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SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 9 - 11, 2019

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 202851. September 9, 2019]

FEATI UNIVERSITY, *petitioner, v*s. **ANTOLIN PANGAN,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST OR AUTHORIZED CAUSES; BURDEN OF PROVING THAT THE DISMISSAL OF AN EMPLOYEE WAS FOR A VALID OR AUTHORIZED CAUSE RESTS ON THE EMPLOYER; CASE AT BAR.—** Well-settled is the rule that the burden of proving that the dismissal of an employee was for a valid or authorized cause rests on the employer. Substantial evidence must be presented to prove that the termination of employment was validly made. Failure to discharge this duty would lead to the conclusion that the dismissal is illegal.

2. **ID.; ID.; ID.; ID.; REDUNDANCY; GUIDELINES; GOOD FAITH MUST BE ESTABLISHED BY THE EMPLOYER BY SUBSTANTIAL PROOF THAT THE SERVICES OF THE EMPLOYEE ARE IN EXCESS OF WHAT IS NEEDED BY THE COMPANY AND THAT FAIR AND REASONABLE CRITERIA WERE USED TO DETERMINE WHICH POSITIONS ARE TO BE CONSIDERED REDUNDANT OR WHO AMONG THE EMPLOYEES ARE TO BE REDUNDATED; CASE AT BAR.—** In this case, petitioner justifies respondent's dismissal on the ground of

redundancy. Indeed, in our jurisdiction, redundancy is a recognized authorized cause to validly terminate employment. The determination of whether the employee's services are no longer necessary or sustainable, and thus, terminable has been recognized to be a management prerogative. The employer's exercise of such prerogative is, however, not an unbridled right that cannot be subjected to the court's scrutiny. Thus, the Court has laid down certain guidelines for the valid dismissal of employees on the ground of redundancy, to wit: (1) written notice served on both the employee and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant. x x x The Court has, in several occasions, emphasized the importance of these last two guidelines. These guidelines ensure good faith in abolishing redundant positions. To establish good faith, the employer must provide substantial proof that the services of the employee are in excess of what is needed by the company and that fair and reasonable criteria, such as but not limited to (a) less preferred status, *e.g.*, temporary employee; (b) efficiency; and (c) seniority, were used to determine which positions are to be considered redundant or who among the employees are to be redundated. Indeed, an employer cannot simply declare that it has become overmanned and dismiss its employees without adequate proof to sustain its claim of redundancy. Neither can an employer merely claim that it has reviewed its organizational structure and decided that a certain position has become redundant. It bears stressing that adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer. In this case, petitioner merely presented financial audits and enrolment lists to justify respondent's dismissal due to redundancy. As correctly held by the NLRC and the CA, at best, these pieces of evidence prove only the fact of financial losses and decline in enrolment. They do not, in any way, prove that fair and reasonable criteria were used in determining which position is to be declared redundant or who among the employees is to be redundated.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; AWARD OF SEPARATION PAY; PROPER IN CASE AT BAR.— As to the payment of separation pay, petitioner argues that the NLRC, as affirmed by the CA, erred in its re-computation of respondent's separation pay, entitling respondent to additional amount therefor. Invoking vouchers marked in this Petition as Annexes "N" and "O", petitioner argues that respondent is not entitled to additional separation pay as he allegedly already received ₱93,140.04 and ₱223,764.00 retirement pay for his 32 years of service. The NLRC, however, found that when respondent availed of the early retirement program, his monthly salary was ₱12,600.00 and at that time, he has already rendered 32 years of service to petitioner. It was also found that respondent received a retirement pay amounting only to ₱93,140.04, which is indeed less than a quarter of respondent's salary per month for every year of service. Hence, the NLRC re-computed the same in accordance with the law requiring payment of separation pay amounting to one month salary for every year of service, but deducting therefrom the early retirement pay, amounting to ₱93,140.04, already received by respondent. We find no reason to depart from the ruling of the NLRC and CA on the matter. Having established that respondent was illegally dismissed and considering the NLRC's finding that reinstatement is not feasible, respondent is indeed entitled to separation pay equivalent to his month's salary for every year of service less the ₱93,140.04 that he received as his supposed early retirement pay. Notably, there was no mention in the tribunals and court *a quo* of the amount of ₱223,764.00 claimed by petitioner to have also been received by respondent as additional early retirement pay. In fact, in the Release and Quitclaim also invoked by petitioner, only the amount of ₱93,140.04 was mentioned to have been received by respondent. Hence, inasmuch as the tribunals and court *a quo* made no mention of the ₱223,764.00, the Court cannot consider the same. The date stated in the dispositive portion of the NLRC Decision should, however, be modified as it erroneously states that the computation of respondent's separation pay is to be reckoned from September 17, 1990 when it is clear that the date of his employment was September 17, 1970.

4. ID.; ID.; ID.; ID.; AWARD OF BACKWAGES; ILLEGALLY DISMISSED EMPLOYEES ARE ENTITLED TO FULL

BACKWAGES, INCLUSIVE OF ALLOWANCES AND OTHER BENEFITS, COMPUTED FROM THE TIME OF THEIR ILLEGAL TERMINATION UP TO THE FINALITY OF THE DECISION.— The award of backwages is also sustained pursuant to Article 294 of the Labor Code, which substantially states that illegally dismissed employees are entitled to full backwages, inclusive of allowances and other benefits, computed from the time of their illegal termination up to the finality of the decision.

5. ID.; ID.; ID.; ID.; AWARD OF ATTORNEY'S FEES; PROPER WHEN AN EMPLOYEE INCURRED LEGAL EXPENSES IN PROTECTING HIS RIGHTS.— [T]he award of attorney's fees is appropriate since respondent incurred legal expenses in protecting his rights.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

The Law Firm of Israel P.J. Calderon for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45, assailing the Decision[2] dated September 29, 2011 and Resolution[3] dated July 19, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 107499, which affirmed the Decision[4] dated June 30, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 047142-06 (NLRC NCR Case No. 00-08-07502-05).

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[1] *Rollo*, pp. 3-24.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias, concurring; *id.* at 363-375.

[3] *Id.* at 392-394.

[4] *Id.* at 315-327.

The Factual Antecedents

On September 17, 1970, FEATI University (petitioner) hired Antolin Pangan (respondent) as a canteen bookkeeper. Respondent was later on promoted as Assistant Cashier and then as University Cashier in 1995.[5]

Alleging decline in enrolment for the past 25 years, petitioner offered a voluntary early retirement program to all its employees on August 27, 2002. This, according to petitioner, was to ensure viability and to realign its budgetary deficiency.[6]

On even date, respondent availed of the early retirement program. On August 30, 2002, respondent's early retirement application was approved. On September 1, 2002, respondent received his retirement pay amounting to ₱93,140.04 and executed a Release and Quitclaim in favor of petitioner.[7]

Meanwhile, prior to the approval of respondent's application to avail of the early retirement program, respondent was re-hired as University Cashier on August 28, 2002. Alleging, however, that the functions of the University Cashier was subsequently transferred to the Accounting Department as part of the cost-cutting measures that petitioner undertook, petitioner re-assigned respondent as Assistant Program Coordinator of the Graduate Studies on April 15, 2004.[8]

On August 6, 2005, respondent was terminated from employment on the ground of redundancy. According to petitioner, respondent's position became redundant due to the progressive decline of enrolment in the Graduate Program and as such, the Graduate Program Coordinator can adequately handle the tasks without a need for an assistant.[9]

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[5] *Id.* at 315.

[6] *Id*. at 316.

[7] *Id.* at 316 and 322.

[8] *Id*. at 322-323.

[9] *Id*. at 316.

Aggrieved, respondent filed a complaint for illegal dismissal and other monetary claims against petitioner before the Labor Arbiter.

The Labor Arbiter's Ruling

The Labor Arbiter subscribed to petitioner's contention that the decline in its enrolment resulted to financial losses and to redundancy of some positions in the university. The Labor Arbiter found that due to the decline of enrollees, the Program Coordinator can adequately meet the needs of the students without a need for an assistant. Respondent's dismissal on the ground of redundancy was, thus, justified according to the Labor Arbiter. The dispositive portion of the Labor Arbiter's Decision[10] dated November 30, 2005, reads as follows:

> **WHEREFORE**, premises considered, the above case for illegal dismissal is hereby **DISMISSED** for being devoid of legal merit.
>
> [Petitioner] FEATI University, however, is directed to pay [respondent], as follows:
>
> 1.) Appropriate termination pay for [respondent's] separation from employment due to redundancy in the sum of [₱]37,800.00.
>
> 2.) Proportionate 13th month pay (January to August 6, 2005) in the sum of [₱]7,518.00.
>
> **SO ORDERED.**[11]

The NLRC Decision

On appeal, the NLRC reversed and set aside the Labor Arbiter's Decision. While the NLRC found the allegations of decline in enrolment, financial losses, and the redundancy of respondent's position as Assistant Program Coordinator of petitioner's Graduate Studies substantiated, the NLRC found respondent's transfer to the said position to be "dubious to the extent of being anomalous."[12] The NLRC found it incredible

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[10] *Id*. at 278-283.

[11] *Id*. at 283.

[12] *Id*. at 321.

for the petitioner to offer respondent an early retirement program and re-hire him for the same position two days before the approval of his early retirement. The NLRC opined that if respondent's services as University Cashier were indispensable as he was re-hired for the same position, petitioner should have simply not included respondent to those who availed of the early retirement program as a cost-cutting measure.[13]

The NLRC also found it baffling that respondent opted to avail of petitioner's early retirement program when what was offered was equivalent only to less than his quarter month's pay for every year of his 32 years of service at that time.[14]

Further, the NLRC found no explanation as to why during the period when petitioner's financial losses from school operations were increasing, it would create the position of an Assistant Program Coordinator in the Graduate School, for the sole purpose of transferring respondent from being the University Cashier.[15]

The NLRC concluded, thus, that respondent was illegally dismissed as petitioner did not fairly and equitably deal with respondent's severance from employment.[16]

Finding that reinstatement was no longer feasible as the position was already occupied by another, the NLRC ordered for the award of separation pay, computing the same at the rate of one month's salary for every year of service reckoned from September 17, 1970,[17] up to the finality of the decision, less the early retirement pay that respondent already received (₱93,140.04). The NLRC also awarded backwages and benefits

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[13] *Id*. at 323.

[14] *Id*.

[15] *Id*. at 323-324.

[16] *Id*. at 324.

[17] The NLRC Decision stated September 17, 1990 in the computation and dispositive portion but also stated that respondent had already 38 years of service, which is consistent with the established fact that respondent commenced employment on September 17, 1970, not 1990.

computed from the date of respondent's illegal dismissal on August 6, 2005, up to the finality of the decision. Attorney's fees were also awarded as respondent was compelled to litigate to protect his rights.[18]

The NLRC disposed, thus:

WHEREFORE, the appeal is **GRANTED** and the Decision of the Labor Arbiter dated 30 November 2005 is hereby **REVERSED and SET ASIDE**. In lieu thereof, a new order is issued declaring [respondent] to have been illegally dismissed by [petitioner] university. Accordingly, it is directed to pay [respondent] the following:

1. Additional separation pay computed at the rate of one (1) month salary for every year of service from 17 September 1990 (sic) up to the finality of this decision, which as of 30 April 2008 already amounted to [₱]385,659.96;

2. Backwages and benefits computed from the date [respondent] was illegally dismissed on 06 August 2005 up to the finality of this decision, which as of 30 April 2008 already amounted to P (sic) [₱]425,810.00; and

3. Attorney's fees in the amount of [₱]50,000.00.

The 13th month pay in the amount of [₱]7,518.00 awarded by the Labor Arbiter in the assailed Decision is **AFFIRMED**, there being no question as to its propriety.

SO ORDERED.[19]

Petitioner's motion for reconsideration was denied by the NLRC in its October 31, 2008 Resolution:[20]

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit. No further motion of the same nature shall be entertained.

SO ORDERED.[21]

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[18] *Id*. at 325-326.

[19] *Id*. at 326-327.

[20] *Id*. at 339-340.

[21] *Id*. at 340.

The CA Decision

Ascribing grave abuse of discretion on the part of the NLRC, petitioner sought refuge from the CA to question the NLRC Decision. The CA, however, affirmed the NLRC's ruling in its entirety, disposing of petitioner's Petition for *Certiorari* as follows:

WHEREFORE, finding the instant petition not impressed with merit, the same is **DENIED DUE COURSE** and is hereby **DISMISSED**.

SO ORDERED.[22]

Petitioner's motion for reconsideration was likewise denied in the CA's July 19, 2012 assailed Resolution:

WHEREFORE, the instant Motion for Reconsideration is hereby **DENIED**.

SO ORDERED.[23]

Undaunted, petitioner filed the instant Petition, maintaining that respondent was validly dismissed from employment on the ground of redundancy. Petitioner argues that it was able to prove that it suffered serious financial reverses, which resulted to reducing the number of its personnel. Petitioner also argues that the NLRC and the CA erred in doubting its intentions when it re-assigned respondent from being the University Cashier to an Assistant Coordinator Position as there was no evidence that respondent was coerced to give his consent for the transfer. Petitioner alleges that it actually demonstrated good faith when it exerted effort to find another position for respondent when his functions as University Cashier were transferred to the Accounting Department. At that point, according to petitioner, respondent could have already been dismissed for redundancy.

The Issue

The pivotal issue in this case is whether or not respondent was validly dismissed from employment on the ground of redundancy.

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[22] *Id*. at 373.

[23] *Id*. at 393.

The Court's Ruling

The petition lacks merit.

Well-settled is the rule that the burden of proving that the dismissal of an employee was for a valid or authorized cause rests on the employer. Substantial evidence must be presented to prove that the termination of employment was validly made. Failure to discharge this duty would lead to the conclusion that the dismissal is illegal.[24]

In this case, petitioner justifies respondent's dismissal on the ground of redundancy. Indeed, in our jurisdiction, redundancy is a recognized authorized cause to validly terminate employment.[25] The determination of whether the employee's services are no longer necessary or sustainable, and thus, terminable has been recognized to be a management prerogative. The employer's exercise of such prerogative is, however, not an unbridled right that cannot be subjected to the court's scrutiny.

Thus, the Court has laid down certain guidelines for the valid dismissal of employees on the ground of redundancy, to wit: (1) written notice served on both the employee and the Department of Labor and Employment (DOLE) at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and

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[24] *Abbott Laboratories (Philippines), Inc. v. Torralba*, G.R. No. 229746, October 11, 2017, 842 SCRA 539, 550-551.

[25] LABOR CODE, Art. 283. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. x x x

(4) fair and reasonable criteria in ascertaining what positions are to be declared redundant.[26]

It is undisputed that petitioner served the required notice to respondent and the DOLE. The issue raised by the petitioner as to the payment of separation pay shall be addressed after the discussion on the third and fourth guidelines, these being the crux of the present controversy.

The Court has, in several occasions, emphasized the importance of these last two guidelines. These guidelines ensure good faith in abolishing redundant positions.[27] To establish good faith, the employer must provide substantial proof that the services of the employee are in excess of what is needed by the company and that fair and reasonable criteria, such as but not limited to (a) less preferred status, *e.g.*, temporary employee; (b) efficiency; and (c) seniority, were used to determine which positions are to be considered redundant or who among the employees are to be redundated.[28]

Indeed, an employer cannot simply declare that it has become overmanned and dismiss its employees without adequate proof to sustain its claim of redundancy.[29] Neither can an employer merely claim that it has reviewed its organizational structure and decided that a certain position has become redundant. It bears stressing that adequate proof of redundancy and criteria in the selection of the employees to be affected must be presented to dispel any suspicion of bad faith on the part of the employer.[30]

In this case, petitioner merely presented financial audits and enrolment lists to justify respondent's dismissal due to

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[26] *Abbott Laboratories (Philippines), Inc. v. Torralba*, *supra* at 551-552.

[27] See *Arabit v. Jardine Pacific Finance, Inc., (Formerly MB Finance)*, 733 Phil. 41, 60 (2014).

[28] *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT, Inc.*, 809 Phil. 106, 123 (2017); *Arabit v. Jardine Pacific Finance, Inc. (formerly MB Finance) supra* note 27, at 58-59.

[29] *Ocean East Agency, Corporation v. Lopez*, 771 Phil. 179, 195 (2015).

[30] *Id.*

redundancy. As correctly held by the NLRC and the CA, at best, these pieces of evidence prove only the fact of financial losses and decline in enrolment. They do not, in any way, prove that fair and reasonable criteria were used in determining which position is to be declared redundant or who among the employees is to be redundated.

Petitioner's bare allegations that it conducted a review of its organizational structure and came up with the decision that respondent's position became redundant cannot be considered substantial evidence to prove compliance with the above-cited jurisprudential guidelines. Neither can general averments about logic and reason — Program Coordinator does not need the aid of an Assistant Coordinator anymore considering that there were less students — be considered sufficient to justify the dismissal of an employee on the ground of redundancy. Again, evidence that the alleged review was conducted, as well as the specific criteria used in the determination of which position or employee should be affected by the cost-cutting measures, must be presented. Otherwise, the termination of the redundated employee cannot be sustained.

Such evidence is important not only because it is mandated by the jurisprudential guidelines, but specifically because in this case, as correctly observed by the NLRC and the CA, the circumstances surrounding respondent's transfer to the redundated position that caused his dismissal are questionable.

To recall, before respondent's position as Assistant Program Coordinator was declared redundant, respondent's position as University Cashier was also considered redundant for allegedly being already absorbed by the Accounting Department. This led to respondent's transfer to the Assistant Program Coordinator position, which, notably, was created only for respondent's purpose. Again, aside from petitioner's bare allegation that the tasks of the University Cashier were absorbed by the Accounting Department, no evidence was presented to support such allegation and to prove that the position was justifiably redundant. Curiously also, no explanation was offered as to why respondent was "re-hired" in the same position before the approval of his alleged

application for early retirement, only to be considered a redundant position later on. Petitioner failed to explain why every position held by respondent was purportedly subjected to its cost-cutting measures.

In sum, while petitioner may have been able to prove decline in enrolment and financial losses, it severely failed to prove that it utilized fair and reasonable criteria in ascertaining that respondent's position as Assistant Program Coordinator, as well as his former position as University Cashier, were redundant and/or that it was necessarily respondent who should be affected by its cost-cutting measures. Respondent's dismissal on the ground of redundancy, therefore, cannot be sustained.

As to the payment of separation pay, petitioner argues that the NLRC, as affirmed by the CA, erred in its re-computation of respondent's separation pay, entitling respondent to additional amount therefor. Invoking vouchers marked in this Petition as Annexes "N" and "O," petitioner argues that respondent is not entitled to additional separation pay as he allegedly already received ₱93,140.04 and ₱223,764.00 retirement pay for his 32 years of service.

The NLRC, however, found that when respondent availed of the early retirement program, his monthly salary was ₱12,600.00 and at that time, he has already rendered 32 years of service to petitioner. It was also found that respondent received a retirement pay amounting only to ₱93,140.04, which is indeed less than a quarter of respondent's salary per month for every year of service. Hence, the NLRC re-computed the same in accordance with the law requiring payment of separation pay amounting to one month salary for every year of service, but deducting therefrom the early retirement pay, amounting to ₱93,140.04, already received by respondent.

We find no reason to depart from the ruling of the NLRC and CA on the matter.

Having established that respondent was illegally dismissed and considering the NLRC's finding that reinstatement is not feasible, respondent is indeed entitled to separation pay equivalent

to his month's salary for every year of service less the ₱93,140.04 that he received as his supposed early retirement pay. Notably, there was no mention in the tribunals and court *a quo* of the amount of ₱223,764.00 claimed by petitioner to have also been received by respondent as additional early retirement pay. In fact, in the Release and Quitclaim also invoked by petitioner, only the amount of ₱93,140.04 was mentioned to have been received by respondent. Hence, inasmuch as the tribunals and court *a quo* made no mention of the ₱223,764.00, the Court cannot consider the same.

The date stated in the dispositive portion of the NLRC Decision should, however, be modified as it erroneously states that the computation of respondent's separation pay is to be reckoned from September 17, 1990 when it is clear that the date of his employment was September 17, 1970.

The award of backwages is also sustained pursuant to Article 294 of the Labor Code, which substantially states that illegally dismissed employees are entitled to full backwages, inclusive of allowances and other benefits, computed from the time of their illegal termination up to the finality of the decision.

Likewise, the award of attorney's fees is appropriate since respondent incurred legal expenses in protecting his rights.[31]

In addition, pursuant to prevailing jurisprudence,[32] a legal interest of six percent (6%) per annum shall be imposed on the total judgment award from the finality of this Decision until its full satisfaction.

WHEREFORE, premises considered, this Petition is **DENIED**. The Decision dated September 29, 2011 and the Resolution dated July 19, 2012 of the Court of Appeals in CA-G.R. SP No. 107499, which affirmed the Decision dated June 30, 2008 of the National Labor Relations Commission in NLRC NCR CA No. 047142-06 (NLRC NCR Case No. 00-08-07502-

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[31] *Innodata Knowledge Services, Inc. v. Inting*, G.R. No. 211892, December 6, 2017, 848 SCRA 106, 149.

[32] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

05) are hereby **AFFIRMED WITH MODIFICATION**. Accordingly, FEATI University is directed to pay Antolin C. Pangan the following:

1. Separation pay computed at the rate of one (1) month salary for every year of service from September 17, 1970 up to the finality of this decision, less Ninety Three Thousand One Hundred Forty Pesos and Four Centavos (₱93,140.04);

2. Backwages and benefits computed from the date Antolin C. Pangan was illegally dismissed on August 6, 2005, up to the finality of this decision;

3. Attorney's fees in the amount of ₱50,000.00;

4. The 13th month pay in the amount of ₱7,518.00 awarded by the Labor Arbiter; and

5. The legal interest of six percent (6%) per annum imposed on the total judgment award from the finality of this Decision until its full satisfaction.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa*, *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 218107. September 9, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE JAMILLO QUILATAN *y* DELA CRUZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); TO SUSTAIN A JUDGMENT OF CONVICTION BEYOND REASONABLE DOUBT IN PROSECUTIONS INVOLVING NARCOTICS, THE IDENTITY OF THE NARCOTIC SUBSTANCE MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.—** In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The identity of the narcotic substance must therefore be established beyond reasonable doubt.

2. **ID.; ID.; SECTION 2 THEREOF AND SECTION 21 (A) OF THE IMPLEMENTING RULES AND REGULATIONS THEREOF; UNJUSTIFIED DEVIATIONS FROM THE PRESCRIBED PROCEDURE OUTLINED THEREIN WILL RESULT TO CREATION OF REASONABLE DOUBT AS TO THE IDENTITY AND INTEGRITY OF THE ILLEGAL DRUGS AND, CONSEQUENTLY, REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED.—** Section 21 of RA 9165, the applicable law at the time of the alleged commission of the crime, lays down the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 (IRR), in turn, filled in the details as to place of inventory and added a saving clause in case of non-compliance with the requirements under justifiable grounds. The requirements outlined in Section 21 of RA 9165 and its IRR are not mere suggestions or recommendations. Undoubtedly, the buy-bust team is not at a liberty to select only parts it wants to comply with and conveniently ignore the rest of the requirements. Unjustified deviations from the prescribed procedure will result to the creation of reasonable doubt as to the identity and integrity of the illegal drugs and, consequently, reasonable doubt as to the guilt of the accused. Among the essential requirements of Section 21 of RA 9165 and its IRR are the presence of the three required witnesses — namely, a media representative, a representative from the DOJ, and any elected public official

— and the immediate conduct of the physical inventory and photographing of the seized items in the specified places allowed under the law. **Here, however, the buy-bust team miserably failed to comply with these requirements.** A perusal of the records and the evidence presented by the prosecution would show that, even believing its version of a buy-bust operation, the buy-bust team made no effort at all to secure the three required witnesses. x x x Moreover, the buy-bust team likewise failed to immediately conduct the inventory and photographing of the seized items in the places allowed by law. The testimonies of both PO2 Ocampo and SPO1 Lumabao showed that the buy-bust team conducted the physical inventory and the photographing of the seized items in a Barangay Hall. x x x The Barangay Hall of Brgy. San Dionisio is not one of the allowed alternative places provided under Section 21 of the IRR. Despite suggesting in the Joint Affidavit that the target area was near the police station and claiming that they rode a car going to the target area, the buy-bust team unjustifiably decided to ignore the prescribed procedure and conduct the inventory and photographing of the seized items in a place not allowed under the rules.

3. ID.; ID.; ID.; ID.; SAVING CLAUSE EXCUSING DEVIATION FROM THE REQUIRED PROCEDURE; ELEMENTS.— While the IRR has a saving clause excusing deviation from the required procedure, the application of such clause must be supported by the presence of the following elements: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

4. ID.; ID.; ID.; GROUNDS WHICH MAY JUSTIFY THE FAILURE OF THE BUY-BUST TEAM TO SECURE THE PRESENCE OF THREE (3) REQUIRED WITNESSES; ABSENT IN CASE AT BAR.— As stated in the case of *People v. Lim*, the grounds which may justify the failure of the buy-bust team to secure the presence of the three required witnesses are: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves

were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. The above grounds were not present in this case; thus, the buy-bust team's failure to comply with the three-witness rule is inexcusable.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT STAND WHEN THERE IS A BRAZEN DISREGARD OF ESTABLISHED PROCEDURES UNDER THE LAW; CASE AT LAW.— The practice of eagerly ascribing the veil of regular performance of duty in favor of the apprehending officers — even in the face of their evident lapses in following the prescribed procedure laid down by law — should not be tolerated. The presumption of regularity in the performance of duties is not a tool designed to coddle State agents unjustifiably violating the law or an excuse for the courts to shy away from their duty to subject the prosecution's evidence to the crucible of severe testing to ascertain whether it is enough to overcome the presumption of innocence in favor of the accused. Here, the presumption of regularity cannot stand because of the buy-bust team's brazen disregard of established procedures under Section 21 of RA 9165 and its IRR.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal[1] filed by accused-appellant Jose Jamillo Quilatan *y* Dela Cruz (Quilatan) from the Decision[2] dated May 30, 2014 of the Court of Appeals[3] (CA), which affirmed the Decision[4] dated February 25, 2013 of the Regional Trial Court[5] (RTC) finding Quilatan guilty beyond reasonable doubt of violating Sections 5[6] and 11,[7] Article II of Republic

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[1] See Notice of Appeal dated June 27, 2014, CA *rollo*, pp. 100-103.

[2] *Rollo*, pp. 2-9. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ricardo R. Rosario, and Danton Q. Bueser concurring.

[3] Special Fourth Division in CA-G.R. CR No. 06054.

[4] Records, pp. 296-303. Penned by Assisting Judge Jansen R. Rodriguez.

[5] Branch 259, Parañaque City.

[6] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[7] SEC. 11. *Possession of Dangerous Drugs*. — x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Act No. (RA) 9165,[8] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The twin Informations[9] filed against Quilatan read as follows:

Criminal Case No. 09-0667

The undersigned State Prosecutor accuses JOSE JAMILLO QUILATAN y DELA CRUZ of the crime of Violation of Sec. 5[,] Art. II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

> That on or about the 15th day of June 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport a one (1) heat-sealed transparent plastic sachet weighing 0.12 gram to Police Poseur[-]Buyer PO2 ELBERT OCAMPO, which content of the said plastic sachet when tested was found positive to be Methamphetamine Hyd[r]ochloride, a dangerous drug.
>
> CONTRARY TO LAW.[10]

Criminal Case No. 09-0668

The undersigned State Prosecutor accuses JOSE JAMILLO QUILATAN y DELACRUZ, of the crime of Violation of Sec. 11 of Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, committed as follows:

> That on or about the 15th day of June 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully

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[8] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

[9] Records, pp. 1-2.

[10] *Id.* at 1.

> authorized to posses[s] dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.12 gram which, when tested was found positive to be [Methamphetamine] Hydrochloride (shabu) a dangerous drug.
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> CONTRARY TO LAW.[11]

The common starting point of the conflicting narrations of factual antecedents is the date of the buy-bust operation.

According to the version of the prosecution, on June 15, 2009 at around 4:30 p.m., the Parañaque City Police Station Anti-Illegal Drugs Special Operation Task Group received a report from a female informant/asset about the illegal drug activities of Quilatan.[12] She stated that she knew Quilatan personally and that she would accompany the police operatives to help ensure that he would get caught by them.[13] A buy-bust team was then formed composed of PO2 Elbert Ocampo (PO2 Ocampo), who was designated as poseur-buyer, SPO1 Luminog Lumabao[14] (SPO1 Lumabao), who was designated as the immediate back-up, and five (5) other team members as back-ups: P/Insp. Roque Tome, SPO4 Alberto Sanggalang, SPO1 Ricky Macaraeg, PO3 Fernan Acbang, and PO2 Domingo Julaton.[15] After coordinating with the Philippine Drug Enforcement Agency, the buy-bust team, together with the informant, went to the target area in Tramo St., Brgy. San Dionisio, Parañaque City at around 9:15 p.m. that same day.[16] PO2 Ocampo and the informant first alighted from their vehicle[17]

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[11] *Id.* at 2.

[12] *Rollo*, p. 3; *id.* at 7.

[13] Records, p. 7.

[14] Also stated as "Lumibao" in some parts of the records.

[15] *Rollo*, p. 3.

[16] *Id.*

[17] TSN, October 10, 2011, p. 9; records, p. 64.

and the rest of the buy-bust team discreetly followed them.[18] At the site, near a drug store,[19] they saw Quilatan wearing a black *sando* and fatigue pants and they approached him.[20] After seeing the informant, Quilatan asked "*iiskor ka ba?*" and the informant replied by saying "*itong kasama k[o]ng taxi driver tropa ko kukuha ng halagang limang daang piso*"[21] PO2 Ocampo then handed the marked money to Quilatan.[22] After counting the same, Quilatan took out from his right pocket a plastic sachet containing a white crystalline substance and handed the same to PO2 Ocampo.[23] After consummating the sale, PO2 Ocampo alerted his team and gave the pre-arranged signal by removing his cap.[24] Seeing that SPO1 Lumabao was already rushing to the scene, PO2 Ocampo grabbed the hand of Quilatan and revealed his identity as a police officer.[25] PO2 Ocampo then checked Quilatan's right hand and recovered another plastic sachet containing a white crystalline substance.[26] When SPO1 Lumabao approached Quilatan, he searched the latter's pocket and recovered the marked money.[27] Their team leader then decided they should proceed to the Barangay Hall of San Dionisio, Parañaque City,[28] and there, in the presence of Quilatan and Brgy. Desk Officer Rodolfo Enrique, PO2 Ocampo marked and prepared an inventory of the items recovered from Quilatan.[29]

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[18] *Id.* at 10; *id.* at 65.

[19] Records, p. 7.

[20] *Id.*

[21] *Id.*

[22] *Rollo*, p. 3; records, p. 297.

[23] *Id.*; *id.*

[24] *Id.*

[25] TSN, October 10, 2011, p. 12; records, p. 67.

[26] *Id.*; *id.*

[27] TSN, October 22, 2012, pp. 5-6; records, pp. 175-176.

[28] TSN, October 10, 2011, p. 13; *id.* at 68.

[29] *Rollo*, pp. 3-4.

Thereafter, they went back to the police station where a request for laboratory examination was made, which, together with the seized items, was brought personally by PO2 Ocampo to the Philippine National Police Crime Laboratory of Southern Police District in Brgy. San Antonio, Makati City.[30] Upon testing, the specimens turned out positive for methamphetamine hydrochloride.[31]

However, in Quilatan's version of the story, he alleged that at around 7:30 p.m. on June 15, 2009, he was riding his motorcyle on his way to the house of his in-laws in San Dionisio, Parañaque City to fetch his wife.[32] He was not able to reach his destination because his path was suddenly blocked by a car and he was then arrested for driving without a helmet.[33] They asked for his license and for his papers for the motorcycle and he was thereafter invited to the police headquarters for a supposed verification.[34] Upon arriving at the station, he asked to call his wife to inform her and to ask her to come to the police station.[35] When Quilatan's wife arrived, a police officer informed Quilatan not to worry anymore since they had already spoken to his wife.[36] Quilatan's wife thereafter informed him that the police officers were asking for Ten Thousand Pesos (₱10,000.00) to settle his case.[37] Quilatan objected to the amount and argued with the police officers by asserting that his violation was merely his failure to wear a helmet while driving.[38] However, the police officers got angry and, to his surprise, someone said "*Nagtutulak din yan ng droga*."[39] Even if Quilatan denied this accusation

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[30] *Id.* at 4.

[31] *Id.*

[32] Records, p. 246.

[33] *Id.* at 247.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

and stated that he did not know what they were talking about, the police officers insisted that he was positively identified by someone they knew and then he was detained.[40] At around 4:30 a.m. the following day, the police officers brought Quilatan to the Barangay Hall, arranged items on top of a table, and took pictures thereof in his presence and in the presence of a certain *tanod*.[41] There was no elected public official, media representative, or representative from the Department of Justice (DOJ) present while they conducted the inventory. Quilatan was again detained after this.[42]

During trial, PO2 Ocampo and SPO1 Lumabao testified for the prosecution, while only Quilatan testified in his defense.[43]

In a Decision[44] dated February 25, 2013, the RTC gave credence to the testimonies of the prosecution witnesses and ruled that the prosecution was able to establish beyond reasonable doubt all the elements of the offenses charged. It further ruled that Quilatan's alibi was self-serving, especially since no other witnesses were presented to corroborate his testimony and no complaint was filed against the police officers relative to his alleged illegal arrest. The RTC stated that, in the face of the presumption of regularity in the performance of official functions in favor of the police officers, Quilatan's alibi could not prevail. Accordingly, the RTC ruled as follows:

WHEREFORE, premises considered, judgement is hereby rendered as follows:

1. In ***Criminal Case No. 09-0667 for Violation of Sec. 5, Art. II, RA 9165***, the court finds accused **JOSE JAMILLO QUILATAN y DELA CRUZ GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of ***life imprisonment*** and ***to pay a fine of Php 500,000.00***;

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[40] *Id.* at 248.

[41] *Id.*

[42] *Id.*

[43] See records, pp. 297-299.

[44] *Id.* at 296-303.

2. In ***Criminal Case No. 09-0668 for Violation of Sec. 11, Art. II, RA 9165***, the court finds accused **JOSE JAMILLO QUILATAN y DELA CRUZ, GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of ***imprisonment of twelve (12) years and one (1) day as minimum to seventeen (17) years and four (4) months as maximum*** and ***to pay a fine of Php 300,000.00***.

It appearing that accused **JOSE JAMILLO QUILATAN y DELA CRUZ** is detained at the Para[ñ]aque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is directed to prepare the *Mittimus* for the immediate transfer of said accused from the Parañaque City Jail to the New Bilibid Prisons, Muntinlupa City.

The specimen[s] are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same to the [PDEA] for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.[45]

Quilatan appealed[46] to the CA, interposing the lone issue of whether the trial court gravely erred in convicting him notwithstanding the apprehending team's non-compliance with Section 21 of RA 9165.

In a Decision[47] dated May 30, 2014, the CA ruled that the prosecution was able to establish beyond reasonable doubt an unbroken link in the chain of custody of the seized items and that their integrity and evidentiary value had been preserved. The fact that there was no representative from the media or the DOJ did not affect the integrity or evidentiary value of the seized items. Besides, Quilatan's defense of frame-up, like alibi, is viewed with disfavor since it can easily be concocted and is a common ploy in most prosecutions for violations of the Dangerous Drugs Law. In view of these findings, the CA dismissed the appeal and affirmed the RTC Decision. Hence, the instant appeal before the Court.

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[45] *Id.* at 302-303.

[46] See Notice of Appeal dated March 1, 2013, records, p. 304.

[47] *Rollo*, pp. 2-9.

The issue in the case at bar is whether the prosecution proved Quilatan's guilt for violation of Sections 5 and 11 of RA 9165 beyond reasonable doubt.

We answer in the negative.

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The identity of the narcotic substance must therefore be established beyond reasonable doubt.[48]

Section 21[49] of RA 9165, the applicable law at the time of the alleged commission of the crime, lays down the procedure to be followed by a buy-bust team in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia. Section 21(a),[50] Article II of the Implementing Rules and

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[48] *People v. Suan*, 627 Phil. 174, 179 and 188 (2010).

[49] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

[50] **SECTION 21.** ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

Regulations of RA 9165 (IRR), in turn, filled in the details as to place of inventory and added a saving clause in case of non-compliance with the requirements under justifiable grounds.[51]

The requirements outlined in Section 21 of RA 9165 and its IRR are not mere suggestions or recommendations. Undoubtedly, the buy-bust team is not at a liberty to select only parts it wants to comply with and conveniently ignore the rest of the requirements. Unjustified deviations from the prescribed procedure will result to the creation of reasonable doubt as to the identity and integrity of the illegal drugs and, consequently, reasonable doubt as to the guilt of the accused.[52]

Among the essential requirements of Section 21 of RA 9165 and its IRR are the presence of the three required witnesses — namely, a media representative, a representative from the DOJ, and any elected public official — and the immediate conduct of the physical inventory and photographing of the seized items in the specified places allowed under the law. **Here, however,**

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied)

[51] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131, 143-144.

[52] *Id.* at 146.

the buy-bust team miserably failed to comply with these requirements.

A perusal of the records and the evidence presented by the prosecution would show that, even believing its version of a buy-bust operation, the buy-bust team made no effort at all to secure the three required witnesses. The Joint Affidavit[53] of PO2 Ocampo and SPO1 Lumabao included a summary of the prosecution's narration of events:

N[A], matapos makuha ang lahat ng detalye tungkol sa aktibidadis (*sic*) [*ni* Quilatan] *agad ipinaalam ng aming* team leader PI TOME *sa aming hepe* PSSUPT ALFREDO VALDEZ *kung kaya't inatasan kami na magsagawa ng* buy[-]bust operation *sa lugar na nabanggit kung kaya't agad kami nakipag-ugnayan sa PDEA, upang maging lihetimo* (sic) *ang [aming] gagawing operasyon.*

NA, bago pa isagawa ang operasyon ay nagsagawa muna kami ng maiksing briefing *sa aming opesina* (*sic*) *at ako* (PO2 OCAMPO) *ang naatasang umaktong* poseur[-]buyer *at binigay sa akin ang isang pirasong isang* (*sic*) *dalawang daang piso na may* serial no. DT755573 *at tatlong pirasong isang daang piso [na] may mga* serial no. LQ134794, PP742266 at NP749150 *na parehong may markang* "EO" *sa kanang itaas na parte ng mga nasabing pera at at* (*sic*) *ang aming napagkasunduang* pre-arrange[d] *signal ay ang "PAGTANGGAL NG SUMBRERO" bilang hudyat ng matagumpay na bilihan ng shabu at ako* (SPOI LUMABAO) *ang naatasang* immediate back[-]up *kay* PO2 OCAMPO.

NA, matapos maitala sa aming police blotter *ang aming gagawing operasyon humigit kumulang* **9:15 ng gabi ika-15 June 2009** *sakay ng aming pribadong sasakyan sa pamumuno ni* PI TOME *ay nagtungo [sa]* Tramo St[.], *Brgy*[.] San Dionisio, *Lungsod ng Parañ[a]que upang magsagawa ng* buy[-]bust *operasyon at sa isang saglit n[g aming] paglalakbay papunta sa aming* target *na lugar ay narating namin ang kanto ng* Tramo St[.], *Brgy*[.] San Dionisio, Parañaque City *at gaya ng aming napagkasunduan ay ako* (PO2 OCAMPO) *kasama ng isang* asset *ay unang b[u]maba ng sasakyan habang lihim na nakasunod sa amin ang iba naming kasamahan.*[54]

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[53] Denominated as "*Pinagsamang Salaysay*," records, pp. 7-8.

[54] *Id.* at 7.

After allegedly receiving the tip from the confidential informant, the buy-bust team was formed, a team briefing was conducted, and the team went to the target area with the informant. **Conspicuously absent in the narration of facts by the prosecution is the part where the buy-bust team sought the attendance of the three required witnesses.** From the time they received the tip at 4:30p.m. up to the time they went to the target area at around 9:15 p.m., there was a span of around five (5) hours where they could have easily contacted the required witnesses, but there was no hint that they made any effort to do so. Consequently, the requirement of the presence of all the witnesses at the time of the operation, conduct of inventory, and photographing was not fulfilled.

While the IRR has a saving clause excusing deviation from the required procedure, the application of such clause must be supported by the presence of the following elements: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[55]

As stated in the case of *People v. Lim*,[56] the grounds which may justify the failure of the buy-bust team to secure the presence of the three required witnesses are:

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of

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[55] See *People v. Tomawis*, *supra* note 51, at 145.

[56] G.R. No. 231989, September 4, 2018.

confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[57] (Emphasis omitted)

The above grounds were not present in this case; thus, the buy-bust team's failure to comply with the three-witness rule is inexcusable.

Moreover, the buy-bust team likewise failed to immediately conduct the inventory and photographing of the seized items in the places allowed by law. The testimonies of both PO2 Ocampo and SPO1 Lumabao showed that the buy-bust team conducted the physical inventory and the photographing of the seized items in a Barangay Hall:

[Testimony of PO2 Ocampo:]

Q: What about SPO1 Lumabao, what happened to him?
A: He assisted me in arresting the suspect and he was able to recover the marked money.

Q: What happened after that?
A: We apprised him of his rights.

Q: What were these rights that you told to him?
A: He has the right to remain silent and that we arrested him for charges of selling illegal drugs.

Q: What happened now to the plastic sachets containing white crystalline substance?
A: Our Team Leader decided to proceed to the Barangay Hall of Brgy. San Dionisio to conduct the inventory and the marking of the recovered evidence.

Q: How far is the (*sic*) Brgy. San Dionisio from the target place?
A: More or less, 500 meters.

Q: What happened at the Barangay Hall of Brgy. San Dionisio?
A: In front of the duty desk officer, I placed markings on the recovered evidence as well as the inventory was prepared.[58] (Emphasis supplied)

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[57] *Id.* at 13.

[58] TSN, October 10, 2011, pp. 12-13; records, pp. 67-68.

[Testimony of SPO1 Lumabao:]

Q: What was that item he was able to buy?
A: White crystalline substance or shabu, Ma'am.

Q: Where was that suspected shabu placed?
A: I only saw the recovered items at the *Barangay* Hall, Ma'am.

Q: How many items did you see at the Barangay Hall?
A: Two (2) plastic sachets, Ma'am.[59] (Emphasis supplied)

The Barangay Hall of Brgy. San Dionisio is not one of the allowed alternative places provided under Section 21[60] of the IRR. Despite suggesting in the Joint Affidavit that the target area was near the police station and claiming that they rode a car going to the target area,[61] the buy-bust team unjustifiably

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[59] TSN, October 22, 2012, pp. 7-8; *id.* at 177-178.

[60] The pertinent portion of the IRR states:

SECTION 21. x x x

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied)

[61] In the *Pinagsamang Salaysay*, PO2 Ocampo and SPO1 Lumabao stated:

NA, matapos maitala sa aming police blotter *ang aming gagawing operasyon humigit kumulang* 9:15 *ng gabi ika*-15 June 2009 ***sakay ng aming pribadong sasakyan sa pamumuno*** ni PI TOME *ay nagtungo [sa]* Tramo St[.], *Brgy*[.] San Dionisio, Lungsod ng Paraña[a]que *upang magsagawa ng* buy[-]bust *operasyon* ***at sa isang saglit n[g aming] paglalakbay papunta***

decided to ignore the prescribed procedure and conduct the inventory and photographing of the seized items in a place not allowed under the rules.

However, both the RTC and the CA saw it fit to tolerate the erroneous conduct of the buy-bust team based only on the presumption of regularity in the performance of official duty in favor of the buy-bust team.

The practice of eagerly ascribing the veil of regular performance of duty in favor of the apprehending officers — even in the face of their evident lapses in following the prescribed procedure laid down by law — should not be tolerated. The presumption of regularity in the performance of duties is not a tool designed to coddle State agents unjustifiably violating the law or an excuse for the courts to shy away from their duty to subject the prosecution's evidence to the crucible of severe testing to ascertain whether it is enough to overcome the presumption of innocence in favor of the accused.

Here, the presumption of regularity cannot stand because of the buy-bust team's brazen disregard of established procedures under Section 21 of RA 9165 and its IRR.

The above unjustified procedural deviations bring into question the identity and integrity of the seized drugs. Hence, it is erroneous to state that the chain of custody remained intact and that the guilt of Quilatan was proven beyond reasonable doubt. Accordingly, Quilatan's right to be presumed innocent is upheld and he must be acquitted.

As a final note, in order to weed out early on from the courts' already congested docket orchestrated or poorly built up drug-related cases, the Court sees it fit to reiterate the mandatory policy pronounced by the Court in the case of *People v. Lim*:[62]

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sa aming target na Iugar ay narating namin ang kanto ng **Tramo St[.], Brgy[.] San Dionisio, Parañaque City** *at gaya ng aming napagkasunduan ay ako* (PO2 OCAMPO) *kasama ng isang* asset *ay unang b[u]maba ng sasakyan habang lihim na nakasunod sa amin ang iba naming kasamahan.* Records, p. 7; emphasis and underscoring supplied.

[62] *Supra* note 56.

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[63]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 30, 2014 of the Court of Appeals, Special Fourth Division in CA-G.R. CR No. 06054 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Jose Jamillo Quilatan *y* Dela Cruz** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison in Muntinlupa City for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

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[63] *Id.* at 15-16.

FIRST DIVISION

[G.R. No. 233200. September 9, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARMELO CARPIO *y* TARROZA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SECTION 21 THEREOF; PROCEDURAL SAFEGUARDS IN THE SEIZURE, CUSTODY AND DISPOSITION OF THE DANGEROUS DRUGS ARE VITAL TO ENSURE THE PRESERVATION OF THE CHAIN OF CUSTODY AND TO GUARANTEE THAT THE INTEGRITY OF THE SEIZED DRUGS IS DULY PRESERVED; CASE AT BAR.— The State bears the burden of proving the elements of the crimes of illegal sale and illegal possession of dangerous drugs by establishing the *corpus delicti*. This requires that the State must present the seized drugs themselves, along with proof of the relevant transaction. The State must further show that there were no substantial gaps in the chain of custody *vis-a-vis* the drugs as to raise doubts about their integrity as evidence of guilt. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and the ensuing criminal prosecution. The Prosecution must account for every link in the chain of custody; otherwise, the crime is not established beyond reasonable doubt. Section 21(1) of R.A. No. 9165 sets the procedural safeguards to be followed in the seizure, custody and disposition of the dangerous drugs. x x x The *Implementing Rules and Regulations of R.A. No. 9165* (IRR) echoes the x x x statutory requirements. x x x The x x x procedure is vital to ensure the preservation of the chain of custody and to guarantee that the integrity of the seized drugs is duly preserved. A perusal of the records shows that the police officers did not observe the procedural requirements and left substantial gaps in the chain of custody of the seized drugs.

2. ID.; ID.; ID.; ID.; MARKING OF THE SEIZED DRUGS AT THE CRIME SCENE IS CRUCIAL IN PROVING THE

CHAIN OF CUSTODY, AS IT IS THE STARTING POINT IN THE CUSTODIAL LINK; TWO-FOLD FUNCTION OF MARKING UPON SEIZURE; CASE AT BAR.— It appears that SPO1 Rivera instantly confiscated the three sachets of *shabu* following the supposed sale but marked the same with his initials in the presence of investigator SPO1 Dalumpines only upon arrival at the police station instead of at the crime scene itself. The delay in marking the confiscated items was already irregular without SPO1 Rivera rendering an explanation of why he did so. We have emphasized that the immediate marking of the seized drugs at the crime scene is crucial in proving the chain of custody because it is the starting point in the custodial link. *People v. Alagarme* instructs that the marking upon seizure serves a two-fold function: the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, planting, or contamination of evidence.

3. ID.; ID.; ID.; STRICT COMPLIANCE WITH THE PROCEDURAL SAFEGUARDS MAY BE DISPENSED WITH, UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— Without doubt, the strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers. Yet, the law recognizes that a departure from the safeguards may become necessary, and has incorporated a saving clause (*"Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items"*). To rely on the saving clause, the Prosecution should prove the concurrence of the twin conditions, namely: (*a*) the existence of justifiable grounds for the departure, and (*b*) the preservation of the integrity and the evidentiary value of the seized items. We have consistently reminded law enforcement officers to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely imperative, could be dispensed with only upon justifiable grounds, and when the integrity of the evidence of

the *corpus delicti* was preserved. But the non-compliance with the procedures, to be excusable, must be justified by the State's agents in such a way that during the proceedings before the trial court, they must acknowledge and justify any perceived deviations from the requirements of the law. If the Prosecution fails to tender any justification for the non-compliance with the procedure prescribed, the Court cannot allow the exception to apply. That is what the Court must do in this case.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; EVERY APPEAL OF A CRIMINAL CONVICTION ALWAYS OPENS THE ENTIRE CASE FOR REVIEW; A CRIMINAL APPEAL, AS DISTINGUISHED FROM A CIVIL APPEAL, PRESERVES THE RIGHT OF THE ACCUSED NOT TO BE PUNISHED FOR A CRIME EXCEPT UPON HIS GUILT BEING ESTABLISHED BEYOND REASONABLE DOUBT; CASE AT BAR.— [T]he CA noted that the accused-appellant was raising the issue against the preservation of the chain of custody for the first time only on appeal; and held him estopped from adverting to the arresting officers' procedural lapses. We disagree. There is to be no question that every appeal of a criminal conviction always opens the entire case for review. The appeal before the CA should be no different. It became incumbent upon the CA to leave no stone unturned during its review of the convictions because the accused-appellant did not waive any errors committed by the trial court. Indeed, the CA, as a reviewing tribunal, had the duty to correct the errors, and could *motu proprio* correct errors of appreciation of the facts and of law committed by the trial court. A criminal appeal is so different from a civil appeal, for the former preserves the right of the accused not to be punished for crime except upon his guilt being established beyond reasonable doubt but the latter is not concerned with the proof beyond reasonable doubt. For sure, the lower courts were shown to have committed grave errors, and it fully became incumbent upon the CA and the Court itself to undo the injustice that prejudiced the accused-appellant. We should acquit him.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *C.J.*:

The requirements for the preservation of the chain of custody in drug-related prosecutions are to be dispensed with upon justifiable reasons, and only if the integrity and evidentiary value of the confiscated dangerous drugs are properly preserved by the apprehending officers.

The Case

By this appeal, the accused-appellant seeks the review and reversal of the decision promulgated on April 7, 2017,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on May 28, 2014 by the Regional Trial Court (RTC), Branch 13, in Zamboanga City finding him guilty of the crimes of illegal sale and illegal possession of *shabu*, a dangerous drug, as respectively defined and punished by Section 5 and Section 11 of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*).[2]

Antecedents

The accusatory portions of the informations filed against the accused-appellant read as follows:

For violation of Section 5, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to SPO1 SERGIO M. RIVERA, a bona fide member of the PNP assigned with the ZCPO Anti-Illegal Drug Special Operation Task Force, who acted as a poseur-buyer, one (1) medium heat-sealed transparent plastic pack containing 0.0568 gram of white crystalline

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[1] *Rollo*, pp. 3-17; penned by Associate Justice Perpetua T. Atal-Pano, concurred in by Associate Justice Edgardo T. Lloren and Associate Justice Oscar V. Badelles.

[2] CA *rollo*, pp. 32-46; penned by Judge Eric D. Elumba.

substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing the same to be a dangerous drug.

CONTRARY TO LAW.[3]

For violation of Section 11, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession and under his custody and control, two (2) small heat-sealed transparent plastic packs each containing white crystalline substance having a total weight of 0.0317 gram both of which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

The accused-appellant pleaded *not guilty* to the charges at his arraignment on September 15, 2005.[5]

The CA summarized the facts and the evidence as follows:

Version of the Prosecution

SPO1 Amado Mirasol, Jr. testified that on August 20, 2004, at about 10:00 o'clock in the morning, a male civilian informant arrived at the office of the Anti-Illegal Drugs Operation Task Force Police Office, Zamboanga City, to report about a certain Carmelo (herein accused-appellant) who was a drug pusher and was engaged in selling shabu at his rented house at San Roque, Zamboanga City. After studying the sketch provided by the asset on the area of the residence of Carmelo, he called the members of his group for the mobilization of a possible buy-bust operation. The buy-bust group, composed of him as the team leader and the following police offices: SPO1 Sergio Rivera, SPO1 Roberto Roca, PO2 Ronald Cordero, PO1 Wilfredo Bobon, and PO1 Hilda Montuno.

[3] *Rollo*, p. 4.

[4] *Id*.

[5] *Id*. at 5.

To start the operation PO1 Montuno prepared five pieces of ₱100.00 bills which he registered with the Public Prosecutors Office, to be used to buy the illegal drugs. He then conducted a briefing wherein he designated SPO1 Rivera as poseur-buyer and gave him one marked ₱100.00 bill, while PO2 Cordero acted as back-up and the rest of the group as perimeter security.

At around 2:00 o'clock in the afternoon, on August 20, 2004 the group proceeded to the target area in [an] L-300 van and parked near the gate of the Chinese Cemetery. As he and the rest of the team followed from a distance, SPO1 Rivera and the confidential informant approached a man standing outside a house at San Roque, near the Chinese Cemetery, and they started talking to him. When the conversation stopped, he saw SPO1 Rivera grabbed the man and called out to PO2 Cordero for assistance. Responding to SPO1 Rivera's call for assistance, he and the rest of the team converged to assist in subduing the suspect. Afterwards, SPO1 Rivera showed him the one (1) heat-sealed plastic sachet that the former bought from Carmelo. SPO1 Rivera frisked Carmelo, and saw the marked money used and two (2) more heat-sealed plastic sachet were recovered from Carmelo's right pocket.

The second witness SPO1 Sergio M. Rivera testified that upon arriving in the area, the rest of the group proceeded to their designated post while he and the confidential informant casually walked towards the house of Carmelo. At about 10 meters away, the informant whispered to him that the person standing near the door was the suspected drug pusher named Carmelo. They continued to walk toward the suspect's house. Their informant approached Carmelo first and asked "do we have now?" to which Carmelo replied "the money?". SPO1 Rivera got one (1) piece of ₱100.00 bill from the left pocket of his polo and handed it to Carmelo. After receiving the money, Carmelo in return handed one-heat sealed plastic sachet to SPO1 Rivera. Sensing that it contains shabu, SPO1 Rivera informed Carmelo in Visayan dialect that he was a police officer and that Carmelo's selling of shabu is contrary to law.

He then effected the arrest to which Carmelo resisted, but was subdued by him and PO2 Cordero until a handcuff was placed around Carmelo's wrist. He informed Carmelo of his rights and proceeded to search the latter's person, wherein he found two (2) heat-sealed plastic sachet containing white crystalline powder and the marked money in the right pocket of Carmelo's pants. He placed the

confiscated sachets in his own pocket until they arrived at their office. In the presence of the Investigator, SPO1 Delumpines, he marked the three (3) sachets with his initials "SMR" before he turned it over to the former.

When SPO1 Rivera was asked by the trial court how he can identify which among the three sachets confiscated is the sachet he bought from Carmelo, SPO1 testified that the sachet he brought from Carmelo is bigger in size that the two sachets he recovered from the latter's pocket.[6]

Version of the Defense

Accused appellant Carmelo testified that on August 20, 2004, at about 2:00 o'clock in the afternoon, he was resting together with his two (2) children inside the house he was renting while his wife was doing laundry outside. He suddenly noticed several armed men in civilian clothes enter the house and started looking for a certain gun. He was familiar with the faces of the men and one of them, SPO1 Mirasol, whom he knew as "Popoy" from his visits in the cockpit in San Roque. He inquired as to what wrong did he commit but he was only handcuffed and told to accompany them to the police station. The men also searched his house but they did not recover anything, and so they proceeded to the police station.

At the police station, he was once again asked where his gun was, to which he answered that he had no gun. Policeman Popoy then demanded from him ₱30,000.00 in exchange for his release but he did not have any money. A neighbor later arrived at the police station known to him as "Langgay" and to whom he had a fight concerning a cockfighting bet amounting to ₱5,000.00 that he owed Langgay. He overheard Popoy and Langgay conversing, with Langgay telling Popoy not to release him until he (Langgay) was paid the amount of ₱5,000.00. As he was not able to pay the demanded amount, he was told that a case for illegal drugs will be filed against him. He was subsequently asked to sign a document, the contents of which he had no knowledge.[7]

Said accused's testimony was corroborated by his witness Miguela De Leon.[8] x x x

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[6] *Id*. at 5-6.

[7] *Id*. at 10-11.

[8] *Id*. at 7-8.

Judgment of the RTC

On May 28, 2004, the RTC rendered judgment finding the accused-appellant guilty as charged,[9] disposing thusly:

> **WHEREFORE**, all the foregoing considered, this Court hereby finds that accused in:
>
> 1. CRIMINAL CASE NO. 20837 GUILTY beyond reasonable for violating Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT and a fine of FIVE HUDNRED THOUSAND PESOS (PHP 500,000.00) without subsidiary penalty in case of insolvency.
>
> 2. CRIMINAL CASE NO. 20838 GUILTY beyond reasonable doubt for violating Section 11, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of 12 YEARS AND 1 DAY to 14 YEARS OF IMPRISONMENTS and pay a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00) without subsidiary imprisonment in case of insolvency.
>
> **SO ORDERED**.[10]

The RTC observed that the testimony of SPO1 Rivera established the elements of the crimes of illegal sale and illegal possession of dangerous drugs; and that the accused-appellant's defense of denial did not overcome the positive testimonies of the Prosecution's witnesses and other evidence like the marked money and the two sachets of *shabu* seized from him.[11]

Decision of the CA

On appeal, the accused-appellant contended that the police officers had blatantly disregarded the mandatory requirements of Section 21 of R.A. No. 9165; that the Prosecution did not establish the identity of the sachets of *shabu* with moral certainty considering that SPO1 Rivera had immediately pocketed the sachets of *shabu* even without marking them; that the marking had been done only at the police station; and that the presumption

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[9] CA *rollo,* pp. 32-46.

[10] *Id.* at 46.

[11] *Id.* at 45.

of regularity in the performance of duty did not apply because the officers had not observed the statutory safeguards under Section 21 of R.A. No. 9165.

On April 7, 2017, the CA promulgated the assailed decision affirming the convictions.[12] It ruled that the testimony of SPO1 Rivera narrating in detail the entrapment operation had demonstrated that the integrity and evidentiary value of the evidence seized were preserved; that marking at the nearest police station or office of the apprehending team had substantially complied with Section 21 of R.A. No. 9165; that the Prosecution's witnesses deserved full faith and credit in the absence of proof of their ill-motive and bad faith; and that the accused belatedly raised the issue surrounding the chain of custody.

Issue

The accused-appellant presents the following grounds in support of his appeal,[13] to wit:

I

Section 21 of R.A. 9165 was blatantly disregarded. There was failure of the arresting team to establish the very first link in the chain of custody and there was failure to preserve the integrity of the alleged items seized.

II

The *corpus delicti* was not established with moral certainty.[14]

The accused-appellant argues that the apprehending officers did not preserve the integrity of the seized contraband; that SPO1 Rivera did not testify that the seized items had been properly marked immediately after having received them; that the marking had not been made in presence of the accused-appellant; that the apprehending officers had not explained why they did not comply with the procedural requirements under

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[12] *Supra*, note 1.

[13] *Rollo*, pp. 35-43.

[14] *Id.* at 35.

Section 21 of the law; and that the CA erred in presuming regularity in the performance of the duty in favor of the apprehending officers.[15]

In short, did the CA correctly affirm the convictions of the accused-appellant for the violations of Section 5 and Section 11 of R.A. No. 9165?

Ruling of the Court

We find merit in the appeal.

The State bears the burden of proving the elements of the crimes of illegal sale and illegal possession of dangerous drugs by establishing the *corpus delicti*.[16] This requires that the State must present the seized drugs themselves, along with proof of the relevant transaction. The State must further show that there were no substantial gaps in the chain of custody *vis-a-vis* the drugs as to raise doubts about their integrity as evidence of guilt. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and the ensuing criminal prosecution.[17] The Prosecution must account for every link in the chain of custody; otherwise, the crime is not established beyond reasonable doubt.[18]

Section 21(1) of R.A. No. 9165 sets the procedural safeguards to be followed in the seizure, custody and disposition of the dangerous drugs, *viz*.:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment

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[15] *Id*. at 36-40.

[16] *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

[17] *People v. Peromingan*, G.R. No. 218401, September 24, 2018.

[18] *People v. Alagarme*, G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328.

so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x

The *Implementing Rules and Regulations of R.A. No. 9165* (IRR) echoes the foregoing statutory requirements, to wit:

x x x x x x x x x

(a) The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The aforestated procedure is vital to ensure the preservation of the chain of custody and to guarantee that the integrity of the seized drugs is duly preserved.

A perusal of the records shows that the police officers did not observe the procedural requirements and left substantial gaps in the chain of custody of the seized drugs.

It appears that SPO1 Rivera instantly confiscated the three sachets of *shabu* following the supposed sale but marked the same with his initials in the presence of investigator SPO1 Dalumpines only upon arrival at the police station instead of at the crime scene itself.[19] The delay in marking the confiscated items was already irregular without SPO1 Rivera rendering an explanation of why he did so. We have emphasized that the immediate marking of the seized drugs at the crime scene is crucial in proving the chain of custody because it is the starting point in the custodial link. *People v. Alagarme*[20] instructs that the marking upon seizure serves a two-fold function: the first being to give to succeeding handlers of the specimens a reference, and the second being to separate the marked evidence from the corpus of all other similar or related evidence from the time of seizure from the accused until their disposition at the end of criminal proceedings, thereby obviating switching, planting, or contamination of evidence.[21]

The records further showed that the police officers dispensed with the other safeguard set in Section 21 of R.A. No. 9165, specifically the taking of the inventory and photographs of the seized items, and ensuring the presence of the representative of the media or of the Department of Justice, and the elective official. SPO1 Rivera admitted so on cross-examination, *viz*.:

Q: So, Mr. Witness, right after the arrest of the accused, did you conduct an inventory?
A: No, Sir.
Q: Did you photograph him with the shabu?
A: Yes, sir.
Q: Did you, before the arrest, before this buy-bust operation, did you ask the guidance of any elective official in that area?
A: No, sir.
Q: In other words, during the arrest of the accused, there was no elective official there?
A: Yes, Sir.

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[19] TSN, August 7, 2009, pp. 33-34.

[20] G.R. No. 184789, February 23, 2015, 751 SCRA 317, 328-329.

[21] *Id.*

Q: How about media?
A: No, Sir.
Q: How about any representative from the DOJ?
A: No, sir.[22]

Although the taking of photographs was supposedly made, such circumstance does not appear now to be probable considering that the Prosecution did not formally offer any photographs as evidence.

Without doubt, the strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers. Yet, the law recognizes that a departure from the safeguards may become necessary, and has incorporated a saving clause ("*Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*"). To rely on the saving clause, the Prosecution should prove the concurrence of the twin conditions, namely: (*a*) the existence of justifiable grounds for the departure, and (*b*) the preservation of the integrity and the evidentiary value of the seized items.[23]

We have consistently reminded law enforcement officers to comply with the safeguards prescribed by the law for the taking of the inventory and photographs. The safeguards, albeit not absolutely imperative, could be dispensed with only upon justifiable grounds,[24] and when the integrity of the evidence of the *corpus delicti* was preserved. But the non-compliance with the procedures, to be excusable, must be justified by the State's agents[25] in such a way that during the proceedings before the trial court, they must acknowledge and justify any perceived

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[22] TSN, August 7, 2009, p. 32.

[23] *People v. Ancheta*, G.R. No. 197371, June 13, 2012, 672 SCRA 604, 618.

[24] *People v. Calates*, G.R. No. 214759, April 4, 2018.

[25] *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 136.

deviations from the requirements of the law.[26] If the Prosecution fails to tender any justification for the non-compliance with the procedure prescribed, the Court cannot allow the exception to apply. That is what the Court must do in this case.

Lastly, the CA noted that the accused-appellant was raising the issue against the preservation of the chain of custody for the first time only on appeal; and held him estopped from adverting to the arresting officers' procedural lapses.

We disagree.

There is to be no question that every appeal of a criminal conviction always opens the entire case for review. The appeal before the CA should be no different. It became incumbent upon the CA to leave no stone unturned during its review of the convictions because the accused-appellant did not waive any errors committed by the trial court. Indeed, the CA, as a reviewing tribunal, had the duty to correct the errors,[27] and could *motu proprio* correct errors of appreciation of the facts and of law committed by the trial court.[28] A criminal appeal is so different from a civil appeal, for the former preserves the right of the accused not to be punished for crime except upon his guilt being established beyond reasonable doubt but the latter is not concerned with the proof beyond reasonable doubt. For sure, the lower courts were shown to have committed grave errors, and it fully became incumbent upon the CA and the Court itself to undo the injustice that prejudiced the accused-appellant. We should acquit him.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 7, 2017; **ACQUITS** accused-appellant **CARMELO CARPIO *y* TARROZA**; and **ORDERS** his **IMMEDIATE RELEASE** from confinement at the San Ramon Prison and Penal Farm, Zamboanga City unless there

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[26] *People v. Oliva*, G.R. No. 234156, January 7, 2019.

[27] *Bongalon v. People*, G.R. No. 169533, March 20, 2013, 604 SCRA 12, 21.

[28] *People v. Miranda*, G.R. No. 229671, January 31, 2018.

are other lawful causes warranting his continued confinement thereat.

Let a copy of this decision be sent to the Superintendent of the San Ramon Prison and Penal Farm in Zamboanga City for immediate implementation. The Superintendent is directed to report the action taken to this Court within five days from receipt of this decision.

SO ORDERED.

Perlas-Bernabe, Jardeleza, Gesmundo, and *Carandang, JJ.,* concur.

FIRST DIVISION

[G.R. No. 242827. September 9, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSEMARIE[*] GABUNADA *y* TALISIC,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; IN CASES FOR ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS, THE PROSECUTION MUST ACCOUNT EACH LINK IN THE CHAIN OF CUSTODY TO ESTABLISH THE IDENTITY OF DANGEROUS DRUGS WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous

[*] "Rose Marie" in some parts of the records.

drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

2. ID.; ID.; ID.; ID.; REQUIREMENTS OF THE LAW IN THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS; RATIONALE.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service (NPS) *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; STRICT COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IS ENJOINED; THE SEIZURE AND CUSTODY OF THE DRUGS ARE STILL VALID DESPITE NON-COMPLIANCE WITH THE PROCEDURE PROVIDED THAT THE JUSTIFIABLE GROUND WAS PROVEN AND THE INTEGRITY AND EVIDENTIARY

VALUE OF THE SAID ITEMS WERE PROPERLY PRESERVED.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law. This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'" Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. **ID.; ID.; ID.; CONDITIONS BEFORE NON-COMPLIANCE WITH WITNESSES REQUIREMENT MAY BE PERMITTED.—** Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary

arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

5. ID.; ID.; ID.; ID.; THE UNJUSTIFIED DEVIATION FROM THE CHAIN OF CUSTODY RULE WITHOUT EXPLANATION BEING OFFERED CONSTRAINED THE COURT TO CONCLUDE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE DRUGS SEIZED FROM APPELLANT WERE COMPROMISED WHICH WARRANTS HER ACQUITTAL.— [A] more circumspect examination of the records would show that Dela Cruz was not present during the conduct of inventory and photography of the seized items. In fact, Dela Cruz himself admitted on re-direct and re-cross examination that one of the arresting police officers merely brought the aforementioned inventory form to him for his signature, two (2) days after the buy-bust, inventory, and photography occurred. x x x [T]he inventory was ***not*** conducted in the presence of Dela Cruz, as the arresting policemen already prepared the inventory form days before it was brought to him for his signature. As discussed, the witness requirement mandates the presence of the required witnesses ***during*** the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented. Hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk. Unfortunately, no such explanation was proferred by the prosecution to justify this glaring procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Gabunada were compromised, which consequently warrants her acquittal.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Gil A. Valera for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 09057, which affirmed the Joint Judgment[3] dated February 13, 2017 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case Nos. R-QZN-16-02795-CR and R-QZN-16-02796-CR finding accused-appellant Rosemarie Gabunada *y* Talisic (Gabunada) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing Gabunada of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that in the early morning of March 19, 2016, policemen of the Quezon City District Anti-Illegal Drug – Special Operation Task Group successfully conducted

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[1] See Notice of Appeal dated June l, 2018; *rollo*, p. 12.

[2] *Id.* at 2-11. Penned by Associate Justice Mario V. Lopez with Associate Justices Victoria Isabel A. Paredes and Carmelita Salandanan Manahan, concurring.

[3] CA *rollo*, pp. 25-37. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated March 21, 2016. Criminal Case No. R-QZN-16-02795-CR is for violation of Section 5, Article II of RA 9165, while Criminal Case No. R-QZN-16-02796-CR is for violation of Section 11, Article II of RA 9165 (See records, pp. 3-6).

a buy-bust operation against Gabunada, during which one (1) plastic sachet containing white crystalline substance was recovered from her. When Gabunada was searched incidental to her arrest, the policemen recovered four (4) other plastic sachets also containing white crystalline substance from her. The seized sachets were then marked, and thereafter, inventoried and photographed in the presence of Gabunada and Barangay Kagawad Leonardo Sinque (Kgd. Sinque). Thereafter, Gabunada and the seized items were taken to the police headquarters where the necessary paperworks for examination were prepared. The seized items were then brought to the crime laboratory for examination, where they tested positive for *methamphetamine hydrochloride* or *shabu,* a dangerous drug.[6]

In defense, Gabunada denied the charges against her, claiming instead, that she was in SM Bicutan in the afternoon of March 18, 2016 to meet her relative. She was waiting to board a jeepney on her way home when she was stopped by a man and a woman who introduced themselves as police officers. The said officers suddenly arrested her and took her to Camp Karingal in Quezon City. Thereafter, at around 3:00 in the morning of March 19, 2016, a police woke her up, boarded her in a vehicle, and brought her near Balintawak Market along EDSA, Quezon City, where she saw a *barangay kagawad* sign an "Inventory of Seized Items." Gabunada was also asked to sign the document, but she refused. She was then brought back to Camp Caringal, and it was only at that time that she first saw the alleged *shabu,* money, and an Octagon paper bag on top of a table.[7]

In a Joint Judgment[8] dated February 13, 2017, the RTC found Gabunada guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: *(a)* in Criminal Case No. R-QZN-16-02795-CR, to suffer the penalty of life imprisonment, and to pay a fine in the amount of ₱500,000.00; and *(b)* in Criminal Case No. R-QZN-16-02796-CR, to suffer

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[6] *Rollo,* pp. 2-4.

[7] *Id.* at 5.

[8] CA *rollo,* pp. 25-37.

the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[9] The RTC found that the prosecution had established beyond reasonable doubt that Gabunada indeed sold one (1) plastic bag containing dangerous drugs to the poseur-buyer during a buy-bust operation, resulting in her arrest, and that during the search incidental thereto, she was found to be in possession of a red paper bag with four (4) more plastic bags of dangerous drugs. Moreover, it held that notwithstanding the absence of a Department of Justice (DOJ) representative or a media representative, the identity of the illegal drugs had been preserved under the chain of custody rule. On the other hand, the RTC did not give credence to Gabunada's defense of denial or frame-up due to her failure to prove any improper motive on the part of the buy bust team.[10] Aggrieved, Gabunada appealed[11] to the CA.

In a Decision[12] dated April 26, 2018, the CA affirmed the RTC ruling.[13] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Gabunada, and that the integrity and evidentiary value of the seized items had been preserved due to the arresting officers' substantial compliance with the chain of custody rule. It added that the absence of a representative from the DOJ or the media was not fatal, as there was substantial compliance on the requisite witnesses of the inventory and photograph of the seized items.[14]

Hence, this appeal seeking that Gabunada's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

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[9] *Id.* at 36.

[10] See *id.* at 33-36.

[11] See Notice of Appeal dated February 14, 2017; *id.* at 12.

[12] *Rollo,* pp. at 2-11.

[13] *Id.* at 10.

[14] See *id.* at 7-10.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[15] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[16] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[17]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[18] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and

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[15] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Magsano,* G.R. No. 231050, February 28, 2018; *People v. Manansala,* G.R. No. 229092, February 21, 2018; *People v. Miranda,* G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018, 853 SCRA, 303, 312-313; all cases citing *People v. Sumili,* 753 Phil. 342, 348 [2015] and *People v. Bio,* 753 Phil. 730, 736 [2015]).

[16] See *People v. Crispo, id.*; *People v. Sanchez, id.*; *People v. Magsano, id.*; *People v. Manansala, id.* at 313; *People v. Miranda, id.*; and *People v. Mamangon, id.* See also *People v. Viterbo,* 739 Phil. 593, 601 (2014).

[17] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018, citing *People v. Umipang,* 686 Phil. 1024, 1039-1040 (2012).

[18] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 19; *People v. Sanchez, supra* note 19; *People v. Magsano, supra* note 19; *People v. Manansala, supra* note 19; *People v. Miranda, supra* note 19, at 53; and *People v. Mamangon, supra* note 19, at 313. See also *People v. Viterbo, supra* note 20.

confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[19] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[20]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[21] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[22] or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service[23] (NPS)

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[19] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[20] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[21] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" As the Court noted in *People v. Gutierrez* (G.R. No. 236304, November 5, 2018), RA 10640 was approved on July 15, 2014. Under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in "The Philippine Star" (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and "Manila Bulletin" (Vol. 499, No. 23; World News section, p. 6). Thus, RA 10640 appears to have become effective on August 7, 2014.

[22] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

[23] The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT

OR the media.[24] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[25]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded not merely as a procedural technicality but as a matter of substantive law.[26] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[27]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[28] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[29] The foregoing is based on the saving

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OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [APRIL 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010]).

[24] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[25] See *People v. Miranda, supra* note 19, at 57. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[26] See *People v. Miranda, id.* at 60-61. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang, supra* note 21, at 1038.

[27] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang, id.*

[28] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[29] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

clause found in Section 21 (a),[30] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[31] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[32] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[33]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[34] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[35] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the

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[30] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: ***"Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items."**

[31] Section 1 of RA 10640 pertinently states: ***"Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."**

[32] *People v. Almorfe, supra* note 33.

[33] *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[34] See *People v. Manansala, supra* note 19.

[35] See *People v. Gamboa, supra* note 21, citing *People v. Umipang, supra* note 21, at 1053.

accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[36]

Notably, the Court, in *People v. Miranda*,[37] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, x x x the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo;* otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[38]

In this case, it would initially appear that the policemen complied with the witness requirement under RA 9165, as amended by RA 10640,[39] considering that the Inventory of Seized Properties/Items[40] contains the signatures of an elected public official, *i.e.*, Kgd. Sinque, and a media representative, *i.e.*, Ernie Dela Cruz (Dela Cruz). However, a more circumspect examination of the records would show that Dela Cruz was not present during the conduct of inventory and photography of the seized items. In fact, Dela Cruz himself admitted on re-direct and re-cross examination that one of the arresting police officers merely brought the aforementioned inventory form to him for his signature, two (2) days after the buy-bust, inventory, and photography occurred, *viz.*:

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[36] See *People v. Crispo, supra* note 19.

[37] *Supra* note 19.

[38] See *id.* at 61.

[39] The arrest was made on March 19, 2016; hence RA 10640, which was enacted in 2014, is already in effect.

[40] Records, p. 71.

REDIRECT-EXAMINATION

[Atty. Gil A. Valera]: A while ago, Mr. Witness, you said that when you signed this document, you also read the date of this Inventory of Seized Properties/Items, which appears as March 19, 2016?
[Dela Cruz]: Yes, sir.

Q: When did you sign this per your Affidavit?
A: March 21, sir.

Q: And why is it that when you signed this on March 21, you still signed it, despite reading the document that it stated March 19, 2016?
A: When I signed this document, sir, it was undated.

Q: I repeat, when you signed this document, you did not see any date on this Inventory?
A: Yes, sir.

Q: Again, when you signed this on March 21, you said that you signed this in your office?
A: Yes, sir.

Q: Why is it that you still signed it, despite that in this document, it says that the document was prepared in Gubat sa [Siudad], EDSA Balintawak?
A: When I signed that document, sir, that information was not indicated.

THE COURT:
Q: Why did you sign it?
A: When I was asked to sign it, Your Honor, this address of Gubat sa [Siudad] was not indicated in that Inventory.

Q: Were the Items indicated in the Inventory Receipt already there when you signed that document?
A: Yes ma'am, but the address of Gubat sa [Siudad] was not yet indicated thereof.

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ATTY. VALERA:
Q: When you signed that document in your office, by the way, where is your office located?
A: At Police Station 10 of Kamuning Quezon City, sir.

Q: You said that you were a member of the Quezon City Press Corp[s], as indicated in that document, where is that office of Quezon City Press Corp[s]?
A: Beside the Police Station 10, sir.

Q: It is not inside?
A: Not inside, sir.

Q: And you said in your Affidavit that when you signed that, it was Police Officer Bibe who approached (sic) to sign that; what items if any did she show to you?
A: One plastic sachet of drugs, sir.

Q: Only one sachet?
A: Yes, sir.

THE COURT:
Q: And why did you sign this Inventory when they indicated several items such as [c]ellphone, bag containing six sealed transparent plastic bags?
A: That is the only item presented to me, Your Honor, because at that time, I was also in a hurry to go to Batangas.

Q: Is that your usual practice to sign documents which are incomplete?
A: PO2 Bibe is my friend that is why I signed that document.

Q: So, you always do that to a friend?
A: No, Your Honor.

Q: You are a media representative?
A: Yes, Your Honor.

[RE]CROSS-EXAMINATION

[Assistant Prosecutor Nilda Ordoño]: When you signed that document, you said that some spaces herein were left blank, why did you still sign it?

[Media Representative Dela Cruz]: I thought that the date I signed it will be the one that they would indicate in the Inventory, ma'am.

Q: Considering that you are a media representative, did you report this incident to your newspaper Remate?
A: Yes, ma'am.

Q: And what is the basis of your report?
A: That the accused was arrested, ma'am.

Q: The Inventory of Seized Properties is that the basis of your report as a reporter?
A: No ma'am, it was based solely on the actual incident on how the accused was arrested.

Q: Where did you get that story?
A: From their report, ma'am.

Q: From whom, from the Police?
A: Yes, ma'am.[41]

As may be gleaned from the foregoing, the inventory was ***not*** conducted in the presence of Dela Cruz, as the arresting policemen already prepared the inventory form days before it was brought to him for his signature. As discussed, the witness requirement mandates the presence of the required witnesses ***during*** the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented. Hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk.[42] Unfortunately, no such explanation was proferred by the prosecution to justify this glaring procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Gabunada were compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 26, 2018 of the Court of Appeals in CA-G.R. CR No. 09057 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rosemarie Gabunada *y* Talisic is **ACQUITTED** of the crimes charged. The Director of the

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[41] TSN, November 16, 2016, pp. 5-8.

[42] See *People v. Cariño*, G.R. No. 233336, January 14, 2019, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 336-337.

Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Bersamin, C.J. (Chairperson), Jardeleza, Gesmundo, and *Carandang, JJ.,* concur.

FIRST DIVISION

[G.R. No. 243589. September 9, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANDIDATO MAMARINTA and JACK BATUAN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; THE PROSECUTION HAS THE DUTY TO DEMONSTRATE OBSERVANCE WITH THE RULE AND TO INITIATE IN ACKNOWLEDGING AND JUSTIFYING ANY PERCEIVED DEVIATIONS THEREFROM; CONDITIONS THAT MUST BE OBSERVED FOR SEIZURE AND CUSTODY OF THE SEIZED DRUGS TO BE VALID DESPITE NON-COMPLIANCE WITH SECTION 21 OF RA 9165.— As a general rule, the foregoing procedure must be strictly complied with. In *People v. Lim*, citing *People v. Sipin*, the Court *En Banc* held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law." As stated in Section 21, failure to do so will not render the seizure and custody of the items void only if the prosecution

satisfactorily proves the following that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Gamboa,* We reiterated that the prosecution must explain the reason for the procedural lapses and that the justifiable ground for non-compliance must be proven as a fact. With respect to the absence of the required witnesses, the prosecution must show that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Mere statements of unavailability are insufficient to justify non-compliance.

2. ID.; ID.; WHERE THE POLICE OFFICERS WHO TESTIFIED HAD NO PERSONAL KNOWLEDGE WITH RESPECT TO THE ABSENCE OF THE REQUIRED WITNESSES, THE PROSECUTION FAILED TO PROVE THAT THEY EXERTED GENUINE EFFORTS IN SECURING THEIR PRESENCE; HENCE, ACQUITTAL OF APPELLANT IS IN ORDER.— In *People v. Jodan,* We held that when the person himself who contacted the representative from the media or the DOJ was not presented as a witness, the testimony of the other witnesses on this point is hearsay. Therefore, the CA erred in relying on the statements of PO1 Nidoy, Jr. and PO1 Bueno with respect to the alleged phone call made to the representatives of the media and the DOJ or the National Prosecution Service (NPS). They had no personal knowledge of the same and were not qualified to testify on the matter. Notably, both PO1 Nidoy, Jr. and PO1 Bueno did not mention whether the representative from the NPS was available, thus giving the impression that no attempt was made to secure the latter's presence. Aside from that, they did not testify how many times they tried to contact the representatives or whether they tried to coordinate with them prior to conducting the operation. In *People v. Misa,* We ruled that "the apprehending officers could not reasonably expect that a representative of the NPS or the media would just be readily available for the conduct of inventory (and photography) at a mere moment's notice, much less at the officers' beck and call." That being the case, the prosecution failed to prove that they exerted genuine efforts in securing the presence of the required witnesses. Their non-compliance with Section 21 of R.A. 9165, as amended, is inexcusable. In *People v. Miranda,* We held that "the procedure in Section 21 of [R.A.] 9165 is a matter of

substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects." Consequently, the acquittal of accused-appellants is in order.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CARANDANG, *J.*:

Before Us is an ordinary appeal[1] filed by accused-appellants Andidato P. Mamarinta (Mamarinta) and Jack A. Batuan (Batuan; collectively, accused-appellants) assailing the Decision[2] dated July 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08215, which affirmed the Judgment[3] dated November 23, 2015 of the Regional Trial Court of Pasig City, Branch 164 (RTC), the dispositive portion of which reads:

WHEREFORE:

1. In ***Criminal Case No. 20483-D,*** the Court finds the accused *(sic)* Andidato P. Mamarinta *alias* "Dato" and Jack A. Batuan *alias* "Malupiton", **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposes upon them the penalty of **life imprisonment and a fine of five hundred thousand pesos (₱500,000.00), with all the accessory penalties under the law.**

2. In ***Criminal Case No. 20484***, the Court finds accused Andidato P. Mamarinta *alias* "Dato" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes

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[1] CA *rollo,* pp. 174-175.

[2] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan, concurring; *rollo,* pp. 2-19.

[3] Penned by Presiding Judge Jennifer Albano Pilar; CA *rollo,* pp. 77-87.

upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years as maximum, and a fine of three hundred thousand pesos (₱300,000.00), with all the accessory penalties under the law.**

3. In ***Criminal Case No. 20485***, the Court finds accused Jack A. Batuan *alias* "Malupiton" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of three hundred thousand pesos (₱300,000.00), with all the accessory penalties under the law.**

The five (5) transparent plastic sachets of *shabu* (Exhibits "W" to "Z" and "AA") subject matter of these cases are hereby ordered confiscated in favor of the government and turned over to the PDEA for destruction in accordance with law.

SO ORDERED.[4] (Emphasis in the original)

The Antecedents

Accused-appellants were charged with violation of Sections 5[5] and 11,[6] Article II of Republic Act No. (R.A.) 9165, also

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[4] *Id.* at 87.

[5] Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[6] Sec. 11. *Possession of Dangerous Drugs.* –The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;

known as the Comprehensive Dangerous Drugs Act of 2002, in three separate Informations which provide:

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(3) 10 grams or more of heroin; CTEDSI
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";
(6) 10 grams or more of marijuana resin or marijuana resin oil;
(7) 500 grams or more of marijuana; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy", paramethoxyamphetamine (PMA), tri-methoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and

Accused: Andidato P. Mamarinta alias "Dato" and Jack A. Batuan alias "Malupiton"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Rodrigo J. Nidoy, Jr., a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[7]

Accused: Andidato P. Mamarinta alias "Dato"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic sachets each containing the following:

1. B (2RJN/DATO 07/19/2015 – 0.12 gram
2. C (3RJN/DATO 07/19/2015 – 0.12 gram
3. D (4RJN/DATO 07/19/2015 – 0.11 gram

of white crystalline substance, which were found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[8]

Accused: Jack A. Batuan alias "Malupiton"

On or about July 19, 2015, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously have

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those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[7] *Rollo,* p. 3.

[8] Records, pp. 3-4.

in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing 0.10 gram of white crystalline substance, which was found positive to the tests for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[9]

The witnesses for the prosecution testified that on July 18, 2015, the operatives of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) of the Pasig City Police Station and its Chief Police Inspector Renato B. Castillo (PCI Castillo), were at their office when a confidential informant arrived and told them that *alias* Gerald was the most notorious pusher of illegal drugs at Villa Evangelista St., Bolante 2, Barangay Palatiw, Pasig City. Based on this information, PCI Castillo formed an entrapment team to conduct a buy-bust operation. PO1 Rodrigo J. Nidoy, Jr. (PO1 Nidoy, Jr.) was assigned as poseur-buyer and PO1 Jonathan B. Bueno (PO1 Bueno) was assigned as back-up. PO1 Nidoy, Jr. received two ₱100.00 bills as buy-bust money, which he marked with his initials "RJN." The SAID-SOTG buy-bust team submitted a Coordination Sheet and Pre-Operation Form to the Eastern Police District Anti-Illegal Drugs Special Operation Task Group and the Philippine Drug Enforcement Agency.[10]

Around 2:20 am of July 19, 2015, the buy-bust team and the confidential informant proceeded to Villa Evangelista St. While walking along said street, the confidential informant pointed to PO1 Nidoy, Jr., Gerald's house. PO1 Bueno was discreetly following them. They saw accused-appellants standing in front of the house. The confidential informant whispered to PO1 Nidoy, Jr. that these were Gerald's cohorts.[11]

The confidential informant and PO1 Nidoy, Jr. approached accused-appellants and looked for Gerald because they wanted to buy *shabu*. After informing them that Gerald just left,[12]

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[9] *Id.* at 4.

[10] *Rollo,* p. 5.

[11] *Id.*

[12] *Id.*

Mamarinta asked them how much they wanted to buy. PO1 Nidoy, Jr. replied *"dos lang"* and brought out the buy-bust money which Batuan received. Mamarinta then brought out four transparent plastic sachets containing white crystalline substance, which appears to be *shabu*, and placed it on his palm. Mamarinta gave one sachet to PO1 Nidoy, Jr.[13]

PO1 Nidoy, Jr. then executed the pre-arranged signal by scratching his head. PO1 Bueno then closed in on the crime scene. PO1 Nidoy, Jr. introduced himself as a police officer, arrested Mamarinta, and confiscated from him the three other sachets. As for PO1 Bueno, he likewise introduced himself as a police officer, arrested Batuan, and ordered him to bring out the contents of his pocket. Batuan brought out from his pocket the buy-bust money and a heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Bueno confiscated the items.[14]

While they were still in the place of arrest, PO1 Nidoy, Jr. marked the sachets he received and confiscated from Mamarinta in front of the latter. PO1 Bueno likewise marked the sachet he confiscated from Batuan. They summoned representatives from the media and *barangay* elected officials. However, it was only *Barangay Kagawad* Chester Guevarra *(Brgy. Kgwd.* Guevarra) who arrived. PO1 Nidoy, Jr. and PO1 Bueno presented accused-appellants and the evidence against them to *Brgy. Kgwd.* Guevarra, and explained the circumstances of their arrest. PO1 Nidoy, Jr. and PO1 Bueno prepared the inventory of the seized evidence in front of accused-appellants and *Brgy. Kgwd.* Guevarra, which they all signed. Photographs were also taken during the conduct of the inventory.[15]

Accused-appellants were brought to the Pasig City Police Headquarters where PO1 Bueno and PO1 Nidoy, Jr. exhibited the confiscated items to police investigator PO1 Lodjie N.

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[13] *Id.* at 6.

[14] *Id.*

[15] *Id.*

Coz (PO1 Coz).[16] PO1 Coz prepared the chain of custody form and the request for laboratory examination. PO1 Nidoy, Jr. and PO1 Bueno proceeded to the Eastern Police District-Crime Laboratory where they handed the request for labratory examination and the confiscated sachets to forensic chemist police senior inspector Anghelisa S. Vicente (PSI Vicente). PSI Vicente examined the contents of the sachets and found that all tested positive for the presence of methamphetamine hydrochloride.[17]

Accused-appellants pleaded not guilty.[18] Mamarinta claimed that he was inside his house in Villa Evangelista St. and was putting his child to sleep when armed men barged in and asked him if he was Gerald. Despite answering in the negative, his hands were tied with a plastic rope and he was brought to the police station via a tricycle. It was only at the police station that he met Batuan. When he was subjected to an inquest, he finally discovered what was being charged against him.[19]

Batuan testified that he was at a store along Villa Evangelista St. when armed men asked him if he was Gerald and arrested him. Accused-appellants both claimed that the police demanded ₱100,000.00 in exchange for their liberty.[20]

Ruling of the RTC

In its Judgment[21] dated November 23, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged against them and imposed the following penalties: 1) for violation of Section 5, accused-appellants were sentenced with life imprisonment and a fine of ₱500,000.00, with all the

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[16] CA *rollo,* p. 81.

[17] *Id.* at 82.

[18] *Rollo,* p. 4.

[19] *Id.* at 7.

[20] *Id.*

[21] Penned by Presiding Judge Jennifer Albano Pilar; CA *rollo,* pp. 77-87.

accessory penalties under the law; and 2) for violation of Section 11, accused-appellants were sentenced with an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to sixteen (16) years as maximum, and to pay a fine of ₱300,000.00, with all the accessory penalties under the law.[22]

The RTC found the testimonies of PO1 Nidoy, Jr. and PO1 Bueno to be more credible than that of accused-appellants.[23] Further, the RTC held that all the confiscated items were properly identified and formally offered in evidence by the prosecution. With respect to the chain of custody, the RTC ruled that it was unbroken since the marking of the sachets, the preparation of the inventory of the seized evidence, and the taking of photographs were all done in the presence of accused-appellants and while they were still in the place of the arrest. *Brgy. Kgwd.* Guevarra was also present during the inventory of the seized evidence. The sachets were then turned over to PSI Vicente who examined its contents and found it positive for methamphetamine hydrochloride.[24] Accused-appellants appealed to the CA.

Ruling of the CA

On July 26, 2018, the CA rendered its Decision[25] affirming the conviction of accused-appellants. The CA agreed with the RTC that the chain of custody requirement was substantially complied with. *First,* the absence of a representative from the media was duly explained by PO1 Nidoy, Jr. and PO1 Bueno, who testified that they made extra efforts to contact a media representative, but no one came because the operation was carried out during an unholy hour, *i.e.*, 2:20 a.m. *Second,* the CA held that the presence of a representative from the National Prosecution Service (NPS) during the inventory-taking

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[22] *Id.* at 87.

[23] *Id.* at 86-87.

[24] *Id.* at 86.

[25] *Rollo,* pp. 2-19.

does not apply because the guidelines became the implementing rules and regulations (IRR) of R.A. 10640,[26] amending R.A. 9165, took effect on July 30, 2015, after the operation was conducted.[27] *Third,* the CA ruled that the non-presentation of PSI Vicente is not a sufficient ground to find a break in the chain of custody since her testimony was dispensed with because accused-appellants' counsel and the prosecution had agreed to a stipulation of facts, among which is that she received the specimens and can identify her report on it.[28] In addition, PSI Vicente is a public officer whose reports carry the presumption of regularity. *Fourth,* the prosecution's failure to establish that the confiscated items were placed in a sealed container or evidence bag is a negligible omission, considering that PO1 Nidoy, Jr. and PO1 Bueno were the only ones who had its custody from the time they confiscated the items until they turned it over to PSI Vicente.[29]

Accused-appellants thus filed a Notice of Appeal[30] dated August 16, 2018. Both parties manifested that they were adopting their Brief before the CA as their Supplemental Brief.[31]

Issue

Whether the CA erred in affirming the conviction of accused-appellants for violation of Sections 5 and 11, Article II of R.A. 9165.

Ruling of the Court

The appeal is meritorious.

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[26] An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act Of 2002," approved July 15, 2014.

[27] *Rollo,* p. 13.

[28] *Id.* at l6.

[29] *Id.*

[30] CA *rollo,* pp. 174-175.

[31] *Rollo,* pp. 28, 34.

Since the five sachets of *shabu* under Exhibits W, X, Y, Z, and AA[32] are the *corpus delicti* of the crimes penalized under Sections 5 and 11, Article II of R.A. 9165, the identity and integrity of the dangerous drugs must be established with moral certainty to prove the guilt of the accused beyond reasonable doubt. Thus, the rule laid down in Section 21, Article II of R.A. 9165, as amended by R.A. 10640, must be strictly observed.[33]

Contrary to the ruling of the CA, R.A. 10640 applies in this case since the law became effective on July 23, 2014[34] and the operation took place on July 19, 2015. The amended provision of Section 21, Article II of R.A. 9165 reads as follows:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – x x x
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> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, **conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public social and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the

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[32] TSN, September 28, 2015, p. 18.

[33] *Limbo v. People*, G.R. No. 238299, July 1, 2019; *People v. Aure*, G.R. No. 237809, January 14, 2019; *People v. Misa*, G.R. No. 236838, October 1, 2018; *People v. Baptista*, G.R. No. 225783, August 20, 2018.

[34] *People v. Gutierrez*, G.R. No. 236304, November 5, 2018.

seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x (Emphasis ours)

As a general rule, the foregoing procedure must be strictly complied with. In *People v. Lim,*[35] citing *People v. Sipin,*[36] the Court *En Banc* held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law."[37] As stated in Section 21, failure to do so will not render the seizure and custody of the items void only if the prosecution satisfactorily proves the following that: (1) there is a justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.[38] In *People v. Gamboa,*[39] We reiterated that the prosecution must explain the reason for the procedural lapses and that the justifiable ground for non-compliance must be proven as a fact. With respect to the absence of the required witnesses, the prosecution must show that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Mere statements of unavailability are insufficient to justify non-compliance.[40]

In this case, the only witness present during the conduct of the inventory in this case was *Brgy. Kgwd.* Guevarra. According to the CA, PO1 Nidoy, Jr. and PO1 Bueno both testified that they made an effort to contact a media representative but to no avail. During his cross examination, PO1 Nidoy, Jr. said that it was a certain PO2 Santos who called a representative

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[35] G.R. No. 231989, September 4, 2018.

[36] G.R. No. 224290, June 11, 2018.

[37] *People v. Lim, supra* note 35.

[38] *Limbo v. People, supra* note 33.

[39] G.R. No. 233702, June 20, 2018.

[40] *Id.*

from the media. He saw PO2 Santos call the media but he could no longer recall exactly who from the media was contacted. No one arrived because of the time.[41] As for PO1 Bueno, he claimed in his re-direct examination that it was the chief of SAID who called through a cellphone the representative from the Department of Justice (DOJ) and the media. Only *Brgy. Kgwd.* Guevarra arrived.[42]

In *People v. Jodan,*[43] We held that when the person himself who contacted the representative from the media or the DOJ was not presented as a witness, the testimony of the other witnesses on this point is hearsay.[44] Therefore, the CA erred in relying on the statements of PO1 Nidoy, Jr. and PO1 Bueno with respect to the alleged phone call made to the representatives of the media and the DOJ or the National Prosecution Service (NPS). They had no personal knowledge of the same and were not qualified to testify on the matter. Notably, both PO1 Nidoy, Jr. and PO1 Bueno did not mention whether the representative from the NPS was available, thus giving the impression that no attempt was made to secure the latter's presence. Aside from that, they did not testify how many times they tried to contact the representatives or whether they tried to coordinate with them prior to conducting the operation. In *People v. Misa*,[45] We ruled that "the apprehending officers could not reasonably expect that a representative of the NPS or the media would just be readily available for the conduct of inventory (and photography) at a mere moment's notice, much less at the officers' beck and call."[46] That being the case, the prosecution failed to prove that they exerted genuine efforts in securing the presence of the required witnesses. Their non-compliance with Section 21 of R.A. 9165, as amended, is inexcusable.

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[41] TSN, September 21, 2015, pp. 12-13.

[42] TSN, September 28, 2015, p. 11.

[43] G.R. No. 234773, June 3, 2019.

[44] *Id.*

[45] G.R. No. 236838, October 1, 2018.

[46] *Id.*

In *People v. Miranda*,[47] We held that "the procedure in Section 21 of [R.A.] 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects."[48] Consequently, the acquittal of accused-appellants is in order.

WHEREFORE, the appeal is **GRANTED**. The Decision dated July 26, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08215 is hereby **REVERSED** and **SET ASIDE**. Accused-appellants Andidato Mamarinta and Jack Batuan are **ACQUITED** of the crimes charged against them, and are ordered to be immediately released, unless they are being lawfully held in custody for any other reason. The Director of Prisons is **DIRECTED** to inform this Court of the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe, Jardeleza, and *Gesmundo, JJ.,* concur.

EN BANC

[G.R. No. 217448. September 10, 2019]

ELENA A. ESTALILLA, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

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[47] G.R. No. 229671, January 31, 2018.

[48] *Id.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON*; EXCEPTIONS, ENUMERATED AND APPLIED; CIRCUMSTANCES IN CASE AT BAR SHOWED THAT FILING A MOTION FOR RECONSIDERATION WOULD BE POINTLESS AND WASTEFUL.— The rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Such requirement is imposed to grant the court or tribunal the opportunity to correct any actual or perceived error attributed to it through the re-examination of the legal and factual circumstances of the case. The rule is not rigid and set in stone, but admits of exceptions, like the following: (1) where the order is a patent nullity, such as when the court *a quo* had no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where a motion for reconsideration would be useless; (5) where the petitioner was deprived of due process, and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent, and the granting of such relief by the trial court is improbable; (6) where the proceedings in the lower court are a nullity for lack of due process; (7) where the proceeding was *ex parte*, or the petitioner had no opportunity to object; and (8) where the issue raised is one purely of law, or where public interest is involved. The fourth and fifth exceptions are applicable. x x x The futility of filing a motion for reconsideration against the COA's December 29, 2014 decision is not difficult to discern in the face of the COA's constant rejections of her efforts to defend herself from the disallowances based solely on the lapse of the period to appeal the NDs. Such stance already indicated the COA's inclination to invoke Section 4, Rule V of its Rules on the period to file an appeal in order to deny outright any reconsideration that Estalilla would seek. Any further attempt by her to convince

the COA to reconsider her case would have been pointless and wasteful.

2. ID.; ID.; ID.; THE COMMISSION ON AUDIT'S (COA) DENIAL OF PETITIONER'S REQUEST FOR DOCUMENTS PERTAINING TO THE DISCHARGE OF HER DUTIES AS MUNICIPAL TREASURER WAS VIOLATIVE OF HER RIGHT TO DUE PROCESS; COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— [W]e reject the posture of the COA to the effect that Estalilla had been fully afforded her right to due process. To recall, she had insisted on her request to be furnished copies of the DVs and the ALOBs having been denied. Her insistence was not denied considering that the COA had been content in simply positing that she had lost the right to appeal by her failure to timely appeal the NDs. Hence, her right to due process had been unduly rebuffed. The COA should be reminded that her right to due process could be respected only if she had been afforded the opportunity to seek the meaningful recourse against the NDs. Unfortunately, the COA rejected the request for the copies of the DVs and the ALOBs on the sole basis of her not having appealed on time. Such rejection of her request was violative of her right to due process, for the DVs and the ALOBs pertained to her discharge of the duties of the municipal treasurer to certify to the availability of funds. Thus, the COA thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF A FINAL JUDGMENT PRECLUDES MODIFICATION OF FINAL JUDGMENTS EVEN TO CORRECT ERRONEOUS FINDINGS OF FACT AND CONCLUSIONS OF LAW; EXCEPTIONS, ENUMERATED.— The settled rule is that courts are bereft of jurisdiction to review decisions that have become final and executory. The rule safeguards the immutability of a final judgment, and is tenaciously applied and adhered to in order to preclude the modification of the final judgment, even if the modification is meant to correct erroneous findings of fact and conclusions of law, and whether the modification is made by the court that rendered the judgments or by the highest court of the land. The evident objective of the rule is to definitively

end disputes. Although the COA correctly cited the rule, the Court holds that the rule bows to recognized exceptions, like: (1) the correction of clerical errors; (2) the making of so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) in case of void judgments. The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.

4. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS OBTAIN IN CASE AT BAR; THE HUGE DISPARITY BETWEEN PETITIONER'S SALARY AND THE LIABILITY WOULD PRODUCE SERIOUS CONSEQUENCES ON HER RIGHT TO LIFE AND PROPERTY; COMPELLING CIRCUMSTANCES ARE ENOUGH REASON TO UNDO THE DECLARATION OF HER PERSONAL LIABILITY BY THE COA.— Estalilla's case affected her right to life and property. Judicial notice is taken of the size of her salary as a municipal treasurer in comparison with the disallowed amount of ₱35,591,200.00. The huge disparity between her salary and the liability was glaring enough. To charge her with the solidary liability would produce very serious and dire consequences on her precious right to life and property. The consequences could impact negatively as well on the rest of her family. What makes the liability even harsher was that she had not personally derived any direct or personal benefit from the disallowed disbursements. Also, the existence of compelling circumstances and the merits of her case, as well as the lack of any showing that she had committed any falsification in her certification on the availability of funds should be enough reason to undo the declaration of her personal liability by the COA.

5. POLITICAL LAW; LOCAL GOVERNMENT CODE (RA 7160); PROVIDES FOR PERSONAL LIABILITY OF THE OFFICIAL OR EMPLOYEE FOR EXPENDITURES OF FUNDS OR USE OF PROPERTY IN VIOLATION OF LAW; FACTORS TO CONSIDER IN DETERMINING

LIABILITY.— Section 351 of the *Local Government Code* provides that expenditures of funds or use of property in violation of law shall be the personal liability of the official or employee responsible therefor. In that regard, in Section 16 of Circular No. 2009-006, the COA has listed the factors to be considered in determining the liability of public officers for disallowances, namely: (1) the nature of the disallowance/charge; (2) the duties and responsibilities of officers/employees concerned; (3) the extent of their participation in the disallowed/charged transaction; and (4) the amount of damage suffered by or loss to the Government.

6. ID.; ID.; ID.; ID.; WHERE THE PRIMARY DUTY OF THE PETITIONER AS A MUNICIPAL TREASURER WAS MERELY TO CERTIFY TO THE AVAILABILITY OF FUNDS AND NOTHING TO DO WITH THE DISALLOWED DISBURSEMENTS, SHE CANNOT BE HELD PERSONALLY LIABLE FOR THE DISALLOWED AMOUNT NOT HAVING BEEN SHOWN THAT SHE ISSUED FALSE CERTIFICATION.— Estalilla's plea that she was not personally liable by virtue of her having certified to the availability of funds in her capacity as the municipal treasurer should not fall on deaf ears. Her plea for relief had legal as well as factual support. As the municipal treasurer, her primary duty in relation to the disallowed disbursement was merely to certify to the availability of funds. She had nothing to do with the disallowed disbursements beyond that. The only time when Estalilla might be properly held personally liable for the disallowance would be if her certification of the availability of funds to cover the expenditures had been deliberately false. Such false certification, and a showing of other factors or circumstances of irregularities, would have invalidated the disbursement. But there was no showing of her having issued a false certification. As such, the COA gravely abused its discretion in holding her personally liable under the NDs without finding that she had certified falsely to the availability of funds.

APPEARANCES OF COUNSEL

The Law Firm of Peig Peig & Liberato for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

A municipal treasurer who merely certifies to the availability of funds is not liable for the disallowance of the disbursement unless she has falsified the certification.

The Case

Petitioner Elena A. Estalilla seeks the review and setting aside of the decision promulgated on December 29, 2014,[1] whereby the Commission on Audit (COA) dismissed her appeal and held her liable in the amount of ₱35,591,200.00, thusly:

> **WHEREFORE,** premises considered, the petition for review of Ms. Elena A. Estalilla of the denial of her Omnibus Motion to Lift the Notice of Finality of Decision and COA Order Of Execution and Admit Appeal Memorandum is hereby **DISMISSED.** Accordingly, Notices of Disallowance Nos. 2008-043-101(05) and 2008-044-101(04) dated November 18, 2008 and November 25, 2008, respectively, on the payment of the 2004 garbage collections of the Municipality of Cabuyao, Laguna, charged against the 2005 appropriation, in the total amount of ₱35,591,200.00, are final and executory.

Antecedents

This case emanated from the *Contract for the Hauling of Garbage* entered into by and between the then Municipality of Cabuyao in the Province of Laguna and J.O. Batallones Trading and Construction on March 18, 2003[2] and May 1, 2005.[3] The Sangguniang Bayan of Cabuyao had approved both contracts through *Pambayang Kapasyahan Bilang* 048-2004 and *Pambayang Kapasyahan Bilang* 067-2005.[4]

After audit, the Audit Team Leader (ATL) of the Municipality of Cabuyao issued Audit Observation Memoranda (AOM) dated

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[1] *Rollo,* pp. 28-33.

[2] *Id*. at 52-53.

[3] *Id*. at 54-55.

[4] *Id*. at 73-74.

February 16, 2003 and September 13, 2005 upon discovering that payments totaling ₱35,591,200.00 for the 2004 garbage collections had been charged against the 2005 appropriation.[5]

Regional Cluster Director Eden D. Tingson Rafanan later on issued Notice of Disallowance (ND) No. 2008-0430-101(05) dated November 18, 2008 in the amount of ₱18,676,200.00 and ND No. 2008-044-101(04) dated November 25, 2008 in the amount of ₱16,915,000.00 on the ground that the expenditures had been improperly charged against the 2005 annual budget contrary to Section 305(a), Section 305(f) and Section 350 of Republic Act No. 7160 *(The Local Government Code)* in relation to Section 85 of Presidential Decree No. 1445 *(Auditing Code of the Philippines)*.[6]

The following individuals were listed in the NDs to be liable, namely:

Persons liable	Position	Participation
Proceso D. Aguillo	Former Mayor	Approved the payment of ₱16,915,000.00
Nila G. Aguillo	Former Mayor	Approved the payment of ₱18,676,200.00
Felix L. Galang	Former Municipal Accountant	Certified the completeness and propriety of supporting documents
Marcelina B. Maraña	Former Municipal Budget Officer	Allowed the payment without appropriation
Elena A. Estalilla	Municipal Treasurer	Certified as to cash availability[7]

After the above-named individuals, including Estalilla, failed to appeal the NDs within the six-month period, the COA Regional Office issued Notices of Finality of Decision (NFDs) on March

[5] *Id*. at 28.

[6] *Id*. at 34-37.

[7] *Id*. at 29.

26, 2012,[8] and the corresponding COA Orders of Execution (COEs) on April 2, 2012.[9]

On June 26, 2012, Estalilla filed an *Omnibus Motion to Lift the NFDs and COEs and Admit Appeal Memorandum*,[10] wherein she denied having received the AOM, but admitted having received the NDs. She thereby also pleaded for compassion, and attributed her inability to timely appeal to her preoccupation with other disallowances issued against her.

Ignoring Estalilla's plea for compassion in view of the substantial amounts involved, the COA Regional Office denied the *Omnibus Motion to Lift the NFDs and COEs and Admit Appeal Memorandum* mainly because of her failure to appeal within the 6-month period provided by Section 2 and Section 4 of the 2009 Revised Rules of Procedure of the COA.[11]

Undeterred, Estalilla filed a petition for review with the COA proper.

Decision of the COA

The COA promulgated the now assailed decision on December 29, 2014 dismissing Estalilla's appeal for having been filed beyond the 6-month reglementary period. The COA observed therein that Estalilla had not tendered any compelling reasons to warrant relaxing in her favor the doctrine on the immutability of judgment.[12]

Hence, this petition for *certiorari.*

Issues

Estalilla submits the following issues for our consideration:

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[8] *Id.* at 38-41.

[9] *Id.* at 42-45.

[10] *Id.* at 29.

[11] *Id.* at 47-49.

[12] *Id.* at 28-33.

I

WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO GIVE DUE COURSE AND DISMISSED THE PETITION FOR REVIEW

II

WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW DESPITE ITS CLEAR AND EVIDENT MERITS[13]

Estalilla claims that her failure to file a timely appeal was not motivated by bad faith, inexcusable negligence, or reckless disregard of the relevant rules; that she had lost track of the NDs due to her being too preoccupied with two other NDs issued against her; that she had not been apprised of the AOM; that the disallowed amount of ₱35,591,200.00 had arisen from a budgetary and accounting error or technicality in which she had had no participation or responsibility; that the irregularity could be traced to the municipal accountant's failure to properly obligate the corresponding appropriation; that her certification had only indicated that there was sufficient cash to cover the proposed disbursement;[14] that the contracts for the hauling of garbage had been authorized and approved by the *Sangguniang Bayan;* that the contractor had performed its obligation in good faith, and had become entitled to compensation; that charging her for the disallowed amount would unjustly enrich the Government considering that the municipality and its constituents had already benefitted from the garbage hauling services.[15]

In its comment,[16] the COA, through the Office of the Solicitor General (OSG), submits that Estalilla's appeal was belated

[13] *Id*. at 8.

[14] *Id*. at 11-12.

[15] *Id*. at 15-22.

[16] *Id*. at 88-96.

pursuant to Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA, which required the appeal to be filed within six months from receipt of the decision; that the COA did not gravely abuse its discretion in denying her omnibus motion because the NDs had meanwhile attained finality; and that the 2004 garbage hauling services had been improperly disbursed against the 2005 appropriations.[17]

In her reply,[18] Estalilla insists that the merits of her petition warrant setting aside technicalities; that the filing of the motion for reconsideration would be useless considering that the COA had consistently rejected her plea, and had stifled her efforts to strengthen and support her cause;[19] that her liability for the disallowed amounts was legally unwarranted; that pursuant to Section 351 of the *Local Government Code* and Section 103 of P.D. No. 1445, she could not be held liable for the questioned amounts because she had not been directly responsible therefor;[20] that paragraph 16.1, Section 16 of the Rules and Regulations on the Settlement of Accounts (RRSA) provided the guidelines in determining the liability of the officers for disallowances; that certifying to the existence of the appropriation and to the availability of cash were two different conditions pertaining to different offices; that her responsibility for certifying to the availability of funds would come only after the local chief executive, the local budget officer, and the local accountant had signed the appropriate documents; that it was the local budget officer who had certified to the availability of the appropriation; that the actual cash under her custody that had been kept in a single depository account was the basis of her certification; that the COA had on several occasions excluded the local treasurers from liability because their participation in the disallowed disbursements had been limited to their certifications to the effect that funds were available;[21] that ND No. 2008-

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[17] *Id*. at 90-93.

[18] *Id*. at 100-111.

[19] *Id*. at 108-109.

[20] *Id*. at 100.

[21] *Id*. at 102-106.

044-101(04) dated November 25, 2008 pertained to payments made in FY2004, not in FY2005; and that it was implausible that the local government had paid ₱35,591,200.00 for the hauling services, but she could not confirm the same because the COA had denied her requests for copies of the disbursement vouchers and allotment and obligation slips (ALOBS).[22]

As the foregoing indicates, Estalilla raises procedural and substantive issues. Procedurally, the COA assails the propriety of still allowing her petition for *certiorari* to prosper despite her failure to file the requisite motion for reconsideration in the COA. Substantively, she calls for the determination of whether or not the COA gravely abused its discretion in dismissing her appeal, and in holding her liable for the disallowed amount of ₱35,591,200.00.

Ruling of the Court

The Court **GRANTS** the petition for *certiorari.*

I
Non-filing of the motion for reconsideration *vis-à-vis* the COA's decision was justified

The COA, through the OSG, argues that Estalilla's failure to file the motion for reconsideration *vis-à-vis* the decision manifested her propensity to disregard the rules of procedure, and constitutes a fatal defect that merits the dismissal of her petition.[23] She submits, however, that filing the motion for reconsideration would have been useless in view of the COA's consistent rejection of her pleas and requests for copies of documents pertinent to her defense.[24]

Estalilla's submission is warranted.

The rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari.* Such requirement is imposed to grant the court or tribunal the

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[22] *Id.* at 102-108.

[23] *Id.* at 94.

[24] *Id.* at 108-110.

opportunity to correct any actual or perceived error attributed to it through the re-examination of the legal and factual circumstances of the case. The rule is not rigid and set in stone, but admits of exceptions, like the following: (1) where the order is a patent nullity, such as when the court *a quo* had no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where a motion for reconsideration would be useless; (5) where the petitioner was deprived of due process, and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent, and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceeding was *ex parte*, or the petitioner had no opportunity to object; and 9) where the issue raised is one purely of law, or where public interest is involved.[25]

The fourth and fifth exceptions are applicable.

To support her claim that the filing of the motion for reconsideration was useless, Estalilla avers that:

> 32. From the time petitioner set out to have the disallowances overturned or obtain a relief from the liability decreed, respondent has consistently rejected petitioner's plea and stifled other efforts aimed at strengthening and supporting her cause. Respondent's Region IV-A Director Luz Loreto-Tolentino denied petitioner's Omnibus Motion seeking the lifting of the COA Order of Execution, Notice of Finality of Decision, and admission of her Appeal Memorandum on the ground that the disallowances have become final and executory.

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[25] *People v. Court of Appeals*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 696; *Republic of the Philippines v. Bayao*, G.R. No. 179492, June 5, 2013, 697 SCRA 313, 323.

Long before petitioner received notice of the unfavorable resolution of her motion, respondent's General Counsel rejected petitioner's request for copies of the disbursement vouchers and ALOBS pertaining to the disallowed payments stating that "*the purpose for which the documents are requested will no longer be served*" because of petitioner's failure to perfect an appeal within the prescribed period.

33. Despite the above setbacks, petitioner pursued her cause before respondent, deprived of the information which the requested disbursement vouchers and ALOBs may have provided to bolster her cause. Similarly, however, respondent denied her appeal and flatly refused to consider it on its merits. This pattern of rejections clearly conveyed that no speedy and adequate relief awaits petitioner from a Motion for Reconsideration filed before respondent and resort thereof would be useless.[26]

Estalilla's averments are valid. The futility of filing a motion for reconsideration against the COA's December 29, 2014 decision is not difficult to discern in the face of the COA's constant rejections of her efforts to defend herself from the disallowances based solely on the lapse of the period to appeal the NDs. Such stance already indicated the COA's inclination to invoke Section 4, Rule V of its Rules on the period to file an appeal in order to deny outright any reconsideration that Estalilla would seek. Any further attempt by her to convince the COA to reconsider her case would have been pointless and wasteful.

Furthermore, we reject the posture of the COA to the effect that Estalilla had been fully afforded her right to due process. To recall, she had insisted on her request to be furnished copies of the DVs and the ALOBs having been denied. Her insistence was not denied considering that the COA had been content in simply positing that she had lost the right to appeal by her failure to timely appeal the NDs. Hence, her right to due process had been unduly rebuffed. The COA should be reminded that her right to due process could be respected only if she had been afforded the opportunity to seek the meaningful recourse against the NDs. Unfortunately, the COA rejected the request

[26] *Rollo,* pp. 108-109.

for the copies of the DVs and the ALOBs on the sole basis of her not having appealed on time. Such rejection of her request was violative of her right to due process, for the DVs and the ALOBs pertained to her discharge of the duties of the municipal treasurer to certify to the availability of funds. Thus, the COA thereby gravely abused its discretion amounting to lack or excess of jurisdiction.

There was also the undeniable urgency of the relief sought in the face of the COA's order to withhold Estalilla's salary and benefits to answer for the disallowed amount of ₱35,591,200.00 by way of the solidary liability adjudged under the assailed decision of the COA.

II
Estalilla is not liable for the disallowed amounts

The Court generally observes the policy of sustaining the decisions of the COA on the basis both of the doctrine of separation of powers and of the COA's presumed expertise in the laws entrusted to it to enforce.[27] Unless the COA's decision or ruling is tainted with grave abuse of discretion, the Court will not review any errors allegedly committed by the COA. Accordingly, the Constitution and the *Rules of Court* provide the remedy of a petition for *certiorari* under Rule 64 in relation to Rule 65 of the *Rules of Court* in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA.[28] In the proper cases, the Court determines whether or not there was on the part of the COA an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, as when the judgment rendered

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[27] *Delos Santos v. Commission on Audit*, G.R. No. 198457, August 13, 2013, 703 SCRA 501, 513; *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA 154, 174.

[28] *Fontanilla v. Commissioner Proper*, G.R. No. 209714, June 21, 2016, 794 SCRA 213, 223-224.

is not based on law and evidence but on caprice, whim, and despotism.[29]

Estalilla pleaded that the COA should admit her appeal on equitable considerations in view of the huge amount involved, and because of her limited participation in the questioned transactions; but the COA stood its ground, and upheld her personal liability for the disbursement of ₱35,591,200.00 in local funds on the ground that the NDs had meanwhile become final and executory.

We rule that the COA thereby gravely abused its discretion in imposing the personal liability against Estalilla.

The settled rule is that courts are bereft of jurisdiction to review decisions that have become final and executory. The rule safeguards the immutability of a final judgment, and is tenaciously applied and adhered to in order to preclude the modification of the final judgment, even if the modification is meant to correct erroneous findings of fact and conclusions of law, and whether the modification is made by the court that rendered the judgments or by the highest court of the land. The evident objective of the rule is to definitively end disputes.[30] Although the COA correctly cited the rule, the Court holds that the rule bows to recognized exceptions, like: (1) the correction of clerical errors; (2) the making of so-called *nunc pro tunc* entries that cause no prejudice to any party; and (3) in case of void judgments.[31] The Court has further allowed the relaxation of the rigid rule on the immutability of a final judgment in order to serve substantial justice in considering: (1) matters

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[29] *Espinas v. Commission on Audit,* G.R. No. 198271, April 1, 2014, 720 SCRA 302, 315; *Veloso v. Commission on Audit,* G.R. No. 193677, September 6, 2011, 656 SCRA 767, 777.

[30] *Aguilar v. Court of Appeals,* G.R. No. 172986, October 2, 2009, 602 SCRA 336, 347.

[31] *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66,* G.R. No. 161282, February 23, 2011; 644 SCRA 50, 56; *Tuballa Heirs v. Cabrera,* G.R. No. 179104, February 29, 2008, 547 SCRA 289, 293.

of life, liberty, honor or property; or (2) the existence of special or compelling circumstances; or (3) the merits of the case; or (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; or (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.[32]

Several of the exceptions obtain in favor of Estalilla.

To begin with, Estalilla's case affected her right to life and property. Judicial notice is taken of the size of her salary as a municipal treasurer in comparison with the disallowed amount of ₱35,591,200.00. The huge disparity between her salary and the liability was glaring enough. To charge her with the solidary liability would produce very serious and dire consequences on her precious right to life and property. The consequences could impact negatively as well on the rest of her family. What makes the liability even harsher was that she had not personally derived any direct or personal benefit from the disallowed disbursements.

Also, the existence of compelling circumstances and the merits of her case, as well as the lack of any showing that she had committed any falsification in her certification on the availability of funds should be enough reason to undo the declaration of her personal liability by the COA.

Section 351 of the *Local Government Code* provides that expenditures of funds or use of property in violation of law shall be the personal liability of the official or employee responsible therefor. In that regard, in Section 16 of Circular No. 2009-006,[33] the COA has listed the factors to be considered in determining the liability of public officers for disallowances, namely: (1) the nature of the disallowance/charge; (2) the duties and responsibilities of officers/employees concerned; (3) the extent of their participation in the disallowed/charged transaction;

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[32] *Barnes v. Padilla,* G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687.

[33] Dated September 15, 2009.

and (4) the amount of damage suffered by or loss to the Government.

In Circular No. 2006-002,[34] the COA has further defined the responsibilities of the public officers involved in the disbursement of local government funds, thusly:

2.0. POLICIES

The responsibilities of the Heads of the Requesting Unit, the Budget Unit, the Accounting Unit and the Treasurer are hereby set forth as follows:

2.1 The Head of the Requesting Unit shall prepare the Obligation Request (ObR) – Annex A and the Disbursement Voucher (DV) – Annex B and certify on the necessity and legality of charges to appropriation and allotment under his direct supervision. He shall also certify to the validity, propriety and legality of supporting documents.

2.2 The Head of the Budget Unit shall certify the existence of available appropriation, take charge of budgetary activities as provided under Section 344 and Section 475, respectively, of R.A. 7160, the Local Government Code, and shall maintain the Registries of Appropriations, Allotments and Obligations as prescribed under the Manual on the New Government Accounting System for Local Government Units,

2.3 The Head of the Accounting Unit shall certify the obligation of allotment and completeness of supporting documents in the DV.

2.4 **The Treasurer shall certify the availability of funds in the DV as provided in the Local Government Code.**

2.5 The Treasurer shall prepare the Daily Cash Position Report – Annex C to be submitted to the Local Chief Executive.

The foregoing rendered clear that Estalilla's responsibility in the disbursement process should only be limited because all that she had done was to certify whether or not funds were

[34] Dated January 31, 2006.

available for the purpose of the expenditure. This limitation is based on Section 344 of Republic Act No. 7160 *(The Local Government Code)*, which relevantly states:

> Section 344. ***Certification, and Approval of, Vouchers.***—No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, **and the local treasurer certifies to the availability of funds for the purpose.** x x x

Accordingly, Estalilla's plea that she was not personally liable by virtue of her having certified to the availability of funds in her capacity as the municipal treasurer should not fall on deaf ears. Her plea for relief had legal as well as factual support. As the municipal treasurer, her primary duty in relation to the disallowed disbursement was merely to certify to the availability of funds.[35] She had nothing to do with the disallowed disbursements beyond that.

The only time when Estalilla might be properly held personally liable for the disallowance would be if her certification of the availability of funds to cover the expenditures had been deliberately false. Such false certification, and a showing of other factors or circumstances of irregularities, would have invalidated the disbursement. But there was no showing of her having issued a false certification. As such, the COA gravely abused its discretion in holding her personally liable under the NDs without finding that she had certified falsely to the availability of funds.

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by

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[35] Bureau of Local Government Finance-Department of Finance. Local Treasury Operations Manual (2008), p. 30, available at http://blgf.gov.ph/wp-content/uploads/2015/10/DOF-BLGF-Local-Treasury-Operations-Manual-LTOM.pdf last accessed on January 20, 2018.

reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[36] The burden is on the part of petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[37]

WHEREFORE, the Court **GRANTS** the petition for *certiorari;* **SETS ASIDE** the decision of the Commission on Audit dated December 29, 2014; and **MODIFIES** the Notice of Disallowance Nos. 2008-0430-101(05) and 2008-044-101(04) dated November 18, 2008 and November 25, 2008, respectively, the Notices of Finality of Decision dated March 26, 2012, and the corresponding Orders of Execution dated April 2, 2012, by **DELETING** that portion ordering the solidary liability of petitioner Elena A. Estalilla for the disallowed amount of ₱35,591,200.00.

SO ORDERED.

Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Hernando, J., on official business.

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[36] *United Coconut Planters Bank v. Looyuko,* G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[37] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

EN BANC

[G.R. No. 222710. September 10, 2019]

PHILIPPINE HEALTH INSURANCE CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY and SUPERVISING AUDITOR ELENA L. AGUSTIN,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT.— As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. As such, it has been held that the availability of an appeal is fatal to a special civil action for *certiorari*, for the same is not a substitute for a lost appeal. This is in line with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

2. ID.; ID.; ID.; ID.; EXCEPTIONS.— In this case, it was established that PhilHealth filed its petition for review before the COA beyond the reglementary period, hence, the subject ND is deemed final and executory x x x. But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and **(4) whenever circumstances transpire after the finality of the decision rendering its execution unjust**

and inequitable. Similarly, while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations. The Court finds that this case falls under the exception of the doctrine of immutability of judgment because there is a particular circumstance that transpired after the finality of ND No. H.O. 12-005 (11) x x x.

3. POLITICAL LAW; STATUTES; CURATIVE STATUTES; CONSIDERED VALID FOR THEIR PURPOSE IS TO GIVE VALIDITY TO ACTS DONE THAT WOULD HAVE BEEN INVALID UNDER EXISTING LAWS, AS IF EXISTING LAWS HAVE BEEN COMPLIED WITH, PROVIDED THAT THEY ARE NOT AGAINST THE CONSTITUTION AND THEY DO NOT IMPAIR VESTED RIGHTS OR THE OBLIGATION OF CONTRACTS.— One of the objectives of R.A. No. 11223, or the Universal Health Care Act, is to ensure that all Filipinos are guaranteed equitable access to quality and affordable health care goods and services, and protected against financial risk. In line with this objective, the law declares that every Filipino citizen shall be automatically included in the National Health Insurance Program. Notably, R.A. No. 11223 provides for a clear and unequivocal declaration regarding the classification of all PhilHealth personnel x x x. Plainly, the law states that all personnel of the PhilHealth are public health workers in accordance with R.A. No. 7305. This confirms that PhilHealth personnel are covered by the definition of a public health worker. In other words, R.A. No. 11223 is a curative statute that remedies the shortcomings of R.A. No. 7305 with respect to the classification of PhilHealth personnel as public health workers. Curative statutes are intended to [correct] defects, abridge superfluities in existing laws and curb certain evils. "They are intended to enable persons to carry into effect that which they have designed and intended, but has failed of expected legal consequence by reason of some statutory disability or

irregularity in their own action. They make valid that which, before the enactment of the statute, was invalid." Curative statutes have long been considered valid in this jurisdiction. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. They are, however, subject to exceptions. For one, they must not be against the Constitution and for another, they cannot impair vested rights or the obligation of contracts. By their nature, curative statutes may be given retroactive effect, unless it will impair vested rights. A curative statute has a retrospective application to a pending proceeding.

4. ID.; ID.; ID.; A CURATIVE LAW SHOULD BE GIVEN RETROSPECTIVE APPLICATION TO THE PENDING PROCEEDING WHEN IT NEITHER VIOLATES THE CONSTITUTION NOR IMPAIRS VESTED RIGHTS.— In this case, while the Court initially declared that PhilHealth personnel were not public health workers in its July 24, 2018 Decision and that ND No. H.O. 12-005 (11) was final and executory, the subsequent enactment of R.A. No. 11223, which transpired after the promulgation of its decision, convinces the Court to review its ruling. Thus, R.A. No. 11223 is a curative legislation that benefits PhilHealth personnel and has retrospective application to pending proceedings. Indeed, R.A. No. 11223, as a curative law, should be given retrospective application to the pending proceeding because it neither violates the Constitution nor impairs vested rights. On the contrary, R.A. No. 11223 further promotes the objective of R.A. No. 7305, which is to promote and improve the social and economic well-being of health workers, their living and working conditions and terms of employment. As a curative statute, R.A. No. 11223 applies to the present case and to all pending cases involving the issue of whether PhilHealth personnel are public health workers under Section 3 of R.A. No. 7305. To reiterate, R.A. No. 11223 settles, once and for all, the matter that PhilHealth personnel are public health workers in accordance with the provisions of R.A. No. 7305.

LEONEN, *J., separate opinion*:

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7305 (THE MAGNA CARTA OF PUBLIC HEALTH

WORKERS); PUBLIC HEALTH WORKERS; PUBLIC HEALTH WORKERS ENGAGED IN HEALTH AND HEALTH-RELATED DUTIES INCLUDE NOT ONLY THOSE WHO WORK IN GOVERNMENT AGENCIES THAT DIRECTLY DELIVER HEALTH SERVICES TO HOSPITALS, CLINICS, AND OTHER SIMILAR ESTABLISHMENTS, BUT ALSO THOSE IN OFFICES SUCH AS THE PHILIPPINE HEALTH INSURANCE CORPORATION.— In furtherance of the State policy to instill health consciousness among the people, Republic Act No. 7305, otherwise known as the Magna Carta of Public Health Workers, was enacted x x x. [P]ublic health workers are given additional compensation such as hazard allowance, subsistence allowance, and longevity pay, among others. To be afforded these benefits, one must be a "health worker," which is defined in Section 3 of Republic Act No. 7305 x x x. As I have underscored in my dissent and now reiterate, based on the text of the law, public health workers engaged in *health and health-related duties* include not only those who work in government agencies that *directly* deliver health services to hospitals, clinics, and other similar establishments, but also those in *offices* such as PhilHealth. PhilHealth, in turn, is attached to an agency primarily mandated to perform tasks related to "provision, financing[,] or regulation of health services." PhilHealth was created under Republic Act No. 7875, as amended, to administer the National Health Insurance Program. x x x The reasonable interpretation in favor of PhilHealth employees is all the more bolstered by the enactment of Republic Act No. 11223, otherwise known as the Universal Health Care Act, on February 20, 2019. Ensuring that every Filipino is automatically included in the National Health Insurance Program, the new law has simplified the membership to the Program to assure "guaranteed equitable access to quality and affordable health care goods and services" for all Filipinos. Notably, the law *expressly* declares that PhilHealth employees are public health workers x x x.

2. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; WHILE ITS GENERAL AUDIT POWER IS AMONG THE CONSTITUTIONAL MECHANISMS THAT GIVE LIFE TO THE CHECK AND BALANCE SYSTEM INHERENT IN THE GOVERNMENT, IT IS NOT ARMED WITH AN UNBRIDLED AUTHORITY TO OVERRIDE AN EXECUTIVE AGENCY'S REASONABLE

INTERPRETATION MADE IN FURTHERANCE OF THE AGENCY'S MANDATE.— I note that the issuance of the PhilHealth Office Order and subsequent Resolution, which integrated longevity pay in the basic salaries of eligible PhilHealth personnel, was premised on the Certification issued by then Health Secretary Alberto G. Romualdez, Jr., who had declared that PhilHealth personnel are public health workers. This declaration was confirmed by the Office of the Government Corporate Counsel, which opined that PhilHealth personnel carry out health-related functions, entitling them to longevity pay. I reiterate what I said in my dissent: the interpretation adopted by the Department of Health should *not* be simply disregarded. While respondent Commission on Audit's "general audit power is among the constitutional mechanisms that [give] life to the check and balance system inherent in our form of government," it is not armed with an unbridled authority to override an executive agency's *reasonable* interpretation made in the furtherance of the agency's mandate. The Department of Health, which oversees all health-related laws and regulations and is the one specifically directed under Republic Act No. 7305 to formulate the law's Implementing Rules and Regulations, determines who are covered by the benefits of the law. Considering that the Department of Health's specific determination is on par with the words and intent of Republic Act No. 7305, its findings cannot be readily substituted by respondent with its own resolution.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

GESMUNDO, *J.*:

This pertains to the Motions for Reconsideration[1] seeking to reverse and set aside the July 24, 2018 Decision[2] of the Court,

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[1] *Rollo*, pp. 471-494 and 443-462.

[2] *Id*. at 406-427.

which dismissed the petition filed by Philippine Health Insurance Corporation (*PhilHealth*). The petition sought to annul and set aside the April 1, 2015 Decision No. 2015-094[3] and November 9, 2015 Resolution[4] of the Commission on Audit (*COA*). The COA affirmed the July 23, 2012 Notice of Disallowance (*ND*) No. H.O. 12-005 (11) on the payment of longevity pay in the amount of ₱5,575,294.70, to the officers and employees of PhilHealth.

Antecedents

On March 25, 1992, Republic Act (*R.A.*) No. 7305, otherwise known as the Magna Carta of Public Health Workers, was signed into law. Section 23 thereof granted longevity pay to a health worker, to wit:

> **Section 23. Longevity Pay**. — A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to a **health worker** for every five (5) years of continuous, efficient and meritorious services rendered as certified by the chief of office concerned, commencing with the service after the approval of this Act.

Pursuant to R.A. No. 7305, former Department of Health (*DOH*) Secretary Alberto G. Romualdez, Jr., issued a Certification[5] dated February 20, 2000, declaring PhilHealth officers and employees as public health workers.

On April 26, 2001, the Office of the Government Corporate Counsel (*OGCC*) issued Opinion No. 064, Series of 2001,[6] stating that the term "health-related work" under Section 3 of R.A. No. 7305, includes not only the direct delivery or provision of health services but also the aspect of financing and regulation of health services. Thus, in its opinion, the PhilHealth officers and employees were deemed engaged in health-related works for purposes of entitlement to longevity pay.

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[3] *Id*. at 55-58.

[4] *Id*. at 129.

[5] *Id*. at 7.

[6] *Id*. at 239-242.

On August 1, 2011, former PhilHealth President and Chief Executive Officer Dr. Rey B. Aquino issued Office Order No. 0053, Series of 2011,[7] prescribing the guidelines on the grant of longevity pay, incorporating it in the basic salary of qualified PhilHealth employees for the year 2011 and every year thereafter.

On January 31, 2012, the PhilHealth Board passed and approved Resolution No. 1584, Series of 2012, which confirmed the grant of longevity pay to its officers and employees for the period January to September 2011, in the total amount of ₱5,575,294.70.[8]

On April 30, 2012, COA Supervising Auditor Elena C. Agustin (*Supervising Auditor*) issued Audit Observation Memorandum 2012-09 (11), stating that the grant of longevity pay to PhilHealth officers and employees lacked legal basis, and thus, should be disallowed.

On May 18, 2012, PhilHealth asserted that its personnel were public health workers, pursuant to the DOH Certification dated February 20, 2000, and OGCC Opinion No. 064, Series of 2001 dated April 26, 2011, and hence, are entitled to longevity pay under R.A. No. 7305.

Notice of Disallowance

On July 23, 2012, the COA Supervising Auditor issued ND No. H.O. 12-005 (11) disallowing the amount of ₱5,575,294.70 representing the payment for longevity pay. The officers who approved the disbursement and all payees were held liable under the said ND which stated that the amount was disallowed because it lacked legal basis.

PhilHealth received the ND on July 30, 2012. After 179 days from its receipt or on January 25, 2013, it filed its appeal memorandum before the COA Corporate Government Sector (*CGS*).

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[7] *Id*. at 7.

[8] *Id*. at 408.

The COA-CGS Ruling

In its March 13, 2014 Decision,[9] the COA-CGS affirmed the ND. It held that under Section 3 of R.A. No. 7305, a government health worker must be principally tasked to render health or health-related services; employees performing functions not directly related to health services are not public health workers. The COA-CGS underscored that PhilHealth's only responsibility is the payment of health services to covered beneficiaries, and that such payment cannot be equated to being a function directly related to health or to health-related services. Hence, it concluded that the officers and employees of PhilHealth were not entitled to longevity pay. The *fallo* reads:

WHEREFORE, premises considered, the instant Appeal is **DENIED**. Accordingly, ND No. H.O. 12-005 (11) dated July 23, 2012 is hereby affirmed.[10]

PhilHealth received the Decision of the COA-CGS on March 25, 2014. It filed a motion for extension of time of thirty (30) days, from March 30, 2014 to April 30, 2014, to file its petition for review. On April 30, 2014, PhilHealth filed said petition before the COA.

The COA Ruling

In its April 1, 2015 Decision, the COA denied the petition for review for being filed out of time. It held that under Section 48 of Presidential Decree (*PD*) No. 1445, and Rule VII, Section 3 of the 2009 Revised Rules of Procedure of the COA, the reglementary period to appeal the decision of an auditor is six (6) months or 180 days from receipt of the decision. The COA found that PhilHealth filed its motion for extension of time to file the petition for review only after the lapse of the said period, hence, the petition was filed out of time. The dispositive portion states:

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[9] *Id*. at 115-120.

[10] *Id*. at 120.

WHEREFORE, premises considered, the instant petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Corporate Government Sector-6 Decision No. 2014-002 dated March 13, 2014, affirming Notice of Disallowance No. H.O. 12-005 (11) dated July 23, 2012, on the payment of longevity pay under the Magna Carta for Public Health Workers to the officers and employees of Philippine Health Insurance Corporation for the period January to September 2011 in the total amount of ₱5,575,294.70, is final and executory.[11]

Undeterred, PhilHealth filed a petition for *certiorari* under Rule 64 of the Rules of Court before the Court.

The Court's Decision

In its July 24, 2018 Decision, the Court denied the petition for *certiorari* filed by PhilHealth. It held that the petition was filed out of time because it was filed beyond the six (6)-month period to appeal an ND. The Court emphasized that PhilHealth received ND No. H.O. 12-005 (11) on July 30, 2012, and that after 179 days, it filed its appeal memorandum before the COA-CGS. Thus, when PhilHealth received the COA-CGS Decision on March 25, 2014, it only had one (1) day to file its petition before the COA, or until March 26, 2014. As the petition was filed on April 30, 2014, it was filed out of time.

Nevertheless, even on the substantive issues, the Court found that the petition lacks merit. It held that to be included within the coverage of R.A. No. 7305 and its Implementing Rules and Regulations (*IRR*), "an employee must be principally tasked to render health or health-related services, such as in hospitals, sanitaria, health infirmaries, health centers, clinical laboratories and facilities and other similar activities which involved health services to the public; medical professionals, allied health professionals, administrative and support personnel in the aforementioned agencies or offices; employees of the health-related establishments, that is, facilities or units engaged in the delivery of health services, although the agencies to which such facilities or units are attached are not primarily involved

[11] *Id*. at 57-58.

in health or health-related services. Otherwise stated, an employee performing functions not primarily connected with the delivery of health services to the public is not a public health worker within the contemplation of the law."[12]

The Court underscored that PhilHealth personnel's functions are not principally related to health service because their service pertains to the effective administration of the National Health Insurance Program, or facilitating the availability of funds of health services to its covered employees. Stated differently, PhilHealth's function is to help its members pay for health care services; unlike that of workers or employees of hospitals, clinics, health centers and units, medical service institutions, clinical laboratories, treatment and rehabilitation centers, health-related establishments of government corporations, and the specific health service section, division, bureau or unit of a government agency, who are actually engaged in health work services. Thus, as PhilHealth's employees are not considered health workers, they are not entitled to longevity pay under R.A. No. 7305.

Further, the Court ruled that PhilHealth cannot claim good faith to escape liability under ND No. H.O. 12-005 (11) dated July 23, 2012, because it had already attained finality. Thus, all PhilHealth personnel must return the received longevity pay.

Hence, these motions for reconsideration raising the following issues:

I

PHILHEALTH PERSONNEL ARE PUBLIC HEALTH WORKERS AS DEFINED AND DETERMINED UNDER [R.A. No.] 7305 AND ITS IRR.

II

ASSUMING *ARGUENDO* THAT PHILHEALTH PERSONNEL ARE NOT PUBLIC HEALTH WORKERS, THEY SHOULD NOT BE MADE TO REFUND THE AMOUNT DISALLOWED IN AUDIT CONSIDERING THAT THIS HONORABLE COURT FOUND THAT THEY RECEIVED THE BENEFIT IN GOOD FAITH.[13]

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[12] *Id*. at 416-417.

[13] *Id*. at 472.

In its Motion for Reconsideration,[14] PhilHealth argues that the exceptions to the doctrine of finality of judgment must be applied in the interest of substantive justice and for the protection of labor's right to fair and reasonable compensation; that its personnel are health workers because it is attached to the DOH, which has an explicit mandate to be involved in both the provision and regulation of health services; and that, since it is attached to an agency which is mandated to provide, finance or regulate health services, PhilHealth personnel should be considered health workers.

In its Motion for Reconsideration,[15] the Office of the Government Corporate Counsel (*OGCC*) reiterates its argument that PhilHealth personnel are covered by the definition of a public health worker under No. 1, Rule III of the Revised IRR of R.A. No. 730 because they are attached to an agency, DOH, which provides financing or regulation of health services; that PhilHealth is not similarly situated with the Social Security System (*SSS*), Government Service Insurance System (*GSIS*), and Philippine Charity Sweepstakes Office (*PCSO*), because these are not attached agencies of the DOH and they do not primarily provide for the financing and regulation of health services; and that PhilHealth's mandate is not limited to simply paying the medical bills of their beneficiaries, rather, they also set the standards, rules, and regulations necessary to ensure quality of care, appropriate utilization of services, fund viability, and member satisfaction; and that PhilHealth personnel received the longevity pay in good faith, and thus, are not liable to return the same.

In its Supplemental Motion for Reconsideration,[16] PhilHealth highlights that R.A. No. 11223, or the Universal Health Care Act, was signed by the President into law on February 20, 2019. Section 15 thereof states that all PhilHealth personnel shall be classified as public health workers in accordance with the

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[14] *Id*. at 443-462.

[15] *Id*. at 471-494.

[16] *Id*. at 812-820.

pertinent provisions under R.A. No. 7305. Thus, PhilHealth concluded that R.A. No. 11223 confirmed its personnel as health workers entitled to longevity pay.

In its Consolidated Comment,[17] the COA argues that PhilHealth personnel are not public health workers because their functions do not principally render health or health-related services; that the personnel of an office should not be considered as public health officers merely because they are attached to the DOH; otherwise, all personnel of the agencies attached to the DOH, such as the Commission on Population (*POPCOM*), National Nutrition Council (*NNC*), Philippine Institute for Traditional Alternative Health Care (*PITAHC*), and the Philippine National AIDS Council (*PNAC*), even if not directly providing health services, would receive the benefits of a public health worker; and that PhilHealth personnel cannot claim good faith to escape liability because the ND is already final and executory due to the belated filing of PhilHealth's appeal.

The Court's Ruling

The Court finds the motions for reconsideration meritorious.

Relaxation of the procedural rules

As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. As such, it has been held that the availability of an appeal is fatal to a special civil action for *certiorari*, for the same is not a substitute for a lost appeal. This is in line with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[18]

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[17] *Id*. at 862-904.

[18] *Orlina v. Ventura*, G.R. No. 227033, December 3, 2018.

In this case, it was established that PhilHealth filed its petition for review before the COA beyond the reglementary period, hence, the subject ND is deemed final and executory, to wit:

> Based on the records, PhilHealth received the ND No. H.O. 12-005 (11) on July 30, 2012, and after 179 days from receipt thereof or on January 25, 2013, PhilHealth filed its appeal memorandum before the COA Corporate Government Sector. The COA Corporate Government Sector upheld the ND No. H.O. 12-005 (11) and the same was received by PhilHealth on March 25, 2014. Hence, by that time, it only had a period of one (1) day, or until March 26, 2014, to file its petition for review before the CACP.
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> However, on March 31, 2014, after the lapse of five (5) days from March 26, 2014, PhilHealth filed a motion for extension of time of thirty (30) days, from March 30, 2014 to April 30, 2014 to file its petition for review. Thereafter, on April 30, 2014 or after the lapse of 215 days after the Resident Auditor issued the ND, PhilHealth filed its petition before the CACP.
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> It is clear that PhilHealth filed its petition beyond the reglementary period to file an appeal which is within six (6) months or 180 days after the Resident Auditor issued a ND. Thus, the Decision No. 2014-002 dated March 13, 2014 of COA Corporate Government Sector which upheld the ND No. H.O. 12-005 (11) dated July 23, 2012 became final and executory pursuant to Section 51 of the Government Auditing Code of the Philippines.[19]

But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and **(4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable**. Similarly, while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain

[19] *Rollo*, pp. 413-414.

special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.[20]

The Court finds that this case falls under the exception of the doctrine of immutability of judgment because there is a particular circumstance that transpired after the finality of ND No. H.O. 12-005 (11), specifically, the enactment of R.A. No. 11223 on February 20, 2019. Further, the issue on whether PhilHealth personnel are health workers must be revisited for special considerations regarding the classification of employees in the public health care sector. Thus, ND No. H.O. 12-005 (11) may still be scrutinized by the Court on its merits.

R.A. No. 11223 is a remedial legislation

One of the objectives of R.A. No. 11223, or the Universal Health Care Act, is to ensure that all Filipinos are guaranteed equitable access to quality and affordable health care goods and services, and protected against financial risk.[21] In line with this objective, the law declares that every Filipino citizen shall be automatically included in the National Health Insurance Program.[22]

Notably, R.A. No. 11223 provides for a clear and unequivocal declaration regarding the classification of all PhilHealth personnel, to wit:

SECTION 15. PhilHealth Personnel as Public Health Workers. — All PhilHealth personnel shall be classified as **public health workers** in accordance with the pertinent provisions under Republic Act No. 7305, also known as the Magna Carta of Public Health Workers. (emphasis supplied)

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[20] *Orlina v. Ventura, supra* note 18.

[21] R.A. No. 11223, Section 3(b).

[22] R.A. No. 11223, Section 5.

Plainly, the law states that all personnel of the PhilHealth are public health workers in accordance with R.A. No. 7305. This confirms that PhilHealth personnel are covered by the definition of a public health worker. In other words, R.A. No. 11223 is a curative statute that remedies the shortcomings of R.A. No. 7305 with respect to the classification of PhilHealth personnel as public health workers.

Curative statutes are intended to [correct] defects, abridge superfluities in existing laws and curb certain evils. "They are intended to enable persons to carry into effect that which they have designed and intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute, was invalid."[23]

Curative statutes have long been considered valid in this jurisdiction. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. They are, however, subject to exceptions. For one, they must not be against the Constitution and for another, they cannot impair vested rights or the obligation of contracts.[24] By their nature, curative statutes may be given retroactive effect, unless it will impair vested rights.[25] A curative statute has a retrospective application to a pending proceeding.[26]

In *Briad Agro Development Corp. v. Hon. Dela Cerna*,[27] the issue therein was whether the Secretary of Labor, through the Regional Directors, had concurrent jurisdiction with the Labor Arbiter regarding money claims. Initially, the Court ruled that they had concurrent jurisdiction based on the Labor Code, as

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[23] *Batong Buhay Gold Mines, Inc. v. Hon. Dela Serna*, 370 Phil. 872, 893 (1999).

[24] *Briad Agro Development Corp. v. Hon. Dela Serna*, 256 Phil. 285, 294 (1989).

[25] *Manuel L. Quezon University v. National Labor Relations Commission*, 419 Phil. 776, 783 (2001).

[26] See *Garcia v. Judge Martinez*, 179 Phil. 263, 265 (1979).

[27] *Supra* note 24.

amended by Executive Order No. 111. While the motion for reconsideration was pending, the Court was informed of the enactment of R.A. No. 6715, which further amended Article 217 of the Labor Code, stating that only the Labor Arbiter has exclusive jurisdiction over money claims.[28] Accordingly, the Court granted the motion for reconsideration and held that R.A. No. 6715 is a curative legislation which finally settled that the Labor Arbiter had exclusive jurisdiction over money claims, not the Secretary of Labor or the Regional Directors. Further, it was declared therein that R.A. No. 6715 is a curative legislation, which is applicable to pending cases.

Similarly, in *Manuel L. Quezon University v. National Labor Relations Commission*,[29] the employees therein received retirement benefits from the retirement plan created by the university. However, the rates of said retirement plan were lower than that provided by the recently enacted R.A. No. 7641.[30] The Court ruled that the employees therein were entitled to the rates provided by R.A. No. 7641, which is a curative social legislation and, by nature, has a retroactive effect.

In this case, while the Court initially declared that PhilHealth personnel were not public health workers in its July 24, 2018 Decision and that ND No. H.O. 12-005 (11) was final and executory, the subsequent enactment of R.A. No. 11223, which transpired after the promulgation of its decision, convinces the Court to review its ruling. Thus, R.A. No. 11223 is a curative

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[28] ARTICLE 217. *Jurisdiction of Labor Arbiters and the Commission.* — x x x

x x x x x x x x x

(6) Except claims for employees compensation, social security, medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00), whether or not accompanied with a claim for reinstatement.

x x x x x x x x x

[29] *Supra* note 25.

[30] R.A. No. 7641 amended Article 287 of the Labor Code regarding the retirement benefits of qualified private sector employees.

legislation that benefits PhilHealth personnel and has retrospective application to pending proceedings.

Indeed, R.A. No. 11223, as a curative law, should be given retrospective application to the pending proceeding because it neither violates the Constitution nor impairs vested rights. On the contrary, R.A. No. 11223 further promotes the objective of R.A. No. 7305, which is to promote and improve the social and economic well-being of health workers, their living and working conditions and terms of employment.[31] As a curative statute, R.A. No. 11223 applies to the present case and to all pending cases involving the issue of whether PhilHealth personnel are public health workers under Section 3 of R.A. No. 7305. To reiterate, R.A. No. 11223 settles, once and for all, the matter that PhilHealth personnel are public health workers in accordance with the provisions of R.A. No. 7305.

Evidently, R.A. No. 11223 removes any legal impediment to the treatment of PhilHealth personnel as public health workers and for them to receive all the corresponding benefits therewith, including longevity pay. Thus, ND H.O. 12-005 (11), disallowing the longevity pay of PhilHealth personnel, must be reversed and set aside. As PhilHealth personnel are considered public health workers, it is not necessary anymore to discuss the issue on good faith.

WHEREFORE, the Motions for Reconsideration are **GRANTED**. The July 24, 2018 Decision of the Court is hereby **REVERSED** and **SET ASIDE**. The July 23, 2012 Notice of Disallowance No. H.O. 12-005 (11), on the payment of longevity pay in the amount of ₱5,575,294.70, is likewise **REVERSED** and **SET ASIDE.**

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Hernando, J., on official business.

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[31] R.A. No. 7305, Section 2.

SEPARATE OPINION

LEONEN, *J.*:

I concur.

To recall, I disagreed[1] with the earlier ruling in this case. In its July 24, 2018 Decision, this Court upheld the Notice of Disallowance on the payment of longevity pay to employees of the Philippine Health Insurance Corporation (PhilHealth),[2] ruling that they were not public health workers under Republic Act No. 7305 and its Revised Implementing Rules and Regulations.

In denying the Petition, the majority in the earlier Decision limited the characterization of public health workers only to those who are principally tasked with delivering health services to clinics, hospitals, and similar establishments.[3]

Contrary to the majority, I believe that PhilHealth employees who carry out functions to administer the National Health Insurance Program categorically fall within the definition of public health workers under Republic Act No. 7305, as they are engaged in both health and health-related work.[4] Conformably, under the law's Revised Implementing Rules and Regulations, they are employees of an office attached to the

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[1] See *J.* Leonen, Dissenting Opinion in *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64465> [Per *J.* Tijam, *En Banc*].

[2] *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64465> [Per *J.* Tijam, *En Banc*].

[3] *Id*.

[4] See *J.* Leonen, Dissenting Opinion in *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64465> [Per *J.* Tijam, *En Banc*].

Department of Health,[5] whose primary purpose includes providing, financing, and regulating health services.[6]

With the advent of Republic Act No. 11223, or the Universal Health Care Act, on February 20, 2019, the reasonable interpretation in favor of PhilHealth employees is reinforced.

Ruling on the present Motions for Reconsideration seeking to reverse the July 24, 2018 Decision, the *ponencia* emphasized that this Court is urged to review its prior judgment due to the recent enactment of Republic Act No. 11223.[7] It noted how the law has "settle[d] once and for all that PhilHealth personnel are public health workers in accordance with the provisions of [Republic Act] No. 7305."[8]

Accordingly, I concur that "there is no more legal impediment"[9] for PhilHealth employees to receive all the benefits afforded to public health workers, including the payment of their longevity pay. Therefore, the pertinent Notice of Disallowance should be set aside.

I

In furtherance of the State policy[10] to instill health consciousness among the people, Republic Act No. 7305, otherwise known as the Magna Carta of Public Health Workers,[11] was enacted:

(a) to promote and improve the social and economic well-being of

[5] See Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305 (1999), Rule III, item 1(b).

[6] See J. Leonen, Dissenting Opinion in *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64465>[Per J. Tijam, *En Banc*].

[7] *Ponencia*, pp. 10-11.

[8] *Id*. at 11.

[9] *Id.*

[10] CONST., Art. II, Sec. 15.

[11] Republic Act No. 7305 (1992), Sec. 2.

the health workers, their living and working conditions and terms of employment; . . . and (c) to encourage those with proper qualifications and excellent abilities *to join and remain* in government service.[12] (Emphasis supplied)

To attain these objectives, public health workers are given additional compensation[13] such as hazard allowance, subsistence allowance, and longevity pay,[14] among others. To be afforded these benefits, one must be a "health worker," which is defined in Section 3 of Republic Act No. 7305 as:

> . . . *all persons who are engaged in health and health-related work*, and all persons employed in all hospitals, sanitaria, health infirmaries, health centers, rural health units, *barangay* health stations, clinics and other health-related establishments owned and operated by the government or its political subdivisions with original charters and shall include medical, allied health professional, administrative and support personnel employed regardless of their employment status. (Emphasis supplied)

Thus, to distinguish public health workers from other categories of employees in the government,[15] the Revised Implementing Rules and Regulations of Republic Act No. 7305 specifically refers to them as:

> 1. Public Health Workers (PWH) — Persons engaged in health and health-related works. These cover employees in any of the following:
>
> a) Any government entity whose primary function according to its legal mandate is the delivery of health services and the operation of hospitals, sanitaria, health infirmaries, health centers, rural health units, *barangay* health stations, clinics or other institutional forms which similarly perform health delivery functions, like clinical

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[12] Republic Act No. 7305 (1992), Sec. 2.

[13] Republic Act No. 7305 (1992), Sec. 20.

[14] Republic Act No. 7305 (1992), Sec. 23.

[15] See Specific Operating Principles applied in drafting the IRR (Background) in the Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305 (1999).

laboratories, treatment and rehabilitation centers, x-ray facilities and other similar activities involving the rendering of health services to the public; and

b) *Offices attached to agencies whose primary function according to their legal mandates involves provision, financing or regulation of health services*.

Also covered are medical and allied health professionals, as well as administrative and support personnel, regardless of their employment status.[16] (Emphasis supplied)

As I have underscored in my dissent and now reiterate, based on the text of the law, public health workers engaged in *health and health-related duties* include not only those who work in government agencies that *directly* deliver health services to hospitals, clinics, and other similar establishments,[17] but also those in *offices* such as PhilHealth. PhilHealth, in turn, is attached to an agency primarily mandated to perform tasks related to "provision, financing[,] or regulation of health services."[18]

PhilHealth was created under Republic Act No. 7875, as amended,[19] to administer the National Health Insurance Program.[20] Section 14 provides:

SECTION 14. *Creation and Nature of the Corporation.* — There is hereby created a Philippine Health Insurance Corporation, which shall have the status of a tax-exempt government corporation *attached to the Department of Health* for Policy coordination and guidance. (Emphasis supplied)

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[16] Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305 (1999), Rule III, item 1.

[17] See Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305, Rule III, item l(a).

[18] See Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305, Rule III, item l(b).

[19] Republic Act No. 7875 (1995) was amended by Republic Act No. 9241 (2004), Republic Act No. 10606 (2013), and Republic Act No. 11223 (2019).

[20] See Republic Act No. 7875 (1995), Sec. 16(1).

Meanwhile, the Department of Health is principally responsible "for the formulation, planning, implementation, and coordination of policies and programs in the field of health."[21] Its main task encompasses "the promotion, protection, preservation[,] or restoration of the health of the people through the *provision and delivery of health services* and through the *regulation* and encouragement of providers of health goods and services."[22]

It is, therefore, undeniable that the Department of Health's key purpose as a government agency entails the "provision, financing[,] or regulation of health services."[23] This conclusion can also be deduced from the department's powers and functions enumerated under the Administrative Code, which reads:

SECTION 3. *Powers and Functions*. — The Department shall:

. . . . . .

(2) *Provide for health programs, services, facilities and other requirements as may be needed, subject to availability of funds and administrative rules and regulations;*

(3) Coordinate or collaborate with, and assist local communities, agencies and interested groups including international organizations in activities related to health;

(4) *Administer all laws, rules and regulations* in the field of health, including quarantine laws and food and drug safety laws;

. . . . . .

(6) Propagate health information and educate the population on important health, medical and environmental matters which have health implications;

. . . . . .

(8) *Regulate* the operation of and issue licenses and permits to government and private hospitals, clinics and dispensaries, laboratories,

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[21] See ADM. CODE, Title IX, Ch. 1, Sec. 2.

[22] See ADM. CODE, Title IX, Ch. 1, Sec. 2.

[23] See Revised Implementing Rules and Regulations on the Magna Carta of Public Health Workers or R.A. 7305, Rule III, item 1(b).

blood banks, drugstores and such other establishments which by the nature of their functions are required to be regulated by the Department;

(9) *Issue orders and regulations* concerning the implementation of established health policies[.][24] (Emphasis supplied)

The reasonable interpretation in favor of PhilHealth employees is all the more bolstered by the enactment of Republic Act No. 11223, otherwise known as the Universal Health Care Act, on February 20, 2019.

Ensuring that every Filipino is automatically included in the National Health Insurance Program,[25] the new law has simplified the membership to the Program[26] to assure "guaranteed equitable access to quality and affordable health care goods and services"[27] for all Filipinos.

Notably, the law *expressly* declares that PhilHealth employees are public health workers:

SECTION 15. *PhilHealth Personnel as Public Health Workers.* — All PhilHealth personnel shall be classified as public health workers in accordance with the pertinent provisions under Republic Act No. 7305, also known as the Magna Carta of Public Health Workers.

That being settled, it is but incumbent upon this Court to reverse and set aside its earlier decision to uphold the pertinent Notice of Disallowance on the payment of longevity pay to PhilHealth personnel.

II

Finally, I note that the issuance of the PhilHealth Office Order and subsequent Resolution, which integrated longevity pay in the basic salaries of eligible PhilHealth personnel, was premised on the Certification issued by then Health Secretary Alberto G. Romualdez, Jr., who had declared that PhilHealth

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[24] ADM. CODE, Title IX, Ch. I, Sec. 3.

[25] Republic Act No. 11223 (2019), Sec. 5.

[26] Republic Act No. 11223 (2019), Sec. 8.

[27] Republic Act No. 11223 (2019), Sec. 3(b).

personnel are public health workers.[28] This declaration was confirmed by the Office of the Government Corporate Counsel, which opined that PhilHealth personnel carry out health-related functions, entitling them to longevity pay.[29]

I reiterate what I said in my dissent: the interpretation adopted by the Department of Health should *not* be simply disregarded.[30]

While respondent Commission on Audit's "general audit power is among the constitutional mechanisms that [give] life to the check and balance system inherent in our form of government,"[31] it is not armed with an unbridled authority to override an executive agency's *reasonable* interpretation made in the furtherance of the agency's mandate.[32]

The Department of Health, which oversees all health-related laws and regulations and is the one specifically directed under Republic Act No. 7305 to formulate the law's Implementing Rules and Regulations, determines who are covered by the benefits of the law.[33] Considering that the Department of Health's specific determination is on par with the words and intent of Republic Act No. 7305, its findings cannot be readily substituted by respondent with its own resolution.[34]

ACCORDINGLY, I concur with the *ponencia* in granting the Motions for Reconsideration and reversing this Court's July 24, 2018 Decision.

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[28] *Ponencia*, pp. 2-3.

[29] *Id*. at 2.

[30] *J*. Leonen, Dissenting Opinion in *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64465>[Per *J*. Tijam, *En Banc*] citing *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20 (1969) [Per *J*. Castro, *En Banc*].

[31] *Id*. citing *Veloso v. Commission on Audit*, 672 Phil. 431 (2011) [Per *J*. Peralta, *En Banc*].

[32] *Id*.

[33] *Id*. citing *Kapisanan ng mga Manggagawa sa GSIS v. Commission on Audit*, 480 Phil. 861 (2004) [Per *J*. Tinga, *En Banc*].

[34] *Id*.

EN BANC

[G.R. No. 230642. September 10, 2019]

OSCAR B. PIMENTEL, ERROL B. COMAFAY, JR., RENE B. GOROSPE, EDWIN R. SANDOVAL, VICTORIA B. LOANZON, ELGIN MICHAEL C. PEREZ, ARNOLD E. CACHO, AL CONRAD B. ESPALDON, ED VINCENT S. ALBANO, LEIGHTON R. SIAZON, ARIANNE C. ARTUGUE, CLARABEL ANNE R. LACSINA, KRISTINE JANE R. LIU, ALYANNA MARI C. BUENVIAJE, IANA PATRICIA DULA T. NICOLAS, IRENE A. TOLENTINO and AUREA I. GRUYAL, *petitioners, vs.* **LEGAL EDUCATION BOARD, as represented by its Chairperson, HON. EMERSON B. AQUENDE, and LEB Member HON. ZENAIDA N. ELEPAÑO,** *respondents;*

ATTYS. ANTHONY D. BENGZON, FERDINAND M. NEGRE, MICHAEL Z. UNTALAN, JONATHAN Q. PEREZ, SAMANTHA WESLEY K. ROSALES, ERIKA M. ALFONSO, KRYS VALEN O. MARTINEZ, RYAN CEAZAR P. ROMANO, and KENNETH C. VARONA, *respondents-in-intervention;*

APRIL D. CABALLERO, JEREY C. CASTARDO, MC WELLROE P. BRINGAS, RHUFFY D. FEDERE, CONRAD THEODORE A. MATUTINO and numerous others similarly situated, ST. THOMAS MORE SCHOOL OF LAW AND BUSINESS, INC., represented by its President RODOLFO C. RAPISTA, for himself and as Founder, Dean and Professor, of the College of Law, JUDY MARIE RAPISTA-TAN, LYNNART WALFORD A. TAN, IAN M. ENTERINA, NEIL JOHN VILLARICO as law professors and as concerned citizens, *petitioners-intervenors;*

[G.R. No. 242954. September 10, 2019]

FRANCIS JOSE LEAN L. ABAYATA,GRETCHEN M. VASQUEZ, SHEENAH S. ILUSTRISMO, RALPH LOUIE SALAÑO, AIREEN MONICA B. GUZMAN, DELFINO ODIAS, DARYL DELA CRUZ, CLAIRE SUICO, AIVIE S. PESCADERO, NIÑA CHRISTINE DELA PAZ, SHEMARK K. QUENIAHAN, AL JAY T. MEJOS, ROCELLYN L. DAÑO,[*] MICHAEL ADOLFO, RONALD A. ATIG, LYNNETTE C. LUMAYAG, MARY CHRIS LAGERA, TIMOTHY B. FRANCISCO, SHEILA MARIE C. DANDAN, MADELINE C. DELA PEÑA, DARLIN R. VILLAMOR, LORENZANA L. LLORICO, and JAN IVAN M. SANTAMARIA, *petitioners, vs.* **HON. SALVADOR MEDIALDEA, Executive Secretary, and LEGAL EDUCATION BOARD, herein represented by its Chairperson, EMERSON B. AQUENDE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; EXPANDED JURISDICTION INCLUDES THE DUTY TO DETERMINE WHETHER OR NOT THERE HAS BEEN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT; RULE 65 OF THE RULES OF COURT AS PROPER REMEDY.— As constitutionally defined under Section 1, Article VIII of the 1987 Constitution, judicial power is no longer limited to the Court's duty to settle actual controversies involving rights which are legally demandable and enforceable, or the power of adjudication, but also includes, the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This innovation under the 1987 Constitution later on became known as the Court's traditional jurisdiction and expanded jurisdiction,

[*] Also referred to as "Jocelyn L. Daño" in some parts of the *rollo*.

respectively. x x x [C]onsidering the commonality of the ground of "grave abuse of discretion," a Rule 65 petition, as a procedural vehicle to invoke the Court's expanded jurisdiction, has been allowed. x x x "Any branch or instrumentality of the Government" necessarily includes the Legislative and the Executive, even if they are not exercising judicial, quasi-judicial or ministerial functions. As such, the Court may review and/or prohibit or nullify, when proper, acts of legislative and executive officials, there being no plain, speedy, or adequate remedy in the ordinary course of law.

2. **ID.; ID.; ID.; ID.; ID.; REQUISITES.—** The power of judicial review is tritely defined as the power to review the constitutionality of the actions of the other branches of the government. For a proper exercise of its power of review in constitutional litigation, certain requisites must be satisfied: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. These requisites are effective limitations on the Court's exercise of its power of review because judicial review in constitutional cases is quintessentially deferential, owing to the great respect that each co-equal branch of the Government affords to the other.

3. **ID.; ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; A CONSTITUTIONAL QUESTION IS RIPE FOR ADJUDICATION WHEN THE CHALLENGED GOVERNMENTAL ACT HAS A DIRECT AND EXISTING ADVERSE EFFECT ON THE INDIVIDUAL CHALLENGING IT.—** Fundamental in the exercise of judicial power, whether under the traditional or expanded setting, is the presence of an actual case or controversy. An actual case or controversy is one which involves a conflict of legal rights and an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice. To be justiciable, the controversy must be definite and concrete, touching on the legal relations of parties having adverse legal interests. It must be shown from the pleadings that there is an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other. There must be

an actual and substantial controversy and not merely a theoretical question or issue. Further, the actual and substantial controversy must admit specific relief through a conclusive decree and must not merely generate an advisory opinion based on hypothetical or conjectural state of facts. Closely associated with the requirement of an actual or justiciable case or controversy is the ripening seeds for adjudication. Ripeness for adjudication has a two-fold aspect: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration. The first aspect requires that the issue must be purely legal and that the regulation subject of the case is a "final agency action." The second aspect requires that the effects of the regulation must have been felt by the challenging parties in a concrete way. To stress, a constitutional question is ripe for adjudication when the challenged governmental act has a direct and existing adverse effect on the individual challenging it. While a reasonable certainty of the occurrence of a perceived threat to a constitutional interest may provide basis for a constitutional challenge, it is nevertheless still required that there are sufficient facts to enable the Court to intelligently adjudicate the issues. x x x Ultimately, whether an actual case is present or not is determinative of whether the Court's hand should be stayed when there is no adversarial setting and when the prerogatives of the co-equal branches of the Government should instead be respected. x x x Concededly, the Court had exercised the power of judicial review by the mere enactment of a law or approval of a challenged action when such is seriously alleged to have infringed the Constitution.

4. ID.; ID.; ID.; ID.; ID.; ID.; LEGAL STANDING; LEGAL STANDING EXTENDED TO PETITIONERS FOR HAVING RAISED A "CONSTITUTIONAL ISSUE OF CRITICAL SIGNIFICANCE."— Inextricably linked with the actual case or controversy requirement is that the party presenting the justiciable issue must have the standing to mount a challenge to the governmental act. By jurisprudence, standing requires a personal and substantial interest in the case such that the petitioner has sustained, or will sustain, direct injury as a result of the violation of its rights, x x x The rule on standing admits of recognized exceptions: the over breadth doctrine, taxpayer suits, third-party standing and the doctrine of transcendental importance. x x x Standing as a citizen has been upheld by this

Court in cases where a petitioner is able to craft an issue of transcendental importance or when paramount public interest is involved. Legal standing may be extended to petitioners for having raised a "constitutional issue of critical significance." Without a doubt, the delineation of the Court's rule-making power *vis-a-vis* the supervision and regulation of legal education and the determination of the reach of the State's supervisory and regulatory power in the context of the guarantees of academic freedom and the right to education are novel issues with far-reaching implications that deserve the Court's immediate attention. In taking cognizance of the instant petitions, the Court is merely exercising its power to promulgate rules towards the end that constitutional rights are protected and enforced.

5. ID.; ID.; EXECUTIVE DEPARTMENT; THE SUPERVISION AND REGULATION OF LEGAL EDUCATION IS AN EXECUTIVE FUNCTION; THE COURT'S EXCLUSIVE RULE-MAKING POWER COVERS THE PRACTICE OF LAW AND NOT THE STUDY OF LAW.— [On the] **Jurisdiction Over Legal Education** [we rule:] x x x The supervision and regulation of legal education is an Executive function. ***1. Regulation and supervision of legal education had been historically and consistently exercised by the political departments*** *x x x* ***2. DECS Order No. 27-1989*** *(*specifically outlined the policies and standards for legal education, and superseded all existing policies and standards related to legal education) ***was the precursor of R.A. No. 7662 (Legal Education Reform Act of 1993)*** x x x ***3. Legal education is a mere composite of the educational system*** *x x x* ***4. Court's exclusive rule-making power covers the practice of law and not the study of law*** *x x x* ***5. The Court exercises judicial power only*** x x x ***6. The Rules of Court do not support the argument that the Court directly and actually regulates legal education.***

6. ID.; POLICE POWER; THE SUPERVISION AND REGULATION OF LEGAL EDUCATION IS AN EXERCISE OF POLICE POWER; TO BE VALID, IT MUST BE REASONABLE AND NOT REPUGNANT TO THE CONSTITUTION.— The regulation or administration of educational institutions, especially on the tertiary level, is invested with public interest. Thus, the enactment of education laws, implementing rules and regulations and issuances of government agencies is an exercise of the State's police power. As a

professional educational program, legal education properly falls within the supervisory and regulatory competency of the State. x x x The exercise of such police power, however, is not absolute. [It must be] ***supervisory and regulatory exercise, not control*** *x x x* To be valid, the supervision and regulation of legal education as an exercise of police power must be reasonable and not repugnant to the Constitution.

7. ID.; ID.; ID.; ID.; THE ACADEMIC FREEDOM OF ALL INSTITUTIONS OF HIGHER LEARNING IS RECOGNIZED.— [T]he reasonable supervision and regulation clause is not a stand-alone provision but must be read in conjunction with the other Constitutional provisions relating to education which include, in particular, the clause on academic freedom. Section 5(2), Article XIV of the 1987 Constitution, provides: (2) Academic freedom shall be enjoyed in all institutions of higher learning. x x x The rule is that institutions of higher learning enjoy ample discretion to decide for itself who may teach; what may be taught, how it shall be taught and who to admit, being part of their academic freedom. The State, in the exercise of its reasonable supervision and regulation over education, can only impose minimum regulations.

8. ID.; ID.; ID.; ID.; RIGHT TO QUALITY EDUCATION MADE ACCESSIBLE TO ALL.— Apart from the perspective of academic freedom, the reasonable supervision and regulation clause is also to be viewed together with the right to education. The 1987 Constitution speaks quite elaborately on the right to education. x x x The normative elements of the general right to education under Section 1, Article XIV, are (1) to protect and promote quality education; and (2) to take appropriate steps towards making such quality education accessible. "Quality" education is statutorily defined as the appropriateness, relevance and excellence of the education given to meet the needs and aspirations of the individual and society. In order to protect and promote quality education, the political departments are vested with the ample authority to set minimum standards to be met by all educational institutions. This authority should be exercised within the parameters of reasonable supervision and regulation. x x x On the other hand, "accessible" education means equal opportunities to education regardless of social and economic differences. The phrase "shall take appropriate steps" signifies that the State may adopt varied approaches in the delivery of

education that are relevant and responsive to the needs of the people and the society. x x x Pertinent to higher education, the elements of quality and accessibility should also be present as the Constitution provides that these elements should be protected and promoted in all educational institutions.

9. ID.; ID.; ID.; ID.; ID.; WHILE THERE IS A RIGHT TO QUALITY HIGHER EDUCATION, SUCH RIGHT IS PRINCIPALLY SUBJECT TO THE BROAD ACADEMIC FREEDOM OF HIGHER EDUCATIONAL INSTITUTIONS TO IMPOSE FAIR, REASONABLE AND EQUITABLE ADMISSION AND ACADEMIC REQUIREMENTS.— [T]he right to receive higher education [however] is not absolute. x x x Article 26(1) of the Universal Declaration of Human Rights provides that "[t]echnical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit[,]" while the ICESCR provides that "[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education[.]" Thus, higher education is not to be generally available, but accessible only on the basis of capacity. The capacity of individuals should be assessed by reference to all their relevant expertise and experience. The right to receive higher education must further be read in conjunction with the right of every citizen to select a profession or course of study guaranteed under the Constitution. In this regard, the provisions of the 1987 Constitution under Section 5(3), Article XIV are more exacting: SEC. 5. x x x (3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements. There is uniformity in jurisprudence holding that the authority to set the admission and academic requirements used to assess the merit and capacity of the individual to be admitted and retained in higher educational institutions lie with the institutions themselves in the exercise of their academic freedom. x x x [W]hile there is a right to quality higher education, such right is principally subject to the broad academic freedom of higher educational institutions to impose fair, reasonable, and equitable admission and academic requirements. Plainly stated, the right to receive education is not and should not be taken to mean as a right to be admitted to educational institutions.

10. ID.; STATUTORY CONSTRUCTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); SECTION 3(A)(2) ON INCREASING AWARENESS AMONG MEMBERS OF THE LEGAL PROFESSION; THE PROVISION GOES BEYOND THE SCOPE OF RA NO. 7662.— One of the general objectives of legal education under Section 3(a)(2) of R.A. No. 7662 is to "increase awareness among **members of the legal profession** of the needs of the poor, deprived and oppressed sectors of society[.]" x x x This provision goes beyond the scope of R.A. No. 7662, *i.e.*, improvement of the quality of legal education, and, instead delves into the training of those who are already members of the bar. Likewise, this objective is a direct encroachment on the power of the Court to promulgate rules concerning the practice of law and legal assistance to the underprivileged and should, thus, be voided on this ground.

11. ID.; ID.; ID.; SECTION 2, PAR. 2 AND SECTION 7(G) ON LEGAL APPRENTICESHIP AND LAW PRACTICE INTERNSHIP AS A REQUIREMENT FOR TAKING THE BAR; THE REQUIREMENT UNDULY INTERFERES WITH THE EXCLUSIVE JURISDICTION OF THE COURT TO PROMULGATE RULES CONCERNING THE PRACTICE OF LAW AND ADMISSIONS THERETO.— Towards the end of uplifting the standards of legal education, Section 2, par. 2 of R.A. No. 7662 mandates the State to (1) undertake appropriate reforms in the legal education system; (2) require proper selection of law students; (3) maintain quality among law schools; and (4) **require legal apprenticeship** and continuing legal education. Pursuant to this policy, Section 7(g) of R.A. No. 7662 grants LEB the power to establish a law practice internship as a requirement for taking the bar examinations: x x x It is clear from the plain text of Section 7(g) that another requirement, *i.e.*, completion of a law internship program, is imposed by law for taking the bar examinations. x x x Under Section 7(g), the power of the LEB is no longer confined within the parameters of legal education, but now dabbles on the requisites for admissions to the bar examinations, and consequently, admissions to the bar. This is a direct encroachment upon the Court's exclusive authority to promulgate rules concerning admissions to the bar and should, therefore, be struck down as unconstitutional.

12. ID.; ID.; ID.; SECTION 2, PAR. 2 AND SECTION 7(H) ON CONTINUING LEGAL EDUCATION OF PRACTICING LAWYERS; INASMUCH AS THE LEGAL EDUCATION BOARD (LEB) IS AUTHORIZED TO COMPEL MANDATORY ATTENDANCE OF PRACTICING LAWYERS IN SUCH COURSES AND FOR SUCH DURATION AS THE LEB DEEMS NECESSARY, THE SAME ENCROACHES UPON THE COURT'S POWER TO PROMULGATE RULES CONCERNING THE INTEGRATED BAR WHICH INCLUDES THE EDUCATION OF "LAWYER-PROFESSORS" AS TEACHING OF LAW IS A PRACTICE OF LAW.— The questioned power of the LEB to adopt a system of continuing legal education appears in Section 2, par. 2 and Section 7(h) of R.A. No. 7662: x x x By its plain language, the clause "continuing legal education" under Section 2, par. 2, and Section 7(h) of R.A. No. 7662 unduly give the LEB the power to supervise the legal education of those who are already members of the bar. Inasmuch as the LEB is authorized to compel *mandatory attendance of practicing lawyers* in such courses and for such duration *as the LEB deems, necessary*, the same encroaches upon the Court's power to promulgate rules concerning the Integrated Bar which includes the education of "lawyer-professors" as teaching of law is practice of law.

13. ID.; ID.; ID.; SECTION 7(E) ON THE LEGAL EDUCATION BOARD'S (LEB'S) POWER TO PRESCRIBE MINIMUM STANDARDS FOR "LAW ADMISSION"; IT PERTAINS TO THE ADMISSION TO THE LEGAL EDUCATION, NOT TO THE PRACTICE OF LAW AND IT IS REASONABLE SUPERVISION AND REGULATION; THE LEB IS AUTHORIZED TO ADMINISTER AN APTITUDE TEST AS A MINIMUM STANDARD FOR LAW ADMISSION.— Basic is the rule in statutory construction that every part of the statute must be interpreted with reference to the context, that is, every part must be read together with the other parts, to the end that the general intent of the law is given primacy. As such, a law's clauses and phrases cannot be interpreted as isolated expressions nor read in truncated parts, but must be considered to form a harmonious whole. Accordingly, the LEB's power under Section 7(e) of R.A. No. 7662 to prescribe the minimum standards for law admission should be read with the State policy

behind the enactment of R.A. No. 7662 which is fundamentally to uplift the standards of legal education and the law's thrust to undertake reforms in the legal education system. Construing the LEB's power to prescribe the standards for law admission together with the LEB's other powers to administer, supervise, and accredit law schools, leads to the logical interpretation that the law circumscribes the LEB's power to prescribe admission requirements only to those seeking enrollment to a school or college of law and not to the practice of law. x x x Section 7(e) of R.A. No. 7662, insofar as it gives the LEB the power to prescribe the minimum standards for law admission is faithful to the reasonable supervision and regulation clause. It merely authorizes the LEB to prescribe minimum requirements not amounting to control. Emphatically, the law allows the LEB to prescribe only the minimum standards and it did not, in any way, impose that the minimum standard for law admission should be by way of an exclusionary and qualifying exam nor did it prevent law schools from imposing their respective admission requirements. x x x Evident from the Senate deliberations that, in prescribing the minimum standards for law admission, *an aptitude test may be administered by the LEB* although such is not made mandatory under the law.

14. ID.; ID.; ID.; ID.; THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) AS AN APTITUDE EXAM, IS REASONABLY RELATED TO THE IMPROVEMENT OF LEGAL EDUCATION.— To determine whether the PhiLSAT constitutes a valid exercise of police power, the same test of reasonableness, *i.e.*, the concurrence of a lawful subject and lawful means, is employed. x x x The subject of the PhiLSAT is to improve the quality of legal education. It is indubitable that the State has an interest in prescribing regulations promoting education and thereby protecting the common good. Improvement of the quality of legal education, thus, falls squarely within the scope of police power. The PhiLSAT, as an aptitude test, was the means to protect this interest. x x x Moreover, by case law, the Court already upheld the validity of administering an aptitude test as a reasonable police power measure in the context of admission standards into institutions of higher learning.

15. ID.; ID.; ID.; ID.; ID.; LEBMO NO. 7-2016, PARAGRAPHS 7, 9, 11 AND 15 ON EFFECTIVELY AND ABSOLUTELY EXCLUDING APPLICANTS WHO FAIL TO PASS THE

PHILSAT FROM TAKING UP A COURSE IN THE LEGAL EDUCATION ARE RESTRICTING AND QUALIFYING ADMISSIONS TO LAW SCHOOLS; THESE PROVISIONS ARE UNCONSTITUTIONAL FOR BEING VIOLATIVE OF THE LAW SCHOOL'S EXERCISE OF ACADEMIC FREEDOM.— [T]he PhiLSAT, insofar as it functions as an aptitude exam that measures the academic potential of the examinee to pursue the study of law to the end that the quality of legal education is improved is not *per se* unconstitutional. However, there are certain provisions in the PhilSat that x x x are unconstitutional for being manifestly violative of the law schools' exercise of academic freedom, specifically the autonomy to determine for itself who it shall allow to be admitted to its law program. x x x Paragraphs 7, 9, 11, and 15 of LEBMO No. 7-2016, x x x exclude and disqualify those examinees who fail to reach the prescribed passing score from being admitted to any law school in the Philippines. In mandating that only applicants who scored at least 55% correct answers shall be admitted to any law school, the PhiLSAT actually usurps the right and duty of the law school to determine for itself the criteria for the admission of students and thereafter, to apply such criteria on a case-by-case basis. It also mandates law schools to absolutely reject applicants with a grade lower than the prescribed cut-off score and those with expired PhiLSAT eligibility. The token regard for institutional academic freedom comes into play, if at all, only after the applicants had been "pre-selected" without the school's participation. The right of the institutions then are constricted only in providing "additional" admission requirements, admitting of the interpretation that the preference of the school itself is merely secondary or supplemental to that of the State which is antithetical to the very principle of reasonable supervision and regulation. The law schools are left with absolutely no discretion to choose its students at the first instance and in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants, under pain of administrative sanctions and/or payment of fines. Mandating law schools to reject applicants who failed to reach the prescribed PhiLSAT passing score or those with expired PhiLSAT eligibility transfers complete control over admission policies from the law schools to the LEB. x x x With the conclusion that the PhiLSAT, when administered as an aptitude test, passes the test of reasonableness, there is no

reason to strike down the PhiLSAT in its entirety. Instead, the Court takes a calibrated approach and partially nullifies LEBMO No. 7-2016 insofar as it absolutely prescribes the passing of the PhiLSAT and the taking thereof within two years as a prerequisite for admission to any law school which, on its face, run directly counter to institutional academic freedom. The rest of LEBMO No. 7-2016, being free from any taint of unconstitutionality, should remain in force and effect, especially in view of the separability clause therein contained.

16. ID.; ID.; ID.; ID.; LEBMO NO. 1-2011 IMPOSING ADDITIONAL REQUIREMENTS FOR ADMISSION TO LAW SCHOOLS SIMILARLY ENCROACH UPON THE LAW SCHOOL'S FREEDOM TO DETERMINE FOR ITSELF ITS ADMISSION POLICIES.— [T]he LEB also imposed additional requirements for admission to law schools under LEBMO No. 1-2011, x x x These provisions similarly encroach upon the law school's freedom to determine for itself its admission policies. With regard to foreign students, a law school is completely bereft of the right to determine for itself whether to accept such foreign student or not, as the determination thereof now belongs to the LEB. Similarly, the requirement that an applicant obtain a specific number of units in English, Mathematics, and Social Science subjects affects a law school's admission policies leaving the latter totally without discretion to admit applicants who are deficient in these subjects or to allow such applicant to complete these requirements at a later time. This requirement also effectively extends the jurisdiction of the LEB to the courses and units to be taken by the applicant in his or her pre-law course. Moreover, such requirement is not to be found under Section 6, Rule 138 of the Rules of Court x x x Likewise, in imposing that only those with a basic degree in law may be admitted to graduate programs in law encroaches upon the law school's right to determine who may be admitted. For instance, this requirement effectively nullifies the option of admitting non-law graduates on the basis of relevant professional experience that a law school, pursuant to its own admissions policy, may otherwise have considered.

17. ID.; ID.; ID.; SECTION 7(C) AND 7(E) ON THE LEB'S POWER TO PRESCRIBE MINIMUM QUALIFICATIONS

OF FACULTY MEMBERS; WHILE THE REQUIREMENT OF MASTERAL DEGREE FOR LAW FACULTY MEMBERS AND DEAN, AND DOCTORAL DEGREE FOR A DEAN OF A GRADUATE SCHOOL OF LAW ARE MINIMUM REASONABLE REQUIREMENTS, THE MANNER BY WHICH THE LEB EXERCISED ITS POWER THROUGH ITS VARIOUS ISSUANCES PROVE UNREASONABLE. — The LEB is also empowered under Section 7(c) to set the standards of accreditation taking into account, among others, the "qualifications of the members of the faculty" and under Section 7(e) of R.A. No. 7662 to prescribe "minimum qualifications and compensation of faculty members[.]" Relative to the power to prescribe the minimum qualifications of faculty members, LEB prescribes under LEBMO No. 1-2011 x x x [that] a law faculty member must have an Ll.B or J.D. degree and must, within a period of five years from the promulgation of LEBMO No. 1-2011, or from June 14, 2011 to June 14, 2016, commence studies in graduate school of law. The mandatory character of the requirement of a master's degree is underscored by the LEB in its *Resolution No. 2014-02*, a "sequel rule" to Section 50 of LEBMO No. 1-2011, x x x [and] reiterated in *LEBMO No. 17, Series of 2018* (Supplemental Regulations on the Minimum Academic Requirement of Master of Laws Degree for Deans and Law Professors/Lecturers/ Instructors in Law Schools), x x x To be sure, under its supervisory and regulatory power, the LEB can prescribe the minimum qualifications of faculty members. x x x As worded, the assailed clauses of Section 7(c) and 7(e) insofar as they give LEB the power to prescribe the minimum qualifications of faculty members are in tune with the reasonable supervision and regulation clause and do not infringe upon the academic freedom of law schools. Moreover, this minimum qualification can be a master of laws degree. x x x Thus, the masteral degree required of law faculty members and dean, and the doctoral degree required of a dean of a graduate school of law are, in fact, minimum reasonable requirements. However, it is the manner by which the LEB had exercised this power through its various issuances that prove to be unreasonable. On this point, the *amicus curiae*, Dean Sedfrey M. Candelaria, while admitting that the masteral degree requirement is a "laudable aim" of the LEB, nevertheless adds that the LEB-imposed period of compliance is unreasonable given the logistical and financial obstacles:

x x x Further, the mandatory character of the master of laws degree requirement, under pain of downgrading, phase-out and closure of the law school, is in sharp contrast with the previous requirement under DECS Order No. 27-1989 which merely *prefer* faculty members who are holders of a graduate law degree, or its equivalent. The LEB's authority to review the strength or weakness of the faculty on the basis of experience or length of time devoted to teaching violates an institution's right to set its own faculty standards. The LEB also imposed strict reportorial requirements that infringe on the institution's right to select its teachers which, for instance, may be based on expertise even with little teaching experience. Moreover, in case a faculty member seeks to be exempted, he or she must prove to the LEB, and not to the concerned institution, that he or she is an expert in the field, thus, usurping the freedom of the institution to evaluate the qualifications of its own teachers on an individual basis. Also, while the LEB requires of faculty members and deans to obtain a master of laws degree before they are allowed to teach and administer a law school, respectively, it is ironic that the LEB, under *Resolution No. 2019-406*, in fact considers the basic law degrees of Ll.B. or J.D. as already equivalent to a doctorate degree in other non-law academic disciplines for purposes of "appointment/promotion, ranking, and compensation." In this connection, the LEB also prescribes who may or may not be considered as full-time faculty, the classification of the members of their faculty, as well as the faculty load, including the regulation of work hours, all in violation of the academic freedom of law schools. x x x The LEB is also allowed to revoke permits or recognitions given to law schools when the LEB deems that there is gross incompetence on the part of the dean and the corps of professors or instructors under Section 41.2(d) of LEBMO No. 1-2011, x x x In this regard, the LEB is actually assessing the teaching performance of faculty members and when such is determined by the LEB as constituting gross incompetence, the LEB may mete out penalties, thus, usurping the law school's right to determine for itself the competence of its faculty members.

18. ID.; ID.; ID.; SECTION 2, PAR. 2 AND SECTION 7(G) ON LEGAL APPRENTICESHIP AND LEGAL INTERNSHIP; THE MANNER BY WHICH THE LEB EXERCISED THIS POWER THROUGH SEVERAL OF ITS ISSUANCES

UNDOUBTEDLY SHOW THAT THE LEB CONTROLS AND DICTATES UPON LAW SCHOOLS HOW SUCH APPRENTICESHIP AND INTERNSHIP PROGRAMS SHOULD BE UNDERTAKEN.— While the clause "legal apprenticeship" under Section 2, par. 2 and Section 7(g) on legal internship, as plainly worded, cannot immediately be interpreted as encroaching upon institutional academic freedom, the manner by which LEB exercised this power through several of its issuances undoubtedly show that the LEB controls and dictates upon law schools how such apprenticeship and internship programs should be undertaken. Pursuant to its power under Section 7(g), the LEB passed *Resolution No. 2015-08* (Prescribing the Policy and Rules in the Establishment of a Legal Aid Clinic in Law Schools) wherein it classified legal aid clinics into three types: (1) a legal aid clinic which is an outreach project of a law school; (2) a legal aid clinic which entitles the participating student to curricular credits; and (3) a legal aid clinic that entitles the participating student to avail of the privileges under Rule 138-A of the Rules of Court. Pertinent to the third type, the LEB requires the law schools to comply with the [prescribed] rules: x x x Further, Section 24(c), Article IV of LEBMO No. 2 prescribes the activities that should be included in the law school's apprenticeship program, x x x Relatedly, Section 59(d) of LEBMO No. 1-2011, provides [a grading system]. x x x These provisions unduly interfere with the discretion of a law school regarding its curriculum, particularly its apprenticeship program. Plainly, these issuances are beyond mere supervision and regulation.

PERLAS-BERNABE*, J., separate concurring opinion*:

POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; ACADEMIC FREEDOM GUARANTEED IN ALL INSTITUTIONS OF HIGHER LEARNING; FREEDOM AS TO WHO MAY BE ADMITTED TO STUDY; COMPLIANCE WITH THE PHILSAT EFFECTIVELY RESULTS IN THE COMPLETE CONTROL OF THE STATE OVER A SIGNIFICANT ASPECT OF THE INSTITUTION'S ACADEMIC FREEDOM.— Section 5 (2), Article XIV of the 1987 Constitution guarantees that "**[a]cademic freedom** shall be enjoyed in **all institutions of higher learning**." According to case law; "[t]his institutional academic freedom

includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them **free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint**. The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) [w]ho may teach, (2) [w]hat may be taught, (3) [h]ow it shall be taught, and (4) **[w]ho may be admitted to study**." This fourth freedom of law schools to determine "who may be admitted to study" is at the core of the present controversy involving the PhiLSAT. x x x Compliance with the PhiLSAT effectively means a surrender of the law schools' academic freedom to determine who to admit to their institutions for study. This is because the PhiLSAT operates as a sifting mechanism that narrows down the pool of potential candidates from which law schools may then select their future students. With the grave administrative sanctions imposed for non-compliance, the surrender of this facet of academic freedom is clearly compulsory, because failing to subscribe to the PhiLSAT requirement is tantamount to the law school risking its complete closure or the phasing out of its law program. **This effectively results in the complete control — not mere supervision — of the State over a significant aspect of the institutions' academic freedom.**

CAGUIOA, *J., separate concurring opinion*:

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; THE GUARANTEE OF ACADEMIC FREEDOM AND THE STATE'S POWER TO REGULATE EDUCATIONAL INSTITUTIONS; REASONABLE SUPERVISION AND REGULATION BY THE STATE OVER EDUCATIONAL INSTITUTIONS DOES NOT INCLUDE THE POWER TO CONTROL, MANAGE, DICTATE, OVERRULE, PROHIBIT AND DOMINATE.— The guarantee of academic freedom is enshrined in Section 5(2), Article XIV of the Constitution, which states that: "[a]cademic freedom shall be enjoyed in all institutions of higher learning." This institutional academic freedom includes "the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint." The essential freedoms subsumed in the term "academic

freedom" are: 1) who may teach; 2) what may be taught; 3) how it shall be taught; and 4) who may be admitted to study. Nevertheless, the Constitution also recognizes the State's power to regulate educational institutions. Section 4(1), Article XIV of the Constitution provides that: "[t]he State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions." As gleaned from the quoted provision, the State's power to regulate is subject to the requirement of *reasonableness*. **"[R]easonable supervision and regulation" by the State over educational institutions does not include the power to control, manage, dictate, overrule, prohibit, and dominate**.

2. ID.; ID.; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); LEGAL EDUCATION BOARD (LEB) POWER TO PRESCRIBE MINIMUM QUALIFICATIONS AND COMPENSATION OF FACULTY MEMBERS; THE LEB GROSSLY VIOLATED THE ACADEMIC FREEDOM OF LAW SCHOOLS BY GOING BEYOND REASONABLE SUPERVISION AND REGULATION IN THEIR ISSUANCES.— R.A. 7662 purportedly empowers the LEB to prescribe *minimum* qualifications and compensation of faculty members x x x. In the exercise of this power, however, the LEB has grossly violated the academic freedom of law schools **by going beyond reasonable supervision and regulation in their issuances**. x x x **[t]he LEB [requirements] have unreasonably interfered with an institution's right to select its faculty and staff and to determine the facilities and benefits that will be made available for their use**. x x x [T]he LEB overreaches its authority in requiring an LLM as a "minimum qualification." **In imposing the foregoing requirement, the LEB arbitrarily usurped an institution's academic authority to gauge and to evaluate the qualifications of its educators on an individual basis, and hastily reduced the pool of expertise available for selection — to the detriment of the institution, the faculty, the students, and the profession as a whole.** x x x Finally, the LEB impairs institutional academic freedom by categorizing faculty members and interfering with faculty load x x x. **[I]t has arbitrarily dabbled in the internal affairs of law schools,**

including the grant of faculty positions and titles, the regulation of work hours and occupations, and the assignment of work load. x x x [A]cademic institutions are free to select their faculty, to fix their qualifications, to evaluate their performance, and to determine their ranks, positions, and teaching loads. The LEB's purported power to prescribe *minimum* qualifications and compensation of faculty members should be construed to cover only minimal state interference when some important public interest calls for the exercise of reasonable supervision. **It does *not* include a blanket authority to impose trivial rules as it sees fit. In the exercise of the LEB's purported power to supervise law schools, it has engaged in the unreasonable and invalid regulation, control, and micromanagement of law schools.**

3. ID.; ID.; ID.; THE LEB'S POWER TO PRESCRIBE THE BASIC CURRICULA FOR THE COURSE OF STUDY ALIGNED TO THE REQUIREMENTS FOR ADMISSION TO THE BAR, LAW PRACTICE AND SOCIAL CONSCIOUSNESS; IT DOES NOT GRANT THE LEB AUTHORITY TO IMPOSE UNREASONABLE REQUIREMENTS IN CONTRAVENTION OF AN ACADEMIC INSTITUTION'S FUNDAMENTAL RIGHT TO DETERMINE WHAT TO TEACH AND HOW TO GO ABOUT IT.— While R.A. 7662 empowers the LEB to prescribe "the *basic* curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness," **it does *not* grant the LEB unbridled authority to impose unreasonable requirements in contravention of an academic institution's fundamental right to determine what to teach and how to go about it**. A review of LEB's various memoranda evinces no other conclusion than that it has grossly overstepped this authority x x x. In contrast with the **curricular flexibility** provided by the CHED, the LEB did not merely prescribe minimum unit requirements, desired program outcomes, or a sample curricula. The LEB gravely abused its authority and violated the law schools' curricular freedom when it ***imposed*** [its own] curriculum, ***usurped*** the lawschools' right to determine appropriate pre-requisites and ***prohibited*** law schools from designing their own electives. Clearly, the right to formulate the curriculum belongs to the educational institutions, subject to reasonable guidelines that may be provided by the

State. x x x In sum, the LEB's authority to prescribe the "basic curricula" is limited by the Constitutional right of law schools to academic freedom and to the due process standard of reasonableness. When the LEB (or any branch of government for that matter) interferes with Constitutional rights and freedoms and overreaches its authority, **as it has done in this case**, it is the Court's Constitutional duty to make it tow the line.

REYES, A., JR., *J., concurring opinion*:

1. **POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); THE LEGAL EDUCATION BOARD (LEB) MO NO. 7 IMPOSING THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) IS A CONSTRICTING REGULATION THAT BINDS THE HANDS OF THE SCHOOLS FROM CHOOSING WHO TO ADMIT IN THEIR LAW PROGRAM.— I agree with the *ponencia* in striking as unconstitutional LEB Mo. No. 7, and all its adjunct orders.** x x x LEBMO No. 7, insofar as it imposes the PhilSAT, is a constricting regulation that binds the hands of the schools from choosing who to admit in their law program. The LEB thrusts upon the law schools a pre-selected roster of applicants, and effectively deprives them of the right to select their own students on the basis of factors and criteria of their own choosing. Consequently, the law schools are left with no choice but to elect from this limited pool. Worse, they are forbidden from admitting those who failed to comply with the LEB's requirements, under pain of administrative sanctions. Undoubtedly, the imposition of the PhilSAT is an oppressive and arbitrary measure. The LEB is bereft of power to substitute its own judgment for that of the universities. Rather, the universities should be free to consider other criteria (aside from the PhilSAT) in determining their prospective students' aptitude and ability to survive in law school.

2. **ID.; ID.; ID.; ID.; IT IS VIOLATIVE OF THE STUDENT'S ACADEMIC FREEDOM AND RIGHT TO ACQUIRE KNOWLEDGE.—** Article XIV, Section 5(3) of the 1987 Constitution declares that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." Certainly, the

right to pursue a course of higher learning is supported, no less by the State. It must endeavor to ensure a becoming respect for every citizen's right to select his/her course of study. To expand one's knowledge, to obtain a degree, or to advance one's professional growth are liberties guaranteed by the Constitution. Although these rights are not absolute, they may only be curbed by standards that are "fair, reasonable, and equitable." x x x Lest it be forgotten, the law is not only a profession, but it is first and foremost, a field of study. It is an interesting and practical science, that proves useful for everyday life, and for one's personal growth and career. x x x There is no doubt that the ultimate goal of attaining quality legal education is a legitimate and lofty objective. x x x [T]he level of supervision and regulation granted unto the State must be reasonable. This "reasonableness" in no way grants a warrant for the State to exercise oppressive control over the schools. In the case of the PhilSAT, in addition to being arbitrary and oppressive, the LEB likewise failed to establish that the means employed will serve its purpose of improving the quality of legal education.

LEONEN*, J., separate dissenting and concurring opinion*:

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT); IT VIOLATED INSTITUTIONAL ACADEMIC FREEDOM AS IT USURPS THE RIGHT OF LAW SCHOOLS TO DETERMINE THE ADMISSION REQUIREMENTS OF ITS WOULD-BE STUDENTS.— [T]he Philippine Law School Admission Test violates institutional academic freedom insofar as it prescribes a passing score that must be followed by law schools. Failure to reach the passing score will disqualify the examinee from admission to any Philippine law school. This is because a Certificate of Eligibility is necessary for enrollment as a first year law student. Respondent Legal Education Board, which administers the test, only allows law schools to impose additional requirements for admission, but passing the test is still mandatory. The failure of law schools to abide by these requirements exposes them to administrative sanctions. x x x Thus, I agree with the majority's characterization that the Philippine Law School Admission Test employs a "totalitarian scheme" that leaves the actions of law schools entirely

dependent on the test results. It usurps the right of law schools to determine the admission requirements for its would-be students—ultimately infringing on the institutional academic freedom they possess, as guaranteed by the Constitution.

2. ID.; ID.; ID.; ID.; A STATE-SPONSORED EXAMINATION LIKE THE PHILSAT, WHICH TENDS TO CONTROL THE INTERNAL AFFAIRS OF ACADEMIC INSTITUTIONS, RUNS AFOUL OF ACADEMIC FREEDOM.— [T]he majority ruled that the Philippine Law School Admission Test is unconstitutional only insofar as it is a mandatory requirement for the law schools' admissions processes. I disagree. The Philippine Law School Admission Test—or, for that matter, any national admission test—even if not made mandatory, still infringes on academic freedom. x x x Academic freedom is intertwined with intellectual liberty. It is inseparable from one's freedom of thought, speech, expression, and the press. Thus, the institutions' and individuals' right to pursue learning must be "free from internal and external interference or pressure." x x x Freedom of expression is a cognate of academic freedom. Hence, the zealous protection accorded to freedom of expression must necessarily be reflected in the level of protection that covers academic freedom. Any form of State intrusion against academic freedom must be treated suspect. Central to the resolution of this case is the freedom of academic institutions, particularly law schools, to determine *who may be admitted to study*. As part of their academic self-government, law schools are given the discretion to come up with an autonomous decision on their admission policies, including the examination they will administer. A state-sponsored examination like the Philippine Law School Admission Test, which tends to control the internal affairs of academic institutions, runs afoul of that essential freedom.

3. ID.; ID.; ID.; ID.; ENFORCING AN ARBITRARY MEASURE IN THE LAW SCHOOL'S ADMISSION PROCESS IS A VIOLATION OF THE APPLICANT'S RIGHT TO DUE PROCESS.— Due process is guaranteed under our Constitution. x x x Substantive due process answers the question of whether "the government has an adequate reason for taking away a person's life, liberty, or property." To pass this test, the State must provide a sufficient justification for enforcing a governmental regulation. x x x When governmental action is

checked against the due process requirement under the Constitution — particularly substantive due process — it must be shown that such action was neither arbitrary nor unreasonable. Respondent failed to show this. The creation of the Philippine Law School Admission Test was not based on scientific research. x x x [B]y enforcing an arbitrary and unreasonable measure in the law schools' admission process, the government violates the applicants' right to due process. The choice of pursuing an education is within the ambit of one's right to life and liberty. x x x Ultimately, the right to life is intertwined with the right to pursue an education. Right to life, after all, is not merely the right to exist, but the right to achieve the "fullness of human potential[.]" This is real in attaining a degree of one's own choice. Education does not only enhance and sharpen intellect, but also opens up better opportunities. It improves the quality of life. When a person obtains a degree, there is economic and social mobility. Thus, when the State interferes and prevents an individual from accessing education, it impliedly infringes on the right to life and liberty. In the same vein, imposing an arbitrary and unreasonable government–sponsored standardized test violates the right to property. Applicants, forced to take the mandatory examination, are likewise required to pay testing fees. This means additional financial cost that acts as another unnecessary obstacle to aspiring law students.

4. ID.; ID.; ID.; THE ENTIRE LEGAL EDUCATION REFORM ACT IS A VIOLATION TO THE CONSTITUTION.— The teaching of law as an academic degree is protected by Article XIV, Section 5(2) of the Constitution, which also relates to Article III, Section 4 under the Bill of Rights. On the other hand, the requirements for a license to practice law is broadly covered by Article XIV, Section 5(3) of the Constitution, and more specifically as a power granted to this Court under Article VIII, Section 5(5). The regulation on the teaching of law as an academic degree is different from the regulation on the practice of law as a profession. The former is an aspect of higher education leading to a degree, while the latter may require a degree, yet the degree alone does not qualify one to practice law. Quality legal education should be guaranteed by the faculty and administration of a law school. A law school, on the other hand, may be part of a university or college. Thus, the law school is accountable to its academic councils for its approaches to

teaching, qualifications and promotion of its professors, as well as the full contents of its curriculum. The broad and ambiguous rubric of police power should not be an excuse to provide government oversight on purely academic matters, or even academic matters that appear to be administrative issues. Academic supervision cannot be done by a statutorily appointed Legal Education Board restricting the academic freedom of institutions of higher learning which offer what amounts to a postgraduate degree. Legal education cannot be supervised in the way institutions offering pre-school or basic elementary education are supervised. The entire concept of the Legal Education Board—appointed public officials interfering with law schools' academic freedoms as if the appointment from an elective official gives them the academic expertise—is precisely what Article XIV, Section 5(2) of the Constitution proscribes. The entire Legal Education Reform Act clearly violates the Constitution.

JARDELEZA, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); LEBMO NO. 7 ON PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) AS A PRE-REQUISITE FOR ADMISSION TO LAW SCHOOL; ACADEMIC FREEDOM TO DETERMINE WHO MAY BE ADMITTED TO STUDY MUST BE BALANCED WITH THE STATE INTEREST IN PRESCRIBING REGULATIONS TO PROMOTE THE EDUCATION AND THE GENERAL WELFARE OF THE PEOPLE.— I concur with the *ponencia* insofar as it holds that the Court has no jurisdiction over legal education. Both statutory history and legislative intent contemplate a separation between legal education and the law profession; and the regulation and supervision of legal education, including admissions thereto, fall within the scope of the State's police power. However, I must dissent from the majority's ruling to partially nullify Legal Education Board Memorandum Order (LEBMO) No. 7-2015 "insofar as it absolutely prescribes the passing of the PhiLSAT x x x as a pre-requisite for admission to any law school which, on its face, run directly counter to institutional academic freedom. x x x Indeed, the freedom to determine who may be admitted to study is among the "four

essential freedoms" accorded an educational institution. This freedom, however, is by no means absolute; it must be balanced with important state interests "which cannot also be ignored for they serve the interest of the greater majority." It is beyond cavil that the State has an interest in prescribing regulations to promote the education and the general welfare of the people. In this case, the *ponencia* itself declares that "the PhiLSAT, when administered as an aptitude test, is reasonably related to the State's unimpeachable interest in improving the quality of legal education." I find that, in addition to the avowed policy to improve legal education, the provision of the PhiLSAT Passing Requirement may also serve to discourage the proliferation of the "great evil" sought to be corrected by the "permit system."

2. ID.; ID.; ID.; ID.; MERE INVOCATION OF CONSTITUTIONAL RIGHTS DOES NOT EXCUSE THE PARTIES FROM ACTUALLY PROVING THEIR CASE THROUGH EVIDENCE.— There is no assertion (much less proof) from any of [the petitioners] that the challenged LEB Law, in general, and the imposition of the PhiLSAT passing requirement, in particular, infringes on their *personal* rights to freedom of expression. x x x Mere invocation of a constitutional right, in this case academic freedom, does not excuse the parties so invoking from actually proving their case through evidence. This is chiefly true in a petition that seeks the invalidation of a law that enjoys the presumption of constitutionality. The burden of proving one's cause through evidence must rise against the bar that gives the challenged law default constitutionality.

GESMUNDO*, J., separate concurring and dissenting opinion*:

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); THE LEGAL EDUCATION BOARD (LEB) MEMORANDUM ORDERS AND CIRCULAR REQUIRING THE PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT) AS MANDATORY AND EXCLUSIONARY IS UNCONSTITUTIONAL.— I concur with the *ponencia* that the LEB Memorandum Orders and Circular, requiring the PhilSAT as mandatory and exclusionary, are unconstitutional. Institutes of higher learning have academic freedom, under the Constitution, and this includes the freedom to determine who may be admitted to study. Such freedom may only be limited

by the State based on the test of reasonability. In this case, however, the assailed LEB Memorandum Orders fail to provide a reasonable justification for restraining the admission of students to law schools based on the following reasons: *First*, by making the PhilSAT mandatory and exclusionary, the LEB significantly restricts the freedom of law schools to determine who shall be admitted as law students. x x x *Second*, the LEB does not give any justification for the required passing score of 55% and the format of the examinations. x x x *Third*, law schools are given no option other than to follow the LEB Memorandum Orders and Circular.

2. **ID.; ID.; ID.; ID.; THE PHILSAT SHOULD BE SET ASIDE AND INSTEAD, THE LAW SCHOOLS IN THE PHILIPPINES, THROUGH THE PHILIPPINE ASSOCIATION OF LAW SCHOOLS (PALS), AND UNDER THE MERE SUPERVISION OF LEB, SHOULD ESTABLISH A UNIFIED, STANDARDIZED, AND ACCEPTABLE LAW ADMISSION EXAMINATION.—** I dissent with the *ponencia* that it should still be the LEB who shall lead, control, and regulate the unified admission examinations for law schools. While a standardized admission test for law schools is constitutionally and legally viable, it must not be the LEB spearheading the admission test. Instead, it must be initiated and organized by the law schools themselves, pursuant to their constitutionally enshrined academic freedom. x x x The institutions of higher learning may come together, through the Philippine Association of Law Schools (PALS) and initiate for the creation and implementation of a standardized admission test. It would be the culmination of the collective effort of law schools in their exercise of academic freedom. x x x Consequently, the LEB may only supervise the proposed standardized admission test of the law schools. **It cannot substitute its own judgment with respect to said test organized by the law schools; otherwise, it would violate the academic freedom of institutions of higher learning.** The LEB may only oversee whether the policies set forth by the law schools in the admission test are reasonable and just.

3. **ID.; ID.; JUDICIAL DEPARTMENT; THE COURT'S RULE-MAKING POWER COVERS NOT ONLY THE PRACTICE OF LAW BUT ALSO THE STUDY OF LAW.—** The *ponencia* states that the Court's rule-making power covers only the practice

of law and cannot be unduly widened to cover the study of law. x x x I dissent. It is impossible to completely separate the interests of the Supreme Court and the law schools and the other branches of government with respect to legal education. There are several reasons that the study of law is affected, one way or another, by the Court's rule-making power. *First*, the Court has the exclusive power to promulgate rules for admission to the practice of law. Thus, the Court prescribe specific subjects that a law school must offer before its students can be admitted for the bar examinations. x x x *Second*, even before a student begins his study of law, the Supreme Court already provides the requirements for his or her pre-law studies. x x x *Third*, the precursor of Republic Act No. 7662, which is DECS Order No. 27, also recognizes that the Supreme Court contributes to the requirements for admission in law courses, x x x *Lastly*, even after earning a law degree, the Supreme Court continues to participate in the study of law. x x x The Supreme Court, either directly or indirectly, affects the legal education administered by the law schools as institutes of higher learning. The Court's authority over legal education is primarily observed in the bar examinations. Nevertheless, such authority or influence of the Court over legal education should be viewed in a coordinated and cooperative manner; and not as a limitation or restriction.

4. ID.; STATUTORY CONSTRUCTION; DOCTRINE OF CONSTITUTIONAL AVOIDANCE.— One of the issues raised by the parties is that R.A. No. 7662 is unconstitutional because it infringes on the power of the Court to supervise the bar examination and legal education. With respect to that issue, the Court must emphasize the doctrine of constitutional avoidance. The doctrine states that this Court may choose to ignore or side-step a constitutional question if there is some other ground upon which the case can be disposed of. To remain true to its democratic moorings, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained. In other words, if the determination of the constitutionality of a particular statute can be avoided based on some other ground, then the Court will not touch upon the issue of unconstitutionality.

5. ID.; 1997 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); SECTION 7(H) WHICH COVERS THE CONTINUING LEGAL EDUCATION OF PRACTICING LAWYERS; ONLY THE COURT HAS THE POWER TO PRESCRIBE THE RULES WITH RESPECT TO THE CONTINUING PRACTICE OF LAWYERS.— Section 7(h) of R.A. No. 7662 x x x covers the continuing legal education of practicing lawyers. However, Section 5(5), Article VIII of the Constitution states that the Supreme Court has the exclusive judicial power to: "[p]romulgate 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." Accordingly, only the Court has the power to prescribe rules with respect to the continuing practice of lawyers. x x x Section 7(h) of R.A. No. 7662 is unconstitutional because it violates Section 5(5), Article VIII of the Constitution.

LAZARO-JAVIER, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; JUDICIAL DEPARTMENT; THE SUPREME COURT HAS NO PRIMARY AND DIRECT JURISDICTION OVER LEGAL EDUCATION AND LAW SCHOOLS; ADMISSION TO LAW SCHOOL IS DIFFERENT FROM ADMISSION TO THE BAR. — I **accept** the *Decision's* ruling that **Congress and the Legal Education Board have primary and direct jurisdiction** to exercise reasonable supervision and regulation of legal education and the law schools providing them. The **Supreme Court has no primary and direct jurisdiction** over legal education and law schools. The Supreme Court, however, is **not entirely irrelevant when it comes to legal education**. *Although the primary and direct responsibility* rests with Congress and the Legal Education Board to reasonably supervise and regulate legal education and law schools, the Supreme Court **can and will intervene** when a justiciable controversy hounds the discharge of the Legal Education Board's duties. The Supreme Court **will also have to intervene when its power to administer admission to the Bar** is infringed. **Admission to law school**

is far different from admission to the Bar. As the *Decision* has aptly discussed, **historically, textually, practicably**, and **legally**, there has been **no** demonstrable assignment of the function to supervise and regulate legal education to the Supreme Court.

2. ID.; 1987 PHILIPPINE CONSTITUTION; THE LEGAL EDUCATION REFORM ACT OF 1993 (RA NO. 7662); SECTION 7(E) ON THE LEGAL EDUCATION BOARD'S (LEB'S) POWER TO PRESCRIBE MINIMUM STANDARDS FOR LAW ADMISSION AND MINIMUM QUALIFICATIONS AND COMPENSATION OF FACULTY MEMBERS; THEY ARE RATIONALLY CONNECTED TO QUALITY LEGAL EDUCATION AND THE OBJECTIVES OF RA NO. 7662.— ***Minimum*** *law admission* and ***minimum*** *faculty competence and compensation* requirements are **rationally** connected to ***quality*** legal education and **to each of the objectives** mentioned in Sections 2 and 3 [of RA 7662]. This **rational connection** is *intuitive*, *logical*, and *common-sensical*. **Prescribing these minimum standards** can lead to and accomplish the **objectives** of Subsection 7(e) as they favorably affect the **quality of students** that a law school admits as well as the **quality of law faculty** who in turn **mentors** the students whose aptitude for law studies has been tested. x x x Subsection 7(e) **impairs the right of a citizen to select** a profession and a course of study *and* the **academic freedom** of every law school only **as little as reasonably possible**. For Subsection 7(e) prescribes only **minimum** standards of law admission and faculty competence and compensation.

3. ID.; ID.; ID.; ID.; LEBMO NO. 7 SERIES OF 2016, IMPOSING PHILIPPINE LAW SCHOOL ADMISSION TEST (PHILSAT); IT IS CONSISTENT WITH THE STATE'S POWER OF REASONABLE REGULATION AND SUPERVISION OF ALL EDUCATIONAL INSTITUTIONS. — LEBMO No. 7, series of 2016, **governs** not only the **mechanics** but also the ***regulatory and supervisory aspects*** of PhiLSAT. x x x [Its] **particular objective** is **to measure the academic potential of an examinee to pursue the study of law**. x x x It is true that PhiLSAT **limits** both the *right of a citizen to select a profession and a course of study* and the *academic freedom of every institution of higher learning*. But it does so only **as little as reasonably possible**. *In the first place*, the **right of a**

citizen to select a profession and a course of study has an **internal limitation**. The Constitution **expressly limits this right subject to fair, reasonable, and equitable admission and academic requirements**. This **right** therefore is **not absolute**, and **PhiLSAT** as an admission requirement **falls within the limitation to this right**. x x x The **impact of PhiLSAT** on the *right of law schools as an institution of higher learning to select their respective students* **must be reconciled with** the *State's power to protect and promote quality education and to exercise reasonable supervision and regulation of all educational institutions*. x x x LEBMO No. 7 **respects the academic freedom of law schools to impose additional admission measures** as they see fit. It is **only this minimal requirement** of *writing and passing PhiLSAT at the very reasonable score of 55% on multiple choice questions that reflects an applicant's capacity for reading, writing, computing and analyzing individual questions and fact scenarios*, **which the State demands of every law school to factor in as an admission requirement**. x x x (PhiLSAT) is **consistent with** the *State's power of reasonable regulation and supervision of all educational institutions*, and is therefore **reasonable**.

4. ID.; ID.; ID.; SECTION 7(G) AND (H) ON LAW PRACTICE INTERNSHIP ALREADY INVOLVES THE PRACTICE OF LAW; THE LEB MAY ESTABLISH LEGAL EDUCATION PROGRAMS BUT MUST BE CONSISTENT WITH THE RULES ALREADY PROMULGATED AND VETTED BY THE COURT.— I read Subsections 7(g) and (h) with the caveat that the Legal Education Board's exercise of power over these matters is neither final, direct, primary nor exclusive for the simple reason that the subject-matters of Subsections 7(g) and (h) are **no longer about promoting the quality of legal education**. Law practice internship or articling as it is called elsewhere *already involves the practice of law. It calls for putting one's legal education to apply to real life situations. Continuing legal education covers lawyers, not law students.* It is *part and parcel of ensuring a lawyer's competence*, **not** a *law student's aptitude for legal education*. Clearly, **the Legal Education Board cannot decide on these matters primarily, directly, and much less, exclusively**. **Subsections** 7(g) and (h) **so as not to render them unconstitutional or illegal**, must be **read consistent with the objective of RA 7662:** is **to focus on enhancing the quality**

of legal education, and these provisions **cannot be given effect beyond that objective**. Here, the Legal Education Board *may establish a law practice internship or adopt a continuing legal education program* for lawyers, *as any service provider can*, **but these programs must be consistent with the rules already promulgated and vetted by the Court**.

APPEARANCES OF COUNSEL

Cacho and Chua Law Offices for petitioners in G.R. No. 230642.

Baldomero C. Estenzo, Manuel Elijah J. Sarausad and *Karla Marie T. Tumulak* for petitioners in G.R. No. 242954.

Rodolfo C. Rapista for petitioners-in-intervention.

The Solicitor General for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

On the principal grounds of encroachment upon the rule-making power of the Court concerning the practice of law, violation of institutional academic freedom and violation of a law school aspirant's right to education, these consolidated Petitions for Prohibition (G.R. No. 230642) and *Certiorari* and Prohibition (G.R. No. 242954) under Rule 65 of the Rules of Court assail as unconstitutional Republic Act (R.A.) No. 7662,[1] or the Legal Education Reform Act of 1993, which created the Legal Education Board (LEB). On the same principal grounds, these petitions also particularly seek to declare as unconstitutional the LEB issuances establishing and implementing the nationwide law school aptitude test known as the Philippine Law School Admission Test or the PhiLSAT.

The Antecedents

Prompted by clamors for the improvement of the system of legal education on account of the poor performance of law

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[1] AN ACT PROVIDING FOR REFORMS IN LEGAL EDUCATION, CREATING FOR THE PURPOSE, A LEGAL EDUCATION BOARD AND FOR OTHER PURPOSES.

students and law schools in the bar examinations,[2] the Congress, on December 23, 1993, passed into law R.A. No. 7662 with the following policy statement:

SEC. 2. *Declaration of Policies*. — It is hereby declared the policy of the State to uplift the standards of legal education in order to prepare law students for advocacy, counselling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice and to develop social competence.

Towards this end, the State shall undertake appropriate reforms in the legal education system, require proper selection of law students, maintain quality among law schools, and require legal apprenticeship and continuing legal education.

R.A. No. 7662 identifies the general and specific objectives of legal education in this manner:

SEC. 3. *General and Specific Objective of Legal Education*. —

(a) Legal education in the Philippines is geared to attain the following objectives:

(1) to prepare students for the practice of law;

(2) to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;

(3) to train persons for leadership;

(4) to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions in the light of the historical and contemporary development of law in the Philippines and in other countries.

(b) Legal education shall aim to accomplish the following specific objectives:

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[2] See *In Re: Legal Education*, B.M. No. 979-B, September 4, 2001 (Resolution).

(1) to impart among law students a broad knowledge of law and its various fields and of legal institutions;

(2) to enhance their legal research abilities to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues;

(3) to prepare law students for advocacy, [counseling], problem-solving and decision-making, and to develop their ability to deal with recognized legal problems of the present and the future;

(4) to develop competence in any field of law as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and to develop in them the desire and capacity for continuing study and self- improvement;

(5) to inculcate in them the ethics and responsibilities of the legal profession; and

(6) to produce lawyers who conscientiously pursue the lofty goals of their profession and to fully adhere to its ethical norms.

For these purposes, R.A. No. 7662 created the LEB, an executive agency which was made separate from the Department of Education, Culture and Sports (DECS), but attached thereto solely for budgetary purposes and administrative support.[3] The Chairman and regular members of the LEB are to be appointed by the President for a term of five years, without reappointment, from a list of at least three nominees prepared, with prior authorization from the Court, by the Judicial and Bar Council (JBC).[4]

Section 7 of R.A. No. 7662 enumerates the powers and functions of the LEB as follows:

SEC. 7. *Powers and Functions*. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

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[3] Republic Act No. 7662, Sec. 4.

[4] *Id*. at Sec. 5.

(a) to administer the legal education system in the country in a manner consistent with the provisions of this Act;

(b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;

(c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;

(d) to accredit law schools that meet the standards of accreditation;

(e) to prescribe minimum standards for law admission and minimum qualifications and compensation to faculty members;

(f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status;

(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar[;]

(h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary; and

(i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act.

On the matter of accreditation of law schools, R.A. No. 7662 further elaborates:

SEC. 8. *Accreditation of Law Schools*. — Educational institutions may not operate a law school unless accredited by the Board. Accreditation of law schools may be granted only to educational institutions recognized by the Government.

SEC. 9. *Withdrawal or Downgrading of Accreditation*. — The [LEB] may withdraw or downgrade the accreditation status of a law school if it fails to maintain the standards set for its accreditation status.

SEC. 10. *Effectivity of Withdrawal or Downgrading of Accreditation*. — The withdrawal or downgrading of accreditation status shall be effective after the lapse of the semester or trimester following the receipt by the school of the notice of withdrawal or downgrading unless, in the meantime, the school meets and/or upgrades the standards or corrects the deficiencies upon which the withdrawal or downgrading of the accreditation status is based.

Bar Matter No. 979-B
Re: Legal Education

In July 2001, the Court's Committee on Legal Education and Bar Matters (CLEBM), through its Chairperson, Justice Jose C. Vitug, noted several objectionable provisions of R.A. No. 7662 which "go beyond the ambit of education of aspiring lawyers and into the sphere of education of persons duly licensed to practice the law profession."[5]

In particular, the CLEBM observed:

x x x [U]nder the declaration of policies in Section 2 of [R.A. No. 7662], the State "shall x x x require apprenticeship and continuing legal education." The concept of continuing legal education encompasses education not only of law students but also of members of the legal profession. [This] implies that the [LEB] shall have jurisdiction over the education of persons who have finished the law course and are already licensed to practice law[, in violation of the Supreme Court's power over the Integrated Bar of the Philippines].

x x x Section 3 provides as one of the objectives of legal education increasing "awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of the society."

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[5] *In Re: Legal Education*, B.M. No. 979-B, *supra* note 2.

Such objective should not find a place in the law that primarily aims to upgrade the standard of schools of law as they perform the task of educating aspiring lawyers. Section 5, paragraph 5 of Article VIII of the Constitution also provides that the Supreme Court shall have the power to promulgate rules on "legal assistance to the underprivileged" and hence, implementation of [R.A. No. 7662] might give rise to infringement of a constitutionally mandated power.

x x x [Section 7(e) giving the LEB the power to prescribe minimum standards for law admission and Section 7(h) giving the LEB the power to adopt a system of continuing legal education and for this purpose, the LEB may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the LEB may deem necessary] encroach upon the Supreme Court's powers under Section 5, paragraph 5 of Article VIII of the Constitution. Aside from its power over the Integrated Bar of the Philippines, the Supreme Court is constitutionally mandated to promulgate rules concerning admission to the practice of law.[6]

While the CLEBM saw the need for the LEB to oversee the system of legal education, it cautioned that the law's objectionable provisions, for reasons above-cited, must be removed.[7]

Relative to the foregoing observations, the CLEBM proposed the following amendments to R.A. No. 7662:

SEC. 2. *Declaration of Policies*. — It is hereby declared the policy of the State to uplift the standards of legal education in order to prepare law students for advocacy, counseling, problem-solving, and decision- making; to infuse in them the ethics of the legal profession; to impress upon them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice; and, to develop socially-committed lawyers with integrity and competence.

Towards this end, the State shall undertake appropriate reforms in the legal education system, require proper selection of law students, provide for legal apprenticeship, and maintain quality among law schools.

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[6] *Id*.

[7] *Id*.

x x x x x x x x x

SEC. 3. *General and Specific Objectives of Legal Education*. x x x

x x x x x x x x x

2.) to increase awareness among law students of the needs of the poor, deprived and oppressed sectors of society;

x x x x x x x x x

SEC. 7. *Power and functions*. —x x x

(a) to regulate the legal education system in accordance with its powers and functions herein enumerated;

(b) to establish standards of accreditation for law schools, consistent with academic freedom and pursuant to the declaration of policy set forth in Section 2 hereof;

(c) to accredit law schools that meet the standards of accreditation;

(d) to prescribe minimum standards for admission to law schools including a system of law aptitude examination;

(e) to provide for minimum qualifications for faculty members of law schools;

(f) to prescribe guidelines for law practice internship which the law schools may establish as part of the curriculum; and

(g) to perform such other administrative functions as may be necessary for the attainment of the policies and objectives of this Act."[8] (Underscoring supplied)

x x x x x x x x x

In a Resolution[9] dated September 4, 2001, the Court approved the CLEBM's explanatory note and draft amendments to R.A. No. 7662. The Senate and the House of Representatives were formally furnished with a copy of said Resolution. This, notwithstanding, R.A. No. 7662 remained unaltered.

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[8] *Id*.

[9] *Id*.

LEB Issuances

In 2003, the Court issued a resolution authorizing the JBC to commence the nomination process for the members of the LEB. In 2009, the LEB was constituted with the appointment of Retired Court of Appeals Justice Hilarion L. Aquino as the first Chairperson and followed by the appointment of LEB members, namely, Dean Eulogia M. Cueva, Justice Eloy R. Bello, Jr., Dean Venicio S. Flores and Commission on Higher Education (CHED) Director Felizardo Y. Francisco. Despite the passage of the enabling law in 1993, the LEB became fully operational only in June 2010.

Acting pursuant to its authority to prescribe the minimum standards for law schools, the LEB issued *Memorandum Order No. 1, Series of 2011* (LEBMO No. 1-2011) providing for the Policies and Standards of Legal Education and Manual of Regulation for Law Schools.

Since then, the LEB had issued several orders, circulars, resolutions, and other issuances which are made available through their website:

A. Orders

Number	Title/Subject
LEBMO No. 2	Additional Rules in the Operation of the Law Program
LEBMO No. 3-2016	Policies, Standards and Guidelines for the Accreditation of Law Schools to Offer and Operate Refresher Courses
LEBMO No. 4-2016	Supplemental to [LEBMO] No. 3, Series of 2016
LEBMO No. 5-2016	Guidelines for the [Prerequisite] Subjects in the Basic Law Courses
LEBMO No. 6-2016	Reportorial Requirements for Law Schools
LEBMO No. 7-2016	Policies and Regulations for the Administration of a Nationwide Uniform Law School Admission Test for Applicants

	to the Basic Law Courses in All Law Schools in the Country
LEBMO No. 8-2016	Policies, Guidelines and Procedures Governing Increases in Tuition and Other School Fees, and Introduction of New Fees by Higher Education Institutions for the Law Program
LEBMO No. 9-2017	Policies and Guidelines on the Conferment of Honorary Doctor of Laws Degrees
LEBMO No. 10-2017	Guidelines on the Adoption of Academic/ School Calendar
LEBMO No. 11-2017	Additional Transition Provisions to [LEBMO] No. 7, Series of 2016, on PhiLSAT
LEBMO No. 12-2018	LEB Service/Transaction Fees
LEBMO No. 13-2018	Guidelines in the Conduct of Summer Classes
LEBMO No. 14-2018	Policy and Regulations in Offering Elective Subjects
LEBMO No. 15-2018	Validation of the Licenses of, and the Law Curriculum/Curricula for the Basic Law Courses in use by Law Schools and Graduate Schools of Law
LEBMO No. 16-2018	Policies, Standards and Guidelines for the Academic Law Libraries of Law Schools
LEBMO No. 17-2018	Supplemental Regulations on the Minimum Academic Requirement of Master of Laws Degree for Deans and Law Professors/Lecturers/Instructors in Law Schools
LEBMO No. 18-2018	Guidelines on Cancellation or Suspension of Classes in All Law Schools
LEBMO No. 19-2018	Migration of the Basic Law Course to Juris Doctor
LEBMO No. 20-2019	Discretionary Admission in the AY 2019-2020 of Examinees Who Rated Below the Cut-off/Passing Score but Not Less than 45% in the Philippine Law School Admission Test Administered on April 7, 2019

B. Memorandum Circulars

Number	Title/Subject
LEBMC No. 1	New Regulatory Issuances
LEBMC No. 2	Submission of Schedule of Tuition and Other School Fees
LEBMC No. 3	Submission of Law School Information Report
LEBMC No. 4	Reminder to Submit Duly Accomplished LSIR Form
LEBMC No. 5	Offering of the Refresher Course for AY 2017-2018
LEBMC No. 6	Applications for LEB Certification Numbers
LEBMC No. 7	Application of Transitory Provisions Under [LEBMO] No. 7, Series of 2017 and [LEBMO] No. 11, Series of 2017 in the Admission of Freshmen Law Students in Basic Law Courses in Academic Year 2017-2018
LEBMC No. 8	Guidelines for Compliance with the Reportorial Requirements Under [LEBMO] No. 7, Series of 2016 for Purposes of the Academic Year 2017-2018
LEBMC No. 9	Observance of Law Day and Philippine National Law Week
LEBMC No. 10	September 21, 2017 Suspension of Classes
LEBMC No. 11	Law Schools Authorized to Offer the Refresher Course in the Academic Year 2016-2017
LEBMC No. 12	Law Schools Authorized to Offer the Refresher Course in the Academic Year 2017-2018
LEBMC No. 13	Legal Research Seminar of the Philippine Group of Law Librarians on April 4-6, 2018

LEBMC No. 14	CSC Memorandum Circular No. 22, s. 2016
LEBMC No. 15	Law Schools Authorized to Offer the Refresher Course in the Academic Year 2018-2019
LEBMC No. 16	Clarification to [LEBMO] No. 3, Series of 2016
LEBMC No. 17	Updated List of Law Schools Authorized to Offer the Refresher Course in the Academic Year 2018-2019
LEBMC No. 18	PHILSAT Eligibility Requirement for Freshmen in the Academic Year 2018-2019
LEBMC No. 19	Guidelines for the Limited Conditional Admission/Enrollment in the 1st Semester of the Academic Year 2018-2019 Allowed for Those Who Have Not Taken the PhiLSAT
LEBMC No. 20	Updated List of Law Schools Authorized to Offer the Refresher Course in the Academic Year 2018-2019
LEBMC No. 21	Adjustments/Corrections to the Requirements for Law Schools to be Qualified to Conditionally Admit/Enroll Freshmen Law Students in AY 2018-2019
LEBMC No. 22	Advisory on who should take the September 23, 2018 PhiLSAT
LEBMC No. 23	Collection of the PhiLSAT Certificate of Eligibility/Exemption by Law Schools from Applicants for Admission
LEBMC No. 24	Observance of the Philippine National Law Week
LEBMC No. 25	Competition Law
LEBMC No. 26	Scholarship Opportunity for Graduate Studies for Law Deans, Faculty Members and Law Graduates with the 2020-2021 Philippine Fulbright Graduate Student Program
LEBMC No. 27	Advisory on April 7, 2019 PhiLSAT and Conditional [Enrollment] for Incoming Freshmen/1st Year Law Students

LEBMC No. 28	April 25-26, 2019 Competition Law Training Program
LEBMC No. 29	Detailed Guidelines for Conditional Enrollment Permit Application
LEBMC No. 30	Law Schools Authorized to Offer Refresher Course in AY 2019-2020
LEBMC No. 31	Law Schools Authorized to Offer Refresher Course in AY 2019-2020
LEBMC No. 40	Reminders concerning Conditionally Enrolled Freshmen Law Students in AY 2019-2020

C. Resolutions and Other Issuances

Number	Title/Subject
Resolution No. 16	Reportorial Requirement for Law Schools with Small Students Population
Resolution No.7, Series of 2010	Declaring a 3-Year Moratorium in the Opening of New Law Schools
Resolution No. 8, Series of 2010	Administrative Sanctions
Resolution No. 2011-21	A Resolution Providing for Supplementary Rules to the Provisions of LEBMO No. 1 in regard to Curriculum and Degrees Ad Eundem
Resolution No. 2012-02	A Resolution Eliminating the Requirement of Special Orders for Graduates of the Basic Law Degrees and Graduate Law Degrees and Replacing them with a Per Law School Certification Approved by the Legal Education Board
Resolution No. 2013-01	Ethical Standards of Conduct for Law Professors

Resolution No. 2014-02	Prescribing Rules on the Ll.M. Staggered Compliance Schedule and the Exemption from the Ll.M. Requirement
Resolution No. 2015-08	Prescribing the Policy and Rules in the Establishment of a Legal Aid Clinic in Law Schools
Order	Annual Law Publication Requirements
Chairman Memorandum	Restorative Justice to be Added as Elective Subject

The PhiLSAT under LEBMO No. 7-2016, LEBMO No. 11-2017, LEBMC No. 18-2018, and related issuances

As above-enumerated, among the orders issued by the LEB was *Memorandum Order No. 7, Series of 2016* (LEBMO No. 7-2016) pursuant to its power to "prescribe the minimum standards for law admission" under Section 7(e) of R.A. No. 7662.

The policy and rationale of LEBMO No. 7-2016 is to improve the quality of legal education by requiring all those seeking admission to the basic law course to take and pass a nationwide uniform law school admission test, known as the PhiLSAT.[10]

The PhiLSAT is essentially an aptitude test measuring the examinee's communications and language proficiency, critical thinking, verbal and quantitative reasoning.[11] It was designed to measure the academic potential of the examinee to pursue the study of law.[12] Exempted from the PhiLSAT requirement were honor graduates who were granted professional civil service

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[10] LEBMO No. 7-2016, par. 1.

[11] *Rollo* (G.R. No. 230642), Vol. I, p. 216.

[12] LEBMO No. 7-2016, *supra*, par. 2.

eligibility and who are enrolling within two years from their college graduation.[13]

Synthesizing, the key provisions of LEBMO No. 7-2016 are as follows:

(1) The policy and rationale of requiring PhiLSAT is to improve the quality of legal education. The PhiLSAT shall be administered under the control and supervision of the LEB;[14]

(2) The PhiLSAT is an aptitude test that measures the academic potential of the examinee to pursue the study of law;[15]

(3) A qualified examinee is either a graduate of a four-year bachelor's degree; expecting to graduate with a four-year bachelor's degree at the end of the academic year when the PhiLSAT was administered; or a graduate from foreign higher education institutions with a degree equivalent to a four-year bachelor's degree. There is no limit as to the number of times a qualified examinee may take the PhiLSAT;[16]

(4) The LEB may designate an independent third-party testing administrator;[17]

(5) The PhiLSAT shall be administered at least once a year, on or before April 16, in testing centers;[18]

(6) The testing fee shall not exceed the amount of ₱1,500.00 per examination;[19]

(7) The cut-off or passing score shall be 55% correct answers, or such percentile score as may be prescribed by the LEB;[20]

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[13] *Id*. at par. 10.

[14] *Id*. at par. 1.

[15] *Id*. at par. 2.

[16] *Id*. at par. 3.

[17] *Id*. at par. 4.

[18] *Id*. at par. 5.

[19] *Id*. at par. 6.

[20] *Id*. at par. 7.

(8) Those who passed shall be issued a Certificate of Eligibility while those who failed shall be issued a Certificate of Grade;[21]

(9) Passing the PhiLSAT is required for admission to any law school. No applicant shall be admitted for enrollment as a first year student in the basic law course leading to a degree of either Bachelor of Laws or Juris Doctor unless he has passed the PhiLSAT taken within two years before the start of the study;[22]

(10) Honor graduates granted professional civil service eligibility who are enrolling within two years from college graduation are exempted from taking and passing the PhiLSAT for purposes of admission to the basic law course;[23]

(11) Law schools, in the exercise of academic freedom, can prescribe additional requirements for admission;[24]

(12) Law schools shall submit to LEB reports of first year students admitted and enrolled, and their PhiLSAT scores, as well as the subjects enrolled and the final grades received by every first year student;[25]

(13) Beginning academic year 2018-2019, the general average requirement (not less than 80% or 2.5) for admission to basic law course under Section 23 of LEBMO No. 1-2011 is removed;[26]

(14) In academic year 2017-2018, the PhiLSAT passing score shall not be enforced and the law schools shall have the discretion to admit in the basic law course, applicants who scored less than 55% in the PhiLSAT, provided that the law dean shall submit a justification for the admission and the required report;[27] and

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[21] *Id*. at par. 8.

[22] *Id*. at par. 9.

[23] *Id*. at par. 10.

[24] *Id*. at par. 11.

[25] *Id*. at par. 12.

[26] *Id*. at par. 13.

[27] *Id*. at par. 14.

(15) Law schools, in violation of LEBMO No. 7-2016, shall be administratively sanctioned as prescribed in Section 32[28] of LEBMO No. 2-2013[29] and/or fined up to ₱10,000.00.[30]

Effective for the academic year 2017 to 2018, no applicant to law school was allowed admission without having taken and passed the PhiLSAT. The first PhiLSAT examination was held on April 16, 2017 in seven pilot sites: Baguio City, Metro Manila, Legazpi City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro. A total of 6,575 out of 8,074 examinees passed the first-ever PhiLSAT. For the first PhiLSAT, the passing grade was adjusted by the LEB from 55% to 45% by way of consideration.

Since the PhiLSAT was implemented for the first time and considering further that there were applicants who failed to take the PhiLSAT because of the inclement weather last April 16, 2017, the LEB issued *Memorandum Order No. 11, Series of 2017* (LEBMO No. 11-2017).

Under LEBMO No. 11-2017, those who failed to take the first PhiLSAT were allowed to be admitted to law schools for the first semester of academic year 2017 to 2018 for justifiable or meritorious reasons and conditioned under the following terms:

2. Conditions — x x x

a. The student shall take the next scheduled PhiLSAT;

b. If the student fails to take the next scheduled PhiLSAT for any reason, his/her conditional admission in the law school shall be automatically revoked and barred from enrolling in the following semester;

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[28] Sec. 32. The imposable administrative sanctions are the following:

a) Termination of the law program (closing the law school);
b) Phase-out of the law program; and
c) Provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status.

[29] Additional Rules in the Operation of the Law Program.

[30] LEBMO No. 7-2016, par. 15.

c. If the student takes the next scheduled PhiLSAT but scores below the passing or cut-off score, his/her conditional admission shall also be revoked and barred from enrolling in the following semester, unless the law school expressly admits him/her in the exercise of the discretion given under Section/Paragraph 14 of LEBMO No. 7, Series of 2016, subject to the requirements of the same provision;

d. The student whose conditional admission and enrol[l]ment is subsequently revoked shall not be entitled to the reversal of the school fees assessed and/or refund of the school fees paid; and

e. The student shall execute under oath, and file with his/her application for a Permit for Conditional Admission/Enrol[l]ment, an UNDERTAKING expressly agreeing to the foregoing conditions.[31]

The conditional admission and enrollment under LEBMO No. 11-2017 and the transitory provision provided in LEBMO No. 7-2016 were subsequently clarified by the LEB through its *Memorandum Circular No. 7, Series of 2017* (LEBMC No. 7-2017).

On September 24, 2017 and April 8, 2018, the second and third PhiLSATs were respectively held.

On October 26, 2017, the LEB issued a *Memorandum* reminding law schools, law students, and other interested persons that the passing of the PhiLSAT is required to be eligible for admission/enrollment in the basic law course for academic year 2017 to 2018. It was also therein clarified that the discretion given to law schools to admit those who failed the PhiLSAT during the initial year of implementation is only up to the second semester of academic year 2017-2018.

Because of the confusion as to whether conditional admission for academic year 2018 to 2019 may still be allowed, the LEB issued *Memorandum Circular No. 18, Series of 2018* (LEBMC No. 18-2018). Under LEBMC No. 18-2018, it was clarified that the conditional admission was permitted only in academic year 2017 to 2018 as part of the transition adjustments in the initial year of the PhiLSAT implementation. As such, by virtue of LEBMC No. 18-2018, the conditional admission of students

[31] LEBMO No. 11-2017, par. 2.

previously allowed under LEBMO No. 11-2017 was discontinued.

Nevertheless, on July 25, 2018, the LEB issued *Memorandum Circular No. 19, Series of 2018* (LEBMC No. 19-2018) allowing limited conditional admission/enrollment in the first semester of academic year 2018 to 2019 for those applicants who have never previously taken the PhiLSAT. Those who have taken the PhiLSAT and scored below the cut-off score were disqualified. In addition, only those law schools with a passing rate of not less than 25%, are updated in the reportorial requirement and signified its intention to conditionally admit applicants were allowed to do so. The limited enrollment was subject to the condition that the admitted student shall take and pass the next PhiLSAT on September 23, 2018, otherwise the conditional enrollment shall be nullified. Non-compliance with said circular was considered a violation of the minimum standards for the law program for which law schools may be administratively penalized.

The fourth PhiLSAT then pushed through on September 23, 2018.

The Petitions

Days before the scheduled conduct of the first-ever PhiLSAT on April 16, 2017, petitioners Oscar B. Pimentel (Pimentel), Errol B. Comafay (Comafay), Rene B. Gorospe (Gorospe), Edwin R. Sandoval (Sandoval), Victoria B. Loanzon (Loanzon), Elgin Michael C. Perez (Perez), Arnold E. Cacho (Cacho), Al Conrad B. Espaldon (Espaldon) and Ed Vincent S. Albano (Albano) [as citizens, lawyers, taxpayers and law professors], with their co-petitioners Leighton R. Siazon (Siazon), Arianne C. Artugue (Artugue), Clarabel Anne R. Lacsina (Lacsina) and Kristine Jane R. Liu (Liu) [as citizens, lawyers and taxpayers], Alyanna Mari C. Buenviaje (Buenviaje) and Iana Patricia Dula T. Nicolas (Nicolas) [as citizens intending to take up law] and Irene A. Tolentino (Tolentino) and Aurea I. Gruyal (Gruyal) [as citizens and taxpayers] filed their Petition for Prohibition,[32] docketed as G.R. No. 230642, principally seeking that R.A. No. 7662 be

[32] *Rollo* (G.R. No. 230642), Vol. I, pp. 6-22.

declared unconstitutional and that the creation of the LEB be invalidated together with all its issuances, most especially the PhiLSAT, for encroaching upon the rule-making power of the Court concerning admissions to the practice of law.[33] They prayed for the issuance of a temporary restraining order (TRO) to prevent the LEB from conducting the PhiLSAT.

Respondents-in-intervention Attys. Anthony D. Bengzon (Bengzon), Ferdinand M. Negre (Negre), Michael Z. Untalan (Untalan), Jonathan Q. Perez (Perez), Samantha Wesley K. Rosales (Rosales), Erika M. Alfonso (Alfonso), Krys Valen O. Martinez (Martinez), Ryan Ceazar P. Romano (Romano), and Kenneth C. Varona (Varona) [as citizens and lawyers] moved to intervene and prayed for the dismissal of the Petition for Prohibition.[34]

On February 12, 2018, petitioners-in-intervention April D. Caballero (Caballero), Jerey C. Castardo (Castardo), MC Wellroe P. Bringas (Bringas), Rhuffy D. Federe (Federe) and Conrad Theodore A. Matutino (Matutino) [as graduates of four-year college course and applicants as first year law students], St. Thomas More School of Law and Business, Inc., [as an educational stock corporation] and Rodolfo C. Rapista (Rapista), Judy Marie Rapista-Tan (Rapista-Tan), Lynnart Walford A. Tan (Tan), Ian M. Enterina (Enterina) and Neil John Villarico (Villarico) [as citizens and law professors] intervened and joined the Petition for Prohibition of Pimentel, *et al.*, seeking to declare R.A. No. 7662 and the PhiLSAT as unconstitutional.[35]

Thereafter, a Petition for *Certiorari* and Prohibition, docketed as G.R. No. 242954, was filed by petitioners Francis Jose Lean L. Abayata (Abayata), Gretchen M. Vasquez (Vasquez), Sheenah S. Ilustrismo (Ilustrismo), Ralph Louie Salaño (Salaño), Aireen Monica B. Guzman (Guzman) and Delfino Odias (Odias) [as law students who failed to pass the PhiLSAT], Daryl Dela Cruz

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[33] *Id.* at 8-11.

[34] *Id.* at 38-59.

[35] *Id.* at 289-320.

(Dela Cruz), Claire Suico (Suico), Aivie S. Pescadero (Pescadero), Niña Christine Dela Paz (Dela Paz), Shemark K. Queniahan (Queniahan), Al Jay T. Mejos (Mejos), Rocellyn L. Daño (Daño), Michael Adolfo (Adolfo), Ronald A. Atig (Atig), Lynette C. Lumayag (Lumayag), Mary Chris Lagera (Lagera), Timothy B. Francisco (Francisco), Sheila Marie C. Dandan (Dandan), Madeline C. Dela Peña (Dela Peña), Darlin R. Villamor (Villamor), Lorenzana Llorico (Llorico) and Jan Ivan M. Santamaria (Santamaria) [as current law students who failed to take the PhiLSAT] seeking to invalidate R.A. No. 7662 or, in the alternative, to declare as unconstitutional the PhiLSAT. They also sought the issuance of a TRO to defer the holding of the aptitude test.[36]

These Petitions were later on consolidated by the Court and oral arguments thereon were held on March 5, 2019.

Temporary Restraining Order

On March 12, 2019, the Court issued a TRO[37] enjoining the LEB from implementing LEBMC No. 18-2018 and, thus, allowing those who have not taken the PhiLSAT prior to the academic year 2018 to 2019, or who have taken the PhiLSAT, but did not pass, or who are honor graduates in college with no PhiLSAT Exemption Certificate, or honor graduates with expired PhiLSAT Exemption Certificates to conditionally enroll as incoming freshmen law students for the academic year 2019 to 2020 under the same terms as LEBMO No. 11-2017.

Subsequently, the LEB issued *Memorandum Circular No. 27, Series of 2019* (LEBMC No. 27-2019) stating that the PhiLSAT scheduled on April 7, 2019 will proceed and reiterated the requirements that must be complied with for the conditional enrollment for the academic year 2019 to 2020.

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[36] *Rollo* (G.R. No. 242954), Vol. I, pp. 3-39.

[37] *Rollo* (G.R. No. 230642), Vol. III, pp. 1309-1311.

The Parties' Arguments

In G.R. No. 230642

Petitioners in G.R. No. 230642 argue that R.A. No. 7662 and the PhiLSAT are offensive to the Court's power to regulate and supervise the legal profession pursuant to Section 5(5), Article VIII[38] of the Constitution and that the Congress cannot create an administrative office that exercises the Court's power over the practice of law. They also argue that R.A. No. 7662 gives the JBC additional functions to vet nominees for the LEB in violation of Section 8(5), Article VIII[39] of the Constitution.

In their Memorandum, petitioners also question the constitutionality of the LEB's powers under Section 7(c)[40] and 7(e)[41] to prescribe the qualifications and compensation of faculty

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[38] Sec. 5. The Supreme Court shall have the following power.

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(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar which, however, may be repealed, altered, or supplemental by the Batasang Pambansa. 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.

[39] Sec. 8. x x x

(5) The [Judicial and Bar] Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

[40] Republic Act No. 7622, Sec. 7. *Powers and Functions.* — x x x

x x x x x x x x x

(c) [T]o set the standards of accreditation for law schools taking into account, among others, the size of enrollment, **the qualifications of the members of the faculty**, the library and other facilities, without enroaching upon the academic freedom of institutions of higher learning[.] (Emphasis supplied)

[41] Sec. 7. (e) [T]o prescribe minimum standards for **law admission** and minimum qualifications and compensation of faculty members[.] (Emphasis supplied)

members and Section 7(h)[42] on the LEB's power to adopt a system of continuing legal education as being repugnant to the Court's rule-making power concerning the practice of law. They also argue that the PhiLSAT violates the academic freedom of law schools and the right to education.

Petitioners-in-intervention meanwhile contend that the PhiLSAT violates the right to liberty and pursuit of happiness of the student-applicants. They posit that the PhiLSAT violates the equal protection clause as it is an arbitrary form of classification not based on substantial distinctions. They also argue that the PhiLSAT violates the right of all citizens to quality and accessible education, violates academic freedom, and is an unfair academic requirement. It is also their position that the PhiLSAT violates due process as it interferes with the right of every person to select a profession or course of study. They also argue that R.A. No. 7662 constitutes undue delegation of legislative powers.

In G.R. No. 242954

Petitioners in G.R. No. 242954 argue that *certiorari* and prohibition are proper remedies either under the expanded or traditional jurisdiction of the Court. They also invoke the doctrine of transcendental importance.

Substantively, they contend that R.A. No. 7662, specifically Section 3(a)(2)[43] on the objective of legal education to increase awareness among members of the legal profession, Section 7(e)

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[42] Sec. 7. (h) [T]o adopt a system of **continuing legal education**. For this purpose, the Board may provide for the mandatory attendance of **practicing lawyers** in such courses and for such duration as the Board may deem necessary[.] (Emphases supplied)

[43] Sec. 3. *General and Specific Objective of Legal Education*. — (a) Legal education in the Philippines is geared to attain the following objectives:
x x x x x x x x x

(2) [T]o increase awareness among **members of the legal profession** of the needs of the poor, deprived and oppressed sectors of society[.] (Emphasis supplied)

on law admission, 7(g)[44] on law practice internship, and 7(h) on adopting a system of continuing legal education, and the declaration of policy on continuing legal education[45] infringe upon the power of the Court to regulate admission to the practice of law. They profess that they are not against the conduct of law school admission test *per se*, only that the LEB cannot impose the PhiLSAT as the power to do so allegedly belongs to the Court.[46]

It is also their contention that the PhiLSAT violates academic freedom as it interferes with the law school's exercise of freedom to choose who to admit. According to them, the LEB cannot issue penal regulations, and the consequent forfeiture of school fees and the ban on enrollment for those who failed to pass the PhiLSAT violate due process.

The Comments

Procedurally, the Office of the Solicitor General (OSG), representing the LEB, argues that *certiorari* and prohibition

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[44] Sec. 7. (g) [T]o establish a **law practice internship** as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar[.] (Emphasis supplied)

[45] Sec. 2. *Declaration of Policies*. — It is hereby declared the policy of the State to uplift the standards of legal education in order to prepare law students for advocacy, counselling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice and to develop social competence.

Towards this end, the State shall undertake appropriate reforms in the legal education system, require proper selection of law students, maintain quality among law schools, and require legal apprenticeship and **continuing legal education**. (Emphasis supplied)

[46] *Rollo* (G.R. No. 242954), Vol. I, p. 29.

are not proper to assail the constitutionality of R.A. No. 7662 either under the traditional or expanded concept of judicial power. For the OSG, R.A. No. 7662 was enacted pursuant to the State's power to regulate all educational institutions, and as such, there could be no grave abuse of discretion. It also claims that the Congress is an indispensable party to the petitions.

Substantively, the OSG contends that the Court's power to regulate admission to the practice of law does not include regulation of legal education. It also defends Section 7(e) on the LEB's power to prescribe minimum standards for law admission as referring to admission to law schools; Section 7(g) on the LEB's power to establish a law practice internship as pertaining to the law school curriculum which is within the power of the LEB to regulate; and 7(h) on the LEB's power to adopt a system of continuing legal education as being limited to the training of lawyer-professors.[47] Anent the argument that R.A. No. 7662 gives the JBC additional functions not assigned to it by the Court, the OSG points out that the Court had actually authorized the JBC to process the applications for membership to the LEB making this a non-issue.

In defending the validity of the PhiLSAT, the OSG advances the argument that the PhiLSAT is the minimum standard for entrance to law schools prescribed by the LEB pursuant to the State's power to regulate education. The OSG urges that the PhiLSAT is no different from the National Medical Admission Test (NMAT) which the Court already upheld as a valid exercise of police power in the seminal case of *Tablarin v. Gutierrez*.[48]

It is also the position of the OSG that neither the PhiLSAT nor the provisions of R.A. No. 7662 violate academic freedom because the standards for entrance to law school, the standards for accreditation, the prescribed qualifications of faculty members, and the prescribed basic curricula are fair, reasonable, and equitable admission and academic requirements.

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[47] *Id*. at 86-87.

[48] 236 Phil. 768 (1987).

For their part, respondents-in-intervention contend that R.A. No. 7662 enjoys the presumption of constitutionality and that the study of law is different from the practice of law.

In its Comment to the Petition-in-Intervention, the OSG dismisses as speculative the argument that the PhiLSAT is anti-poor, and adds that the Court has no competence to rule on whether the PhiLSAT is an unfair or unreasonable requirement, it being a question of policy.

Respondents-in-intervention, for their part, argue that the right of the citizens to accessible education means that the State shall make quality education accessible only to those qualified enough, as determined by fair, reasonable, and equitable admission and academic requirements. They dispute the claimed intrusion on academic freedom as law schools are not prevented from selecting who to admit among applicants who have passed the PhiLSAT. They stress that the right to education is not absolute and may be regulated by the State, citing *Calawag v. University of the Philippines Visayas*.[49]

By way of Reply, petitioners-in-intervention emphasize that the doctrine in *Tablarin*[50] is inapplicable as medical schools are not the same as law schools. They further aver that the decline in enrollment as a result of the implementation of the PhiLSAT is not speculative.[51]

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[49] 716 Phil. 208 (2013).

[50] *Tablarin v. Gutierrez*, *supra*.

[51] In support, petitioners-in-intervention attached to their Partial Compliance and Motion, certifications issued by St. Thomas More School of Law and Business, Inc., St. Mary's College of Tagum, Inc. College of Law, and Western Leyte College School of Law tending to show a decrease in the number of enrollees from academic year 2017 to 2018 to academic year 2018 to 2019. They also attached a Summary of Enrollment (of 44 out of the 126 law schools) furnished by the Philippine Association of Law Schools which tend to show that 37 out of the 44 law schools experienced a decrease in enrollment. (*Rollo* [G.R. No. 242954], Vol. III, pp. 1463-1477).

The Issues

After a careful consideration of the issues raised by the parties in their pleadings and refined during the oral arguments, the issues for resolution are synthesized as follows:

I. Procedural Issues:

A. Remedies of *certiorari* and prohibition; and
B. Requisites of judicial review and the scope of the Court's review in the instant petitions.

II. Substantive Issues:

A. Jurisdiction over legal education;
B. Supervision and regulation of legal education as an exercise of police power;
   1. Reasonable supervision and regulation
   2. Institutional academic freedom
   3. Right to education

C. LEB's powers under R.A. No. 7662 *vis-à-vis* the Court's jurisdiction over the practice of law; and

D. LEB's powers under R.A. No. 7662 *vis-à-vis* the academic freedom of law schools and the right to education.

The Rulings of the Court

I.
Procedural Issues

A.
Remedies of *Certiorari* and Prohibition

The propriety of the remedies of *certiorari* and prohibition is assailed on the ground that R.A. No. 7662 is a legislative act and not a judicial, quasi-judicial, or ministerial function. In any case, respondents argue that the issues herein presented involve purely political questions beyond the ambit of judicial review.

The Court finds that petitioners availed of the proper remedies.

The 1935[52] and 1973[53] Constitutions mention, but did not define, "judicial power." In contrast, the 1987 Constitution lettered what judicial power is and even "expanded" its scope.

As constitutionally defined under Section 1, Article VIII of the 1987 Constitution,[54] judicial power is no longer limited to the Court's duty to settle actual controversies involving rights which are legally demandable and enforceable, or the power of adjudication, but also includes, the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This innovation under the 1987 Constitution later on became known as the Court's traditional jurisdiction and expanded jurisdiction, respectively.[55]

The expanded scope of judicial review mentions "grave abuse of discretion amounting to lack or excess of jurisdiction" to harbinger the exercise of judicial review; while petitions for *certiorari*[56] and prohibition[57] speak of "lack or excess of

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[52] Art. VIII, Sec. 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.

[53] Art. X, Sec. 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law. The Batasang Pambansa shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section five hereof.

[54] Sec. 1. The judicial power shall be vested in the Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[55] See *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 883, 909-910 (2003).

[56] RULES OF COURT, Rule 65, Sec. 1, provides:

jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction." Petitions for *certiorari* and prohibition as it is understood under Rule 65 of the Rules of Court are traditionally regarded as supervisory writs used as a means by superior or appellate courts, in the exercise of their supervisory jurisdiction, to keep subordinate courts within the bounds of their jurisdictions. As such, writs of *certiorari* and prohibition correct only errors of jurisdiction of judicial and quasi-judicial bodies.[58]

However, considering the commonality of the ground of "grave abuse of discretion," a Rule 65 petition, as a procedural vehicle to invoke the Court's expanded jurisdiction, has been allowed.[59] After all, there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence, or is executed whimsically, capriciously or arbitrarily, out of malice,

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Sec. 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[57] *Id.* at Sec. 2. *Petition for Prohibition*. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

[58] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 136 (2016).

[59] *Id.* at 139.

ill will, or personal bias.[60] In *Spouses Imbong v. Ochoa, Jr.*,[61] the Court emphasized that *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues.

That it is a legislative act which is being assailed is likewise not a ground to deny the present petitions.

For one, the 1987 Constitution enumerates under Section 5(2)(a), Article VIII,[62] the Court's irreducible powers which expressly include the power of judicial review, or the power to pass upon the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation.

For another, the Court's expanded jurisdiction, when invoked, permits a review of acts not only by a tribunal, board, or officer exercising judicial, quasi-judicial or ministerial functions, but also by any branch or instrumentality of the Government. "Any branch or instrumentality of the Government" necessarily includes the Legislative and the Executive, even if they are not exercising judicial, quasi-judicial or ministerial functions.[63] As such, the Court may review and/or prohibit or nullify, when proper, acts of legislative and executive officials, there being no plain, speedy, or adequate remedy in the ordinary course of law.[64]

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[60] *Ocampo v. Enriquez*, 798 Phil. 227, 294 (2016).

[61] 732 Phil. 1, 121 (2014).

[62] Sec. 5. The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

[63] *Araullo v. Aquino III*, 737 Phil. 457, 531 (2014), citing *Holy Spirit Homeowners Association, Inc. v. Defensor*, 529 Phil. 573, 587 (2006).

[64] *Spouses Imbong v. Ochoa*, *supra*.

The power of judicial review over congressional action, in particular, was affirmed in *Francisco, Jr. v. The House of Representatives*,[65] wherein the Court held:

> There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.*, this Court ruled that **it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives**. In *Tañada v. Angara*, where petitioners sought to nullify an act of the Philippine Senate on the ground that it contravened the Constitution, it held that the petition raised a justiciable controversy and that **when an action of the legislative branch is alleged to have seriously infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute**. In *Bondoc v. Pineda*, [this Court] declared null and void a resolution of the House of Representatives withdrawing the nomination, and rescinding the election, of a congressman as a member of the House Electoral Tribunal for being violative of Section 17, Article VI of the Constitution. In *Coseteng v. Mitra*, it held that the resolution of whether the House representation in the Commission on Appointments was based on proportional representation of the political parties as provided in Section 18, Article VI of the Constitution is subject to judicial review. In *Daza v. Singson*, it held that the act of the House of Representatives in removing the petitioner from the Commission on Appointments is subject to judicial review. In *Tañada v. Cuenco*, it held that **although under the Constitution, the legislative power is vested exclusively in Congress, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress**. In *Angara v. Electoral Commission*, it exercised its power of judicial review to determine which between the Electoral Commission and the National Assembly had jurisdiction over an electoral dispute concerning members of the latter. (Internal citations omitted; emphases supplied)

This was reiterated in *Villanueva v. Judicial and Bar Council*,[66] as follows:

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[65] *Supra* note 55, at 891-892.

[66] 757 Phil. 534, 544 (2015).

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials. (Internal citation omitted; emphasis supplied)

Consistently, in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[67] the remedies of *certiorari* and prohibition were regarded as proper vehicles to assail the constitutionality of curfew ordinances, and in *Agcaoili v. Fariñas*,[68] to question the contempt powers of the Congress in the exercise of its power of inquiry in aid of legislation.

The consistency in the Court's rulings as to the propriety of the writs of *certiorari* and prohibition under Rule 65 of the Rules of Court to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to correct, undo, or restrain any act of grave abuse of discretion on the part of the legislative and the executive, propels the Court to treat the instant petitions in the same manner.

B.
Requisites for Judicial Review

The power of judicial review is tritely defined as the power to review the constitutionality of the actions of the other branches

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[67] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[68] G.R. No. 232395, July 3, 2018.

of the government.[69] For a proper exercise of its power of review in constitutional litigation, certain requisites must be satisfied: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[70]

These requisites are effective limitations on the Court's exercise of its power of review because judicial review in constitutional cases is quintessentially deferential, owing to the great respect that each co-equal branch of the Government affords to the other.

Of these four requisites, the first two, being the most essential,[71] deserve an extended discussion in the instant case.

1. Actual Case or Controversy

Fundamental in the exercise of judicial power, whether under the traditional or expanded setting, is the presence of an actual case or controversy.[72] An actual case or controversy is one which involves a conflict of legal rights and an assertion of opposite legal claims susceptible of judicial resolution. The case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice.

To be justiciable, the controversy must be definite and concrete, touching on the legal relations of parties having adverse

[69] *Garcia v. Executive Secretary*, 602 Phil. 64, 73 (2009). See also *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936), where the Court held that the Court's duty under the Constitution is "to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them."

[70] *Garcia v. Executive Secretary*, *id.*, citing *Francisco, Jr. v. The House of Representatives*, *supra* note 55, at 892.

[71] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 471 (2010).

[72] *Association of Medical Clinics for Overseas Workers, Inc., (AMCOW), v. GCC Approved Medical Centers Association, Inc.*, *supra* note 58, at 140.

legal interests. It must be shown from the pleadings that there is an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other. There must be an actual and substantial controversy and not merely a theoretical question or issue. Further, the actual and substantial controversy must admit specific relief through a conclusive decree and must not merely generate an advisory opinion based on hypothetical or conjectural state of facts.[73]

Closely associated with the requirement of an actual or justiciable case or controversy is the ripening seeds for adjudication. Ripeness for adjudication has a two-fold aspect: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration. The first aspect requires that the issue must be purely legal and that the regulation subject of the case is a "final agency action." The second aspect requires that the effects of the regulation must have been felt by the challenging parties in a concrete way.[74]

To stress, a constitutional question is ripe for adjudication when the challenged governmental act has a direct and existing adverse effect on the individual challenging it.[75] While a reasonable certainty of the occurrence of a perceived threat to a constitutional interest may provide basis for a constitutional challenge, it is nevertheless still required that there are sufficient facts to enable the Court to intelligently adjudicate the issues.[76]

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[73] *Information Technology Foundation of the Philippines v. Commission on Elections*, 499 Phil. 281, 304-305 (2005).

[74] *De Borja v. Pinalakas na Ugnayan ng Maliliit na Mangingisda ng Luzon, Mindanao at Visayas*, G.R. Nos. 185320 and 185348, April 19, 2017, 823 SCRA 550, 571-572.

[75] *ABAKADA Guro Partylist v. Purisima*, 584 Phil. 246, 266 (2008).

[76] *De Castro v. Judicial and Bar Council*, 629 Phil. 629, 686-687 (2010), citing *Buckley v. Valeo*, 424 U.S. 1, 113-118 (1976) <https://supreme.justia.com/cases/federal/us/424/1/> and *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138-148 (1974) <https://supreme.justia.com/cases/federal/us/419/102/> (visited May 31, 2019).

In this regard, the Court's pronouncement in *Philippine Association of Colleges and Universities (PACU) v. Secretary of Education*[77] deserves reiteration:

It should be understandable, then, that this Court should be doubly reluctant to consider petitioner's demand for avoidance of the law aforesaid, [e]specially where, as respondents assert, petitioners suffered no wrong — nor allege any — from the enforcement of the criticized statute.

> It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility. x x x
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> When a law has been long treated as constitutional and important rights have become dependent thereon, the Court may refuse to consider an attack on its validity. x x x
>
> As a general rule, the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned. x x x
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> x x x x x x x x x
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> It is an established principle that to entitle a private individual immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general [interest] to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or [has an] interest common to all members of the public. x x x
>
> Courts will not pass upon the constitutionality of a law upon the complaint of one who fails to show that he is injured by its operation. x x x
>
> The power of courts to declare a law unconstitutional arises only when the interests of litigants require the use of that judicial authority for their protection against actual interference, a hypothetical threat being insufficient. x x x

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[77] 97 Phil. 806, 809-811 (1955).

> *Bona fide suit*. — Judicial power is limited to the decision of actual cases and controversies. The authority to pass on the validity of statutes is incidental to the decision of such cases where conflicting claims under the Constitution and under a legislative act assailed as contrary to the Constitution are raised. It is legitimate only in the last resort, and as necessity in the determination of real, earnest, and vital controversy between litigants. x x x
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> x x x x x x x x x

An action, like this, is brought for a positive purpose, nay, to obtain actual and positive relief. x x x Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest therein, however intellectually solid the problem may be. This is [e]specially true where the issues "reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." x x x (Internal citations omitted; emphases supplied)

Ultimately, whether an actual case is present or not is determinative of whether the Court's hand should be stayed when there is no adversarial setting and when the prerogatives of the co-equal branches of the Government should instead be respected.

As ruled in *Republic v. Roque*:[78]

A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would remain untrammelled. As their petition would disclose, private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. **They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA**

[78] 718 Phil. 294, 305-306 (2013).

9372 against them. In other words, there was no particular, real or imminent threat to any of them. As held in *Southern Hemisphere*:

> Without any justiciable controversy, the petitions have become pleas for declaratory relief, over which the Court has no original jurisdiction. Then again, declaratory actions characterized by "double contingency," where both the activity the petitioners intend to undertake and the anticipated reaction to it of a public official are merely theorized, lie beyond judicial review for lack of ripeness.
>
> The possibility of abuse in the implementation of RA 9372 does not avail to take the present petitions out of the realm of the surreal and merely imagined. Such possibility is not peculiar to RA 9372 since the exercise of any power granted by law may be abused. Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable. (Internal citations omitted; emphasis supplied)

Concededly, the Court had exercised the power of judicial review by the mere enactment of a law or approval of a challenged action when such is seriously alleged to have infringed the Constitution. In *Pimentel, Jr. v. Aguirre*:[79]

> *First*, on prematurity. According to the Dissent, when "the conduct has not yet occurred and the challenged construction has not yet been adopted by the agency charged with administering the administrative order, the determination of the scope and constitutionality of the executive action in advance of its immediate adverse effect involves too remote and abstract an inquiry for the proper exercise of judicial function."
>
> This is a rather novel theory — that people should await the implementing evil to befall on them before they can question acts that are illegal or unconstitutional. Be it remembered that the real issue here is whether the Constitution and the law are contravened by Section 4 of AO 372, not whether they are violated by the acts implementing it. In the unanimous *en banc case Tañada v. Angara*, this Court held that when an act of the legislative department is seriously alleged to have infringed the Constitution, settling the controversy

[79] 391 Phil. 84, 106-108 (2000).

becomes the duty of this Court. **By the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. Said the Court:**

> In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. **Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus posed is judicial rather than political.** The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld. Once a controversy as to the application or interpretation of a constitutional provision is raised before this Court x x x, it becomes a legal issue which the Court is bound by constitutional mandate to decide.
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> x x x x x x x x x
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> As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.

In the same vein, the Court also held in *Tatad v. Secretary of the Department of Energy*:

> x x x Judicial power includes not only the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, but also the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. The courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. Where the statute violates the Constitution, it is not only the right but the duty of the judiciary to declare such act unconstitutional and void.

By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged

to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts. (Internal citations omitted; emphases supplied)

In *Spouses Imbong v. Ochoa*,[80] the Court took cognizance of the petitions despite posing a facial challenge against the entire law as the petitions seriously alleged that fundamental rights have been violated by the assailed legislation:

In this case, the Court is of the view **that an actual case or controversy exists and that the same is ripe for judicial determination. Considering that the RH Law and its implementing rules have already taken effect and that budgetary measures to carry out the law have already been passed, it is evident that the subject petitions present a justiciable controversy. As stated earlier, when an action of the legislative branch is seriously alleged to have infringed the Constitution, it not only becomes a right, but also a duty of the Judiciary to settle the dispute**.

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Facial Challenge

The OSG also assails the propriety of the facial challenge lodged by the subject petitions, contending that the RH Law cannot be challenged "on its face" as it is not a speech regulating measure.

The Court is not persuaded.

In United States (*US*) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

In this jurisdiction, the application of doctrines originating from the U.S. has been generally maintained, albeit with some modifications. **While this Court has withheld the application of facial challenges**

[80] *Supra* note 61.

to strictly penal statutes, it has expanded its scope to cover statutes not only regulating free speech, but also those involving religious freedom, and other fundamental rights. The underlying reason for this modification is simple. **For unlike its counterpart in the U.S., this Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Verily, the framers of Our Constitution envisioned a proactive Judiciary, ever vigilant with its duty to maintain the supremacy of the Constitution.**

Consequently, considering that the foregoing petitions have seriously alleged that the constitutional human rights to life, speech and religion and other fundamental rights mentioned above have been violated by the assailed legislation, the Court has authority to take cognizance of these kindred petitions and to determine if the RH Law can indeed pass constitutional scrutiny. To dismiss these petitions on the simple expedient that there exist no actual case or controversy, would diminish this Court as a reactive branch of government, acting only when the Fundamental Law has been transgressed, to the detriment of the Filipino people. (Internal citations omitted; emphases supplied)[81]

Likewise in *Belgica v. Ochoa*,[82] the Court held that the requirement of an actual case or controversy is satisfied by the antagonistic positions taken by the parties:

The requirement of contrariety of legal rights is clearly satisfied by the antagonistic positions of the parties on the constitutionality of the "Pork Barrel System." Also, the questions in these consolidated cases are ripe for adjudication since the challenged funds and the provisions allowing for their utilization — such as the 2013 GAA for the PDAF, PD 910 for the Malampaya Funds and PD 1869, as amended by PD 1993, for the Presidential Social Fund — are currently existing and operational; hence, there exists an immediate or threatened injury to petitioners as a result of the unconstitutional use of these public funds.

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[81] *Id*. at 124-126.

[82] 721 Phil. 416, 520 (2013).

1(a). Scope of Judicial Review

To determine whether petitioners presented an actual case or controversy, or have seriously alleged that R.A. No. 7662 suffers from constitutional infirmities to trigger the Court's power of judicial review, resort must necessarily be had to the pleadings filed.

Petitioners in G.R. No. 230642 allege that R.A. No. 7662 and the LEB issuances relative to the admission and practice of law encroach upon the powers of the Court.[83] It is their position that the powers given to the LEB are directly related to the Court's powers.[84] In particular, they argue that the LEB's power to adopt a system of continuing legal education under Section 7(h) of R.A. No. 7662 falls within the authority of the Court.[85] In their Memorandum, they additionally argue that the LEB's powers to prescribe the qualifications and compensation of faculty members under Section 7(c) and 7(e) of R.A. No. 7662, Sections 50-51 of LEBMO No. 1, and Resolution No. 2014-02 intrude into the Court's rule-making power relative to the practice of law.[86] They also argue that the PhiLSAT violates the academic freedom of law schools and the right to education.[87] It is their contention that the LEB is without power to impose sanctions.[88] They also question the authority of the LEB Chairperson and Members to act in a hold-over capacity.[89]

For their part, petitioners-in-intervention allege that the PhiLSAT requirement resulted to a reduced number of law student enrollees for St. Thomas More School of Law and Business, Inc. and constrained said law school to admit only

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[83] *Rollo* (G.R. No. 230642), Vol. 1, p. 11.

[84] *Id.* at 15.

[85] *Id.* at 17.

[86] *Rollo* (G.R. No. 230642), Vol. 3, pp. 1370-1371.

[87] *Id.* at 1375-1380.

[88] *Id.* at 1381.

[89] *Id.* at 1382.

students who passed the PhiLSAT which is against their policy of admitting students based on values.[90] Their co-petitioners are students who either applied for law school, failed to pass the PhiLSAT, or, were conditionally enrolled. Thus, they argue that Section 7(e) of R.A. No. 7662 and the PhiLSAT violate the law school's academic freedom.

Petitioners in G.R. No. 242954 allege that they are current law students who failed to pass and/or take the PhiLSAT, and who are therefore threatened with the revocation of their conditional enrollment and stands to be barred from enrolling. Twelve of the 23 petitioners in G.R. No. 242954 were not allowed to enroll for failure to pass and/or take the PhiLSAT.

It is their argument that the LEB's power under Section 7(e) of R.A. No. 7662 to prescribe minimum standards for law admission, Section 7(g) to establish a law practice internship, Section 7(h) to adopt a system of continuing legal education, and Section 3(a)(2) on the stated objective of legal education to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society usurp the Court's rule-making powers concerning admission to the practice of law.[91] In addition, they argue that the PhiLSAT issuances violate academic freedom, and that the LEB is not authorized to revoke conditional enrollment nor is it authorized to forfeit school fees and impose a ban enrollment which are penal sanctions violative of the due process clause. They also argue that the classification of students to those who have passed or failed the PhiLSAT for purposes of admission to law school is repugnant to the equal protection clause.

The petitions therefore raise an actual controversy insofar as they allege that R.A. No. 7662, specifically Section 2, paragraph 2, Section 3(a)(2), Section 7(c), (e), (g), and (h) of R.A. No. 7662 infringe upon the Court's power to promulgate

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[90] *Rollo* (G.R. No. 230642), Vol. 1, p. 304.

[91] *Rollo* (G.R. No. 242954), Vol. 1, p. 22.

rules concerning the practice of law and upon institutional academic freedom and the right to quality education. Necessarily, a review of the LEB issuances when pertinent to these assailed provisions of R.A. No. 7662 shall also be undertaken.

2. Legal Standing

Inextricably linked with the actual case or controversy requirement is that the party presenting the justiciable issue must have the standing to mount a challenge to the governmental act.

By jurisprudence, standing requires a personal and substantial interest in the case such that the petitioner has sustained, or will sustain, direct injury as a result of the violation of its rights,[92] thus:

> Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." **The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."**[93] (Emphasis supplied)

The rule on standing admits of recognized exceptions: the over breadth doctrine, taxpayer suits, third-party standing and the doctrine of transcendental importance.[94]

Petitioners-in-intervention Caballero, Castardo, Bringas, Federe and Matutino, being graduates of a four-year college course and applicants as first year law students, as well as

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[92] *BAYAN v. Zamora*, 396 Phil. 623, 646 (2000) and *Kilosbayan, Inc. v. Morato*, 316 Phil. 652, 695-696 (1995).

[93] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018.

[94] *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, G.R. No. 234448, November 6, 2018.

petitioners Abayata, Vasquez, Ilustrismo, Salaño, Guzman and Odias, as law students who failed to pass the PhiLSAT and were denied admission to law school for the academic year 2018 to 2019, and petitioners Dela Cruz, Suico, Pescadero, Dela Paz, Queniahan, Mejos, Daño, Adolfo, Atig, Lumayag, Lagera, Francisco, Dandan, Dela Peña, Villamor, Llorico and Santamaria, being law students who were conditionally enrolled, possess the requisite standing to challenge the constitutionality of Section 7(e) of R.A. No. 7662 and the implementing LEB issuances, as they were, in fact, required to take the PhiLSAT, or to comply with the terms of the conditional enrollment and failing which, were denied admission as regular students to law school.

Petitioner-in-intervention St. Thomas More School of Law and Business, Inc., likewise sufficiently alleges injury that it has sustained in the form of reduced number of enrollees due to the PhiLSAT requirement and the curtailment of its discretion on who to admit in its law school. Under the specific and concrete facts available in this case, these petitioners have demonstrated that they were, or tend to be directly and substantially, injured.

Meanwhile, petitioners Pimentel, Comafay, Gorospe, Sandoval, Loanzon, Perez, Cacho, Espaldon, Albano, Siazon, Artugue, Lacsina, Liu, Buenviaje, Nicolas, Tolentino, and Gruyal; and petitioners-in intervention Rapista, Rapista-Tan, Tan, Enterina and Villarico commonly anchor their standing to challenge R.A. No. 7662 and the PhiLSAT as citizens.

Standing as a citizen has been upheld by this Court in cases where a petitioner is able to craft an issue of transcendental importance or when paramount public interest is involved.[95]

Legal standing may be extended to petitioners for having raised a "constitutional issue of critical significance."[96] Without a doubt, the delineation of the Court's rule-making power *vis-à-vis*

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[95] See *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 634 (2000).

[96] *Funa v. Villar*, 686 Phil. 571, 585 (2012).

the supervision and regulation of legal education and the determination of the reach of the State's supervisory and regulatory power in the context of the guarantees of academic freedom and the right to education are novel issues with far-reaching implications that deserve the Court's immediate attention. In taking cognizance of the instant petitions, the Court is merely exercising its power to promulgate rules towards the end that constitutional rights are protected and enforced.[97]

Now, to the core substantive issues.

II.
Substantive Issues

A.
Jurisdiction Over Legal Education

Petitioners in G.R. No. 230642 argue that the Court's power to promulgate rules concerning the admission to the practice of law necessarily includes the power to do things related to the practice of law, including the power to prescribe the requirements for admission to the study of law. In support, they point to Sections 6[98] and 16,[99] Rule 138 of the Rules of

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[97] 1987 CONSTITUTION, Art. VIII, Sec. 5(5), *supra* note 38.

[98] Sec. 6. *Pre-Law*. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, [E]nglish, [S]panish, history and economics.

[99] Sec. 16. *Failing candidates to take review course*. — Candidates who have failed the bar examinations for three times shall be disqualified from taking another examination unless they show to the satisfaction of the court that they have enrolled in and passed regular fourth year review classes as well as attended a pre-bar review course in a recognized law school.

The professors of the individual review subjects attended by the candidates under this rule shall certify under oath that the candidates have regularly

Court. They contend that the Congress cannot create an administrative body, like the LEB, that exercises this rule-making power of the Court. They emphasize that the LEB belongs to the Executive department, and, as such, is not linked or accountable to the Court nor placed under the Court's regulation and supervision.

For their part, petitioners in G.R. No. 242954 maintain that the Court exercises authority over the legal profession which includes the admission to the practice of law, to the continuing requirements for and discipline of lawyers.[100] According to them, the rule-making power of the Court is plenary in all cases regarding the admission to and supervision of the practice of law. They argue that the Court's power to admit members to the practice of law extends to admission to legal education because the latter is a preparatory process to the application for admission to the legal profession, which "residual power" of the Court can be inferred from Sections 5[101] and 6, Rule 138 of the Rules of Court. They also emphasize that under Sections 1[102]

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attended classes and passed the subjects under the same conditions as ordinary students and the ratings obtained by them in the particular subject.

[100] *Rollo* (G.R. No. 242954), Vol. 1, p. 18.

[101] Sec. 5. *Additional requirements for other applicants*. — All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the examination, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses [Bachelor of Laws] in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.

No applicant who obtained the Bachelor of Laws degree in this jurisdiction shall be admitted to the bar examination unless he or she has satisfactorily completed the following courses in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics.

[102] Sec. 1. *Conditions for student practice*. — A law student who has successfully completed his 3rd year of the regular four-year prescribed law

and 2[103] of Rule 138-A, non-lawyers are allowed to have limited practice of law and are held to answer by the Court under the same rules on privileged communication and standard of conduct pursuant to Sections 3[104] and 4[105] of Rule 138-A.[106]

Contrary to petitioner's claims, the Court has no primary and direct jurisdiction over legal education. Neither the history of the Philippine legal education nor the Rules of Court invoked by petitioners support their argument. The supervision and regulation of legal education is an Executive function.

1. Regulation and supervision of legal education had been historically and consistently exercised by the political departments

Legal education in the Philippines was institutionalized in 1734, with the establishment of the Faculty of Civil Law in the University of Santo Tomas with Spanish as the medium of

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curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

[103] Sec. 2. *Appearance*. — The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

[104] Sec. 3. *Privileged communications*. — The Rules safeguarding privileged communications between attorney and client shall apply to similar communications made to or received by the law student, acting for the legal clinic.

[105] Sec. 4. *Standards of conduct and supervision*. — The law student shall comply with the standards of professional conduct governing members of the Bar. Failure of an attorney to provide adequate supervision of student practice may be a ground for disciplinary action.

[106] *Supra* note 91.

instruction. Its curriculum was identical to that adopted during the time in the universities in Europe[107] and included subjects on Civil Law, Canon Law, ecclesiastical discipline and elements of Natural Law.[108]

In 1901, Act No. 74 was passed centralizing the public school system, and establishing the Department of Public Instruction headed by the General Superintendent.[109] The archipelago was then divided into school divisions and districts for effective management of the school system. It was through Act No. 74 that a Trade School[110] and a Normal School[111] in Manila and a School of Agriculture in Negros were established.[112]

In 1908, the legislature approved Act No. 1870 which created the University of the Philippines (UP). However, English law courses were not offered until 1910 when the Educational Department Committee of the Young Men's Christian Association (YMCA), through the efforts of Justice George Malcolm, offered law courses in the English language. In 1911, UP adopted these classes by formally establishing its College of Law,[113] with its first graduates being students who studied

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[107] Faculty of Civil Law (1734) <http://www.ust.edu.ph/civil-law/> (visited April 1, 2019).

[108] Cortes, Irene R. (1994), *ESSAYS ON LEGAL EDUCATION*, Quezon City: University of the Philippines, Law Center.

[109] The implementation of this Act created a heavy shortage of teachers so the Philippine Commission authorized the Secretary of Public Instruction to bring to the Philippines 600 teachers from the United States known as the "Thomasites."

[110] Philippine College of Arts and Trade, now known as the Technological University of the Philippines.

[111] Philippine Normal School, now known as the Philippine Normal University.

[112] Act No. 74, Sec. 18.

[113] University of the Philippines College of Law <law.upd.edu.ph/about-the-college/> (visited April 1, 2019).

at YMCA.[114] The curriculum adopted by the UP College of Law became the model of the legal education curriculum of the other law schools in the country.[115]

Private schools were formally regulated in 1917 with the passage of Act No. 2706[116] which made obligatory the recognition and inspection of private schools and colleges by the Secretary of Public Instruction, so as to maintain a standard of efficiency in all private schools and colleges[117] in the country. As such, the Secretary of Public Instruction was authorized to inspect schools and colleges to determine efficiency of instruction and to make necessary regulations. Likewise, under Act No. 2706, the Secretary of Public Instruction was specifically authorized to prepare and publish, from time to time, in pamphlet form, the minimum standards required of law schools and other schools giving instruction of a technical or professional character.[118]

In 1924, a survey of the Philippine education and of all educational institutions, facilities and agencies was conducted through Act No. 3162, which created the Board of Educational

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[114] ESSAYS ON LEGAL EDUCATION, *supra* note 108.

[115] *Id*.

[116] AN ACT MAKING THE INSPECTION AND RECOGNITION OF PRIVATE SCHOOLS AND COLLEGES OBLIGATORY FOR THE SECRETARY OF PUBLIC INSTRUCTION, AND FOR OTHER PURPOSES, March 10, 1917.

[117] Act No. 2706, Sec. 2. For the purposes of this Act, a private school or college shall be any private institution for teaching managed by private individuals or corporations, which is not subject to the authority and regulations of the Bureau of Education, and which offers courses of primary, intermediate, or secondary instruction, or superior courses in technical, professional, or special schools, for which diplomas are to be granted or degrees conferred.

[118] *Id*. at Sec. 6. The Secretary of Public Instruction shall from time to time prepare and publish in pamphlet form the minimum standards required of primary, intermediate, and high schools and colleges granting the degrees of bachelor of arts, bachelor of science, or any other academic degrees. He shall also from time to time prepare and publish in pamphlet form the minimum standards required of law, medical, dental, pharmaceutical, engineering, and agricultural schools or colleges and other special schools giving instruction of a technical or professional character.

Survey. Among the factual findings of the survey was that schools at that time were allowed to operate with almost no supervision at all. This led to the conclusion that a great majority of schools from primary grade to the university are money-making devices of persons who organize and administer them. Thus, it was recommended that some board of control be· organized under legislative control to supervise their administration.[119] It was further recommended that legislation be enacted to prohibit the opening of any school without the permission of the Secretary of Public Instruction. The grant of the permission was, in turn, predicated upon a showing that the school is compliant with the proper standards as to the physical structure, library and laboratory facilities, ratio of student to teacher and the qualifications of the teachers.[120]

Consistent with these statutory precursors, the 1935 Constitution expressed in no uncertain terms that "[a]ll educational institutions shall be under the supervision and subject to regulation by the State."[121]

This was followed by several other statutes such as the Commonwealth Act No. 578[122] which vests upon teachers, professors, and persons charged with the supervision of public or duly-recognized private schools, colleges and universities

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[119] Cited in *Philippine Association of Colleges and Universities v. Secretary of Education*, *supra* note 77, at 812.

[120] *Id*.

[121] CONSTITUTION (1935), Art. XIII, Sec. 5, provides:

Sec. 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.

[122] Enacted on June 8, 1940.

the status of "persons in authority" and Republic Act No. 139[123] which created the Board of Textbooks, mandating all public schools to use only the books approved by the Board and allowing all private schools to use textbooks of their choice, provided it is not against the law or public policy or offensive to dignity.[124]

In 1947, the Department of Instruction was changed to the Department of Education.[125] During this period, the regulation and supervision of public and private schools belonged to the Bureau of Public and Private Schools. The regulation of law schools in particular was undertaken by the Bureau of Private Schools through a special consultant who acted as a supervisor of the law schools and as a national coordinator of the law deans.[126]

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[123] Approved on June 14, 1947. Repealed by Republic Act No. 8047 or the BOOK PUBLISHING INDUSTRY DEVELOPMENT ACT.

[124] Republic Act No. 139, Sec. 1. Sec. one of Act Numbered Twenty-nine hundred and fifty-seven, as amended by Acts Numbered Thirty-one hundred and eighty-five, Thirty-four hundred and two, and Thirty-seven hundred and seventy-two, is further amended to read as follows:

Sec. 1. A board is hereby created which shall be known as the Board on Textbooks and shall have charge of the selection and approval of textbooks to be used in the public schools. The textbooks selected and approved shall be used for a period of at least six years from the date of their adoption.

The textbooks to be used in the private schools recognized or authorized by the Government shall be submitted to the Board which shall have the power to prohibit the use of any of said textbooks which it may find to be against the law or to offend the dignity and honor of the Government and people of the Philippines, or which it may find to be against the general policies of the Government, or which it may deem pedagogically unsuitable.

Decisions of the Board on Textbooks shall be subject to the approval of the Secretary of Instruction upon the recommendation of the National Council of Education.

[125] Executive Order No. 94 (1947).

[126] Magsalin, M. Jr. (2003), *The State of Philippine Legal Education Revisited*, *Arellano Law and Policy Review*, 4(1), 38-56 <https://arellanolaw.edu/alpr/v4nlc.pdf> (visited May 31, 2019).

The Department of Education, through its Bureau of Private Schools, issued a Manual of Instructions for Private Schools which contained the rules and regulations pertaining to the qualifications of the faculty and deans, faculty load and library holdings of private learning institutions.[127] Meantime, a Board of National Education was created[128] with the task of formulating, implementing and enforcing general educational policies and coordinating the offerings and functions of all educational institutions. The Board of National Education was later renamed as the National Board of Education.[129] In 1972, the Department of Education became the Department of Education and Culture,[130] and was later on renamed as the. Ministry of Education and Culture in 1978.[131]

Meanwhile, the 1973 Constitution remained consistent in mandating that all educational institutions shall be under the supervision of and subject to regulation by the State.[132]

With the passage of Batas Pambansa Bilang 232[133] (B.P. Blg. 232) or the *Education Act of 1982*, the regulatory rules on both formal and non-formal systems in public and private schools in all levels of the entire educational system were codified. The National Board of Education was abolished, and instead,

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[127] *Id*. at 39.

[128] Republic Act No. 1124, AN ACT CREATING A BOARD OF NATIONAL EDUCATION CHARGED WITH THE DUTY OF FORMULATING GENERAL EDUCATION POLICIES AND DIRECTING THE EDUCATIONAL INTERESTS OF THE NATION, June 16, 1954. Later on amended by Republic Act No. 4372 on June 19, 1965.

[129] Presidential Decree No. 1 (1972).

[130] Under Proclamation No. 1081 (1972).

[131] Under Presidential Decree No. 1397 (1978).

[132] CONSTITUTION (1973) Art. XV, Sec. 8(1), provides:

> 1. All educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate, and integrated system of education relevant to goals of national development.

[133] Approved on September 11, 1982.

a Ministry of Education, Culture and Sports (MECS) was organized to supervise and regulate educational institutions. Part and parcel of the MECS' authority to supervise and regulate educational institutions is its authority to recognize or accredit educational institutions of all levels.[134]

Accordingly, the MECS was given the authority over public and private institutions of higher education, as well as degree-granting programs, in all post-secondary public and private educational institutions.[135] In particular, a Board of Higher Education[136] was established as an advisory body to the Minister of Education, Culture and Sports with the functions of making policy recommendations on the planning and management of the integrated system of higher education and recommending steps to improve the governance of the higher education system. Apart from the Board of Higher Education, a Bureau of Higher

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[134] Batas Pambansa Blg. 232, Part III, Chapter 3, Sec. 27, provides:

Sec. 27. *Recognition of Schools*. — The educational operations of schools shall be subject to their prior authorization of the government, and shall be affected by recognition. In the case of government operated schools, whether local, regional, or national, recognition of educational programs and/or operations shall be deemed granted simultaneously with establishment.

In all other cases the rules and regulations governing recognition shall be prescribed and enforced by the Ministry of Education, Culture and Sports defining therein who are qualified to apply, providing for a permit system, stating the conditions for the grant of recognition and for its cancellation and withdrawal, and providing for related matters.

[135] *Id*. at Part IV, Chapter 1, Sec. 54. *Declaration of Policy*. — The administration of the education system and, pursuant to the provisions of the Constitution, the supervision and regulation of educational institutions are hereby vested in the Ministry of Education, Culture and Sports, without prejudice to the provisions of the charter of any state college and university.

[136] *Id*. at Chapter 2, Sec. 59. *Declaration of Policy*. — Higher education will be granted towards the provision of better quality education, the development of middle and high-level manpower, and the intensification of research and extension services. The main thrust of higher education is to achieve equity, efficiency, and high quality in the institutions of higher learning both public and private, so that together they will provide a complete set of program offerings that meet both national and regional development needs.

Education was also established to formulate and evaluate programs and educational standards for higher education[137] and to assist the Board of Higher Education. Law schools were placed, under the jurisdiction of the Bureau of Higher Education.[138]

The MECS later became the DECS in 1987 under Executive Order No. 117[139] (E.O. No. 117). Nevertheless, the power of the MECS to supervise all educational institutions remained unchanged.[140]

The Administrative Code[141] also states that it shall be the State that shall protect and promote the right of all citizens to

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[137] *Id*. at Sec. 65. *Bureau of Higher Education*. — The Bureau of Higher Education shall perform the following functions:

1. Develop, formulate and evaluate programs, projects and educational standards for a higher education;

2. Provide staff assistance to the Board of Higher Education in its policy formulation and advisory functions;

3. Provide technical assistance to encourage institutional development programs and projects;

4. Compile, analyze and evaluate data on higher education; and

5. Perform other functions provided for by law.

[138] The State of Philippine Legal Education Revisited, *supra* note 126.

[139] Reorganization of the Ministry of Education, Culture and Sports, Prescribing its Powers and Functions and for other purposes, Executive Order No. 117 (1987), Sec. 27, provides:

Sec. 27. *Change of Nomenclatures*. — In the event of the adoption of a new Constitution which provides for a presidential form of government, the Ministry shall be called Department of Education, Culture and Sports and the titles Minister, Deputy Minister, and Assistant Minister shall be changed to Secretary, Undersecretary and Assistant Secretary, respectively.

[140] *Id*. at Sec. 4. *Mandate*. — The Ministry shall be primarily responsible for the formulation, planning, implementation and coordination of the policies, plans, programs and projects in the areas of formal and non-formal education at all levels, supervise all education institutions, both public and private, and provide for the establishment and maintenance of a complete, adequate and integrated system of education relevant to the goals of national development.

[141] Book IV, Title VI, Chapter 1, Sec. 1.

quality education at all levels, and shall take appropriate steps to make such education accessible to all; and that the DECS shall be primarily responsible for the formulation, planning, implementation, and coordination of the policies, plans, programs and projects in the areas of formal and non-formal education. The Administrative Code also empowered the Board of Higher Education to create technical panels of experts in the various disciplines including law, to undertake curricula development.[142] As will be discussed hereunder, the 1987 Constitution crystallized the power of the State to supervise and regulate all educational institutions.[143]

2. DECS Order No. 27-1989 was the precursor of R.A. No. 7662

Pursuant to its mandate under B.P. Blg. 232, the DECS promulgated *DECS Order No. 27, Series of 1989* (DECS Order No. 27-1989),[144] in close coordination with the Philippine Association of Law Schools, the Philippine Association of Law Professors and the Bureau of Higher Education. DECS Order No. 27-1989 specifically outlined the policies and standards for legal education, and superseded all existing policies and standards related to legal education. These policies were made applicable beginning school year 1989 to 1990.

"Legal education" was defined in DECS Order No. 27-1989 as an educational program including a clinical program appropriate and essential in the understanding and application of law and the administration of justice. It is professional education after completion of a required pre-legal education at the college level. For state colleges and universities, the operation of their law schools was to depend on their respective charters, and for private colleges and universities, by the rules and regulations issued by the DECS. Nevertheless, it was made clear

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[142] *Id.* at Chapter 4, Sec. 10.

[143] 1987 CONSTITUTION, Art. XIV, Sec. 4(1). The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

[144] Approved on March 30, 1989.

under DECS Order No. 27-1989 that the administration of a law school shall be governed primarily by the law school's own policies and the provisions thereof apply only suppletorily.[145]

Likewise, in generally permissive terms, DECS Order No. 27-1989 prescribed the preferred qualifications and functions of a law dean, as well as the preferred qualifications, conditions of employment and teaching load of law faculty members. It also prescribed the general inclusions to the law curriculum, but gave the law schools the prerogative to design its own curriculum. The DECS also drew a model law curriculum, thus, revising the 122-unit curriculum prescribed in 1946 by the Office of Private Education, as well as the 134-unit curriculum prescribed in 1963. The law schools were also given the option to maintain a legal aid clinic as part of its law curriculum. It also prescribed the need for law schools to have relevant library resources. Applicants for a law course are required to comply with the specific requirements for admission by the Bureau of Higher Education and the Court.

Such was the state of the regulation of legal education until the enactment of R.A. No. 7662 in 1993. In 1994, R.A. No. 7722[146] was passed creating the Commission on Higher Education (CHED) tasked to supervise tertiary degree programs. Except for the regulation and supervision of law schools which was to be undertaken by the LEB under R.A. No. 7662, the structure of DECS as embodied in E.O. No. 117 remained practically unchanged.

Due to the fact that R.A. No. 7662 was yet to be implemented with the organization of the LEB, the CHED, meanwhile, assumed the function of supervising and regulating law schools. For this purpose, the CHED constituted a Technical Panel for Legal Education which came up with a Revised Policies and

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[145] Art. III. *Organization and Administration.*

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Sec. 2. The administration of a law school shall be governed primarily by its own policies. The provisions under this Article shall only be suppletory in character.

[146] AN ACT CREATING THE COMMISSION ON HIGHER EDUCATION OR THE HIGHER EDUCATION ACT OF 1994.

Standards for Legal Education, which, however, was unpublished.

3. Legal education is a mere composite of the educational system

As recounted, the historical development of statutes on education unerringly reflects the consistent exercise by the political departments of the power to supervise and regulate all levels and areas of education, including legal education.

Legal education is but a composite of the entire Philippine education system. It is perhaps unique because it is a specialized area of study. This peculiarity, however, is not reason in itself to demarcate legal education and withdraw it from the regulatory and supervisory powers of the political branches.

Notwithstanding, petitioners maintain that legal education, owing to its specialized "legal" nature and being preparatory to the practice of law, should fall within the regulation and supervision of the Court itself. Petitioners in G.R. No. 242954 went as far as professing that they are not against the creation of an administrative body that will supervise and regulate law schools, only that such body should be placed under the Court's supervision and control.

Two principal reasons militate against such proposition:

First, it assumes that the Court, in fact, possesses the power to supervise and regulate legal education as a necessary consequence of its power to regulate the admission to the practice of law. This assumption, apart from being manifestly contrary to the above-recounted history of legal education in the Philippines, is likewise devoid of legal anchorage.

Second, the Court exercises only judicial functions and it cannot, and must not, arrogate upon itself a power that is not constitutionally vested to it, lest the Court itself violates the doctrine of separation of powers. For the Court to void R.A. No. 7662 and thereafter, to form a body that regulates legal education and place it under its supervision and control, as what petitioners suggest, is to demonstrate a highly improper form of judicial activism.

4. Court's exclusive rule-making power covers the practice of law and not the study of law

The Constitution lays down the powers which the Court can exercise. Among these is the power to promulgate rules concerning admission to the practice of law.

The rule-making power of the Supreme Court had been uniformly granted under the 1935, the 1973 and the 1987 Constitutions. The complexion of the rule-making power, however, changes with the promulgation of these organic laws.

Under the 1935 Constitution, existing laws on pleading, practice and procedure were repealed and were instead converted as the Rules of Court which the Court can alter and modify. The Congress, on the other hand, was given the power to repeal, alter or supplement the rules on pleading, practice and procedure, and the admission to the practice of law promulgated by the Court.[147]

This power to promulgate rules concerning pleading, practice and procedure, and admission to the practice of law is in fact zealously guarded by the Court.

Thus, in *Philippine Lawyers Association v. Agrava*,[148] the Court asserted its "exclusive" and constitutional power with respect to the admission to the practice of law and when the

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[147] Art. VIII, Sec. 13, provides:

Sec. 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

[148] 105 Phil. 173 (1959).

act falls within the term "practice of law," the Rules of Court govern.[149]

In *In Re: Petition of A.E. Garcia*,[150] the Court withheld from the executive the power to modify the laws and regulations governing admission to the practice of law as the prerogative to promulgate rules for admission to the practice of law belongs to the Court and the power to repeal, alter, or supplement such rules is reserved only to the Congress.

Even then, the character of the power of the Congress to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law under the 1935 Constitution was held not to be absolute and that any law passed by the Congress on the matter is merely permissive, being that the power concerning admission to the practice of law is primarily a judicial function.

The 1973 Constitution is no less certain in reiterating the Court's power to promulgate rules concerning pleading, practice, and procedure in all courts and the admission to the practice of law. As observed in *Echegaray v. Secretary of Justice*,[151] the 1973 Constitution further strengthened the independence of the judiciary by giving it the additional power to promulgate rules governing the integration of the Bar.[152]

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[149] *Id*. at 176.

[150] 112 Phil. 884 (1961).

[151] 361 Phil. 73, 88 (1999), as cited in *Estipona, Jr. v. Lobrigo*, G.R. No. 226679, August 15, 2017, 837 SCRA 160.

[152] Art. X, Sec. 5(5), provides:

Sec. 5. The Supreme Court shall have the following powers:

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(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. 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.

The ultimate power to promulgate rules on pleading, practice, and procedure, the admission to the practice of law, and the integration of the Bar remains to be with the Court under the 1973 Constitution even when the power of the Batasang Pambansa to pass laws of permissive and corrective character repealing, altering, or supplementing such rules was retained.

The 1987 Constitution departed from the 1935 and the 1973 organic laws in the sense that it took away from the Congress the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law, and the integration of the Bar and therefore vests exclusively and beyond doubt, the power to promulgate such rules to the Court, thereby supporting a "stronger and more independent judiciary."[153]

While the 1935 and 1973 Constitutions "textualized a power-sharing scheme" between the legislature and the Court in the enactment of judicial rules,[154] the 1987 Constitution "textually altered the power-sharing scheme" by deleting the Congress' subsidiary and corrective power.[155]

Accordingly, the Court's exclusive power of admission to the Bar has been interpreted as vesting upon the Court the authority to define the practice of law,[156] to determine who will be admitted to the practice of law,[157] to hold in contempt any person found to be engaged in unauthorized practice of law,[158] and to exercise corollary disciplinary authority over members of the Bar.[159]

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[153] *Echegaray v. Secretary of Justice*, *supra*.

[154] *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Judge Cabato-Cortes*, 627 Phil. 543, 548 (2010).

[155] *Id*. at 549.

[156] *Philippine Lawyers Association v. Agrava*, *supra* note 148, at 176.

[157] *In Re: Cunanan*, 94 Phil. 534, 546 (1954).

[158] *People v. De Luna*, 102 Phil. 968 (1958).

[159] *Query of Atty. Karen M. Silverio-Buffe, Former Clerk of Court, Branch*

The act of admitting, suspending, disbarring and reinstating lawyers in the practice of law is a judicial function because it requires "(1) previously established rules and principles; (2) concrete facts, whether past or present, affecting determinate individuals; and (3) decision as to whether these facts are governed by the rules and principles."[160]

Petitioners readily acknowledge that legal education or the study of law is not the practice of law, the former being merely preparatory to the latter. In fact, the practice of law has a settled jurisprudential meaning:

> The practice of law is not limited to the conduct of cases or litigation in court; it embraces the preparation of pleadings and other papers incident to actions and social proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all advice to clients, and all action taken for them in matters connected with the law corporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice as do the preparation and drafting of legal instruments, where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.
>
> Practice of law under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs. Although these transactions may have no direct connection with court proceedings, they are always subject to become involved in litigation. They require in many aspects a high degree of legal skill, a wide experience with men and affairs, and great capacity for adaptation to difficult and complex situations. These customary functions of an attorney or counselor at law bear an

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81, Romblon, Romblon, 613 Phil. 1, 23 (2009), citing *Zaldivar v. Gonzales*, 248 Phil. 542, 555 (1988).

[160] *In Re: Cunanan, supra*, at 545.

intimate relation to the administration of justice by the courts. No valid distinction, so far as concerns the question set forth in the order, can be drawn between that part of the work of the lawyer which involved appearance in court and that part which involves advice and drafting of instruments in his office. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill, of sound moral character, and acting at all times under the heavy trust obligations to clients which rests upon all attorneys.[161] (Internal citations omitted)

The definition of the practice of law, no matter how broad, cannot be further enlarged as to cover the study of law.

5. The Court exercises judicial power only

Section 12, Article VIII of the 1987 Constitution clearly provides that "[t]he Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions." The Court exercises judicial power only and should not assume any duty alien to its judicial functions, the basic postulate being the separation of powers. As early as *Manila Electric Co. v. Pasay Transportation Co.*,[162] the Court already stressed:

> The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. **It is judicial power and judicial power only which is exercised by the Supreme Court.** Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. **The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions.** (Emphases supplied)

Neither may the regulation and supervision of legal education be justified as an exercise of the Court's "residual" power. A

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[161] *Cayetano v. Monsod*, 278 Phil. 235, 242-243 (1991).

[162] 57 Phil. 600, 605 (1932).

power is residual if it does not belong to either of the two co-equal branches and which the remaining branch can, thus, exercise consistent with its functions. Regulation and supervision of legal education is primarily exercised by the Legislative and implemented by the Executive, thus, it cannot be claimed by the judiciary.

It is with studied restraint that the Court abstains from exercising a power that is not strictly judicial, or that which is not expressly granted to it by the Constitution.[163] This judicial abstention is neither avoidance nor dereliction — there is simply no basis for the Court to supervise and regulate legal education.

Court supervision over legal education is nevertheless urged[164] to the same extent as the Court administers, supervises and controls the Philippine Judicial Academy (PHILJA).[165] The parallelism is mislaid because the PHILJA is intended for judicial education.[166] It particularly serves as the "training school for justices, judges, court personnel, lawyers and aspirants to judicial posts."[167] Court supervision over judicial education is but consistent with the Court's power of supervision over all courts and the personnel thereof.[168]

Still, petitioners insist that the Court actually regulated legal education through Sections 5, 6, and 16 of Rule 138 and Sections

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[163] *Id*.

[164] See *Amicus* Brief of Dean Sedfrey Candelaria, *rollo* (G.R. No. 230642), Vol. 4, pp. 1657-1677.

[165] Republic Act No. 8557 or AN ACT ESTABLISHING THE PHILIPPINE JUDICIAL ACADEMY, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[166] *Id*. at Sec. 3. The PHILJA shall serve as a training school for justices, judges, court personnel, lawyers and aspirants to judicial posts. For this purpose, it shall provide and implement a curriculum for judicial education and shall conduct seminars, workshops and other training programs designed to upgrade their legal knowledge, moral fitness, probity, efficiency, and capability. It shall perform such other functions and duties as may be necessary in carrying out its mandate.

[167] *Id*.

[168] 1987 CONSTITUTION, Art.VIII, Sec. 6.

1, 2, 3, and 4 of Rule 138-A of the 1997 Rules of Court. On the contrary, the Rules of Court do not intend nor provide for direct and actual Court regulation over legal education. At most, the Rules of Court are reflective of the inevitable relationship between legal education and the admissions to the bar.

6. The Rules of Court do not support the argument that the Court directly and actually regulates legal education

While the power of the Court to promulgate rules concerning admission to the practice of law exists under the 1935 Constitution and reiterated under the 1973 and 1987 Constitutions, the Court has not promulgated any rule that directly and actually regulates legal education.

Instead, the 1964 Rules of Court concerned only the practice of law, admission to the bar, admission to the bar examination, bar examinations, and the duties, rights and conduct of attorneys. The 1997 Rules of Court is no different as it contained only the rules on attorneys and admission to the bar under Rule 138, the law student practice rule under Rule 138-A, the integrated bar in Rule 139-A and disbarment and discipline of attorneys in Rule 139-B.[169]

In the exercise of its power to promulgate rules concerning the admission to the practice of law, the Court has prescribed the subjects covered by, as well as the qualifications of candidates to the bar examinations. Only those bar examination candidates who are found to have obtained a passing grade are admitted to the bar and licensed to practice law.[170] The regulation of the admission to the practice of law goes hand in hand with the commitment of the Court and the members of the Philippine Bar to maintain a high standard for the legal profession. To ensure that the legal profession is maintained at a high standard, only those who are known to be honest, possess good moral

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[169] As amended by Supreme Court Resolutions dated May 20, 1968 and February 13, 1992.

[170] *In Re: Parazo*, 82 Phil. 230, 242 (1948).

character, and show proficiency in and knowledge of the law by the standard set by the Court by passing the bar examinations honestly and in the regular and usual manner are admitted to the practice of law.[171]

Thus, under the 1997 Rules of Court, admission to the bar requires: (1) furnishing satisfactory proof of educational, moral, and other qualifications; (2) passing the bar examinations;[172] and (3) taking the lawyer's oath,[173] signing the roll of attorneys

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[171] *Id.*

[172] RULES OF COURT, Rule 138, Sec. 9. *Examination; subjects*. — Applicants, not otherwise provided for in Sections 3 and 4 of this rule, shall be subjected to examinations in the following subjects: Civil Law; Labor and Social Legislation; Mercantile Law; Criminal Law; Political Law (Constitutional Law, Public Corporations, and Public Officers); International Law (Private and Public); Taxation; Remedial Law (Civil Procedure, Criminal Procedure, and Evidence); Legal Ethics and Practical Exercises (in Pleading and Conveyancing).

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Sec. 11. *Annual examination*. — Examinations for admission to the bar of the Philippines shall take place anually in the City of Manila. They shall be held in four days to be designated by the chairman of the committee on bar examiners. The subjects shall be distributed as follows: First day: Political and International Law (morning) and Labor and Social Legislation (afternoon); Second day: Civil Law (morning) and Taxation (afternoon); Third day: Mercantile Law (morning) and Criminal Law (afternoon); Fourth day: Remedial Law (morning) and Legal Ethics and Practical Exercises (afternoon).

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Sec. 14. *Passing average*. — In order that a candidate may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 percent in all subjects, without falling below 50 percent in any subject. In determining the average, the subjects in the examination shall be given the following relative weights: Civil Law, 15 percent; Labor and Social Legislation, 10 percent; Mercantile Law, 15 percent; Criminal Law, 10 percent; Political and International Law, 15 percent; Taxation, 10 percent; Remedial Law, 20 percent; Legal Ethics and Practical Exercises, 5 percent.

[173] Sec. 17. *Admission and oath of successful applicants*. — An applicant who has passed the required examination, or has been otherwise found to be entitled to admission to the bar, shall take and subscribe before the Supreme Court the corresponding oath of office.

and receiving from the clerk of court a certificate of the license to practice.[174] An applicant for admission to the bar must have these qualifications: (1) must be a citizen of the Philippines; (2) must at least be 21 years of age; (3) must be of good moral character; (4) must be a resident of the Philippines; (5) must produce satisfactory evidence of good moral character; and (6) no charges against the applicant, involving moral turpitude, have been filed or are pending in any court in the Philippines.[175] It is beyond argument that these are the requisites and qualifications for admission to the practice of law and not for admission to the study of law.

In turn, to be admitted to the bar examinations, an applicant must first meet the core academic qualifications prescribed under the Rules of Court.

6(a). Sections 5, 6, and 16, Rule 138

Section 5 provides that the applicant should have studied law for four years and have successfully completed all the prescribed courses. This section was amended by Bar Matter No. 1153,[176] to require applicants to "successfully [complete]

Sec. 18. *Certificate.* — The Supreme Court shall thereupon admit the applicant as a member of the bar for all the courts of the Philippines, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of court, which certificate shall be his authority to practice.

[174] Sec. 19. *Attorney's roll.* — The clerk of the Supreme Court shall keep a roll of all attorneys admitted to practice, which roll shall be signed by the person admitted when he receives his certificate.

[175] Sec. 2. *Requirements for all applicants for admission to the bar.* — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

[176] *Re: Letter of Atty. Estelito P. Mendoza Proposing Reforms in the Bar Examinations through Amendments to Rule 138 of the Rules of Court,* March 9, 2010.

all the prescribed courses for the degree of Bachelor of Laws or its equivalent, in a law school or university officially recognized by the Philippine Government, or by the proper authority in foreign jurisdiction where the degree has been granted." Bar Matter No. 1153 further provides that a Filipino citizen who is a graduate of a foreign law school shall be allowed to take the bar examinations only upon the submission to the Court of the required certifications.

In addition to the core courses of civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, and legal ethics, Section 5 was further amended by *A.M. No. 19-03-24-SC or the Revised Law Student Practice Rule dated June 25, 2019* to include Clinical Legal Education as a core course that must be completed by an applicant to the bar examinations.

Notably, Section 5, Rule 138 of the Rules of Court, as amended, is not directed to law schools, but to those who would like to take the bar examinations and enumerates the academic competencies required of them. The Court does not impose upon law schools what courses to teach, or the degree to grant, but prescribes only the core academic courses which it finds essential for an applicant to be admitted to the bar. Law schools enjoy the autonomy to teach or not to teach these courses. In fact, the Court even extends recognition to a degree of Bachelor of Laws or its equivalent obtained abroad or that granted by a foreign law school for purposes of qualifying to take the Philippine Bar Examinations, subject only to the submission of the required certifications. Section 5 could not therefore be interpreted as an exercise of the Court's regulatory or supervisory power over legal education since, for obvious reasons, its reach could not have possibly be extended to legal education in foreign jurisdictions.

In similar fashion, Section 6, Rule 138 of the Rules of Court requires that an applicant to the bar examinations must have completed a four-year high school course and a bachelor's degree in arts or sciences. Again, this requirement is imposed upon

the applicant to the bar examinations and not to law schools. These requirements are merely consistent with the nature of a law degree granted in the Philippines which is a professional, as well as a post-baccalaureate degree.

It is a reality that the Rules of Court, in prescribing the qualifications in order to take the bar examinations, had placed a considerable constraint on the courses offered by law schools. Adjustments in the curriculum, for instance, is a compromise which law schools apparently are willing to take in order to elevate its chances of graduating future bar examinees. It is in this regard that the relationship between legal education and admissions to the bar becomes unmistakable. This, however, does not mean that the Court has or exercises jurisdiction over legal education. Compliance by law schools with the prescribed core courses is but a recognition of the Court's exclusive jurisdiction over admissions to the practice of law — that no person shall be allowed to take the bar examinations and thereafter, be admitted to the Philippine Bar without having taken and completed the required core courses.

Section 16, Rule 138 of the Rules of Court, on the other hand, provides that those who fail the bar examinations for three or more times must take a refresher course. Similarly, this is a requirement imposed upon the applicant. The Court does not impose that a law school should absolutely include in its curriculum a refresher course.

6(b). Revised Law Student Practice Rule

Neither does Rule 138-A of the Rules of Court as amended by A.M. No. 19-03-24-SC on law student practice manifest the Court's exercise of supervision or regulation over legal education. The three-fold rationale of the law student practice rule is as follows:

1. [T]o ensure that there will be no miscarriage of justice as a result of incompetence or inexperience of law students, who, not having as yet passed the test of professional competence, are presumably not fully equipped to act [as] counsels on their own;

2. [T]o provide a mechanism by which the accredited law school clinic may be able to protect itself from any potential vicarious liability arising from some culpable action by their law students; and

3. [T]o ensure consistency with the fundamental principle that no person is allowed to practice a particular profession without possessing the qualifications, particularly a license, as required by law.[177]

Consistently, the Revised Law Student Practice Rule is primordially intended to ensure access to justice of the marginalized sectors and to regulate the law student practitioner's limited practice of law pursuant to the Court's power to promulgate rules on pleading, practice, and procedure in all courts, the Integrated Bar, and legal assistance to the underprivileged.

In allowing the law student and in governing the conduct of the law student practitioner, what the Court regulates and supervises is not legal education, but the appearance and conduct of a law student before any trial court, tribunal, board, or officer, to represent indigent clients of the legal clinic — an activity rightfully falling under the definition of practice of law. Inasmuch as the law student is permitted to act for the legal clinic and thereby to practice law, it is but proper that the Court exercise regulation and supervision over the law student practitioner. Necessarily, the Court has the power to allow their appearance and plead their case, and thereafter, to regulate their actions.

In all, the Rules of Court do not support petitioners' argument that the Court regulates and supervises legal education. To reiterate, the Rules of Court are directed not towards legal education or law schools, but towards applicants for admission to the bar and applicants for admission to the bar examinations — consistent with the Court's power to promulgate rules concerning admission to the practice of law, the same being fundamentally a judicial function.

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[177] *In Re: Need that Law Student Practicing Under Rule 138-A be Actually Supervised During Trial*, Bar Matter No. 730, June 13, 1997 <https://www.lawphil.net/courts/bm/bm_730_1997.html> (visited September 3, 2019).

Having, thus, established that the regulation and supervision of legal education do not fall within the competence of the Court and is, instead, a power exercised by the political departments, the Court now proceeds to determine the extent of such police power in relation to legal education.

B.
Reasonable Supervision and Regulation of Legal Education as an Exercise of Police Power

The term police power was first used[178] in jurisprudence in 1824 in *Gibbons v. Ogden*[179] where the U.S. Supreme Court, through Chief Justice Marshall, held that the regulation of navigation by steamboat operators for purposes of interstate commerce was a power reserved to and exercised by the Congress, thus, negating state laws interfering with the exercise of that power. Likewise often cited is *Commonwealth v. Alger*[180] which defined police power as "the power vested in legislature by the [C]onstitution, to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the [C]onstitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same."

Closer to home, early Philippine jurisprudence pertain to police power as the power to promote the general welfare and public interest;[181] to enact such laws in relation to persons and property as may promote public health, public morals, public safety and the general welfare of each inhabitant;[182] to preserve public order and to prevent offenses against the state and to establish for the intercourse of [citizens] those rules of good

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[178] *Morfe v. Mutuc*, 130 Phil. 415, 427 (1968).

[179] 22 U.S. 1 (1824) <https://supreme.justia.com/cases/federal/us/22/1/> (visited May 31, 2019).

[180] 7 Cush. 53, 85 (1851) <masscases.com/cases/sjc/61/61mass53.html> (visited May 31, 2019).

[181] *Morfe v. Mutuc*, *supra* note 178, citing *United States v. Toribio*, 15 Phil. 85, 94 (1910).

[182] *Id.*, citing *United States v. Gomez Jesus*, 31 Phil. 218, 225 (1915).

manners and good neighborhood calculated to prevent conflict of rights.[183]

In *Ermita-Malate Hotel and Motel [Operators] Association, Inc. v. City Mayor of Manila*,[184] the nature and scope of police power was reaffirmed as embracing the power to prescribe regulations to promote the health, morals, education, good order, safety, or the general welfare of the people. It is negatively defined as the authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare[185] and the State's inherent power to prohibit all that is hurtful to the comfort, safety, and welfare of society,[186] and flows from the recognition that *salus populi est suprema lex*.[187] It is described as the most essential, insistent and illimitable[188] of the powers of the State. It is co-existent with the concept of the State and is the very foundation and one of its cornerstones,[189] and therefore even precedes the written Constitution.

1. Enactment of education laws is an exercise of police power

The State has a "high responsibility for [the] education of its citizens"[190] and has an interest in prescribing regulations to promote the education, and consequently, the general welfare

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[183] *Id*., citing *United States v. Pompeya*, 31 Phil. 245, 254 (1915).

[184] 127 Phil. 306 (1967).

[185] *Philippine Association of Service Exporters, Inc. v. Drilon*, 246 Phil. 393, 398 (1988).

[186] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 708 (1919); *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 986 (2000).

[187] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 93 (1996).

[188] *Ichong v. Hernandez*, 101 Phil. 1155, 1163 (1957).

[189] *United States v. Gomez Jesus, supra*.

[190] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018, citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972) <https://supreme.justia.com/cases/federal/us/406/205/> (visited May 31, 2019).

of the people.[191] The regulation or administration of educational institutions, especially on the tertiary level, is invested with public interest.[192] Thus, the enactment of education laws, implementing rules and regulations and issuances of government agencies is an exercise of the State's police power.[193]

As a professional educational program, legal education properly falls within the supervisory and regulatory competency of the State. The legislative history of the Philippine legal educational system earlier recounted evinces that the State, through statutes enacted by the Congress and administrative regulations issued by the Executive, consistently exercises police power over legal education.

The exercise of such police power, however, is not absolute.

2. Supervisory and regulatory exercise, not control

The 1935[194] and 1973[195] Constitutions plainly provide that all educational institutions shall be under the supervision of and subject to regulation by the State. These reflect in express terms the police power already inherently possessed by the State. Making express an already inherent power is not a superfluous exercise, but is rather consequential in case of conflict between express powers. As elucidated in *Philippine Association of Colleges and Universities*:[196]

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[191] *Id.*

[192] *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483, 495 (2001).

[193] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education, supra.*

[194] Art. XIII, Sec. 5. All educational institutions shall be under the supervision of and subject to regulation by the State.

[195] Art. XV, Sec. 8(1). All educational institutions shall be under the supervision of, and subject to regulation by, the State. The State shall establish and maintain a complete, adequate, and integrated system of education relevant to the goals of national development.

[196] *Philippine Association of Colleges and Universities (PACU) v. Secretary of Education, supra* note 77, at 819.

In this connection we do not share the belief that [now Article XIV, Section 4(1)] has added new power to what the State inherently possesses by virtue of the police power. An express power is necessarily more extensive than a mere implied power. For instance, if there is conflict between an express individual right and the express power to control private education it cannot off-hand be said that the latter must yield to the former — conflict of two express powers. But if the power to control education is merely implied from the police power, it is feasible to uphold the express individual right[.] x x x

The 1987 Constitution under Section 4(1), Article XIV, even when expressly recognizing the complementary roles played by the public and private schools in education, reiterated that these educational institutions are subject to State supervision and regulation, thus:

SEC. 4.(1) The State recognizes the complementary roles of **public and private institutions in the educational system** and shall **exercise reasonable supervision and regulation of all educational institutions**. (Emphasis supplied)

As much as possible, the words of the Constitution are understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say.[197]

As worded, the Constitution recognizes that the role of public and private schools in education is complementary in relation to each other, and primordial in relation to the State as the latter is only empowered to supervise and regulate. The exercise of police power in relation to education must be compliant with the normative content of Section 4(1), Article XIV of the 1987 Constitution.[198] The exercise of police power over education must merely be supervisory and regulatory.

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[197] *Supra* note 195.

[198] Sec. 4.(1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

The State's supervisory and regulatory power is an auxiliary power in relation to educational institutions, be it a basic, secondary or higher education. This must necessarily be so since the right and duty to educate, being part and parcel of youth-rearing, do not inure to the State at the first instance. Rather, it belongs essentially and naturally to the parents,[199] which right and duty they surrender by delegation to the educational institutions. As held in *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[200] the right and duty of parents to rear their children being a natural and primary right connotes the parents' superior right over the State in the upbringing of their children. The responsibility to educate lies with the parents and guardians as an inherent right,[201] over which the State assumes a supportive role.[202] Withholding from

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[199] Sec. 12, Art. II of the 1987 Constitution articulates the State's policy relative to the rights of parents in the rearing of their children:

Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. **The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.** (Emphasis supplied)

[200] *Supra* note 67.

[201] See *Pierce v. Society of Sisters* (268 U.S. 510, 535 [1925]), where the U.S. Supreme Court recognized that "[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." <https://supreme.justia.com/cases/federal/us/268/510/> (visited May 30, 2019).

Nevertheless, a shift of responsibility from the parent to the State is observed in the light of the compulsory education laws. (Brooke Wilkins [2005], Should Public Education be a Federal Fundamental Right?, *Brigham Young University Education and Law Journal*, 2005[2], 261-290) <https://digitalcommons.law.byu.edu/elj/vol2005/iss2/8/> (visited May 30, 2019).

[202] See Art. 13, Sec. 3 of the International Covenant on Economic, Social and Cultural Rights which provides that:

Sec. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities

the State the unqualified power to control education also serves a practical purpose — it allows for a degree of flexibility and diversity essential to the very reason of education to rear socially responsible and morally upright youth and to enable them, also, to come in contact with challenging ideas.

In this sense, when the Constitution gives the State supervisory power, it is understood that what it enjoys is a supportive power, that is, the power of oversight[203] over all educational institutions. It includes the authority to check, but not to interfere.

In addition to supervision, educational institutions are likewise made subject to State regulation. Dispensing a regulatory function means imposing requirements, setting conditions, prescribing restrictions, and ensuring compliance. In this regard, the political departments are vested with ample authority to set *minimum standards* to be met by all educational institutions.[204]

Starkly withheld from the State is the power to control educational institutions. Consequently, in no way should supervision and regulation be equated to State control. It is interesting to note that even when a suggestion had been made during the drafting of the 1935 Constitution that educational

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x x x. <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (visited May 30, 2019).

[203] As a legal concept, supervision is usually understood in relation with the concept of control. Thus, in *Bito-onon v. Yap Fernandez* (403 Phil. 693, 702-703 [2011]), the Court held that "[s]upervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. [Officer] in control [lays] down the rules in the doing of an act. If they are not followed, it is discretionary on his part to order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. Supervising officers merely see to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done to conform to the prescribed rules. He cannot prescribe his own manner for the doing of the act."

[204] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education, supra* note 190.

institutions should be made "subject to the laws of the State," the proponent of the amendment had no totalitarian intentions,[205] and the proposal was not meant to curtail the liberty of teaching,[206] thus:

> I think it only insures the efficient functioning of educational work and does not limit liberty of administrators of schools. The gentleman will notice that my amendment does not tend to curtail which he used in asking the question [sic]. **I want the power of the State to be supervisory as supervision in educational parlance should be of the constructive type in the matter of help rather than obstruction.**[207] (Emphasis supplied)

3. Reasonable exercise

To be valid, the supervision and regulation of legal education as an exercise of police power must be reasonable and not repugnant to the Constitution.[208]

As held in *Social Justice Society v. Atienza, Jr.*,[209] the exercise of police power, in order to be valid, must be compliant with substantive due process:

> [T]he State, x x x may be considered as having properly exercised [its] police power only if the following requisites are met: (1) the **interests of the public generally**, as distinguished from those of a particular class, require its exercise[;] and (2) the means employed are **reasonably necessary** for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a **concurrence of a lawful subject and a lawful method**. (Emphases supplied)

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[205] Bernas, Joaquin G. (1958), State "Supervision" and "Regulation" of Private Schools, *Philippine Studies*, 6(3) 295-314 <https://www.jstor.org/stable/42719389> (visited May 30, 2019).

[206] *Id.* at 303.

[207] *Id.*

[208] *The Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, 557 Phil. 121, 140 (2007).

[209] 568 Phil. 658, 702 (2008).

In *Philippine Association of Service Exporters, Inc. v. Drilon*,[210] the Court held that:

> Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, **it may not be exercised arbitrarily or unreasonably**. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. (Emphasis supplied)

Obviating any inference that the power to regulate means the power to control, the 1987 Constitution added the word "reasonable" before the phrase supervision and regulation.

The import of the word "reasonable" was elaborated in *Council of Teachers*,[211] as follows:

> x x x Section 4(1) was a provision added by the Framers to crystallize the State's recognition of the importance of the role that the private sector plays in the quality of the Philippine education system. Despite this recognition, the Framers added the second portion of Section 4[1] to emphasize that the State, in the exercise of its police power, still possesses the power of supervision over private schools. The Framers were explicit, however, that this supervision refers to *external governance*, as opposed to *internal governance* which was reserved to the respective school boards, thus:
>
> > Madam President, Section 2(b) introduces four changes: one, the addition of the word "reasonable" before the phrase "supervision and regulation"; two, the addition of the word "quality" before the word "education"; three, the change of the wordings in the 1973 Constitution referring to a system of education, requiring the same to be relevant to the goals of national development, to the present expression of "relevant to the needs of the people and society"; and four, the explanation of the meaning of the expression "integrated system of education" by defining the same as the recognition and strengthening of the complementary roles of public and private educational institutions as separate but integral parts of the total Philippine educational system.

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[210] 246 Phil. 393, 399 (1988).

[211] *Supra* note 190.

When we speak of State supervision and regulation, we refer to the external governance of educational institutions, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary to add the word "reasonable" because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities vs. The Secretary of Education and the Board of Textbooks* in 1955. In that case, the court said, and I quote:

> It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
>
> The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.

The addition, therefore, of the word 'reasonable' is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented. It does not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate. (Emphases in the original; underscoring supplied)

The addition of the word "reasonable" did not change the texture of police power that the State exercises over education. It merely emphasized that State supervision and regulation of legal education cannot amount to control.

4. Academic freedom

Fundamental in constitutional construction is that the Constitution is to be interpreted as a whole, and that all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the purposes of the Constitution.[212]

Accordingly, the reasonable supervision and regulation clause is not a stand-alone provision, but must be read in conjunction with the other Constitutional provisions relating to education which include, in particular, the clause on academic freedom.

Section 5(2), Article XIV of the 1987 Constitution, provides:

(2) Academic freedom shall be enjoyed in all institutions of higher learning.

This guarantee is not peculiar to the 1987 Constitution. A similar provision was found in the 1973 Constitution providing that: "All institutions of higher learning shall enjoy academic freedom."[213] Both the 1973 and 1987 Constitutions provide for a broader scope of academic freedom compared to the 1935 Constitution which limits the guarantee of academic freedom only to universities of higher learning established by the State.[214]

In fact, academic freedom is not a novel concept. This can be traced to the freedom of intellectual inquiry championed by Socrates, lost and replaced by thought control during the time of Inquisition, until the movement back to intellectual liberty beginning the 16th century, most particularly flourishing in German universities.[215]

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[212] *Civil Liberties Union v. The Executive Secretary*, 272 Phil. 147, 162 (1991).

[213] Article XV, Sec. 8(2).

[214] CONSTITUTION (1935), Art. 13, Sec. 5, provides:

Sec. 5. x x x "Universities established by the State shall enjoy academic freedom." x x x

[215] *Ateneo de Manila University v. Judge Capulong*, 294 Phil. 654, 672 (1993).

Academic freedom has traditionally been associated as a narrow aspect of the broader area of freedom of thought, speech, expression and the press. It has been identified with the individual autonomy of educators to "investigate, pursue, [and] discuss free from internal and external interference or pressure."[216] Thus, academic freedom of faculty members, professors, researchers, or administrators is defended based on the freedom of speech and press.[217]

Academic freedom is enjoyed not only by members of the faculty, but also by the students themselves, as affirmed in *Ateneo de Manila University v. Judge Capulong*:[218]

> x x x. After protracted debate and ringing speeches, the final version which was none too different from the way it was couched in the previous two (2) Constitutions, as found in Article XIV, Section 5(2) states: "Academic freedom shall be enjoyed in all institutions of higher learning." In anticipation of the question as to whether and what aspects of academic freedom are included herein, ConCom Commissioner Adolfo S. Azcuna explained: "Since academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom."
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> More to the point, Commissioner Jose Luis Martin C. Gascon asked: "When we speak of the sentence 'academic freedom shall be enjoyed in all institutions of higher learning,' do we mean that academic freedom shall be enjoyed by the institution itself?" Azcuna replied: "Not only that, it also includes x x x" Gascon finished off the broken thought, — "the faculty and the students." Azcuna replied: "Yes."

Jurisprudence has so far understood academic freedom of the students as the latter's right to enjoy in school the guarantees

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[216] *Id*. at 672-673.

[217] As notoriously stated in *Keyishian v. Board of Regents* (385 U.S. 589, 603 [1967]), "academic freedom x x x is x x x a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom." <https://supreme.justia.com/cases/federal/us/385/589/> (visited May 31, 2019).

[218] *Ateneo de Manila University v. Judge Capulong*, *supra* note 215, at 674.

of the Bill of Rights. For instance, in *Villar v. Technological Institute of the Philippines*[219] and in *Non v. Dames II*,[220] it was held that academic standards cannot be used to discriminate against students who exercise their rights to peaceable assembly and free speech, in *Malabanan v. Ramento*,[221] it was ruled that the punishment must be commensurate with the offense, and in *Guzman v. National University*,[222] which affirmed the student's right to due process.

Apart from the academic freedom of teachers and students, the academic freedom of the institution itself is recognized and constitutionally guaranteed.

The landmark case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*[223] elucidates how academic freedom is enjoyed by institutions of higher learning:

> [I]t is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. **It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students.** This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor." He cited the following from Dr. Marcel Bouchard, Rector of the University of Dijon, France, President of the conference of rectors and vice-chancellors of European

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[219] 220 Phil. 379 (1985).

[220] 264 Phil. 98 (1990).

[221] 214 Phil. 319 (1984).

[222] 226 Phil. 596 (1986).

[223] 160-A Phil. 929, 943-944 (1975).

universities: "It is a well-established fact, and yet one which sometimes tends to be obscured in discussions of the problems of freedom, that the collective liberty of an organization is by no means the same thing as the freedom of the individual members within it; in fact, the two kinds of freedom are not even necessarily connected. In considering the problems of academic freedom one must distinguish, therefore, between the autonomy of the university, as a corporate body, and the freedom of the individual university teacher." Also: "To clarify further the distinction between the freedom of the university and that of the individual scholar, he says: "The personal aspect of freedom consists in the right of each university teacher — recognized and effectively guaranteed by society — to seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen. Thus the status of the individual university teacher is at least as important, in considering academic freedom, as the status of the institutions to which they belong and through which they disseminate their learning. (Internal citations omitted; emphasis supplied)

Garcia also enumerated the internal conditions for institutional academic freedom, that is, the academic staff should have *de facto* control over: (a) the admission and examination of students; (b) the curricula for courses of study; (c) the appointment and tenure of office of academic staff; and (d) the allocation of income among the different categories of expenditure.[224]

Reference was also made to the influential language of Justice Frankfurter's concurring opinion in *Sweezy v. New Hampshire*,[225] describing it as the "business of the university" to provide a conducive atmosphere for speculation, experimentation, and creation where the four essential freedoms of the university prevail: the right of the university to determine for itself on academic grounds (a) who may teach; (b) what may be taught; (c) how it shall be taught; and (d) who may be admitted to study.

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[224] *Id.* at 944.

[225] 354 U.S. 234, 263 (1957) <https://supreme.justia.com/cases/federal/us/354/234/> (visited May 31, 2019).

4(a). State's supervisory and regulatory power over legal education in relation to academic freedom

The rule is that institutions of higher learning enjoy ample discretion to decide for itself who may teach, what may be taught, how it shall be taught and who to admit, being part of their academic freedom. The State, in the exercise of its reasonable supervision and regulation over education, can only impose minimum regulations.

At its most elementary, the power to supervise and regulate shall not be construed as stifling academic freedom in institutions of higher learning. This must necessarily be so since institutions of higher learning are not mere walls within which to teach; rather, it is a place where research, experiment, critical thinking, and exchanges are secured. Any form of State control, even at its most benign and disguised as regulatory, cannot therefore derogate the academic freedom guaranteed to higher educational institutions. In fact, this non-intrusive relation between the State and higher educational institutions is maintained even when the Constitution itself prescribes certain educational "thrusts" or directions.[226]

This attitude of non-interference is not lost in jurisprudence. To cite an example, due regard for institutional academic freedom versus State interference was recognized in *Lupangco v. Court of Appeals*,[227] the commendable purpose of the Philippine

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[226] To illustrate, Art. XIV, Sec. 3(2) of the 1987 Constitution prescribes that all educational institutions "shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency." These are understood as mere guidelines for the State.

[227] 243 Phil. 993, 1006 (1988).

Regulation Commission of ensuring the integrity of the examination notwithstanding:

> **Another evident objection to Resolution No. 105 is that it violates the academic freedom of the schools concerned. Respondent PRC cannot interfere with the conduct of review that review schools and centers believe would best enable their enrolees to meet the standards required before becoming a full-[f]ledged public accountant. Unless the means or methods of instruction are clearly found to be inefficient, impractical, or riddled with corruption**, review schools and centers may not be stopped from helping out their students. x x x (Emphasis supplied)

Similarly, in *University of the Philippines v. Civil Service Commission*,[228] the Court upheld the university's academic freedom to choose who should teach and held that the Civil Service Commission had no authority to dictate to the university the outright dismissal of its personnel. Nothing short of marked arbitrariness,[229] or grave abuse of discretion[230] on the part of the schools, or overriding public welfare[231] can therefore justify State interference with the academic judgment of higher educational institutions. As held in *Ateneo de Manila University v. Judge Capulong*,[232] "[a]s corporate entities, educational institutions of higher learning are inherently endowed with the right to establish their **policies, academic and otherwise**, unhampered by external controls or pressure."

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[228] 408 Phil. 132 (2001).

[229] See concurring opinion of Justice Teehankee in *Garcia v. The Faculty and Admission Committee, Loyola School of Theology*, *supra* note 223, at 949.

[230] *Calawag v. University of the Philippines Visayas*, *supra* note 49, at 216.

[231] *Garcia v. The Faculty and Admission Committee, Loyola School of Theology*, *supra* note 223, at 943.

[232] *Supra* note 215, at 661.

5. Right to education

Apart from the perspective of academic freedom, the reasonable supervision and regulation clause is also to be viewed together with the right to education. The 1987 Constitution speaks quite elaborately on the right to education. Section 1, Article XIV provides:

> SEC. 1. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.

The normative elements of the general right to education under Section 1, Article XIV, are (1) to protect and promote quality education; and (2) to take appropriate steps towards making such quality education accessible.

"Quality" education is statutorily defined as the appropriateness, relevance and excellence of the education given to meet the needs and aspirations of the individual and society.[233]

In order to protect and promote quality education, the political departments are vested with the ample authority to set minimum standards to be met by all educational institutions. This authority should be exercised within the parameters of reasonable supervision and regulation. As elucidated in *Council of Teachers*:[234]

> While the Constitution indeed mandates the State to provide quality education, **the determination of what constitutes quality education is best left with the political departments who have the necessary knowledge, expertise, and resources to determine the same**. The deliberations of the Constitutional Commission again are very instructive:
>
> Now, Madam President, **we have added the word "quality" before "education" to send appropriate signals to the**

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[233] Republic Act No. 9155 (2001) or the GOVERNANCE OF BASIC EDUCATION ACT OF 2001.

[234] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, *supra* note 190.

> **government that, in the exercise of its supervisory and regulatory powers, it should first set satisfactory minimum requirements in all areas: curriculum, faculty, internal administration, library, laboratory class and other facilities, et cetera, and it should see to it that satisfactory minimum requirements are met by all educational institutions, both public and private**.
>
> **When we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in educational technology and teaching methodologies, improvement of research quality, and others.** Here and in many other provisions on education, the principal focus of attention and concern is the students. I would like to say that in my view there is a slogan when we speak of quality of education that I feel we should be aware of, which is, "Better than ever is not enough." In other words, even if the quality of education is good now, we should attempt to keep on improving it. (Emphases and underscoring supplied)

On the other hand, "accessible" education means equal opportunities to education regardless of social and economic differences. The phrase "shall take appropriate steps" signifies that the State may adopt varied approaches in the delivery of education that are relevant and responsive to the needs of the people and the society. This is why, towards this end, the State shall:

(1) Establish, maintain, and support a complete, adequate, and integrated system of **education relevant to the needs of the people and society**;

(2) Establish and maintain a system of **free public education in the elementary and high school levels**. Without limiting the natural right of parents to rear their children, elementary education is compulsory for all children of school age;

(3) Establish and maintain a **system of scholarship grants, student loan programs, subsidies, and other incentives** which shall be available to deserving students in both public and private schools, especially to the underprivileged;

(4) Encourage **non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs** particularly those that respond to community needs; and

(5) Provide **adult citizens, the disabled, and out-of-school youth** with training in civics, vocational efficiency, and other skills.[235] (Emphases supplied)

The deliberations of the framers in this regard are instructive:

MR. GASCON: When we speak of education as a right, what we would like to emphasize is that **education should be equally accessible to all regardless of social and economic differences. So we go into the issue of providing opportunities to such an education**, recognizing that there are limitations imposed on those who come from the poorer social classes because of their inability to continue education.[236] x x x (Emphasis supplied)

And further, as follows:

This is why **when we speak of education as a right, it means very clearly that education should be accessible to all, regardless of social and economic differences, meaning, educational opportunities should be provided through a system of free education, at least, up to the secondary level. And recognizing the limits of our financial resources, tertiary education should still be afforded and provided availability to those who are poor and deserving**. That is why when we say that education is a right, it imposes a correlative duty on the part of the State to provide it to the citizens. Making it a right shows that education is recognized as an important function of the State. Education is not merely a social service to be provided by the State. The proposed provision recognizes that a right to education is a right to acquire a decent standard of living, and that, therefore, the State cannot deprive anyone of this right in the same manner that the right to life, the right to liberty and property cannot be taken away without due process of law.[237] (Emphasis supplied)

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[235] 1987 CONSTITUTION, Art. XIV, Sec. 2(1), (2), (3), (4) and (5).

[236] IV RECORD, CONSTITUTIONAL COMMISSION 58 (August 29, 1986).

[237] *Id*. at 53.

The element of accessibility under the Constitution, thus, pertains to both the elimination of discrimination especially against disadvantaged groups and to the financial duty of the State for, after all, the right to education is part and parcel of social justice. The objective is to make quality education accessible by appropriate means.

Apart from the Constitution, the right to education is also recognized in international human rights law under various instruments to which the Philippines is a state signatory and to which it is concomitantly bound.

For instance, Article 13(2)[238] of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to receive an education with the following interrelated and essential features: (a) availability; (b) accessibility; (c) acceptability; and (d) adaptability.[239]

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[238] Art. 13(2). The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; [and]

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. *Supra* note 202.

[239] Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13). (Twenty-first Session, December 8, 1999) <https://www.refworld.org/docid/4538838c22.html> (visited May 31, 2019).

In particular, accessibility is understood as giving everyone, without discrimination, access to educational institutions and programs. Accessibility has three overlapping dimensions:

> (1) Non-discrimination — education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds x x x;
>
> (2) Physical accessibility — education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location ([*e.g.*] a neighborhood school) or [*via*] modern technology ([*e.g.*] access to a "distance learning" programme); [and]
>
> (3) Economic accessibility — education has to be affordable to all. This dimension of accessibility is subject to the differential wording of [A]rticle 13(2) in relation to primary, secondary and higher education: whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education[.][240]

Pertinent to higher education, the elements of quality and accessibility should also be present as the Constitution provides that these elements should be protected and promoted in all educational institutions.

Nevertheless, the right to receive higher education is not absolute.

5(a). Right to education is subject to fair, reasonable, and equitable admission and academic requirements

Article 26(1)[241] of the Universal Declaration of Human Rights provides that "[t]echnical and professional education shall be

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[240] *Id.*

[241] Art. 26(1). Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.<https://www.un.org/en/universal-declaration-human-rights/> (visited May 31, 2019).

made generally available and higher education shall be equally accessible to all on the basis of merit[,]" while the ICESCR provides that "[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education[.]"[242] Thus, higher education is not to be generally available, but accessible only on the basis of capacity.[243] The capacity of individuals should be assessed by reference to all their relevant expertise and experience.[244]

The right to receive higher education must further be read in conjunction with the right of every citizen to select a profession or course of study guaranteed under the Constitution. In this regard, the provisions of the 1987 Constitution under Section 5(3), Article XIV are more exacting:

> SEC. 5. x x x
>
> x x x x x x x x x
>
> (3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.

There is uniformity in jurisprudence holding that the authority to set the admission and academic requirements used to assess the merit and capacity of the individual to be admitted and retained in higher educational institutions lie with the institutions themselves in the exercise of their academic freedom.

In *Ateneo de Manila University v. Judge Capulong*,[245] the Court ruled:

> Since *Garcia v. Loyola School of Theology*, we have consistently upheld the salutary proposition that **admission to an institution of higher learning is discretionary upon a school, the same being a**

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[242] International Covenant on Economic, Social and Cultural Rights, *supra* note 202, at Art. 13(2)(c).

[243] Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Art. 13), *supra* note 239.

[244] *Id*.

[245] *Supra* note 215, at 675-676.

privilege on the part of the student rather than a right. While under the Education Act of 1982, students have a right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation," such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution.

"For private schools have the right to establish reasonable rules and regulations for the admission, discipline and promotion of students. This right x x x extends as well to parents x x x as parents are under a social and moral (if not legal) obligation, individually and collectively, to assist and cooperate with the schools."

Such rules are "incident to the very object of incorporation and indispensable to the successful management of the college. The rules may include those governing student discipline." Going a step further, the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.

Within memory of the current generation is the eruption of militancy in the academic groves as collectively, the students demanded and plucked for themselves from the panoply of academic freedom their own rights encapsulized under the rubric of "right to education" forgetting that, in Hohfeldian terms, they have a concomitant duty, and that is, their **duty to learn under the rules laid down by the school.** (Citation in the original omitted; emphases supplied)

In *Villar v. Technological Institute of the Philippines*,[246] the Court similarly held:

x x x x x x x x x

2. What cannot be stressed too sufficiently is that among the most important social, economic, and cultural rights is the right to education not only in the elementary and high school grades but also on the college level. The constitutional provision as to the State maintaining "a system of free public elementary education and, in areas where finances permit, establish and maintain a system of free public education" up to the high school level does not *per se* exclude the

[246] *Supra* note 219, at 383-384.

exercise of that right in colleges and universities. It is only at the most a reflection of the lack of sufficient funds for such a duty to be obligatory in the case of students in the colleges and universities. **As far as the right itself is concerned, not the effectiveness of the exercise of such right because of the lack of funds, Article 26 of the Universal Declaration of Human Rights provides: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."**

3. It is quite clear that **while the right to college education is included in the social economic, and cultural rights, it is equally manifest that the obligation imposed on the State is not categorical, the phrase used being "generally available" and higher education, while being "equally accessible to all should be on the basis of merit." To that extent, therefore, there is justification for excluding three of the aforementioned petitioners because of their marked academic deficiency.**

4. **The academic freedom enjoyed by "institutions of higher learning" includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students.** Once it has done so, however, that standard should be followed meticulously. It cannot be utilized to discriminate against those students who exercise their constitutional rights to peaceable assembly and free speech. If it does so, then there is a legitimate grievance by the students thus prejudiced, their right to the equal protection clause being disregarded. (Emphases supplied)

Likewise, in *Calawag*:[247]

Lastly, the right to education invoked by Calawag cannot be made the basis for issuing a writ of preliminary mandatory injunction. In *Department of Education, Culture and Sports v. San Diego*, we held that the right to education is not absolute. Section 5(e), Article XIV of the Constitution provides that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements." **The thesis requirement and**

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[247] *Calawag v. University of the Philippines Visayas*, *supra* note 49, at 217.

the compliance with the procedures leading to it, are part of the reasonable academic requirements a person desiring to complete a course of study would have to comply with. (Citation in the original omitted; emphasis supplied)

The deliberations of the framers on the qualifications to the right to education are also illuminating:

MR. NOLLEDO: Thank you, Madam President. Before I ask questions directed to the chairman and members of the committee, I would like to warmly congratulate them for a job well-done. The committee report to my mind, Madam President, is excellent and I hope it will not, in the course of amendments, suffer from adulteration. With respect to page 1, lines 12-13: "Education is the right of every citizen of the Philippines," I agree with this statement, but when we talk of the right, I understand from the chairman that it is compellable and from Commissioner Guingona, that it is enforceable in court. **Suppose a student of a private school is not allowed to enroll by reason of misconduct or that his stay in the school is considered by the administration of that school to be undesirable, does he have a right to enforce his right to education under this situation?**

MR. GUINGONA: Madam President, **the right to education, like any other right, is not absolute**. As a matter of fact, Article XXVI of the Universal Declaration of Human Rights, when it acknowledges the right to education, also qualifies it when at the end of the provision, it say, "on the basis of merit." Therefore, **the student may be subject to certain reasonable requirements regarding admission and retention** and this is so provided in the draft Constitution. We admit even of discrimination. We have accepted this in the Philippines, and I suppose in the United States **there are schools that can refuse admission to boys because they are supposed to be exclusively for girls. And there are schools that may refuse admission to girls because they are exclusively for boys. There may even be discrimination to accept a student who has a contagious disease on the ground that it would affect the welfare of the other students.** What I mean is that there could be reasonable qualifications, limitations or restrictions to this right, Madam President.

MR. GASCON: May I add, Madam President.

MR. NOLLEDO: Yes, the Commissioner may.

MR. GASCON: When we speak of education as a right, what we would like to emphasize is that education should be equally accessible to all regardless of social and economic differences. So we go into the issue of providing opportunities to such an education, recognizing that there are limitations imposed on those who come from the poorer social classes because of their inability to continue education.

However, in the same light, **this right to education is subject to the right of educational institutions to admit students upon certain conditions such as ability to pay the required entrance examination fee and maintaining a respectable school record. When we speak of this right of schools as far as maintaining a certain degree or quality of students, these conditions must be reasonable and should not be used just to impose certain unfair situations on the students.**

MR. GUINGONA: Madam President, may I add.

There is already established jurisprudence about this. In the United States, in the case of [*Lesser*] *v. Board of Education of New York City*, 239, NYS 2d 776, the court held that the refusal of a school to admit a student who had an average of less than 85 percent which is the requirement for that school was lawful.

In the Philippines, we have the case of *Padriguilan* [sic] *v. Manila Central University* where refusal to retain the student was because of the alleged deficiency in a major subject and this was upheld by our Supreme Court. There is also the case of *Garcia v. Loyola School of Theology*, wherein Garcia, a woman, tried to continue studying in this school of theology.[248] (Citation in the original omitted; emphases supplied)

Extant from the foregoing is that while there is a right to quality higher education, such right is principally subject to the broad academic freedom of higher educational institutions to impose fair, reasonable, and equitable admission and academic requirements. Plainly stated, the right to receive education is not and should not be taken to mean as a right to be admitted to educational institutions.

With the basic postulates that jurisdiction over legal education belongs primarily and directly to the political departments, and

[248] IV RECORD, CONSTITUTIONAL COMMISSION, *supra* note 236.

that the exercise of such police power must be in the context of reasonable supervision and regulation, and must be consistent with academic freedom and the right to education, the Court now proceeds to address whether the assailed provisions of R.A. No. 7662 and the corresponding LEB issuances fall within, the constitutionally-permissible supervision and regulation of legal education.

C.
LEB's Powers Under R.A. No. 7662 *vis-à-vis* the Court's Jurisdiction Under Article VIII, Section 5(5) of the Constitution

1. Section 3(a)(2) on increasing awareness among members of the legal profession

One of the general objectives of legal education under Section 3(a)(2) of R.A. No. 7662 is to "increase awareness among **members of the legal profession** of the needs of the poor, deprived and oppressed sectors of society[.]" This objective is reiterated by the LEB in LEBMO No. 1-2011, Section 7, Article II, as follows:

> SEC. 7. (Section 3 of the law) General and Specific Objectives of Legal Education.
>
> a) Legal education in the Philippines is geared to attain the following objectives:
>
> x x x x x x x x x
>
> (2) to increase awareness among **members of the legal profession of the needs of the poor, deprived and oppressed sectors of society[.]** (Emphasis supplied)

The plain language of Section 3(a)(2) of R.A. No. 7662 and Section 7(2) of LEBMO No. 1-2011 are clear and need no further interpretation. This provision goes beyond the scope of R.A. No. 7662, *i.e.*, improvement of the quality of legal education, and, instead delves into the training of those who are already members of the bar. Likewise, this objective is a direct

encroachment on the power of the Court to promulgate rules concerning the practice of law and legal assistance to the underprivileged and should, thus, be voided on this ground. As aptly observed by the CLEBM and which the Court had approved:

> In the same vein Section 3 provides as one of the objectives of legal education increasing "awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of the society." Such objective should not find a place in the law that primarily aims to upgrade the standard of schools of law as they perform the task of educating aspiring lawyers. Section 5, paragraph 5 of Article VIII of the Constitution also provides that the Supreme Court shall have the power to promulgate rules on "legal assistance to the underprivileged" and hence, implementation of [R.A. No. 7662] might give rise to infringement of a constitutionally mandated power.[249]

2. Section 2, par. 2 and Section 7(g) on legal apprenticeship and law practice internship as a requirement for taking the bar

Towards the end of uplifting the standards of legal education, Section 2, par. 2 of R.A. No. 7662 mandates the State to (1) undertake appropriate reforms in the legal education system; (2) require proper selection of law students; (3) maintain quality among law schools; and (4) **require legal apprenticeship** and continuing legal education.

Pursuant to this policy, Section 7(g) of R.A. No. 7662 grants LEB the power to establish a law practice internship as a requirement for taking the bar examinations:

> SEC. 7. *Powers and Functions.* — x x x
>
> x x x x x x x x x
>
> (g) **to establish a law practice internship as a requirement for taking the Bar**, which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance

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[249] B.M. No. 979-B, *supra* note 2.

group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

This power is mirrored in Section 11(g) of LEBMO No. 1-2011:

SEC. 11. (Section 7 of the law) Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

x x x x x x x x x

g) **to establish a law practice internship as a requirement for taking the Bar** which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12)months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar[.]

It is clear from the plain text of Section 7(g) that another requirement, *i.e.*, completion of a law internship program, is imposed by law for taking the bar examinations. This requirement unduly interferes with the exclusive jurisdiction of the Court to promulgate rules concerning the practice of law and admissions thereto.

The jurisdiction to determine whether an applicant may be allowed to take the bar examinations belongs to the Court. In fact, under the *whereas* clauses of the Revised Law Student Practice Rule, the Court now requires the completion of clinical legal education courses, which may be undertaken *either* in a law clinic or through an externship, as a prerequisite to take the bar examinations, thus:

Whereas, to produce practice-ready lawyers, the completion of clinical legal education courses must be a prerequisite to take the bar examinations as provided in Section 5 of Rule 138.

Under Section 7(g), the power of the LEB is no longer confined within the parameters of legal education, but now dabbles on the requisites for admissions to the bar examinations, and consequently, admissions to the bar. This is a direct encroachment upon the Court's exclusive authority to promulgate rules concerning admissions to the bar and should, therefore, be struck down as unconstitutional.

Further, and as will be discussed hereunder, the LEB exercised this power in a manner that forces upon law schools the establishment of a legal apprenticeship program or a legal aid clinic, in violation of the schools' right to determine for themselves their respective curricula.

3. Section 2, par. 2 and Section 7(h) on continuing legal education of practicing lawyers

Petitioners in G.R. No. 230642 argue that the power given to the LEB to adopt a system of continuing legal education implies that the LEB exercises jurisdiction not only over the legal education of those seeking to become lawyers, but also over those who are already lawyers which is a function exclusively belonging to the Court.[250] Respondent, on the other hand, maintains that the LEB's power to adopt a system of continuing legal education is different from the mandatory continuing legal education required of all members of the bar.[251] Respondent explains that the continuing legal education under R.A. No. 7662 is limited to the training of lawyer-professors and not to the practice of the legal profession.[252]

The questioned power of the LEB to adopt a system of continuing legal education appears in Section 2, par. 2 and Section 7(h) of R.A. No. 7662:

SEC. 2. *Declaration of Policies.* — x x x

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[250] *Rollo* (G.R. No. 230642), Vol. 1, p. 17.

[251] *Id.* at 100.

[252] *Id.* at 101.

x x x x x x x x x

Towards this end, the State shall undertake appropriate reforms in the legal education system, require proper selection of law students, maintain quality among law schools, and require legal apprenticeship and **continuing legal education**.

x x x x x x x x x

SEC. 7. *Powers and Functions*. — x x x

x x x x x x x x x

(h) **to adopt a system of continuing legal education. For this purpose, the [LEB] may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the [LEB] may deem necessary;** x x x (Emphases supplied)

This power is likewise reflected in Section 11(h) of LEBMO No. 1-2011, as follows:

SEC. 11. (Section 7 of the law) Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

x x x x x x x x x

h) to **adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary[.]** x x x (Emphasis supplied)

By its plain language, the clause "continuing legal education" under Section 2, par. 2, and Section 7(h) of R.A. No. 7662 unduly give the LEB the power to supervise the legal education of those who are already members of the bar. Inasmuch as the LEB is authorized to compel *mandatory attendance of practicing lawyers* in such courses and for such duration *as the LEB deems, necessary*, the same encroaches upon the Court's power to promulgate rules concerning the Integrated Bar which includes the education of "lawyer-professors" as teaching of law is practice of law. The mandatory continuing legal education of the members of the bar is, in fact, covered by B.M. No. 850 or the Rules on Mandatory Continuing Legal Education (MCLE)

dated August 22, 2000 which requires members of the bar, not otherwise exempt, from completing, every three years, at least 36 hours of continuing legal education activities approved by the MCLE Committee directly supervised by the Court.

As noted by the CLEBM:

> Thus, under the declaration of policies in Section 2 of [R.A. No. 7662], the State "shall undertake appropriate reforms in the legal education system, require the proper selection of law students, maintain quality among law schools and require apprenticeship and continuing legal education["]. The concept of continuing legal education encompasses education not only of law students but also of members of the legal profession. Its inclusion in the declaration of policies implies that the [LEB] shall have jurisdiction over the education of persons who have finished the law course and are already licensed to practice law. Viewed in the light of Section 5, paragraph 5 of Article VIII of the Constitution that vests the Supreme Court with powers over the Integrated Bar of the Philippines, said portion of Section 2 of [R.A. No. 7662] risks a declaration of constitutional infirmity.[253] (Underscoring supplied)

4. Section 7(e) on minimum standards for law admission and the PhiLSAT issuances

Of the several powers of the LEB under R.A. No. 7662, its power to prescribe minimum standards for law admission under Section 7(e) received the strongest objection from the petitioners. Section 7(e), provides:

> SEC. 7. *Powers and Functions.* — x x x
>
> x x x x x x x x x
>
> (e) to **prescribe minimum standards for law admission** and minimum qualifications and compensation of faculty members; (Emphasis supplied)

Petitioners argue that the power to prescribe the minimum standards for law admission belongs to the Court pursuant to

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[253] B.M. No. 979-B, *supra* note 2.

its rule-making power concerning the admission to the practice of law. Thus, Section 7(e) of R.A. No. 7662 which gives the LEB the power to prescribe the minimum standards for law admission is allegedly unconstitutional as it violates the doctrine of separation of powers. Necessarily, according to the petitioners, the PhiLSAT which was imposed by the LEB pursuant to Section 7(e) of R.A. No. 7662 is likewise void.

The Court finds no constitutional conflict between its rule-making power and the power of the LEB to prescribe the minimum standards for law admission under Section 7(e) of R.A. No. 7662. Consequently, the PhiLSAT, which intends to regulate admission to law schools, cannot be voided on this ground.

4(a). LEB's power to prescribe minimum standards for "law admission" pertain to admission to legal education and not to the practice of law

Much of the protestation against the LEB's exercise of the power to prescribe the minimum standards for law admission stems from the interpretation extended to the phrase "law admission." For petitioners, "law admission" pertains to the practice of law, the power over which belongs exclusively to the Court.

The statutory context and the intent of the legislators do not permit such interpretation.

Basic is the rule in statutory construction that every part of the statute must be interpreted with reference to the context, that is, every part must be read together with the other parts, to the end that the general intent of the law is given primacy.[254] As such, a law's clauses and phrases cannot be interpreted as

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[254] *Land Bank of the Philippines v. AMS Farming Corporation*, 590 Phil. 170, 203 (2008).

isolated expressions nor read in truncated parts, but must be considered to form a harmonious whole.[255]

Accordingly, the LEB's power under Section 7(e) of R.A. No. 7662 to prescribe the minimum standards for law admission should be read with the State policy behind the enactment of R.A. No. 7662 which is fundamentally to uplift the standards of legal education and the law's thrust to undertake reforms in the legal education system. Construing the LEB's power to prescribe the standards for law admission together with the LEB's other powers to administer, supervise, and accredit law schools, leads to the logical interpretation that the law circumscribes the LEB's power to prescribe admission requirements only to those seeking enrollment to a school or college of law and not to the practice of law.

Reference may also be made to DECS Order No. 27-1989, as the immediate precursor of R.A. No. 7662, as to what is sought to be regulated when the law speaks of "law admission" requirements.

Section 1, Article VIII of DECS Order No. 27-1989 is clear that the admission requirement pertains to enrollment in a law course, or law school, or legal education, thus:

> Article VIII
> **Admission**, Residence and Other **Requirements**
>
> SEC. 1. **No applicant shall be enrolled in the law course unless he complies with specific requirements for admission by the Bureau of Higher Education and the Supreme Court of the Philippines**, for which purpose he must present to the registrar the necessary credentials before the end of the enrollment period. (Emphases supplied)

This contemporary interpretation suffice in itself to hold that the phrase "law admission" pertains to admission to the study of law or to legal education, and not to the practice of law. Further support is nevertheless offered by the exchanges

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[255] *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007).

during the Senate interpellations, wherein it was assumed that the phrase "minimum standards for law admission" refers to the requirements that the student must fulfill before being admitted to law school. This assumption was not corrected by the bill's sponsor.[256]

4(b). Section 7(e) of R.A. No. 7662 is reasonable supervision and regulation

Section 7(e) of R.A. No. 7662, insofar as it gives the LEB the power to prescribe the minimum standards for law admission is faithful to the reasonable supervision and regulation clause. It merely authorizes the LEB to prescribe minimum requirements not amounting to control.

Emphatically, the law allows the LEB to prescribe only the minimum standards and it did not, in any way, impose that the minimum standard for law admission should be by way of an exclusionary and qualifying exam nor did it prevent law schools from imposing their respective admission requirements.

Thus, under LEBMO No. 1-2011, the minimum standards for admission to law schools as implemented by the LEB are: (1) completion of a four-year high school course; and (2) completion of a course for a bachelor's degree in arts or sciences.[257] Again, these requirements are but consistent with

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[256] I RECORD, SENATE 9th CONGRESS 2nd SESSION 458 (August 24, 1993).

Senator Tolentino: Thank you, Mr. President.

Now, here is one question on which I would like to be enlightened. The Council here may provide for the minimum standards for law admission and minimum qualifications to faculty members. I assume that this law admission means admission to the college of law of the student.

x x x x x x x x x

I assume that minimum standards for law admission here refers [sic] to the requirements that the student must fulfill before being admitted to the law school. x x x

[257] *Section 15. Prerequisites to Admission to Law School.* — Section 6, Rule 138 of the Rules of Court prescribes: "No applicant for admission to the Bar Examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study

the nature of the law course in the Philippines as being both a professional and post-baccalaureate education.

As the facts disclose, however, the LEB later on introduced the PhiLSAT as an additional prerequisite for admission to law school.

4(c). Pursuant to Section 7(e), LEB is authorized to administer an aptitude test as a minimum standard for law admission

Evident from the Senate deliberations that, in prescribing the minimum standards for law admission, *an aptitude test may be administered by the LEB* although such is not made mandatory under the law. Thus:

Senator Tolentino: x x x

I will proceed to another point, Mr. President. I have taught law for more than 25 years in private schools and in the University of the Philippines as well. There is one thing I have noticed in all these years of teaching and that is, many students in the law school are not prepared or apt by inclination or by ability to become lawyers. I see that the objectives of the legal education that are provided for in this bill do not provide for some mechanism of choosing people who should take up the law course.

As it is now, because of our democratic principles, anybody who wants to become a lawyer, who can afford the tuition fee, or who has the required preparatory course, can be admitted into the law school. And yet, while studying law, many of these students — I would say there are about 30 or 40 percent of students in private schools — should not be taking up law but some other course because, simply, they do not have the inclination, they do not have the aptitude or the ability to become lawyers.

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of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, English, Spanish, history and economics." (Underscoring supplied)

Can that be provided for in this bill, Madam Sponsor? Would it contravene really our principles of democracy where everybody should be free to take the course that he wants to take? Or should the State be able to determine who should be able or who should be allowed to take a particular course, in this case of law?

Senator Shahani: **Mr. President, there are those aptitude tests which are being taken when the student is in high school to somehow guide the guidance councilors [sic] into the aptitude of the students. But the talent or the penchant for the legal profession is not one of those subjects specifically measured. I think what is measured really is who is, more or less, talented for an academic education as against a vocational education. But maybe, a new test will have to be designed to really test the aptitude of those who would like to enter the law school.** x x x

Senator Tolentino: x x x

Many parents want to see their children become lawyers. But they do not consider the aptitude of these children, and they waste money and time in making these children take up law when they really are not suited to the law course. **My real concern is whether by legislation, we can provide for selection of those who should be allowed to take up law, and not everybody would be allowed to take up law.** x x x

x x x x x x x x x

Senator Shahani: **Mr. President, of course, the right to education is a constitutional right, and I think one cannot just categorically deny a student — especially if he is bright — entrance to a law school. I think I would stand by what I had previously said that an aptitude examination will have to be specially designed.** It is not in existence yet. x x x[258] (Emphases supplied)

This matter was amplified in second reading:

Senator Angara: x x x

Senator Tolentino asked why there is an omission on the requirements for admission to law school. I think [Senator Shahani] has already answered that, **that the [LEB] may prescribe an aptitude test for**

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[258] I RECORD, SENATE 9th CONGRESS 2nd SESSION, *supra* note 256, at 456-457.

that purpose. Just as in other jurisdictions, they prescribe a law admission test for prospective students of law. I think the board may very well decide to prescribe such a test, although it is not mandatory under this bill.[259] (Emphasis and underscoring supplied)

The lawmakers, therefore, recognized and intended that the LEB be vested with authority to administer an aptitude test as a minimum standard for law admission. The presumption is that the legislature intended to enact a valid, sensible, and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.[260] This presumption has not been successfully challenged by petitioners.

It also bears to note that the introduction of a law aptitude examination was actually supported by the Court when it approved the CLEBM's proposed amendment to Section 7(e), as follows:

SEC. 6. Section 7 of the same law is hereby amended to read as follows:

"SEC. 7. *Power and Functions.* — x x x

x x x x x x x x x

d). to prescribe minimum standards for ADMISSION TO LAW SCHOOLS INCLUDING A SYSTEM OF LAW APTITUDE EXAMINATION x x x[.]" (Underscoring supplied)

And further in Bar Matter No. 1161[261] when the Court referred to the LEB the conduct of a proposed law entrance examination.

4(d). PhiLSAT, as an aptitude exam, is reasonably related to the improvement of legal education

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[259] *Id.* at 711 (September 22, 1993).

[260] *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, 686 Phil. 357, 372-373 (2012).

[261] Re: Proposed Reforms in the Bar Examinations.

Having settled that the LEB has the power to administer an aptitude test, the next issue to be resolved is whether the exercise of such power, through the PhiLSAT, was reasonable.

Indeed, an administrative regulation is susceptible to attack for unreasonableness. In *Lupangco v. Court of Appeals*,[262] the Court held:

> **It is an [axiom] in administrative law that administrative authorities should not act arbitrarily and capriciously in the issuance of rules and regulations. To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they are authorized to be issued, then they must be held to be invalid.** (Emphasis supplied)

To determine whether the PhiLSAT constitutes a valid exercise of police power, the same test of reasonableness, *i.e.*, the concurrence of a lawful subject and lawful means, is employed. Petitioners argue that the PhiLSAT is unreasonable because: it is not a conclusive proof of the student's aptitude;[263] it entails unreasonable examination and travel expenses and burdensome documentary requirements;[264] applying for PhiLSAT exemption is inconvenient;[265] it is redundant to existing law school entrance exams;[266] and it is not supported by scientific study.[267]

Unfortunately, these grounds are not only conclusions of fact which beg the presentation of competent evidence, but also necessarily go into the wisdom of the PhiLSAT which the Court cannot inquire into. The Court's pronouncement as to the reasonableness of the PhiLSAT based on the grounds

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[262] *Supra* note 227, at 1005.

[263] *Rollo* (G.R. No. 230642), Vo1. 1, p. 305.

[264] *Id*. at 305 and 1567-1568.

[265] *Id*. at 1564.

[266] *Id*. at 1569.

[267] *Id*. at 1582.

propounded by petitioners would be an excursion into the policy behind the examinations — a function which is administrative rather than judicial.

Petitioners also argue that there is no reasonable relation between improving the quality of legal education and regulating access thereto. The Court does not agree.

The subject of the PhiLSAT is to improve the quality of legal education. It is indubitable that the State has an interest in prescribing regulations promoting education and thereby protecting the common good. Improvement of the quality of legal education, thus, falls squarely within the scope of police power. The PhiLSAT, as an aptitude test, was the means to protect this interest.

4(e). Tablarin sustained the conduct of an admission test as a legitimate exercise of the State's regulatory power

Moreover, by case law, the Court already upheld the validity of administering an aptitude test as a reasonable police power measure in the context of admission standards into institutions of higher learning.

In *Tablarin*, the Court upheld not only the constitutionality of Section 5(a) of R.A. No. 2382, or the Medical Act of 1959, which gave the Board of Medical Education (BME) the power to prescribe requirements for admission to medical schools, but also *MECS Order No. 52, Series of 1985* (MECS Order No. 52-1985) issued by the BME which prescribed NMAT.

Using the rational basis test, the Court upheld the constitutionality of the NMAT as follows:

> Perhaps the only issue that needs some consideration is **whether there is some reasonable relation between the prescribing of passing the NMAT as a condition for admission to medical school on the one hand, and the securing of the health and safety of the general community, on the other hand**. This question is perhaps most usefully approached by recalling that the **regulation of the practice of medicine**

in all its branches has long been recognized as a reasonable method of protecting the health and safety of the public. 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. Similarly, the establishment of minimum medical educational requirements — i.e., the completion of prescribed courses in a recognized medical school — for admission to the medical profession, has also been sustained as a legitimate exercise of the regulatory authority of the state. **What we have before us in the instant case is closely related; the regulation of access to medical schools.** MECS Order No. 52, s. 1985, as noted earlier, articulates the rationale of regulation of this type: the improvement of the professional and technical quality of the graduates of medical schools, by upgrading the quality of those admitted to the student body of the medical schools. **That upgrading is sought by selectivity in the process of admission, selectivity consisting, among other things, of limiting admission to those who exhibit in the required degree the aptitude for medical studies and eventually for medical practice.** The need to maintain, and the difficulties of maintaining, high standards in our professional schools in general, and medical schools in particular, in the current stage of our social and economic development, are widely known.

We believe that the government is entitled to prescribe an admission test like the NMAT as a means for achieving its stated objective of "upgrading the selection of applicants into [our] medical schools" and of "improv[ing] the quality of medical education in the country." Given the widespread use today of such admission tests in, for instance, medical schools in the United States of America the Medical College Admission Test [MCAT] and quite probably in other countries with far more developed educational resources than our own, and taking into account the failure or inability of the petitioners to even attempt to prove otherwise, **we are entitled to hold that the NMAT is reasonably related to the securing of the ultimate end of legislation and regulation in this area. That end, it is useful to recall, is the protection of the public from the potentially deadly effects of incompetence and ignorance in those who would undertake to treat our bodies and minds for disease or trauma**.[268] (Emphases supplied)

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[268] *Tablarin v. Gutierrez, supra* note 48, at 782-784.

The Court reached its conclusion that NMAT is a valid exercise of police power because the method employed, *i.e.*, regulation of admissions to medical education is reasonably related to the subject, *i.e.*, the protection of the public by ensuring that only those qualified are eventually allowed to practice medicine.

The necessity of State intervention to ensure that the medical profession is not infiltrated by those unqualified to take care of the life and health of patients was likewise the reason why the Court in *Department of Education, Culture and Sports v. San Diego*[269] upheld the "three-flunk" rule in NMAT:

> We see no reason why the rationale in the [*TabIarin*] case cannot apply to the case at bar. The issue raised in both cases is the academic preparation of the applicant. This may be gauged at least initially by the admission test and, indeed with more reliability, by the three-flunk rule. **The latter cannot be regarded any less valid than the former in the regulation of the medical profession.**
>
> There is no need to redefine here the police power of the State. Suffice it to repeat that the power is validly exercised if (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals.
>
> In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.
>
> **The subject of the challenged regulation is certainly within the ambit of the police power. It is the right and indeed the responsibility of the State to insure that the medical profession is not infiltrated by incompetents to whom patients may unwarily entrust their lives and health.**
>
> **The method employed by the challenged regulation is not irrelevant to the purpose of the law nor is it arbitrary or oppressive. The three-flunk rule is intended to insulate the medical schools and ultimately the medical profession from the intrusion of those not qualified to be doctors.** (Emphases supplied)

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[269] 259 Phil. 1016, 1021-1022 (1989).

Tablarin recognized that State intervention was necessary, and therefore was allowed, because of the need to meet the goal of promoting public health and safety.

In similar vein, the avowed purpose of the PhiLSAT is to improve the quality of legal education by evaluating and screening applicants to law school. As elucidated, the State has an interest in improving the quality of legal education for the protection of the community at-large, and requiring an entrance test is reasonably related to that interest. In other words, the State has the power and the prerogative to impose a standardized test prior to entering law school, in the same manner and extent that the State can do so in medical school when it prescribed the NMAT.

In all, the Court finds no constitutional conflict between the Court's rule-making power concerning admissions to the practice of law and on the LEB's power to prescribe minimum standards for law admission under Section 7(e) of R.A. No. 7662.

Further, pursuant to its power under Section 7(e), the Court affirms the LEB's authority to initiate and administer an aptitude test, such as the PhiLSAT, as a minimum standard for law admission. Thus, the PhiLSAT, insofar as it functions as an aptitude exam that measures the academic potential of the examinee to pursue the study of law to the end that the quality of legal education is improved is not *per se* unconstitutional.

However, there are certain provisions of the PhiLSAT that render its operation exclusionary, restrictive, and qualifying which is contrary to its design as an aptitude exam meant to be used as a tool that should only help and guide law schools in gauging the aptness of its applicants for the study of law. These provisions effectively and absolutely exclude applicants who failed to pass the PhiLSAT from taking up a course in legal education, thereby restricting and qualifying admissions to law schools. As will be demonstrated, these provisions of the PhiLSAT are unconstitutional for being manifestly violative of the law schools' exercise of academic freedom, specifically the autonomy to determine for itself who it shall allow to be admitted to its law program.

D.
LEB's Powers *vis-à-vis* Institutional Academic Freedom and the Right to Education

1. PhiLSAT

Paragraphs 7, 9, 11, and 15 of LEBMO No. 7-2016, provide:

x x x x x x x x x

7. Passing Score — The **cut-off or passing score for the PhiLSAT shall be FIFTY-FIVE PERCENT (55%) correct answers, or such percentile score as may be prescribed by the LEB**.

x x x x x x x x x

9. Admission Requirement — **All college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines.** Upon the effectivity of this memorandum order, **no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within 2 years before the start of studies for the basic law course and presents a valid [Certificate of Eligibility] as proof thereof**.

x x x x x x x x x

11. Institutional Admission Requirements — The PhiLSAT **shall be without prejudice to the right of a law school in the exercise of its academic freedom to prescribe or impose additional requirements for admission**, such as but not limited to:

a. A score in the PhiLSAT higher than the cut-off or passing score set by the LEB;

b. Additional or supplemental admission tests to measure the competencies and/or personality of the applicant; and

c. Personal interview of the applicant.

x x x x x x x x x

15. Sanctions — Law schools violating this Memorandum Order shall [be] imposed the **administrative sanctions** prescribed in Section 32 of LEBMO No. 2, Series of 2013 **and/or fine** of up to Ten Thousand Pesos (₱10,000) for each infraction. (Emphases supplied)

Without doubt, the above provisions exclude and disqualify those examinees who fail to reach the prescribed passing score from being admitted to any law school in the Philippines. In mandating that only applicants who scored at least 55% correct answers shall be admitted to any law school, the PhiLSAT actually usurps the right and duty of the law school to determine for itself the criteria for the admission of students and thereafter, to apply such criteria on a case-by-case basis. It also mandates law schools to absolutely reject applicants with a grade lower than the prescribed cut-off score and those with expired PhiLSAT eligibility. The token regard for institutional academic freedom comes into play, if at all, only after the applicants had been "pre-selected" without the school's participation. The right of the institutions then are constricted only in providing "additional" admission requirements, admitting of the interpretation that the preference of the school itself is merely secondary or supplemental to that of the State which is antithetical to the very principle of reasonable supervision and regulation.

The law schools are left with absolutely no discretion to choose its students at the first instance and in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants, under pain of administrative sanctions and/or payment of fines. Mandating law schools to reject applicants who failed to reach the prescribed PhiLSAT passing score or those with expired PhiLSAT eligibility transfers complete control over admission policies from the law schools to the LEB. As *Garcia* tritely emphasized: "[c]olleges and universities should [not] be looked upon as public utilities devoid of any discretion as to whom to admit or reject. Education, especially higher education, belongs to a different, and certainly higher category."[270]

1(a). Comparison of PhiLSAT with NMAT and LSAT

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[270] *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra* note 223, at 945.

Respondent urges the Court to treat the PhiLSAT in the same manner that the Court treated the NMAT in *Tablarin*. Petitioners oppose on the ground that the PhiLSAT and the NMAT are different because there is a Constitutional body, *i.e.*, the Court, tasked to regulate the practice of law while there is none with respect to the practice of medicine.

The Court treats the PhiLSAT differently from the NMAT for the fundamental reason that these aptitude exams operate differently.

For one, how these exams allow the schools to treat the scores therein obtained is different.

While both exams seem to prescribe a "cut-off" score, the NMAT score is evaluated by the medical schools in relation to their own cut-off scores. Unlike the PhiLSAT score, the NMAT score is not the sole determining factor on whether or not an examinee may be admitted to medical school. The NMAT score is only meant to be one of the bases for evaluating applicants for admission to a college of medicine.

Medical schools further enjoy the discretion to determine how much weight should be assigned to an NMAT score relative to the schools' own admissions policy. Different medical schools may therefore set varying acceptable NMAT scores. Different medical schools may likewise assign different values to the NMAT score. This allows medical schools to consider the NMAT score *along with* the other credentials of the applicant. The NMAT score does not constrain medical schools to accept pre-selected applicants; it merely provides for a tool to evaluate all applicants.

Obtaining a low NMAT percentile score will not immediately and absolutely disqualify an applicant from being admitted to medical school. Obtaining a high NMAT percentile score only increases an applicant's options for medical schools. Taking the NMAT, thus, expands the applicant's options for medical schools; it does not limit them.

For another, medical schools are not subjected to sanctions in case they decide to admit an applicant pursuant to their own

admissions policy. In fact, at some point,[271] there was even no prescribed cut-off percentile score for the NMAT, and instead it was stressed that a student may enroll in any school, college or university upon meeting the latter's specific requirements and reasonable regulations.[272] Also, the issuance of a certificate of eligibility for admission to a college of medicine had been transferred to the medical schools, thus, rightfully giving the responsibility for and accountability of determining eligibility of students for admission to the medical program to the schools concerned.[273]

Similar to the NMAT, the Law School Admission Test (LSAT) is only one of the several criteria for evaluation for law school admission. It is just one of the methods that law schools may use to differentiate applicants for law school. The American Bar Association actually allows a law school to use an admission test other than the LSAT and it does not dictate the particular weight that a law school should give to the results of the LSAT in deciding whether to admit an applicant.[274]

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[271] See Commission on Higher Education Memorandum Order No. 6 (1996) <https://ched.gov.ph/cmo-6-s-1996/> (visited May 31, 2019).

[272] *Id*.

[273] See CHED Memorandum Order No. 03 (2003) <https://ched.gov.ph/cmo-3-s-2003-2/> (visited September 3, 2019).

[274] The American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2018 to 2019 provide:

Standard 503. ADMISSION TEST

A law school shall require each applicant for admission as a first-year J.D. degree student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test.

Interpretation 503-1

A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall demonstrate that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's program of legal education.

In contrast, the PhiLSAT score itself determines whether an applicant may be admitted to law school or not, the PhiLSAT being strictly a pass or fail exam. It excludes those who failed to reach the prescribed cut-off score from being admitted to any law school. It qualifies admission to law school not otherwise imposed by the schools themselves. The PhiLSAT, as presently crafted, employs a totalitarian scheme in terms of student admissions. This leaves the consequent actions of the applicant-student and the school solely dependent upon the results of the PhiLSAT.

1(b). Balancing State interest with institutional academic freedom

Thus far, it is settled that the PhiLSAT, when administered as an aptitude test, is reasonably related to the State's unimpeachable interest in improving the quality of legal education. This aptitude test, however, should not be exclusionary, restrictive, or qualifying as to encroach upon

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Interpretation 503-2
This Standard does not prescribe the particular weight that a law school should give to an applicant's admission test score in deciding whether to admit or deny admission to the applicant.
Interpretation 503-3
(a) It is not a violation of this Standard for a law school to admit no more than 10% of an entering class without requiring the LSAT from:
(1) Students in an undergraduate program of the same institution as the J.D. program; and/or
(2) Students seeking the J.D. degree in combination with a degree in a different discipline.
(b) Applicants admitted under subsection (a) must meet the following conditions:
(1) Scored at or above the 85th percentile on the ACT or SAT for purposes of subsection (a)(1), or for purposes of subsection (a)(2), scored at or above the 85th percentile on the GRE or GMAT; and
(2) Ranked in the top 10% of their undergraduate class through six semesters of academic work, or achieved a cumulative GPA of 3.5 or above through six semesters of academic work.<https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter5.pdf> (visited May 31, 2019).

institutional academic freedom. Moreover, in the exercise of their academic freedom to choose who to admit, the law schools should be left with the discretion to determine for themselves how much weight should the results of the PhiLSAT carry in relation to their individual admission policies. At all times, it is understood that the school's exercise of such academic discretion should not be gravely abused, arbitrary, whimsical, or discriminatory.

With the conclusion that the PhiLSAT, when administered as an aptitude test, passes the test of reasonableness, there is no reason to strike down the PhiLSAT in its entirety. Instead, the Court takes a calibrated approach and partially nullifies LEBMO No. 7-2016 insofar as it absolutely prescribes the passing of the PhiLSAT and the taking thereof within two years as a prerequisite for admission to any law school which, on its face, run directly counter to institutional academic freedom. The rest of LEBMO No. 7-2016, being free from any taint of unconstitutionality, should remain in force and effect, especially in view of the separability clause[275] therein contained.

1(c). PhiLSAT and the right to education

Anent the argument that the PhiLSAT transgresses petitioners' right to education and their right to select a profession or course of study, suffice to state that the PhiLSAT is a minimum admission standard that is rationally related to the interest of the State to improve the quality of legal education and, accordingly, to protect the general community. The constitutionality of the PhiLSAT, therefore, cannot be voided on the ground that it violates the right to education as stated under Section 1, Article XIV of the Constitution. The Court's pronouncement in *Tablarin*[276] again resonates with significance:

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[275] 16. Separability Clause — If any part or provision of this memorandum order is declared invalid or unconstitutional, all other provisions shall remain valid and effective.

[276] *Tablarin v. Gutierrez*, *supra* note 48, at 779.

Turning to Article XIV, Section 1, of the 1987 Constitution, we note that once more, petitioners have failed to demonstrate that the statute and regulation they assail in fact clash with that provision. On the contrary, we may note — x x x — that the statute and the regulation which petitioners attack are in fact designed to promote "quality education" at the level of professional schools. When one reads Section 1 in relation to Section 5(3) of Article XIV, as one must, one cannot but note that the latter phrase of Section 1 is not to be read with absolute literalness. The State is not really enjoined to take appropriate steps to make quality education "accessible to all" who might for any number of reasons wish to enroll in a professional school, but rather merely to make such education accessible to all who qualify under "fair, reasonable and equitable admission and academic requirements."

2. Other LEB issuances on law admission

Apart from the PhiLSAT, the LEB also imposed additional requirements for admission to law schools under LEBMO No. 1-2011, specifically:

> Article III
> Prerequisites and Program Specification
>
> SEC. 15. *Prerequisites to admission to Law School*. — x x x
>
> x x x x x x x x x
>
> Where the applicant for admission into a law school is a graduate of a foreign institution or school following a different course and progression of studies, **the matter shall be referred to the Board that shall determine the eligibility of the candidate for admission to law school**.
>
> SEC. 16. *Board Prerequisites for Admission to the Ll.B. or J.D. Program*. — The Board shall apply Section 6 of Rule 138 in the following wise: An applicant for admission to the Ll.B. or J.D. program of studies must be a graduate of a bachelor's degree and must have earned **at least eighteen (18) units in English, six (6) units in Mathematics, and eighteen (18) units of social science subjects**.
>
> SEC. 17. *Board Prerequisites for Admission to Graduate Programs in Law*. — Without prejudice to other requirements that graduate schools may lay down, **no applicant shall be admitted for the Master of**

Laws (Ll.M.) or equivalent master's degree in law or juridical science, without an Ll.B. or a J.D. degree. Admission of non-Members of the Philippine Bar to the master's degree shall be a matter of academic freedom vested in the graduate school of law. The candidate for the doctorate degree in juridical science, or doctorate in civil law or equivalent doctorate degree must have completed a Master of Laws (Ll.M.) or equivalent degree.

Graduate degree programs in law shall have no bearing on membership or non-membership in the Philippine Bar.[277] (Emphases supplied)

Further, LEBMO No. 1-2011, Article V, provides:

x x x x x x x x x

SEC. 23. No student who has obtained a general average below 2.5 or 80 in the college course required for admission to legal studies may be admitted to law school. Exceptions may be made by the Dean in exceptionally meritorious cases, after having informed the Board.[278]

These provisions similarly encroach upon the law school's freedom to determine for itself its admission policies. With regard to foreign students, a law school is completely bereft of the right to determine for itself whether to accept such foreign student or not, as the determination thereof now belongs to the LEB.

Similarly, the requirement that an applicant obtain a specific number of units in English, Mathematics, and Social Science subjects affects a law school's admission policies leaving the latter totally without discretion to admit applicants who are deficient in these subjects or to allow such applicant to complete these requirements at a later time. This requirement also effectively extends the jurisdiction of the LEB to the courses and units to be taken by the applicant in his or her pre-law course. Moreover, such requirement is not to be found under Section 6, Rule 138 of the Rules of Court as this section simply requires only the following from an applicant to the bar exams:

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[277] *Rollo* (G.R. No. 230642), Vol. 1, pp. 119-120.

[278] *Id*. at 123.

SEC. 6. *Pre-Law*. — No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, **the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics**.

Likewise, in imposing that only those with a basic degree in law may be admitted to graduate programs in law encroaches upon the law school's right to determine who may be admitted. For instance, this requirement effectively nullifies the option of admitting non-law graduates on the basis of relevant professional experience that a law school, pursuant to its own admissions policy, may otherwise have considered.

The required general weighted average in the college course suffers the same infirmity and would have been struck down had it not been expressly repealed by the LEB because of the PhiLSAT.[279]

3. Section 7(c) and 7(e) on the minimum qualifications of faculty members

The LEB is also empowered under Section 7(c) to set the standards of accreditation taking into account, among others, the "qualifications of the members of the faculty" and under Section 7(e) of R.A. No. 7662 to prescribe "minimum qualifications and compensation of faculty members[.]"

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[279] LEBMO No. 7-2016, provides:

x x x x x x x x x

13. General Average — Beginning in Academic/School Year 2018-2019, the requirement of a general average of not less than eighty percent (80%) or 2.5 for admission in the basic law course under Section 23 of [LEBMO No. 1-2011] shall be withdrawn and removed.

Relative to the power to prescribe the minimum qualifications of faculty members, LEB prescribes under LEBMO No. 1-2011 the following:

[PART I]
Article V
Instructional Standards

SEC. 20. The law school shall be headed by a **properly qualified dean, maintain a corps of professors drawn from the ranks of leading and acknowledged practitioners as well as academics and legal scholars or experts in juridical science[.]** x x x

x x x x x x x x x

PART III
QUALIFICATIONS AND CURRICULUM

Article I
Faculty Qualifications

SEC. 50. The **members of the faculty of a law school should, at the very least, possess a L1.B. or a J.D. degree and should be members of the Philippine Bar**. In the exercise of academic freedom, the law school may also ask specialists in various fields of law with other qualifications, provided that they possess relevant doctoral degrees, to teach specific subjects.

Within a period of five (5) years of the promulgation of the present order, members of the faculty of schools of law shall commence their studies in graduate schools of law.

Where a law school offers the J.D. curriculum, a qualified Ll.B. graduate who is a member of the Philippine Bar may be admitted to teach in the J.D. course and may wish to consider the privilege granted under Section 56 hereof.

SEC. 51. **The dean should have, aside from complying with the requirements above, at least a Master of Laws (Ll.M.) degree or a master's degree in a related field, and should have been a Member of the Bar for at least 5 years prior to his appointment as dean.**

SEC. 52. **The dean of a graduate school of law should possess at least a doctorate degree in law and should be an acknowledged**

authority in law, as evidenced by publications and membership in learned societies and organizations; members of the faculty of a graduate school of law should possess at least a Master of Laws (Ll.M.) degree or the relevant master's or doctor's degrees in related fields.

Aside from the foregoing, retired justices of the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals may serve as deans of schools of law, provided that: they have had teaching experience as professors of law and provided further that, **with the approval of the Legal Education Board**, a graduate school of law may accredit their experience in the collegiate appellate courts and the judgments they have penned towards the degree [*ad eundem*] of Master of Laws.[280] (Emphases supplied)

Thus, under LEBMO No. 1-2011, a law faculty member must have an Ll.B or J.D. degree and must, within a period of five years from the promulgation of LEBMO No. 1-2011, or from June 14, 2011 to June 14, 2016, commence studies in graduate school of law.

The mandatory character of the requirement of a master's degree is underscored by the LEB in its *Resolution No. 2014-02*, a "sequel rule" to Section 50 of LEBMO No. 1-2011, which provides that:

x x x x x x x x x

1. **Members of the law faculty are required to be holders of the degree of Master of Laws.** It is the responsibility of the law deans to observe and implement this rule.

2. The law faculty of all law schools shall have the following percentage of holders of the master of laws degree:

    2.1. School Year— 2017-2018—20%
    2.2. School Year— 2018-2019—40%
    2.3. School Year— 2019-2020—60%
    2.4. School Year— 2020-2021—80%

In computing the percentage, those who are exempted from the rule shall be included.

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[280] *Supra* note 277, at 123 and 136-137.

3. Exempted from this requirement of a master's degree in law are the following:

   The Incumbent or Retired Members of the:

   3.1. Supreme Court;
   3.2. Court of Appeals, Sandiganbayan and Court of Tax Appeals;
   3.3. Secretary of Justice and Under-Secretaries of Justice, Ombudsman, Deputy Ombudsmen, Solicitor General and Assistant Solicitors General
   3.4. Commissioners of the National Labor Relations Commission who teach Labor Laws;
   3.5. Regional Trial Court Judges;
   3.6. DOJ State and Regional State Prosecutors and Senior Ombudsman Prosecutors who teach Criminal Law and/or Criminal Procedure;
   3.7. Members of Congress who are lawyers who teach Political Law, Administrative Law, Election Law, Law on Public Officers and other related subjects;
   3.8. Members of Constitutional Commissions who are Lawyers;
   3.9. Heads of bureaus who are lawyers who teach the law subjects which their respective bureaus are implementing;
   3.10. Ambassadors, Ministers and other [D]iplomatic Officers who are lawyers who teach International Law or related subjects;
   3.11. Those who have been teaching their subjects for 10 years or more upon recommendation of their deans; and
   3.12. Other lawyers who are considered by the Board to be experts in any field of law provided they teach the subjects of their expertise.

4. **The following are the sanctions for non-compliance with the foregoing rules**:

4.1. If a law school is non-compliant with these rules for the first time beginning School Year 2017-2018, the Board shall **downgrade its Recognition status to Permit status**;

4.2. If a law school under a Permit status should remain non-compliant with these rules in succeeding school years, the Board shall **downgrade the Permit status to Phase-Out status**;

4.3. If a law school which is under Phase-Out status remains non-compliant with these rules in succeeding school years, the Board shall order its **closure** to take effect at the end of the school year.

5. If a law school under sanction shall become compliant, its Recognition status shall be restored. (Emphases supplied)

x x x x x x x x x

And under LEBMO No. 2:

SEC. 31. Unfitness to Continue Operating a Law Program. A law school which is operated **below quality standards of a law school** is unfit to continue operating a law program.

x x x x x x x x x

2) A law school is **substandard** if the result of the inspection and evaluation of the law school and its facilities by members of the Board or its staff shows that the law school has serious deficiencies including a **weak faculty** as indicated, among others, by the fact that **most of the members are neophytes in the teaching of law[.]** x x x

x x x x x x x x x

SEC. 32. The imposable administrative sanctions are the following:

a) Termination of the law program (closing the law school);
b) Phase-out of the law program;
c) Provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status.

This master of laws degree requirement is reiterated in *LEBMO No. 17, Series of 2018* (Supplemental Regulations on the Minimum Academic Requirement of Master of Laws Degree for Deans and Law Professors/Lecturers/Instructors in Law Schools), as follows:

x x x x x x x x x

B) For Members of the Law Faculty

SEC. 6. For purposes of determining compliance with the **minimum academic requirement** of a Ll.M. degree for the members of the

law faculty in law schools required under Section 50 of LEBMO No. 1, Series of 2011 and Resolution No. 2014-02, the required percentage of holders of Ll.M. shall be computed based on the aggregate units of all courses/subjects offered during the semester by the law school.

SEC. 7. Within thirty (30) days upon completion the effectivity this of this memorandum [sic], the President of the HEI and the Dean of each law school shall jointly **submit to the LEB separate certification of the total teaching assignments/load for the 1st Semester and 2nd Semester of the Academic Year 2017-2018 in the prescribed matrix form containing the names of every faculty member, his/her highest academic law degree, qualification for exemption from the Ll.M. requirement, if applicable, courses/ subjects assigned to teach, and academic weight of each course/ subject, and a disclosure whether or not the law school is compliant with the prescribed percentage of Ll.M. holders for faculty members**. Thereafter, the same certification shall be submitted for every regular semester not later than 45 days from the start of the semester.

x x x x x x x x x

SEC. 12. **Law schools failing to meet the prescribed percentage of its faculty members required to have Ll.M. degrees shall be imposed the appropriate administrative sanction specified under Resolution No. 2014-02.** (Emphases supplied)

To be sure, under its supervisory and regulatory power, the LEB can prescribe the minimum qualifications of faculty members. This much was affirmed by the Court when it approved the CLEBM's proposal to revise the powers of LEB under R.A. No. 7662, but nevertheless retaining the LEB's power to "provide for minimum qualifications for faculty members of law schools." As worded, the assailed clauses of Section 7(c) and 7(e) insofar as they give LEB the power to prescribe the minimum qualifications of faculty members are in tune with the reasonable supervision and regulation clause and do not infringe upon the academic freedom of law schools.

Moreover, this minimum qualification can be a master of laws degree. In *University of the East v. Pepanio*,[281] the Court

[281] 702 Phil. 191, 201 (2013).

held that the requirement of a masteral degree, albeit for tertiary education teachers, is not unreasonable. Thus:

> **The requirement of a masteral degree for tertiary education teachers is not unreasonable. The operation of educational institutions involves public interest. The government has a right to ensure that only qualified persons, in possession of sufficient academic knowledge and teaching skills, are allowed to teach in such institutions. Government regulation in this field of human activity is desirable for protecting, not only the students, but the public as well from ill-prepared teachers, who are lacking in the required scientific or technical knowledge. They may be required to take an examination or to possess postgraduate degrees as prerequisite to employment.** (Emphasis supplied)

This was reiterated in *Son v. University of Santo Tomas*,[282] as follows:

> As early as in 1992, the requirement of a Master's degree in the undergraduate program professor's field of instruction has been in place, through DECS Order 92 (series of 1992, August 10, 1992) or the Revised Manual of Regulations for Private Schools. Article IX, Section 44, paragraph [1(a)] thereof provides that college faculty members must have a master's degree in their field of instruction as a minimum qualification for teaching in a private educational institution and acquiring regular status therein.
>
> DECS Order 92, Series of 1992 was promulgated by the DECS in the exercise of its [rule]-making power as provided for under Section 70 of Batas Pambansa Blg. 232, otherwise known as the Education Act of 1982. As such, it has the force and effect of law. In *University of the East v. Pepanio*, the requirement of a masteral degree for tertiary education teachers was held to be not unreasonable but rather in accord with the public interest.
>
> x x x x x x x x x

From a strict legal viewpoint, the parties are both in violation of the law: respondents, for maintaining professors without the mandated

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[282] G.R. No. 211273, April 18, 2018.

masteral degrees, and for petitioners, agreeing to be employed despite knowledge of their lack of the necessary qualifications. Petitioners cannot therefore insist to be employed by UST since they still do not possess the required master's degrees; the fact that UST continues to hire and maintain professors without the necessary master's degrees is not a ground for claiming illegal dismissal, or even reinstatement. As far as the law is concerned, respondents are in violation of the CHED regulations for continuing the practice of hiring unqualified teaching personnel; but the law cannot come to the aid of petitioners on this sole ground. As between the parties herein, they are in *pari delicto*.

x x x x x x x x x

The minimum requirement of a master's degree in the undergraduate teacher's field of instruction has been cemented in DECS Order 92, Series of 1992. Both petitioners and respondents have been violating it. The fact that government has not cracked down on violators, or that it chose not to strictly implement the provision, does not erase the violations committed by erring educational institutions, including the parties herein; it simply means that government will not punish these violations for the meantime. The parties cannot escape its concomitant effects, nonetheless. And if respondents knew the overwhelming importance of the said provision and the public interest involved — as they now fiercely advocate to their favor — they should have complied with the same as soon as it was promulgated.

x x x x x x x x x

In addition, the Court already held in *Herrera-Manaois v. St. Scholastica's College* that —

> Notwithstanding the existence of the SSC Faculty Manual, Manaois still cannot legally acquire a permanent status of employment. Private educational institutions must still supplementarily refer to the prevailing standards, qualifications, and conditions set by the appropriate government agencies (presently the Department of Education, the Commission on Higher Education, and the Technical Education and Skills Development Authority). This limitation on the right of private schools, colleges, and universities to select and determine the employment status of their academic personnel has been imposed by the state in view of the public interest nature of educational

> institutions, so as to ensure the quality and competency of our schools and educators. (Internal citations omitted)

Thus, the masteral degree required of law faculty members and dean, and the doctoral degree required of a dean of a graduate school of law are, in fact, minimum reasonable requirements. However, it is the manner by which the LEB had exercised this power through its various issuances that prove to be unreasonable.

On this point, the *amicus curiae*, Dean Sedfrey M. Candelaria, while admitting that the masteral degree requirement is a "laudable aim" of the LEB, nevertheless adds that the LEB-imposed period of compliance is unreasonable given the logistical and financial obstacles:

> The masteral degree requirement is a laudable aim of LEB, but the possibility of meeting the LEB period of compliance is unreasonable and unrealistic in the light of logistical and financial considerations confronting the deans and professors, including the few law schools offering graduate degrees in law.
>
> To illustrate, to the best of my knowledge there are no more than six (6) graduate schools of law around the country to service potential applicants. Those who have opted for graduate studies in law find it very costly to fly to the venue. While one or two programs may have been delivered outside the provider's home school venue to reach out to graduate students outside the urban centers, pedagogical standards are often compromised in the conduct of the modules. This is even aggravated by the fact that very few applicants can afford to go into full-time graduate studies considering that most deans and professors of law are in law practice. Perhaps, LEB should work in consultation with PALS in designing a cost-effective but efficient delivery system of any graduate program in law, [especially] for deans and law professors.[283]

Further, the mandatory character of the master of laws degree requirement, under pain of downgrading, phase-out and closure of the law school, is in sharp contrast with the previous requirement under DECS Order No. 27-1989 which merely *prefer*

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[283] *Amicus* Brief of Dean Sedfrey Candelaria, *supra* note 164, at 1674.

faculty members who are holders of a graduate law degree, or its equivalent. The LEB's authority to review the strength or weakness of the faculty on the basis of experience or length of time devoted to teaching violates an institution's right to set its own faculty standards. The LEB also imposed strict reportorial requirements that infringe on the institution's right to select its teachers which, for instance, may be based on expertise even with little teaching experience. Moreover, in case a faculty member seeks to be exempted, he or she must prove to the LEB, and not to the concerned institution, that he or she is an expert in the field, thus, usurping the freedom of the institution to evaluate the qualifications of its own teachers on an individual basis.

Also, while the LEB requires of faculty members and deans to obtain a master of laws degree before they are allowed to teach and administer a law school, respectively, it is ironic that the LEB, under *Resolution No. 2019-406*, in fact considers the basic law degrees of Ll.B. or J.D. as already equivalent to a doctorate degree in other non-law academic disciplines for purposes of "appointment/promotion, ranking, and compensation."

In this connection, the LEB also prescribes who may or may not be considered as full-time faculty, the classification of the members of their faculty, as well as the faculty load, including the regulation of work hours, all in violation of the academic freedom of law schools. LEBMO No. 2 provides:

> SEC. 33. Full-time and Part-time Faculty. There are two general kinds of faculty members, the full-time and part-time faculty members.
>
> a) A full-time faculty member is one:
>
> 1) Who possesses the **minimum qualification of a member of the faculty as prescribed in Sections 50 and 51 of LEBMO No. 1**;
> 2) Who devotes **not less than eight (8) hours of work** for the law school;
> 3) Who has **no other occupation elsewhere** requiring regular hours of work, except when permitted by the higher

education institution of which the law school is a part; and

4) Who is **not teaching full-time in any other higher education institution**.

b) A part-time faculty member is one who does not meet the qualifications of a full-time professor as enumerated in the preceding number.

SEC. 34. Faculty Classification and Ranking. Members of the faculty may be classified, in the discretion of the higher education institution of which the law school is a part, according to academic proceeding, training and scholarship into Professor, Associate Professor, Assistant Professor, and Instructor.

Part-time members of the faculty may be classified as Lecturers, Assistant Professorial Lecturers, Associate Professorial Lecturers and Professorial Lecturers. **The law schools shall devise their scheme of classification and promotion not inconsistent with these rules.**

SEC. 35. Faculty Load. Generally, **no member of the faculty should teach more than 3 consecutive hours in any subject nor should he or she be loaded with subjects requiring more than three preparations or three different subjects (no matter the number of units per subject) in a day**.

However, under exceptionally meritorious circumstances, the law deans may allow members of the faculty to teach 4 hours a day provided that there is a break of 30 minutes between the first 2 and the last 2 hours. (Emphases supplied)

The LEB is also allowed to revoke permits or recognitions given to law schools when the LEB deems that there is gross incompetence on the part of the dean and the corps of professors or instructors under Section 41.2(d) of LEBMO No. 1-2011, thus:

SEC. 41.2. Permits or recognitions may be revoked, or recognitions reverted to permit status for just causes including but not limited to:

a) fraud or deceit committed by the institution in connection with its application to the Board;

b) the unauthorized operation of a school of law or a branch or an extension of a law school;

c) mismanagement or gross inefficiency in the operation of a law school;

d) gross incompetence on the part of the dean and the corps of professors or instructors;

e) violation of approved standards governing institutional operations, announcements and advertisements;

f) transfer of the school of law to a site or location detrimental to the interests of the students and inimical to the fruitful and promising study of law;

g) repeated failure of discipline on the part of the student body; and

h) other grounds for the closure of schools and academic institutions as provided for in the rules and regulations of the Commission on Higher Education.[284] (Emphasis supplied)

In this regard, the LEB is actually assessing the teaching performance of faculty members and when such is determined by the LEB as constituting gross incompetence, the LEB may mete out penalties, thus, usurping the law school's right to determine for itself the competence of its faculty members.

4. Section 2, par. 2 and Section 7(g) on legal apprenticeship and legal internship

While the clause "legal apprenticeship" under Section 2, par. 2 and Section 7(g) on legal internship, as plainly worded, cannot immediately be interpreted as encroaching upon institutional academic freedom, the manner by which LEB exercised this power through several of its issuances undoubtedly show that the LEB controls and dictates upon law schools how such apprenticeship and internship programs should be undertaken.

Pursuant to its power under Section 7(g), the LEB passed *Resolution No. 2015-08* (Prescribing the Policy and Rules in

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[284] *Supra* note 277, at 133.

the Establishment of a Legal Aid Clinic in Law Schools) wherein it classified legal aid clinics into three types: (1) a legal aid clinic which is an outreach project of a law school; (2) a legal aid clinic which entitles the participating student to curricular credits; and (3) a legal aid clinic that entitles the participating student to avail of the privileges under Rule 138-A of the Rules of Court.

Pertinent to the third type, the LEB requires the law schools to comply with the following rules:

x x x x x x x x x

b) Implementing Rules

(1) A LAC should be established by the law school.
(2) **The law school should formulate its Clinical Legal Education Program and submit it to the Legal Education board for its assessment and evaluation.**
(3) **If Legal Education Board finds the Clinical Legal Education Program to be proper and in order it shall endorse it to the Supreme Court for its approval.**
(4) Once approved by the Supreme Court, fourth (4th) year law students in that law school enrolled in it shall be allowed to practice law on a limited manner pursuant to the provisions of Rule 138-A of the Rules of Court. (Emphasis supplied)

Further, Section 24(c), Article IV of LEBMO No. 2 prescribes the activities that should be included in the law school's apprenticeship program, as follows:

Article IV
Law School: Administrative Matters and Opening of Branches or Extension Classes

SEC. 24. Administrative Matters.

x x x x x x x x x

c) Apprenticeship Program. The apprenticeship program should be closely supervised by the Dean or a member of the faculty assigned by the Dean to do the task. **The apprenticeship program should at least include any of the following activities:**

1) Preparation of legal documents
2) Interviewing clients
3) Courtroom observation and participation
4) Observation and assistance in police investigations, inquests and preliminary investigations
5) Legal counseling
6) Legal assistance to detention prisoners
7) For working students, participation in the legal work of the legal section or office of the employer-entity x x x (Emphasis supplied)

Relatedly, Section 59(d) of LEBMO No. 1-2011, provides:

Article IV
Grading System

SEC. 59. Grading System. — The law school, in the exercise of academic freedom, shall devise its own grading system provided that on the first day of classes, the students are apprised of the grading system and **provided further that the following are observed:**

x x x x x x x x x

(d) When apprenticeship is required and the student does not complete the mandated number of apprenticeship hours, or the person supervising the apprenticeship program deems the performance of the student unsatisfactory, the dean shall require of the student such number of hours more in apprenticeship as will fulfill the purposes of the apprenticeship program.[285] (Emphasis supplied)

These provisions unduly interfere with the discretion of a law school regarding its curriculum, particularly its apprenticeship program. Plainly, these issuances are beyond mere supervision and regulation.

III.
Conclusion

In general, R.A. No. 7662, as a law meant to uplift the quality of legal education, does not encroach upon the Court's jurisdiction to promulgate rules under Section 5(5), Article VIII

[285] *Supra* note 277, at 191-192.

of the Constitution. It is well-within the jurisdiction of the State, as an exercise of its inherent police power, to lay down laws relative to legal education, the same being imbued with public interest.

While the Court is undoubtedly an interested stakeholder in legal education, it cannot assume jurisdiction where it has none. Instead, in judicial humility, the Court affirms that the supervision and regulation of legal education is a political exercise, where judges are nevertheless still allowed to participate not as an independent branch of government, but as part of the sovereign people.

Nevertheless, inasmuch as the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged is settled as belonging exclusively to the Court, certain provisions and clauses of R.A. No. 7662 which, by its plain language and meaning, go beyond legal education and intrude upon the Court's exclusive jurisdiction suffer from patent unconstitutionality and should therefore be struck down.

Moreover, the exercise of the power to supervise and regulate legal education is circumscribed by the normative contents of the Constitution itself, that is, it must be reasonably exercised. Reasonable exercise means that it should not amount to control and that it respects the Constitutionally-guaranteed institutional academic freedom and the citizen's right to quality and accessible education. Transgression of these limitations renders the power and the exercise thereof unconstitutional.

Accordingly, the Court recognizes the power of the LEB under its charter to prescribe minimum standards for law admission. The PhiLSAT, when administered as an aptitude test to guide law schools in measuring the applicants' aptness for legal education along with such other admissions policy that the law school may consider, is such minimum standard.

However, the PhiLSAT presently operates not only as a measure of an applicant's aptitude for law school. The PhiLSAT, as a pass or fail exam, dictates upon law schools who among the examinees are to be admitted to any law program. When the PhiLSAT is used to exclude, qualify, and restrict admissions to law schools, as its present design mandates, the PhiLSAT goes beyond mere supervision and regulation, violates institutional academic freedom, becomes unreasonable and therefore, unconstitutional. In striking down these objectionable clauses in the PhiLSAT, the State's inherent power to protect public interest by improving legal education is neither emasculated nor compromised. Rather, the institutional academic freedom of law schools to determine for itself who to admit pursuant to their respective admissions policies is merely protected. In turn, the recognition of academic discretion comes with the inherent limitation that its exercise should not be whimsical, arbitrary, or gravely abused.

In similar vein, certain LEB issuances which exceed the powers granted under its charter should be nullified for being *ultra vires*.

As in all levels and areas of education, the improvement of legal education indeed deserves serious attention. The parties are at a consensus that legal education should be made relevant and progressive. Reforms for a more responsive legal education are constantly introduced and are evolving. The PhiLSAT, for instance, is not a perfect initiative. Through time and a better cooperation between the LEB and the law schools in the Philippines, a standardized and acceptable law admission examination may be configured. The flaws which the Court assessed to be unconstitutional are meanwhile removed, thereby still allowing the PhiLSAT to develop into maturity. It is, thus, strongly urged that recommendations on how to improve legal education, including tools for screening entrants to law school, reached possibly through consultative summits, be taken in careful consideration in further issuances or legislations.

WHEREFORE, the petitions are **PARTLY GRANTED**.

The jurisdiction of the Legal Education Board over legal education is **UPHELD**.

The Court further declares:

As **CONSTITUTIONAL**:

1. Section 7(c) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to set the standards of accreditation for law schools taking into account, among others, the qualifications of the members of the faculty without encroaching upon the academic freedom of institutions of higher learning; and

2. Section 7(e) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to prescribe the minimum requirements for admission to legal education and minimum qualifications of faculty members without encroaching upon the academic freedom of institutions of higher learning.

As **UNCONSTITUTIONAL** for encroaching upon the power of the Court:

1. Section 2, par. 2 of R.A. No. 7662 insofar as it unduly includes "continuing legal education" as an aspect of legal education which is made subject to Executive supervision and control;

2. Section 3(a)(2) of R.A. No. 7662 and Section 7(2) of LEBMO No. 1-2011 on the objective of legal education to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;

3. Section 7(g) of R.A. No. 7662 and Section 11(g) of LEBMO No. 1-2011 insofar as it gives the Legal Education Board the power to establish a law practice internship as a requirement for taking the Bar; and

4. Section 7(h) of R.A. No. 7662 and Section 11(h) of LEBMO No. 1-2011 insofar as it gives the Legal

Education Board the power to adopt a system of mandatory continuing legal education and to provide for the mandatory attendance of practicing lawyers in such courses and for such duration as it may deem necessary.

As **UNCONSTITUTIONAL** for being *ultra vires*:

1. The act and practice of the Legal Education Board of excluding, restricting, and qualifying admissions to law schools in violation of the institutional academic freedom on who to admit, particularly:

    a. Paragraph 9 of LEBMO No. 7-2016 which provides that all college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two years before the start of studies for the basic law course;

    b. LEBMC No. 18-2018 which prescribes the passing of the PhiLSAT as a prerequisite for admission to law schools; Accordingly, the temporary restraining order issued on March 12, 2019 enjoining the Legal Education Board from implementing LEBMC No. 18-2018 is made **PERMANENT**. The regular admission of students who were conditionally admitted and enrolled is left to the discretion of the law schools in the exercise of their academic freedom; and

    c. Sections 15, 16, and 17 of LEBMO No. 1-2011;

2. The act and practice of the Legal Education Board of dictating the qualifications and classification of faculty

members, dean, and dean of graduate schools of law in violation of institutional academic freedom on who may teach, particularly:

a. Sections 41.2(d), 50, 51, and 52 of LEBMO No. 1-2011;
b. Resolution No. 2014-02;
c. Sections 31(2), 33, 34, and 35 of LEBMO No. 2;
d. LEBMO No. 17-2018; and

3. The act and practice of the Legal Education Board of dictating the policies on the establishment of legal apprenticeship and legal internship programs in violation of institutional academic freedom on what to teach, particularly:

a. Resolution No. 2015-08;
b. Section 24(c) of LEBMO No. 2; and
c. Section 59(d) of LEBMO No. 1-2011.

SO ORDERED.

Carpio, Carandang, Inting, and *Zalameda, JJ.*, concur.

Perlas-Bernabe, Caguioa, and *Reyes, A. Jr., JJ.*, see separate concurring opinions.

Leonen, Jardeleza, Gesmundo, and *Lazaro-Javier, JJ.*, see dissenting and concurring opinions.

Bersamin, C. J., joins the separate dissenting and concurring opinion of *J.* Leonen.

Peralta, J., no part.

Hernando, J., on official business.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result,[1] but I tender this opinion to briefly explain my reasons as to why the provisions of Legal Education Board (LEB) Memorandum Order No. 7, Series of 2016[2] (LEBMO No. 7-2016) that mandatorily require the passing of the Philippine Law School Admission Test (PhiLSAT) as a pre-requisite for admission to any law school violate institutional academic freedom and hence, unconstitutional.

Section 5 (2), Article XIV of the 1987 Constitution guarantees that "**[a]cademic freedom** shall be enjoyed in **all institutions of higher learning**."[3] According to case law, "[t]his institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them **free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint**. The essential freedoms subsumed in the term 'academic freedom' encompasses the freedom to determine for itself on academic grounds: (1) [w]ho may teach, (2) [w]hat may be taught, (3) [h]ow it shall be taught, and (4) **[w]ho may be admitted to study**."[4] This fourth freedom of law schools to determine "who may be admitted to study" is at the core of the present controversy involving the PhiLSAT.

The PhiLSAT is essentially a standardized aptitude test measuring the examinees' communications and language proficiency, critical thinking skills, and verbal and quantitative

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[1] See *fallo* of the *ponencia*, pp. 101-103.

[2] "POLICIES AND REGULATIONS FOR THE ADMINISTRATION OF A NATIONWIDE UNIFORM LAW SCHOOL ADMISSION TEST FOR APPLICANTS TO THE BASIC LAW COURSES IN ALL LAW SCHOOLS IN THE COUNTRY," issued on December 29, 2016.

[3] Emphases supplied.

[4] *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000); emphases and underscoring supplied.

reasoning.[5] It is designed to measure the academic potential of the examinee to pursue the study of law.[6] One of the essential provisions of LEBMO No. 7-2016 is paragraph 9, which states that passing the PhiLSAT is required for admission to any law school in the Philippines, and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within two (2) years before the start of the study. The PhiLSAT has a passing score of 55%.[7] To concretize the mandatory nature of the PhiLSAT, paragraph 15 of LEBMO No. 7-2016 provides that law schools that violate the issuance shall be administratively sanctioned and/or fined in the amount of up to ₱10,000.00 for each infraction. The administrative sanctions direly encompass: (*a*) termination of the law program (closing the law school); (*b*) phasing out of the law program; and (*c*) provisional cancellation of the Government Recognition and putting the law program of the substandard law school under Permit Status.[8] As the PhiLSAT is a requirement mandatorily imposed by LEBMO No. 7-2016, non-compliance therewith would result into these potential consequences.

Compliance with the PhiLSAT effectively means a surrender of the law schools' academic freedom to determine who to admit to their institutions for study. This is because the PhiLSAT operates as a sifting mechanism that narrows down the pool of potential candidates from which law schools may then select their future students. With the grave administrative sanctions imposed for non-compliance, the surrender of this facet of academic freedom is clearly compulsory, because failing to subscribe to the PhiLSAT requirement is tantamount to the law

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[5] *Rollo* (G.R. No. 230642), Vol. I, p. 216.

[6] See LEBMO No. 7-2016, paragraph 2.

[7] See LEBMO No. 7-2016, paragraph 14.

[8] See LEBMO No. 2-2013, "LEGAL EDUCATION BOARD MEMORANDUM ORDER NO. 2: ADDITIONAL RULES IN THE OPERATION OF THE LAW PROGRAM" (June 1, 2014), Section 32.

school risking its complete closure or the phasing out of its law program. **This effectively results in the complete control — not mere supervision — of the State over a significant aspect of the institutions' academic freedom.**

Notably, the core legal basis for the PhiLSAT is derived from Section 7 (e) of Republic Act No. 7662[9] which empowers the LEB "to prescribe the minimum standards for law admission x x x." On a broader scale, Section 7 (b) of the same law empowers the LEB "to supervise the law schools in the country x x x." This is a specific iteration of Section 4 (1), Article XIV of the 1987 Constitution which provides that "**[t]he State x x x shall exercise reasonable supervision and regulation of all educational institutions**."[10] **"Reasonable supervision," as the Framers intended, meant only "external" and not "internal" governance; as such, it is meant to exclude the right to manage, dictate, overrule, prohibit, and dominate.**[11] As elucidated in the fairly recent case of *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*:[12]

The Framers were explicit, however, that this supervision refers to *external governance*, as opposed to *internal governance* which was reserved to the respective school boards, thus:

> Madam President, Section 2(b) introduces four changes: one, the addition of the word "reasonable" before the phrase "supervision and regulation"; two, the addition of the word "quality" before the word "education"; three, the change of the wordings in the 1973 Constitution referring to a system of education, requiring the same to be relevant to the goals of

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[9] Entitled "AN ACT PROVIDING FOR REFORMS IN LEGAL EDUCATION, CREATING FOR THE PURPOSE A LEGAL EDUCATION BOARD, AND FOR OTHER PURPOSES," otherwise known as the "LEGAL EDUCATION REFORM ACT OF 1993," approved on December 23, 1993.

[10] Emphasis and underscoring supplied.

[11] See Amicus Brief dated March 27, 2019 of Dean Sedfrey M. Candelaria, p. 5; emphasis and underscoring supplied.

[12] See G.R. Nos. 216930, 217451, 217752, 218045, 218098, 218123 and 218465, October 9, 2018.

national development, to the present expression of "relevant to the needs of the people and society"; and four, the explanation of the meaning of the expression "integrated system of education" by defining the same as the **recognition and strengthening of the complementary roles of public and private educational institutions as separate but integral parts of the total Philippine educational system**.

When we speak of State supervision and regulation, we refer to the external governance of educational institutions, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary to add the word "reasonable" because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities vs. The Secretary of Education and the Board of Textbooks* in 1955. In that case, the court said, and I quote:

> It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
>
> The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.

The addition, therefore, of the word "reasonable" is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented. It does not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate.[13] (Emphases and underscoring supplied)

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[13] See *id.*

As pointed out by Dean Sedfrey M. Candelaria (Dean Candelaria) in his Amicus Brief, "[w]hen [the] LEB took over the functions of the [Commission on Higher Education (CHED)] in relation to law schools, it is safe to presume that the scope of power of [the] LEB should be no more than what [the] CHED had traditionally exercised over law schools."[14] As to what he insinuates as "reasonable supervision" over institutions of higher learning, the State may, through the appropriate agency, determine the: (*a*) minimum unit requirements for a specific academic program; (*b*) general education distribution requirements; and (*c*) specific professional subjects as may be stipulated by the various licensing entities.[15] These activities may ostensibly fall under the category of "external governance" and hence, "reasonable supervision," as compared to a mandatory, exclusively State-crafted aptitude test which not only operates as a predetermination of the schools' potential candidates for admission but also brandishes the total closure of the institution or phasing out of the academic program as punishment for noncompliance. The latter is, to my mind, a form of State-domination that translates to "internal governance" and hence, the exercise of the State's control over academic freedom. As earlier intimated, this strays from the intent of the Framers of our Constitution.

While the more intricate contours of "academic freedom" have yet to be charted in our jurisprudence as compared to other individual liberties, Dean Candelaria, in his Amicus Brief, also broached the idea that academic freedom is an aspect of the freedom of expression, and hence, any regulation thereof is subject to strict scrutiny.[16] The tie between academic freedom and freedom of expression has yet to be definitively settled in our jurisprudence. Nevertheless, there is ostensible merit in this theory since an institution of higher learning may be treated as the embodiment of the composite rights of its individual educators, and ultimately, an educational method of instruction

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[14] See Amicus Brief, p. 12.

[15] *Id*. at 7.

[16] *Id*. at 12-13.

is a form of communication. Learning necessarily connotes an exchange of ideas. The transmission of knowledge does not happen in a vacuum but within a framework that the school autonomously determines — subject only to reasonable State regulation — a cognate part of which is who it deems fit for its instruction. As Associate Justice Marvic M.V.F. Leonen eloquently stated in his Separate Dissenting and Concurring Opinion, academic discussions and other forms of scholarship are manifestations and extensions of an individual's thoughts and beliefs.[17] Academic freedom is anchored on the recognition that academic institutions perform a social function, and its business is conducted for the common good; that is, it is a necessary tool for critical inquiry of truth and its free exposition. Thus, the guarantee of academic freedom is complementary to the freedom of expression and the freedom of the mind.[18]

The theoretical transposition of the concept of freedom of expression/freedom of the mind to institutional academic freedom would greatly impact the dynamic of how this Court would henceforth deal with regulations affecting institutions of higher learning because, as mentioned, the test to be applied would be strict scrutiny.[19] "Strict scrutiny entails that the presumed law or policy must be justified by a compelling state or government interest, that such law or policy must be narrowly tailored to achieve that goal or interest, and that the law or policy must be the least restrictive means for achieving that interest."[20]

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[17] See Justice Leonen's Separate Dissenting and Concurring Opinion.

[18] See *id*.

[19] Strict scrutiny applies to "laws dealing with freedom of the mind." It is also "used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection." (See *White Light Corporation v. City of Manila*, 596 Phil. 444, 462-463 [2009].)

[20] *Divinagracia v. Consolidated Broadcasting System, Inc.*, 602 Phil. 625, 663 (2009); underscoring supplied.

In this case, while the policy of the State to "uplift the standards of legal education"[21] may be characterized as a compelling State interest, the means of achieving this goal, through the PhiLSAT, together with its mandatory and exclusionary features as above-discussed, do not appear to be narrowly tailored or the least restrictive means for achieving this interest. There is no concrete showing why the implementation of a standardized but optional State aptitude exam, which schools may freely adopt in their discretion as a tool for their own determination of who to admit (such as the National Medical Aptitude Test for medical schools or the Law School Admission Test in the United States of America), would be less of a "sifting" measure than a mandatory and exclusively State-determined one (such as the PhiLSAT). This is especially so since, as conceded by LEB Chairperson Emerson B. Aquende during the oral arguments in this case, there is no statistical basis[22] to show the propensity of the PhiLSAT to improve the quality of legal education. Furthermore, no other study or evaluation regarding the viability of the PhiLSAT was shown to this effect. It is true that in a general sense, the PhiLSAT operates as a basic aptitude exam which seeks to test skills that have rational connection to the field of law, *i.e.*, communications and language proficiency, critical thinking, and verbal and quantitative reasoning. However, because the test was solely crafted by the LEB, it completely excludes the law schools' input and participation, and worse, even puts their very existence in jeopardy should there be non-subservience. Verily, an absolutist approach in any facet of academic freedom would not only result in an overly restrictive State regulation, it would also be practically counterproductive because law schools, being at the forefront, are the quintessential stakeholders to the mission of improving legal education. Again, by constitutional fiat, the State's role is limited to reasonable supervision, not control. For these reasons, the provisions of LEBMO No. 7-2016 on the PhiLSAT clearly transgress institutional academic freedom.

Accordingly, I concur in the result.

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[21] See Republic Act No. 7662, Section 2.

[22] See TSN, March 5, 2019, pp. 171-182.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia*. I write this opinion only to further expand on the points raised therein, with emphasis on the primordial issue of academic freedom.

The Scope of the Court's Review

The *ponencia* declares as constitutional the power of the Legal Education Board (LEB) to set the standards of accreditation for law schools, minimum qualifications of law school faculty members, and the minimum requirements for admission to legal education, granted under Sections 7(c) and 7(e) of Republic Act No. (R.A.) 7662.[1]

In turn, the *ponencia* declares as unconstitutional for encroaching upon the Court's rule-making powers the powers of the LEB to establish a law practice internship as a requirement for taking the Bar examinations,[2] and to adopt a system of continuing legal education for lawyers.[3] The *ponencia* also declares as unconstitutional for being *ultra vires* a number of resolutions, memoranda, and circulars issued by the LEB for violating the law schools' academic freedom.

I agree with the scope and extent of the Court's disposition in the instant case, as indeed, the Court is not limited only to the issue of the requirement of Philippine Law School Admission Test (PhiLSAT). Apart from the reasons already stated in the *ponencia*, I note that the petitioners, particularly those in G.R. No. 230642, questioned the entire law, not just the provision empowering the LEB to impose standards for admission into law schools. Moreover, the substantive issues in this case had been expanded in the Advisory for the oral arguments, to cover the following:

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[1] AN ACT PROVIDING FOR REFORMS IN LEGAL EDUCATION, CREATING FOR THE PURPOSE A LEGAL EDUCATION BOARD, And For OTHER PURPOSES.

[2] R.A. 7662, Sec. 7, par. (g).

[3] *Id*. at par. (h).

3. Whether or not R.A. No. 7662 violates the academic freedom of law schools, specifically:

a. Section 7(c) which empowers the LEB to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities[;]

b. Section 7(e) which empowers the LEB to prescribe minimum standards for law admission;

c. Section 7(e) which empowers the LEB to prescribe minimum qualifications and compensation of faculty members[;]

d. Section 7(f) which empowers the LEB to prescribe the basic curricula for the course of study; and

4. Whether or not R.A. No. 7662 is a valid police power measure.[4]

Clearly, the issues now before the Court go beyond the PhiLSAT. As there are other pressing concerns about the operations of the LEB — *vis-a-vis* academic freedom, the *ponencia* was correct in looking into the LEB's issuances and rulings beyond those covering the PhiLSAT. Stated otherwise, the Court is called upon to look at the entirety of R.A. 7662, as well as the issuances of the LEB, and to test their validity on the basis of the primordial issue of whether they violate the academic freedom of law schools: an exercise the Court is actually called upon to do given that there are no factual issues involved.

While it is true that, on the surface, the issue on the validity of the PhiLSAT is the centerpiece of the instant petitions, a deeper understanding of the issues raised herein, as well as the discussions that arose from the oral arguments, readily reveals that at the heart of the instant controversy is the constitutionality of the LEB's powers under R.A. 7662 **and the reasonableness of the exercise of such powers**, as measured through the yardstick of academic freedom.

It must not be lost on the Court that the exercise by the LEB of its powers under the aforesaid law, including its exercise of

[4] Advisory, p. 3.

control over the law schools' operations, the qualifications of the deans and professors, and especially the curriculum, are even more intrusive and invasive than the PhiLSAT, which only deals with admission to law school. Therefore, it would be a wasted opportunity for the Court to adopt a short-sighted approach and shirk away from delving into the constitutionality of the other powers and acts of the LEB, especially considering that, as extensively shown herein, the LEB's exercise of these powers is punctuated by blatant violations of academic freedom. The Court's ruling in *Pimentel Jr. v. Hon. Aguirre*[5] teaches:

> x x x By the **mere enactment** of the questioned law or the **approval of the challenged action**, the dispute is said to have ripened into a judicial controversy even without any other overt act. Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty. x x x
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> x x x x x x x x x
>
> By the same token, when an act of the President, who in our constitutional scheme is a coequal of Congress, is seriously alleged to have infringed the Constitution and the laws, as in the present case, settling the dispute becomes the duty and the responsibility of the courts.[6] (Emphasis and underscoring supplied)

I submit that the Court not only has the opportunity but, in fact, the duty to settle the disputes given the serious allegations of infringement of the Constitution. The Court should thus not foster lingering or recurring litigation as this case already presents the opportune time to rule on the constitutionality of the LEB's statutory powers and how the LEB exercises the same. Hence, I maintain that the Court's disposition of the instant case should not be unduly restricted to only the question of the PhiLSAT's constitutionality.

For ease of reference, quoted below are the functions and powers of the LEB under R.A. 7662:

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[5] 391 Phil. 84 (2000).

[6] *Id*. at 107-108.

SEC. 7. *Powers and Functions*. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

a) to administer the legal education system in the country in a manner consistent with the provisions of this Act[;]

b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;

c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;

d) to accredit law schools that meet the standards of accreditation;

e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members;

f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status;

g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar;

h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practising lawyers in such courses and for such duration as the Board may deem necessary; and

i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act.

Much like the *ponencia*, I have undertaken the same exercise of evaluating, through the lens of academic freedom, the powers of the LEB **and how the same are and have been exercised**. As a result, I have identified several other LEB issuances beyond those identified by the *ponencia* which are arbitrary and unreasonable, and thus null and void.

A. Issues on Academic Freedom

The guarantee of academic freedom is enshrined in Section 5(2), Article XIV of the Constitution, which states that: "[a]cademic freedom shall be enjoyed in all institutions of higher learning." This institutional academic freedom includes "the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint."[7] The essential freedoms subsumed in the term "academic freedom" are: 1) who may teach; 2) what may be taught; 3) how it shall be taught; and 4) who may be admitted to study.[8]

Nevertheless, the Constitution also recognizes the State's power to regulate educational institutions. Section 4(1), Article XIV of the Constitution provides that: "[t]he State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions." As gleaned from the quoted provision, the State's power to regulate is subject to the requirement of *reasonableness*.

The limitation on the State's power to regulate was introduced in the 1987 Constitution. Under the 1973 Constitution, it only states that "[a]ll educational institutions shall be under the supervision of, and subject to regulation by, the State."[9] The

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[7] *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000).

[8] *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975).

[9] Art. XV, Sec. 8, par. (1).

framers of the current Constitution saw the need to add the word "reasonable" before the phrase "supervision and regulation" in order to qualify the State's power over educational institutions. This is extant from the deliberations of the Constitutional Commission on August 29, 1986:

> MR. GUINGONA. x x x
>
> x x x x x x x x x
>
> When we speak of **State supervision and regulation, we refer to the external governance of educational institutions, particularly private educational institutions as distinguished from the internal governance by their respective boards of directors or trustees and their administrative officials**. Even without a provision on external governance, the State would still have the inherent right to regulate educational institutions through the exercise of its police power. **We have thought it advisable to restate the supervisory and regulatory functions of the State provided in the 1935 and 1973 Constitutions with the addition of the word "reasonable." We found it necessary to add the word "reasonable"** because of an *obiter dictum* of our Supreme Court in a decision in the case of *Philippine Association of Colleges and Universities vs. The Secretary of Education and the Board of Textbooks* in 1955. In that case, the court said, and I quote:
>
> > It is enough to point out that local educators and writers think the Constitution provides for control of education by the State.
> >
> > The Solicitor General cites many authorities to show that the power to regulate means power to control, and quotes from the proceedings of the Constitutional Convention to prove that State control of private education was intended by organic law.
>
> **The addition, therefore, of the word "reasonable" is meant to underscore the sense of the committee, that when the Constitution speaks of State supervision and regulation, it does not in any way mean control. We refer only to the power of the State to provide regulations and to see to it that these regulations are duly followed and implemented. It does not include the right to manage, dictate, overrule and prohibit. Therefore, it does not include the right to dominate.**
>
> x x x x x x x x x

Delegate Clemente, chairman of the 1973 Constitutional Convention's Committee on Education, has this to say about supervision and regulation, and I quote:

> While we are agreed that we need some kind of supervision and regulation by the State, there seems to be a prevailing notion among some sectors in education that there is too much interference of the State in the management of private education. If that is true, we need some kind of re-examination of this function of the State to supervise and regulate education because we are all agreed that there must be some kind of diversity, as well as flexibility, in the management of private education. (Minutes of the November 27, 1971 meeting of the Committee on Education of the 1971 Constitutional Convention, pages 10 and 11.)[10] (Emphasis and underscoring supplied)

Further, the Constitutional Commission deliberations on September 9, 1986 also discuss:

MR. MAAMBONG. What I am trying to say is that we have bogged down in this discussion because we do not see how we can reconcile a concept of state regulation and supervision with the concept of academic freedom.

MR. GASCON. **When we speak of state regulation and supervision, that does not mean dictation**, because we have already defined what education is. Hence, in the pursuit of knowledge in schools we should provide the educational institution as much academic freedom as it needs. **When we speak of regulation, we speak of guidelines and others. We do not believe that the State has any right to impose its ideas on the educational institution because that would already be a violation of their constitutional rights.**

There is no conflict between our perspectives. When we speak of regulations, we speak of providing guidelines and cooperation in as far as defining curricula, *et cetera*, but that does not give any mandate to the State to impose its ideas on the educational institution. That is what academic freedom is all about.[11] (Emphasis and underscoring supplied)

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[10] IV RECORD, CONSTITUTIONAL COMMISSION 56-57.

[11] IV RECORD, CONSTITUTIONAL COMMISSION 441.

In sum, **"reasonable supervision and regulation" by the State over educational institutions does not include the power to control, manage, dictate, overrule, prohibit, and dominate**.

As applied to the instant case, in order to determine whether the LEB's functions violate the academic freedom of law schools, it must be ascertained whether the LEB's discharge of its functions is reasonable.

However, a review of the issuances of the LEB (*i.e.*, memorandum orders, memorandum circulars and resolutions), **of which this Court can take judicial notice**,[12] and in which there are no factual questions, reveals that the LEB has gone beyond its powers of reasonable supervision and regulation of the law schools. Dean Sedfrey M. Candelaria (Dean Candelaria), as *amicus curiae* for this case, expressed a similar view in his *Amicus Brief*: "[i]t is my considered view that a number of LEB issuances may have overstepped the limits of its jurisdiction, powers and functions. The problem areas have been on the power to prescribe minimum standards for (a) law admission; (b) qualification and compensation of faculty members; and, (c) basic curriculum."[13]

I accordingly discuss these LEB issuances in relation to the essential freedoms inherent in academic freedom:

i. Who may teach

As already explained, the Constitution protects the right of institutions of higher learning to academic freedom,[14] the first

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[12] RULES OF COURT, Rule 129, Sec. 1: "*Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions." (Underscoring supplied)

[13] *Amicus Brief*, p. 6.

[14] CONSTITUTION, (1987), Art. XIV, Sec. 5, par. (2).

aspect of which is the right to determine "who may teach"[15] and to fix "the appointment and tenure of office of academic staff."[16] This aspect protects an institution's right to select and to assemble a roster of faculty members that best suits its academic aims, objectives and standards, subject only to minimal state interference when some overwhelming public interest calls for the exercise of reasonable supervision and never repressive or dictatorial control.[17] The power to select educators is not some esoteric concept, but involves an institution's freedom to: determine the eligibility of faculty members and other academic staff; categorize their positions and ranks; evaluate their performance; establish quality and retention standards; determine work load and work hours; determine, subject to applicable labor laws, the appropriate compensation and benefits to be given; and choose the facilities that will be made available for their use.

R.A. 7662 purportedly empowers the LEB to prescribe *minimum* qualifications and compensation of faculty members, to wit:

> SEC. 7. *Powers and Functions*. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
>
> x x x x x x x x x
>
> c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;
>
> x x x x x x x x x
>
> e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.] (Underscoring supplied)

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[15] *Garcia v. The Faculty Admission Committee, Loyola School of Theology, supra* note 8.

[16] *Id*.

[17] *Id*. at 943.

In the exercise of this power, however, the LEB has grossly violated the academic freedom of law schools **by going beyond reasonable supervision and regulation in their issuances**. To illustrate:

First. In the guise of accreditation, the LEB has gravely abused its minimal supervisorial authority by requiring as part of an institution's application for a permit[18] to operate: a) "a copy of the roster of its administrative officials, including the members of the Board of Trustees or Directors,"[19] b) "a roster of its faculty members for the proposed law school, x x x [including] the academic credentials and personal data sheets of the dean and of the faculty members,"[20] c) "the present library holdings for law as well as the name and qualifications of the law librarian"[21] and, quite ridiculously, d) "pictures of [, among others, the] dean's office, and faculty lounge of the law school."[22] Under LEB Memorandum Order No. 1, Series of 2011 (LEBMO No. 1-2011), the application for a permit to operate may be denied upon evaluation and ocular inspection,[23] if the LEB finds that the law program is "substandard in the quality of its operation[,] x x x when surrounding circumstances make it very difficult

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[18] LEB Memorandum Order No. 1, Series of 2011 (LEBMO No. 1-2011), ***Section 31.1.*** A **PERMIT** entitles a law school to open and to offer the subjects of the first year of the law curriculum. A permit must be obtained before each academic year to enable the law school to operate on the succeeding academic year.

[19] *Id*. at Sec. 33.1, par. (4). *See* also Section 20 of the same LEBMO, which states that "The law school shall be headed by a properly qualified dean, maintain a corps of professors drawn from the ranks of leading and acknowledged practitioners as well as academics and legal scholars or experts in juridical science, properly equipped with the necessities of legal education, particularly library facilities including reliable internet access as well as suitable classrooms and a Moot Court room. There shall likewise be provided a faculty lounge for the convenience of members of the faculty."

[20] *Id*. at par. (5); underscoring supplied.

[21] *Id*. at par. (7); underscoring supplied.

[22] *Id*. at par. (8); underscoring supplied.

[23] *Id*. at Sec. 34.

for it to form a suitable faculty or for any valid and weighty reasons, the proposed law school could not possibly deliver quality legal education."[24]

The foregoing grounds for denial of an application to operate under LEBMO No. 1-2011 are not only vague and arbitrary but worse, blatantly violative of an institution's academic freedom. By insisting that it can review 1) the "suitability" of the faculty and personnel through the submission of their academic credentials and personal data sheets, and 2) the "quality" of a school's operations through an evaluation of an institution's library holdings and faculty facilities, **the LEB has unreasonably interfered with an institution's right to select its faculty and staff and to determine the facilities and benefits that will be made available for their use**.

Second. Again in the guise of accreditation, the LEB overreached its mandate anew by authorizing itself to interview[25] the dean and faculty members of schools applying for recognition status[26] in order for it to determine whether "its students are prepared for the last year of the law curriculum, and that the professors who are to teach review subjects are prepared for the last year of the law course."[27] This requirement is so unreasonable that if an institution undergoing accreditation is found deficient, recognition may be denied and the law school may be closed.[28]

LEB Memorandum Order No. 2, Series of 2013 (LEBMO No. 2-2013) likewise provides that law schools that have a "weak

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[24] *Id*. at par. (d); underscoring supplied.

[25] *Id*. at Sec. 35, par. (3).

[26] *Id*. at Sec. 31.2. "A **RECOGNITION** constitutes full mandatory accreditation. It allows the law school to graduate its students, to confer upon them their degrees and titles and to endorse them to the Office of the Bar Confidant for the Bar Examinations."

[27] *Id*. at Sec. 35, par. (1).

[28] *Id*. at Sec. 37.

faculty,"[29] "inadequate library research facilities,"[30] "no faculty syllabus,"[31] "no moot court room,"[32] and "no faculty lounge,"[33] as determined by the LEB, shall be considered "substandard,"[34] and shall be "unfit to continue operating a law program."[35]

The LEB's supposed authority to review 1) an individual faculty member's ability to teach and 2) the strength or weakness of the faculty as a whole, is not only presumptuous but is a gross violation of an institution's right to set academic standards and procedures for evaluating the qualifications and performance of its own educators.

Third. In gross violation of an institution's right to select "who may teach," the LEB has also imposed the requirement that the members of the faculty, in addition to their respective law degrees and Bar memberships, must likewise possess Masters of Law degrees (LLM). LEBMO No. 1-2011 pertinently provides:

> ***Section 50.*** The members of the faculty of a law school should, at the very least, possess a Ll.B. or a J.D. degree and should be members of the Philippine Bar. In the exercise of academic freedom, the law school may also ask specialists in various fields of law with other qualifications, provided that they possess relevant doctoral degrees, to teach specific subjects.
>
> Within a period of five (5) years of the promulgation of the present order, members of the faculty of schools of law shall commence their studies in graduate schools of law.

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[29] Sec. 31, par. (2), which defines that "[a]s indicated, among others, by the fact that most of the members are neophytes in the teaching of law or their ratings in the students' and deans' evaluations are below 75% or its equivalent in other scoring system"; underscoring supplied.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*. at par. (1).

[35] *Id*.

Where a law school offers the J.D. curriculum, a qualified Ll.B. graduate who is a member of the Philippine Bar may be admitted to teach in the J.D. course and may wish to consider the privilege granted under Section 56 hereof. (Underscoring supplied)

LEB Resolution No. 2014-02 and LEB Memorandum Order No. 17, Series of 2018 (LEBMO No. 17-2018), which implement the foregoing provision, mandate that law schools comply with the following percentages and schedules, **under pain of downgrading, phase-out, and eventual closure**. LEB Resolution No. 2014-02 provides:

2. The law faculty of all law schools shall have the following percentage of holders of the master of laws degree:

2.1. School Year — 2017-2018 — 20%
2.2. School Year — 2018-2019 — 40%
2.3. School Year — 2019-2020 — 60%
2.4. School Year — 2020-2021 — 80%

In computing the percentage, those who are exempted from the rule shall be included.

3. Exempted from this requirement of a master's degree in law are the following:

The Incumbent or Retired Members of the:

3.1 Supreme Court;
3.2 Court of Appeals, Sandiganbayan and Court of Tax Appeals;
3.3 Secretary of Justice and Under-Secretaries of Justice, Ombudsman, Deputy Ombudsmen, Solicitor General and Assistant Solicitors General;
3.4 Commissioners of the National Labor Relations Commission who teach Labor Laws;
3.5 Regional Trial Court Judges;
3.6 DOJ State and Regional State Prosecutors and Senior Ombudsman Prosecutors who teach Criminal Law and/or Criminal Procedure;
3.7 Members of Congress who are lawyers who teach Political Law, Administrative Law, Election Law, Law on Public Officers and other related subjects;
3.8 Members of Constitutional Commissions who are Lawyers;
3.9 Heads of bureaus who are lawyers who teach the law subjects

which their respective bureaus are implementing;

3.10 Ambassadors, Ministers and other diplomatic Officers who are lawyers who teach International Law or related subjects;

3.11 Those who have been teaching their subjects for 10 years or more upon recommendation of their deans; and

3.12 Other lawyers who are considered by the Board to be experts in any field of law provided they teach the subjects of their expertise. (Underscoring supplied)

To ensure compliance with the foregoing, LEBMO No. 17-2018 imposes strict reportorial requirements, including the regular submission of various certifications and even the faculty members' LLM diplomas.[36]

The foregoing requirements impose unreasonable burdens on incumbent and potential faculty members and unduly infringe on an institution's right to select the legal experts and practitioners that will educate its students and further its academic aspirations. More importantly, the requirement is arbitrary and miserably fails to take into account the distinct nature of the legal profession, *i.e.*, that legal expertise is not necessarily developed or acquired only through further studies but also (**or more so**) through constant and continuous law practice in various specialized fields.

Under the foregoing rule, a seasoned law practitioner with 10 or 20 years of experience from an established law firm will not be qualified to teach in a law school without an LLM, unless he or she is able to prove to the LEB (not to the institution) that he or she is an expert in the subject he or she seeks to teach. This does not only prejudice the institution, but more so the law student who is, by LEB fiat, senselessly deprived of the opportunity to learn from the wisdom of experience. The significance of actual law practice *vis-à-vis* law study is highlighted by the fact that a minimum number of years in the former is required as a qualification for appointment as a judge.[37]

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[36] Sec. 8.

[37] Batas Pambansa Blg. 129 (1983), provides:

SEC. 15. *Qualifications*. — No persons shall be appointed Regional Trial Judge unless he is a natural-born citizen of the Philippines, at least thirty-

In contrast, an LLM degree is not even required for members of the Court.

The LEB also failed to consider that 1) LLM programs impose onerous financial/time constraints and opportunity costs on incumbent or potential faculty members, 2) few schools in the Philippines offer LLM programs, and 3) LLM programs abroad teaching foreign laws do not necessarily augment legal expertise, knowledge, and experience in Philippine law. As Dean Candelaria accurately noted in his *Amicus Brief*, "[t]he mandatory requirement of graduate degrees in law for deans and faculty members under LEB policies, while laudable and ideal, may not be easily realizable in light of the practical difficulties in accessing and maintaining enrollment in graduate programs."[38] Upon being asked during the oral arguments to expound on this matter, Dean Candelaria elucidated as follows:

ASSOCIATE JUSTICE CAGUIOA:

Okay, on page seven (7) of your Brief, you mentioned that the master's requirement while laudable, may not be easily realizable in light of the practical difficulties in accessing and maintaining enrollment in graduate programs. Can you inform the Court exactly what [these] practical difficulties are?

DEAN CANDELARIA:

Your Honor, I teach at least in two (2) schools where there is graduate degree being offered, the Ateneo and San Beda Graduate

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five years of age, and, for at least ten years has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite.

x x x x x x x x x

SEC. 26. *Qualifications*. — No person shall be appointed judge of a Metropolitan Trial Court, Municipal Trial Court, or Municipal Circuit Trial Court unless he is a natural-born citizen of the Philippines, at least 30 years of age, and, for at least five years, has been engaged in the practice of law in the Philippines, or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (Underscoring supplied)

[38] *Amicus Brief*, p. 7.

School of Law with the consortium with the academy, and I have seen the difficulties in particular, for instance, for sitting deans or faculty members, to appropriate the time to actually access the centers for learning, because we don't have as much presence, perhaps, in the Visayas or Mindan[a]o. And of course, we have to ad[a]pt now, because some schools now are going out there, like Ateneo De Naga, has actually requested on-site the offerings. So, difficulties really abound insofar as remote areas are concerned. Manila is not so much problematic, for those who teach in Manila. But for those who would have to fly, from Samar, I know I have a student from Samar, from Mindanao, who would tranche a weekend curriculum, let's say at San Beda. . .

ASSOCIATE JUSTICE CAGUIOA:

So, in other words, Dean, what you are saying is that, as an example, the physical location or the topography of the area is such that, insisting on this requirement would be a grave prejudice to these other law schools because they cannot, in fact, access further higher learning to comply with the requirements of [the] LEB.

DEAN CANDELARIA:

At this stage, Your Honor, as the lack of institutions is really evident, I think we may have to work on this progressively in the near future. With the cooperation of the Bench, the Bar, the Association of Law Schools, and also the Philippine Association of Law Professors, to be able to achieve that goal.[39]

Undoubtedly, the LEB overreaches its authority in requiring an LLM as a "minimum qualification." **In imposing the foregoing requirement, the LEB arbitrarily usurped an institution's academic authority to gauge and to evaluate the qualifications of its educators on an individual basis, and hastily reduced the pool of expertise available for selection — to the detriment of the institution, the faculty, the students, and the profession as a whole.**

Fourth. The same observations may be made about the qualifications imposed on deans of law schools and graduate law schools, who are required to possess a Master's or Doctorate Degree, respectively. LEBMO No. 1-2011 states:

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[39] TSN, March 5, 2019, pp. 102-103.

Section 51. The dean should have, aside from complying with the requirements above, at least a Master of Laws (Ll.M.) degree or a master's degree in a related field, and should have been a Member of the Bar for at least 5 years prior to his appointment as dean.

Section 52. The dean of a graduate school of law should possess at least a doctorate degree in law and should be an acknowledged authority in law, as evidenced by publications and membership in learned societies and organizations; members of the faculty of a graduate school of law should possess at least a Master of Laws (Ll.M.) degree or the relevant master's or doctor's degrees in related fields.

Aside from the foregoing, retired justices of the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals may serve as deans of schools of law, provided that: they have had teaching experience as professors of law and provided further that, with the approval of the Legal Education Board, a graduate school of law may accredit their experience in the collegiate appellate courts and the judgments they have penned towards the degree ad eundem of Master of Laws. (Underscoring supplied)

The unreasonableness of the foregoing provisions is exemplified by the fact that deans are primarily "school administrators." While certainly, many legal luminaries have occupied, and currently occupy, the position of dean, there is no justifiable reason to absolutely require (rather than encourage or recommend) an LLM (for law deans) and Doctorate Degree (for graduate law deans), when the same would not necessarily improve the management or administration of a law institution. **On the other hand, if legal scholarship and authority were to be made the standard, it is peculiar that even a retired Member of the Court would prove unfit, unless otherwise approved by the members of the LEB.**

Notably, the members of the LEB — while seeing it fit to impose arbitrary requirements to gauge the suitability of faculty members, and to evaluate the strength or weakness of the faculty as a whole — are themselves not subjected to the same educational qualifications. As pointed out by Justice Marvic M.V.F. Leonen during the oral arguments:

JUSTICE LEONEN:

Excuse me, for a moment, you are requiring from all Deans, which you supervise, [and] law professors that they have an advanced degree, yet the LEB does not have an advanced degree, how do you explain this?

[MR.] AQUENDE:

Your Honor, the justification or the rationale that was prepared by the previous Board because it was not approved during our term, the previous Board looked into the function of the LEB and which is not academic in nature, Your Honor.

x x x x x x x x x

JUSTICE LEONEN:

And in LEB, maybe, even perhaps, you should take care first that the LEB members are all, at minimum, have masteral degrees from reputable law schools here or abroad or a doctoral degree for that matter before you apply it to your constituents, but my point is, isn't that unreasonable x x x

x x x x x x x x x

x x x that you require deans to take an advance[d] degree x x x

x x x x x x x x x

In other words, you imposed an educational requirement on law schools and certainly according to our jurisprudence, who to teach is an academic matter? It is a mission of a school and it is protected by academic freedom on the basis of your LLB or JD degrees?

[MR.] AQUENDE:

Yes, Your Honor. The point, Your Honor, is that the fact that the members of the LEB [do] not have x x x higher degrees [is] because the law does not require it. However, that does not mean that we could not x x x

x x x x x x x x x

JUSTICE LEONEN:

If the law does not require it, it doesn't mean that anything you do will be reasonable. You have to actually prove to us because, again, from my point of view, the degree of judicial scrutiny of any interference

on academic freedom x x x the degree of scrutiny should be very tight. So again, my point is, perhaps you can address the reasonability of the requirement, etcetera x x x[40]

Fifth. Finally, the LEB impairs institutional academic freedom by categorizing faculty members and interfering with faculty load, as follows:

Section 33. Full-time and Part-time Faculty. There are two general kinds of faculty members, the full-time and part-time faculty members.

a) A full-time faculty member is one:

1) Who possesses the minimum qualification of a member of the faculty as prescribed in Sections 50 and 51 of LEBMO NO. 1;

2) Who devotes not less than eight (8) hours of work for the law school;

3) Who has no other occupation elsewhere requiring regular hours of work, except when permitted by the higher education institution of which the law school is a part; and

4) Who is not teaching full-time in any other higher education institution.

b) A part-time faculty member is one who does not meet the qualifications of a full-time professor as enumerated in the preceding number.

Section 34. Faculty Classification and Ranking. Members of the faculty may be classified, in the discretion of the higher education institution of which the law school is a part, according to academic proceeding, training and scholarship into Professor, Associate Professor, Assistant Professor, and Instructor.

Part-time members of the faculty may be classified as Lecturers, Assistant Professorial Lecturers, Associate Professorial Lecturers and Professorial Lecturers. The law schools shall devise their scheme of classification and promotion not inconsistent with these rules.

Section 35. Faculty Load. Generally, no member of the faculty should teach more than 3 consecutive hours in any subject nor should he or

[40] *Id*. at 173-175.

she be loaded with subjects requiring more than three preparations or three different subjects (no matter the number of units per subject) in a day.

However, under exceptionally meritorious circumstances, the law deans may allow members of the faculty to teach 4 hours a day provided that there is a break of 30 minutes between the first 2 and the last 2 hours.[41] (Underscoring supplied)

The foregoing provisions unequivocally show that the LEB has not only overreached its authority to set minimum qualifications for faculty members, **it has arbitrarily dabbled in the internal affairs of law schools, including the grant of faculty positions and titles, the regulation of work hours and occupations, and the assignment of work load**. While presumably imposed for the benefit of the students and the professor, the imposition of the foregoing is better left to the individual institution which would be in a better position to determine the needs and capacities of its students and its faculty.

To reiterate, academic institutions are free to select their faculty, to fix their qualifications, to evaluate their performance, and to determine their ranks, positions, and teaching loads. The LEB's purported power to prescribe *minimum* qualifications and compensation of faculty members should be construed to cover only minimal state interference when some important public interest calls for the exercise of reasonable supervision. **It does *not* include a blanket authority to impose trivial rules as it sees fit. In the exercise of the LEB's purported power to supervise law schools, it has engaged in the unreasonable and invalid regulation, control, and micromanagement of law schools. The LEB has become, for lack of a better word, a tyrant.**

ii. What may be taught

The second aspect of academic freedom involves the right of institutions of higher learning to determine "what may be

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[41] LEBMO No. 2-2013, Secs. 33-35. See also LEB Memorandum Circular No. 14, Series of 2018 (LEBMC No. 14-2018).

taught,"[42] *i.e.*, to design the curricula (what courses to offer, when to offer them, and in what sequence) and to craft the appropriate syllabi (course description, coverage; content, and requirements).

The importance of this right cannot be overemphasized. An academic institution should be given the necessary independence to identify, design and establish the courses and subjects that it deems crucial to a student's personal and professional development and what it believes will best reflect and inculcate its fundamental academic values. Protecting an institution's right to select various fields of study and to design the corresponding curricula and syllabi fosters critical thinking, diversity, innovation, and growth, encourages the free exchange of ideas, **and protects the youth from potential indoctrination by the State**.

Similar to the right of an academic institution to determine "who may teach" therefore, the Constitution likewise safeguards its right to determine what to teach and how to teach, free from undue interference "except when there is an overriding public welfare which would call for some restraint."[43]

While R.A. 7662 empowers the LEB to prescribe "the *basic* curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness,"[44] **it does *not* grant the LEB unbridled authority to impose unreasonable requirements in contravention of an academic institution's fundamental right to determine what to teach and how to go about it**.

A review of LEB's various memoranda evinces no other conclusion than that it has grossly overstepped this authority, as shown below:

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[42] *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra* note 8.

[43] *Cudia v. The Superintendent of the Philippine Military Academy*, 754 Phil. 590, 655 (2015).

[44] R.A. 7662, Sec. 7, par. (f).

LEBMO No. 1-2011 requires institutions 1) to submit its curriculum for evaluation and approval as a requirement for accreditation,[45] 2) to comply with the minimum unit requirements for each legal education, course, *i.e.*, Bachelor of Laws (LLB) (152 units), Juris Doctor (JD) (168 units), LLM (36 units) and Doctor of Juridical Science (SJD) or Doctor of Civil Law (DCL) (60 units),[46] 3) to follow a specific and highly inflexible model curricula,[47] and 4) to comply with the course names, prescribed number of units, number of hours, course descriptions, and prerequisites.[48]

In LEBMO No. 2-2013, the LEB unequivocally stated that "in the exercise of its regulatory authority, [it may] void the graduation of any law student and/or impose appropriate sanctions on any law school that has not complied with the curricular requirements, as well as policy and standards required by the Board."[49]

A perusal of the mandatory model curricula unmistakably shows that the LEB has gone far beyond the mere prescription of a "basic curricula." For instance, all the following subjects as specifically described in the course descriptions, in the corresponding number of units, during the semester indicated. This is illustrated by the mandatory first year courses of a JD degree, as follows:

First Year[50]

1st SEMESTER		2nd SEMESTER	
COURSE	**UNIT**	**COURSE**	**UNIT**
Introduction to Law	1	Obligations and Contracts	5
Persons and Family Relations	4	Constitutional Law II	3

[45] Secs. 33, par (6) and 53.

[46] *Id*. at Sec. 54.

[47] *Id.* at Sec. 55.

[48] *Id*. at Sec. 58.

[49] Sec. 3.

[50] LEBMO No. 1-2011, Sec. 55.2.

Constitutional Law I	3	Criminal Law II	4
Criminal Law I	3	Legal Technique and Logic	2
Statutory Construction	2	Legal Writing	2
Philosophy of Law	2	Basic Legal Ethics	3
Legal Research and Thesis Writing	2		
Legal Profession	1		
TOTAL	**18**	**TOTAL**	**19**

In relation thereto, Section 58.2 of the same issuance particularly describes each course, the required units and hours per week, and even the manner by which each class should be conducted. Sample course descriptions' of the first year courses of JD degree are shown below:

COURSE NAME/NUMBER OF UNITS/CONTACT HOURS/PREREQUISITES	**COURSE DESCRIPTION**
First Year – First Semester	
INTRODUCTION TO LAW Cases, recitations and lectures; 1 hour a week; 1 unit	A general course given to freshmen, providing for an overview of the various aspects of the concept of law, with emphasis on the relationship between law, jurisprudence, equity, courts, society and public policy, presented through selected provisions of law, cases and other materials depicting settled principles and current developments, both local and international, including a review of the evolution of the Philippine legal system.
PERSONS AND FAMILY RELATIONS Cases, recitations and lectures; 4 hours a week; 4 units	A basic course on the law of persons and the family which first views the effect and application of laws, to examine the legal norms affecting civil personality, marriage, property

	relations between husband and wife, legal separation, the matrimonial regimes of absolute community, conjugal partnership of gains, and complete separation of property; paternity and filiation, ad[o]ption, guardianship, support, parental authority, surnames, absence and emancipation, including the rules of procedure relative to the foregoing.
CONSTITUTIONAL LAW I Cases, recitations and lectures; 3 hours a week; 3 units	A survey and evaluation of basic principles dealing with the structure of the Philippine Government.
CRIMINAL LAW I Cases, recitations and lectures; 3 hours a week; 3 units	A detailed examination into the characteristics of criminal law, the nature of felonies, stages of execution, circumstances affecting criminal liability, persons criminally liable[,] the extent and extinction of criminal liability as well as the understanding of penalties in criminal law, their nature and theories, classes, crimes, habitual delinquency, juvenile delinquency, the Indeterminate Sentence Law and the Probation Law. The course covers Articles 1-113 of the Revised Penal Code and related laws.
STATUTORY CONSTRUCTION Cases, recitations and lectures; 2 hours a week; 2 units	A course that explores the use and force of statutes and the principles and methods of their construction and interpretation.
PHILOSOPY OF LAW 2 hours a week; 2 units	A study of the historical roots of law from Roman times, the schools of legal thought that spurred its growth and development, and the primordial purpose of law and legal education.

LEGAL RESEARCH AND THESIS WRITING Lectures, reading and practical work; 2 hours a week; 2 units	The course will introduce structures to the methodology of legal research and the preparation of legal opinions, memoranda, or expository or critical paper on any subject approved by the faculty member teaching it.
LEGAL PROFESSION Cases, recitations and lectures 1 hour a week; 1 unit	The history and development of the legal profession in the Philippines, its current problems, goals, and role in society. Also covered are the methodologies in the preparation of J.D. thesis
First Year - Second Semester	
OBLIGATIONS AND CONTRACTS Cases, recitations and lectures; 5 hours a week; 5 units	An in-depth study of the nature, kinds and effect of obligations and their extinguishment[,] contracts in general, their requisites, form and interpretation[,] defective contracts, quasi contracts, natural obligations, and estoppel.
CONSTITUTIONAL LAW II Cases, recitations and lectures; 3 hours a week; 3 units	A comprehensive study of the Constitution, the bill of rights and judicial review of the acts affecting them.
CRIMINAL LAW II Cases, recitations and lectures; 4 hours a week; 4 units	A comprehensive appraisal of specific felonies penalized in Book II of the Revised Penal Code, as amended, their nature, elements and corresponding penalties.
LEGAL TECHNIQUE AND LOGIC Recitations and lectures; 2 hours a week; 2 units	A course on the methods of reasoning, syllogisms, arguments and expositions, deductions, the truth table demonstrating invalidity and inconsistency of arguments. It also includes the logical organization of legal language and logical testing of judicial reasoning.
LEGAL WRITING Lectures, reading and practical work;	An introduction to legal writing techniques; it involves applied legal bibliography, case digesting and

2 hours a week; 2 units	reporting analysis, legal reasoning and preparation of legal opinions or memoranda.
BASIC LEGAL ETHICS Cases, recitations and lectures; 3 hours a week; 3 units	A course that focuses on the canons of legal ethics involving the duties and responsibilities of the lawyer with respect to the public or society, the bar or legal profession, the courts and the client.

The LEB mandate that law schools offer *specifically* described subjects during a *specific* semester is a manifest violation of academic freedom, both individual and institutional.[51] It does not only deprive the faculty member of his or her academic right to design the coverage of the course and to conduct classes as he or she sees fit, but also unreasonably usurps the academic institution's right to decide for itself 1) the subjects law students must take (core subjects) and the subjects law students may opt to take (non-core subjects/electives); 2) the coverage and content of each subject; and 3) the sequence by which the subjects should be taken.

The abuse of power does not end there.

The LEB has not only taken it upon itself to require subjects such as *Agrarian Law and Social Legislation*,[52] *Special Issues in International Law*,[53] and *Human Rights Law*,[54] which are

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[51] *Garcia v. The Faculty Admission Committee, Loyola School of Theology, supra* note 8.

[52] LEBMO No. 1-2011, Sec. 58.1 and 58.2, Second Year, First Semester, 2-unit subject, described as "A study of Presidential Decree No. 27, the Comprehensive Agrarian Reform Program and related laws and regulations, and the Special Security Act and the Government Service Insurance Act."

[53] *Id*. at Sec. 58.2, Second Year, Second Semester, 2-unit subject described as "This is an elective subject that allows for more concentrated study on any of the following possible areas of international law: a. International Criminal Law: that should be taken with reference to R.A. 9851; b. The Law of the Sea: which should be of special interest to the Philippines because we are an archipelagic state; and c. International Trade Law: particularly the regime of the World Trade Organization."

[54] *Id*. at Sec. 58, Second Year, Second Semester, 2-unit subject described as "Study focused on the aspects of protecting, defending and seeking redress for violations of human rights in the Philippines."

subjects of special interest or specialization that law schools may have only previously offered as electives, it has also usurped the institution's right to design and develop its own electives. Significantly, LEBMO No. 1-2011 provides a list of "suggested" electives,[55] including but not limited to the following:

SUGGESTED ELECTIVES (DESCRIPTION)

x x x x x x x x x

JURIS DOCTOR (J.D.) PROGRAM

ADMIRALTY
The course covers the history or the genesis of the Carriage of Goods by Sea Act, up to the advent of the contentious Hague Rules of 1924, Hague Visby Rules of 1968 and Hamburg Rules of 1978, including aspects of bills of lading, charter parties, collision, salvage, towage, pilotage, and the Ship Mortgage Act. (2 units)

ADVANCED TAXATION
A seminar designed for students who are seriously considering tax practice. It examines the procedural requirements of the Internal Revenue Code. This includes a detailed look at the audit process from the examination of a return, and ending with a consideration of the questions surrounding the choice of a forum when litigation is appropriate. It also exposes students to some of the intellectual rigors of a high level tax practice. (Prerequisites: Taxation I and Taxation II) (2 units)

APPELLATE PRACTICE AND BRIEF MAKING
The course is designed to provide students with the skills necessary to successfully litigate appeals before the Court of Appeals and Supreme Court. Emphasis will be placed on practical training including appellate procedure, oral and written presentation and methodology. Brief writing and other aspects of modern appellate practice are also covered. (2 units)

ARBITRATION LAWS
A study of the Philippine laws on Arbitration, the ICC Rules on Arbitration, the Conventions on the Recognition and Enforcement of Foreign Arbitral Awards, and the settlement of investment disputes between states and nationals of other states. (2 units)

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[55] *Id.*

BANKING LAW I (GENERAL BANKING)
The course covers the study of the rules and regulations governing banks and non-bank financial intermediaries, including the New Central Bank Act, the General Banking Law of 2000, and Bangko Sentral ng Pilipinas circulars, rules and regulations. (2 units)

BANKING LAWS II (INVESTMENT BANKING)
A study of the Finance Company Act, the Investment House Law and the Investment Company Act, and related Bangko Sentral ng Pilipinas and Securities and Exchange Commission regulations. (1 unit)

CHILDREN'S RIGHTS LAW
This elective course aims to introduce the students to the legal framework of protection for children and the psycho-social dimensions of handling children's rights cases. The Convention on the Rights of the Child is used to provide the background on an international level. The course is divided further into specific clusters of rights of children in relation to Philippine laws, issuances, rules of court and jurisprudence. In each cluster the legal and psycho-social issues affecting certain groups of children (sexually and physically abused children in conflict with the law, child laborers, children in situations of armed conflict, trafficked children, displaced and refugee children, indigenous children, etc. . .) are discussed in order to understand in a holistic manner the plight of children within the legal system. The methods used in teaching the course include lectures, workshop exercises and mock trial. Students will also be exposed to actual case handling. (2 units)

CLINICAL LEGAL EDUCATION I AND II
Supervised student practice under Rule 138-A (Law Student Practice Rule) of the Rules of Court including conference with clients, preparation of pleadings and motions, appearance in court, handling of trial, preparation of memorandum. The course will include the use of video equipments and computers to enhance training in direct and cross-examination techniques. (4 units)

COLLECTIVE BARGAINING AND ALTERNATIVE DISPUTE RESOLUTIONS
An introduction to the collective bargaining process, negotiations, mediation, and arbitration as experienced in both the private and government sectors, with emphasis on practice. (2 units)[56]

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[56] *Id*.

While suggesting electives may be acceptable and even commendable, LEB Memorandum Order No. 14, Series of 2018 (LEBMO No. 14-2018) has 1) atrociously **prohibited** law schools from offering elective subjects not falling within the LEB's "suggested" list of electives, without prior LEB approval[57] and 2) penalized the same with fines, and threats of downgrading, phase out, and/or eventual closure.[58] This is grave abuse of the power to prescribe "*basic* curricula."

Further, and as equally appalling, the LEB now mandates a prescribed sequence, again under pain of downgrading, phase-out, and eventual closure,[59] by which subjects must be taken. LEBMO No. 2-2013 provides:

Section 4. Advanced Subjects and Back Subjects. As a general rule, a student shall not be permitted to take any advanced subject until he has satisfactorily passed the prerequisite subject or subjects.

In relation thereto, LEB Memorandum Order No. 5, Series of 2016 (LEBMO No. 5-2016) dictates "what subjects need to be taken and passed by students in the basic law courses before being allowed to take the advanced subjects"[60] as follows:

ADVANCED SUBJECT(S)	PRE-REQUISITE SUBJECT(S)
Administrative and Election Laws or Administrative Law, Law on Public Officers and Election Law	Constitutional Law I
Agency, Trust and Partnership	Obligations and Contracts
Civil Law Review I	Persons and Family Relations Property Succession
Civil Law Review II	Civil Law Review I

[57] Par. (3).

[58] *Id*. at par. (7).

[59] LEB Memorandum Order No. 5, Series of 2016 (LEBMO No. 5-2016), par. (4).

[60] *Id*. at par. (1).

Civil Procedure	Persons and Family Relations Obligations and Contracts
Commercial Law Review	Agency, Trust and Partnership Transportation Credit Transaction Corporation Law Negotiable Instruments Law Insurance
Constitutional Law Review	Constitutional Law I Constitutional Law II
Criminal Law Review	Criminal Law I Criminal Law II
Credit Transaction	Obligations and Contracts
Criminal Law II	Criminal Law I
Criminal Procedure	Criminal Law I Criminal Law II
Evidence	Criminal Procedure Civil Procedure
Human Rights Law	Constitutional Law II
Insurance	Obligations and Contracts
Labor Law II	Labor Law I
Labor Law Review	Labor Law I Labor Law II
Legal Forms	Obligations and Contracts Property Sales Credit Transactions Negotiable Instruments Law Agency, Trust and Partnership Land Titles and Deeds Criminal Procedure Civil Procedure
Legal Counseling and Social Responsibility	Basic Legal Ethics Problem Areas in Legal Ethics Criminal Procedure Civil Procedure Evidence
Legal Medicine	Criminal Law II

Obligations and Contracts	Persons and Family Relations
Practice Court I	Criminal Procedure Civil Procedure Evidence Special Proceedings Legal Forms
Practice Court II	Practice Court I
Problem Areas in Legal Ethics	Basic Legal Ethics
Property	Obligations and Contracts
Remedial Law Review I	Criminal Procedure Civil Procedure Evidence Special Proceedings
Remedial Law Review II	Remedial Law Review I
Sales	Obligations and Contracts
Special Proceedings	Succession
Succession	Persons and Family Relations Property
Taxation I	Constitutional Law I
Taxation II	Persons and Family Property Taxation I Succession
Torts and Damages	Obligations and Contracts
Transportation	Obligations and Contracts

The foregoing cannot, in any way, be construed as falling within the LEB's power to prescribe *basic* curricula. The basis for delineating "pre-requisites" *vis-à-vis* "advanced subjects" is not only arbitrary, it is fundamentally flawed. To illustrate:

1) *Persons and Family Relations* has been made a pre-requisite for *Obligations and Contracts*, while *Persons and Family Property* and *Succession* have been made pre-requisites for *Taxation II*,[61] even though knowledge of the aforementioned "pre-requisite" may not

[61] *Id.*

necessarily be essential for studying the corresponding "advanced subject;"

2) *Persons and Family Relations, Property*, and *Succession* have been made pre-requisites to *Civil Law Review I* and *Civil Law Review II*, but curiously, *Obligations and Contracts* was not made a pre- requisite for either of the Civil Law Review subjects;[62]

3) *Agency, Trust and Partnerships* has been made a pre-requisite for *Commercial Law Review*,[63] even though it has traditionally been treated as a Civil Law subject in the Bar; and

4) *Legal Forms* (a mere 2-unit subject) has been arbitrarily assigned 9 pre-requisites while *Practice Court* (which is not even a Bar subject) has been assigned 5 pre-requisites.[64]

The inflexibility of the mandate has also, as Dean Candelaria explained, "led to implementation problems affecting student tenure, faculty assignments, **tuition rates**, among others."[65] Upon being asked to elaborate, he further elucidated on this matter during the oral arguments, to wit:

DEAN CANDELARIA:

x x x [O]n student tenure, there had been changes in recent years, whereby they add or split courses. I'll give you an example concretely. When I took Administrative Law, it was offered with Public Corporation, I think it was also with Election Law, and Public Officers. That has been the experience for a long time. In more recent times, there had been splits by the Legal Education Board, and the problem that students who have taken it, or who are about to take it for instance, would be displaced in terms of the ladder of courses that they will take. So, we've had students who have had tenure problems, because they have to take one which, at that time, was actually not offered so, there is an administrative problem imputing the number of units, that's

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[62] *Id*.

[63] *Id*.

[64] *Id*.

[65] *Amicus Brief*, p. 7.

one concrete problem. On faculty for instance, the assignment, there have been changes when it comes to faculty assignments and I think the problem with many law schools also, is hiring. Faculty members who may have to teach new courses also that are now being required by the Legal Education Board. I think for instance, Environmental Law. I know Environmental Law is booming in this country, there is a roster of lawyers right now who have gone into Environmental Law. But there are other subjects, of course, that are being introduced that may really be not, I think, easily taught by incumbent faculty members. **And the last one is tuition rates. When you start tampering with the number of units, in a law school operation, and recommending changes, it will affect tuition rates for many law schools. At least those who are reliant on private tuition.**[66] (Emphasis and underscoring supplied)

While the Court does not pass upon questions regarding the wisdom of the LEB's prescribed curriculum, the Court is duty-bound to uphold an educational institution's right to determine and evaluate the propriety of assigning pre-requisites as an aspect of its right to determine what to teach and how to do so.

If only to highlight the gross and patent abuse by the LEB of its power to prescribe the *basic* curricula, it bears emphasis that the Commission on Higher Education (CHED), which was empowered to set "(a) minimum unit requirements for specific academic programs; (b) general education distribution requirements as may be determined by the Commission; and (c) specific professional subjects as may be stipulated by the various licensing entities,"[67] *subject to* an educational institution's academic right to "curricular freedom,"[68] has only seen fit to ***recommend*** sample curricula and sample syllabi to meet a minimum set of desired program outcomes. For instance,

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[66] TSN, March 5, 2019, pp. 106-107.

[67] R.A. 7722, Sec. 13.

[68] *Id*.

CHED Memorandum Order No. 041-17,[69] which prescribes the Standards and Guidelines for Journalism majors, states:

> Per Section 13 of RA 7722, the higher education institution shall exercise academic freedom in its curricular offerings but must comply with the minimum requirements for specific academic programs, the general education distribution requirements and the specific professional courses.
>
> **Section 3.** The Articles that follow set minimum standards and other requirements and prescriptions that all HEIs must adopt. These standards are expressed as a minimum set of **desired program outcomes**, as enumerated under Article IV, Section 6. The CHED designed the curricula to attain such outcomes. These curricula are shown in Article V, Section 9 as **sample curricula**. The numbers of units for these curricula are herein prescribed as the "minimum unit requirement" pursuant to Section 13 of RA 7722. In designing the curricula, the CHED employed a curriculum map for each program, **samples** of which are shown in Article V, Section 10.
>
> Using an outcomes-based approach, the CHED also determined the appropriate curriculum delivery methods shown in Article V, Section 11. The **sample course syllabus** given in Article V, Section 12 shows some of these methods.
>
> x x x x x x x x x
>
> **Section 4. In recognition of the HEIs' vision, mission and contexts under which they operate, the HEIs may design curricula suited to their own needs. However, the HEIs must demonstrate that the same leads to the attainment of the required minimum set of outcomes. In the same vein, they have latitude in terms of curriculum delivery and in specifying and deploying human and physical resources as long as they attain the program outcomes and satisfy program educational objectives.** (Emphasis and underscoring supplied)

Similarly worded provisions appear in the Standards and Guidelines for degrees in Computer Engineering,[70] Political

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[69] POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR IN JOURNALISM (B JOURNALISM) AND BACHELOR OF ARTS IN JOURNALISM (BA JOURNALISM) PROGRAMS, May 12, 2017.

[70] POLICIES, STANDARDS AND GUIDELINES FOR THE BACHELOR OF SCIENCE IN COMPUTER ENGINEERING (BS CPE) EFFECTIVE (AY) 2018-2019, CHED Memorandum Order No. 087-17, December 4, 2017.

Science,[71] Communications,[72] Business Administration,[73] Statistics,[74] Education,[75] among others.

In contrast with the **curricular flexibility** provided by the CHED, the LEB did not merely prescribe minimum unit requirements, desired program outcomes, or a sample curricula. The LEB gravely abused its authority and violated the law schools' curricular freedom when it ***imposed*** the above-described curriculum, ***usurped*** the law schools' right to determine appropriate pre-requisites and ***prohibited*** law schools from designing their own electives.

Clearly, the right to formulate the curriculum belongs to the educational institutions, subject to reasonable guidelines that may be provided by the State. On the dangers of having the State actually prescribe what may be taught in educational institutions of higher learning, the Constitutional Commissioners had this to say:

FR. BERNAS. **What I am concerned about, and I am sure the committee is concerned about also, is the danger always of the State prescribing subjects.** I recall that when the sponsor was the dean of Arts and Sciences in La Salle, his association of private school deans was precisely fighting the various prescriptions imposed by the State — that the schools must teach this, must teach that. Are we opening that up here?

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[71] POLICIES AND STANDARDS FOR THE BACHELOR OF ARTS IN POLITICAL SCIENCE (BA POS) PROGRAM, CHED Memorandum Order No. 051-17, May 31, 2017.

[72] REVISED POLICIES, STANDARDS, AND GUIDELINES (PSGS) FOR BACHELOR OF ARTS IN COMMUNICATION (BA COMM) PROGRAM, CHED Memorandum Order No. 035-17, May 11, 2017.

[73] REVISED POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR OF SCIENCE IN BUSINESS ADMINISTRATION, CHED Memorandum Order No. 017-17, May 9, 2017.

[74] POLICIES, STANDARDS, AND GUIDELINES FOR THE BACHELOR OF SCIENCE IN STATISTICS (BS STAT) PROGRAM, CHED Memorandum Order No. 042-17, May 17, 2017.

[75] POLICIES, STANDARDS AND GUIDELINES FOR BACHELOR OF SECONDARY EDUCATION (BS ED), CHED Memorandum Order No. 075-17, November 2, 2017.

MR. VILLACORTA. The Commissioner is right in describing these as guidelines. This is not to say that there will be specific subjects that will embody these principles on a one-to-one correspondence. In other words, we are not saying that there should be a subject called nationalism or ecology. That was what we were fighting against in the Association of Philippine Colleges of Arts and Sciences. The government always came up with what they called thrusts, and therefore the corresponding subjects imposed on schools that are supposed to embody these thrusts. So, we had current issues. It was a course that was required on the tertiary level. Then there was a time when they required subjects that dealt with green revolution; and then agrarian reform. Taxation is in fact still a required course. We are not thinking in those terms. These are merely guidelines.

FR. BERNAS. **In other words, while the State will give the goals and guidelines, as it were, how these are to be attained is to be determined by the institution by virtue of its academic freedom.**

MR. VILLACORTA. That is right, Mr. Presiding Officer. I invite, of course, my fellow members in the committee who might have some reservations on the points I raised.

FR. BERNAS. But I guess what I am trying to point out is: Are we really serious about academic freedom?

MR. VILLACORTA. Definitely, we are. Would the Commissioner have certain misgivings about the way we defined it?

FR. BERNAS. I would, **if the committee goes beyond mere guidelines, because if we allow the State to start dictating what subjects should be taught and how these would be taught, I think it would be very harmful for the educational system**. Usually, legislation is done by legislators who are not educators and who know very little about education. Perhaps education should be left largely to educators, with certain supervision, and so forth.

MR. VILLACORTA. Excuse me, Mr. Presiding Officer, if I may interject. I am sure the Honorable Bernas, being very much experienced in education, is aware of the fact that there is this great need to develop certain priority concerns in the molding of our youths' mind and behavior. For example, love of country is something that is very lacking in our society and I wonder if the Honorable Bernas would have any reservation against giving emphasis to nationalism.

FR. BERNAS. I have nothing against motherhood concepts, Mr. Presiding Officer.

MR. VILLACORTA. But this is always the dilemma of educators. To what extent do we give freedom as to the subject matter and manner of teaching versus certain imperatives of national development? In the last dispensation, we found a lopsided importance given to so-called national development which turned out to be just serving the interest of the leadership. The other members of the committee are fully aware of the dangers inherent in the State spelling out the priorities in education, but at the same time, we cannot overlook the fact that there are certain areas which must be emphasized in a developing society. Of course, we would wish that we shall not always be a developing society bereft of economic development as well as national unity. But we like the advise of the Honorable Bernas, as well as our colleagues in the Commission, on how we can constitutionalize certain priorities in educational development as well as curricular development without infringing necessarily on the goals of academic freedom. Moreover, jurisprudence accords academic freedom only to institutions of higher learning.

FR. BERNAS. So, I am quite satisfied that **these are guidelines**.[76] (Emphasis and underscoring supplied)

In sum, the LEB's authority to prescribe the "basic curricula" is limited by the Constitutional right of law schools to academic freedom and to the due process standard of reasonableness. When the LEB (or any branch of government for that matter) interferes with Constitutional rights and freedoms and overreaches its authority, **as it has done in this case**, it is the Court's Constitutional duty to make it tow the line.

iii. How to teach

As regards the aspect of academic freedom on *how to teach*, several issuances of the LEB readily reveal that, over the years, the LEB has exercised considerable power in *controlling*, and not merely recommending or supervising, the manner by which legal education institutions and law school professors conduct the teaching of law courses.

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[76] IV RECORD, CONSTITUTIONAL COMMISSION 77 (August 29, 1986).

To cite a concrete example of how the LEB interferes with the law schools' right to determine the manner of instruction, the LEB issued LEBMO No. 1-2011, which, as earlier discussed, introduced policies and standards of legal education and provided for a manual of regulations for law schools. **The said LEBMO is riddled with various rules, regulations, and restrictions that go into the manner by which law schools teach their students.**

For instance, according to Section 18(a) of LEBMO No. 1-2011, with respect to the LLB curriculum, the LEB requires law schools to complete the teaching of all subjects in the LLB curriculum within the entire semester as prescribed by the model curriculum provided in the LEBMO. Law schools are prohibited from completing the curriculum in *modular fashion*, *i.e.*, completing the subject by a class held continuously for a number of days, although satisfying the required number of hours. Evidently, the manner by which the law schools implement its curriculum is restricted.

The said provision also prohibits distance education, unless otherwise provided for by the LEB. For instance, if a law school professor wishes to conduct class through a video teleconference when he/she is temporarily outside of the country, because LEBMO No. 1-2011 prohibits distance education unless approved by the LEB, the professor cannot do so. Clearly, this illustrates how the LEB interferes with the professors' prerogative to determine what methods they will employ in teaching their respective classes.

Further, under Section 18(c), the LEB imposes the total number of credits that shall be awarded to a student pursuing his/her LLM, as well as the specific number of units to be credited upon a successful defense before a Panel of Oral Examiners. The said provision also dictates upon the law school the specific type of output that a student must submit in a non-thesis master's program. Similarly, under Section 18(d), the issuance not only determines the minimum academic credits as regards the degree of SJD or DCL; even the specific number of pages of a doctoral dissertation is imposed, *i.e.*, 200 pages. In fact, under Section

20 of the same issuance, legal education institutions are mandated to utilize internet access and to put up a Moot Court room in the process of teaching their students.

With respect to assessing the respective faculties of the law schools, under Section 41.2 of the issuance, the LEB is allowed to revoke the permits or recognitions given to legal education institutions when the LEB deems that there is gross incompetence on the part of the dean and the corps of professors or instructors. Simply stated, under the issuance, the LEB is permitted to assess the teaching performance of law school faculty members and mete out penalties in line with such assessment. The evaluation of the performance and competence of faculty members is part and parcel of a law school's right to determine its own manner of instruction. **Worse, the said issuance is silent as to how the LEB gauges gross incompetence.**

As discussed earlier, under Section 58 of LEBMO No. 1-2011, the LEB prescribes course specifications, wherein the names of the courses, the number of units per course, the number of hours to be spent per week, and the various methods of instruction that must be utilized are dictated upon the legal education institution and the law school professors who teach the various courses indicated therein.

As a glaring example, under Section 58.1 of the aforesaid issuance, on the course of *Persons and Family Relations* in the LLB program, the instructor is specifically required to conduct "[c]ases, recitations and lectures" for 4 hours a week. For *Legal Technique and Logic*, on the other hand, the teaching methods prescribed are limited to "[r]ecitations and lectures" only, for 2 hours per week. Does this mean that professors who teach *Persons and Family Relations and Legal Technique and Logic* are discouraged, or worse, prohibited, to require group work or group presentations in their respective classes, considering that these methods of instruction were not included in the course specifications? That seems to be the case, based on a reading of the said issuance.

To stress, as clearly illustrated in the foregoing examples, the LEB, through LEBMO No. 1-2011, **dictates with much**

particularity and, therefore, unduly restricts the method of teaching that may be adopted by the law school professors. This does not merely encroach on the academic freedom of the legal education institutions as to how to teach; the academic freedom of the faculty members themselves is directly infringed.

It must equally be stressed that the imposition of the course specifications provided under LEBMO No. 1-2011 is not merely recommendatory. It is *mandatory* in nature, considering that under Section 58 of the issuance, the law schools may provide their own course descriptions *only* when the same are not provided under the issuance and if in conformity with the subject titles stated in the model curricula provided in the issuance.

Astonishingly, under Section 59 of LEBMO No. 1-2011, the LEB even imposes specific rules and regulations on the manner by which the law schools grade its students. Law schools are even required to submit their grading system and a complete explanation thereof before the LEB.

To further illustrate how the LEB meddles with the right of the law schools to determine their own grading system, Section 59(a) specifies certain factors that must be considered by the law school professor in determining the student's final grade, *i.e.*, "[p]articipation in class through recitation, exchange of ideas, presentation of reports, and group discussion."

Under Section 59(b), law schools are forced to drop students who incur absences totaling 20% of the total number of contact hours or required hours (units) for the subject. Worse, law schools are required to inscribe the entry "FA" (Failed due to Absences) in the student's official transcript of records.

Section 59(d), on the other hand, interferes with the law schools' management of their respective apprenticeship programs. Under the said provision, when apprenticeship is required by the law school and the student does not complete the mandated number of apprenticeship hours, or the person supervising the apprenticeship program deems the performance of the student unsatisfactory, the law school dean is forced to "require of the student such number of hours more in

apprenticeship as will fulfill the purposes of the apprenticeship program."

Also, under Section 59(e), when a program requires the submission and defense of a thesis, in a situation where a student fails to submit or receives a failing grade, the issuance directs law schools to allow students to "improve, correct or change the thesis and present it anew for the evaluation of the law school, through its dean or the professor assigned to direct thesis-writing." It is readily apparent that the very manner by which legal education institutions conduct their thesis program is interfered with.

Beyond LEBMO No. 1-2011, various rules and regulations that interfere in the legal education institutions' right to determine their manner of teaching are likewise found in LEBMO No. 2-2013.

In the said issuance, the LEB imposes several restrictions as to the allowable load of students in the law schools. As previously discussed, under Section 4 of LEBMO No. 2-2013, students are not permitted to take any advanced subject until passing prerequisite subjects. Further, under Section 5, the LEB sets the maximum number of academic units in excess of the normal load that may be allowed for graduating students, *i.e.*, six units. Under Sections 6 and 8, the requirements for the cross enrollment and transfer of students from one law school to another, respectively, are imposed.

Several impositions are also made even on the most miniscule of details regarding the request, transfer, and release of school records and transfer credentials.[77] **Interestingly, even the *format* of the school records is forced upon the law schools, as found in Section 7**[78] **of the issuance.**

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[77] LEBMO No. 2-2013, Sec. 7-11.

[78] **Section 7. School Records of a Student.** The school record of every student shall contain the final rating in each subject with the corresponding credits, and the action thereon preferably indicated by "passed" or "failed". No final record may contain any suspensive mark such as "Inc." The student must either be given a passing or a failing grade in the final record.

Under Section 12, the rules on denial of final examinations, withholding of grades, and refusal to re-enroll are likewise dictated upon the legal education institutions.

Under Section 14 of LEBMO No. 2-2013, which mirrors Section 59(b) of LEBMO No. 1-2011, the LEB requires that professors fail students who incur absences of more than 20% of the prescribed number of class hours. This provision is a clear example of how the LEB directly interferes with the law professors' freedom to manage their respective classes.

LEBMO No. 2-2013 even imposes upon the legal education institutions the manner by which they should conduct their respective apprenticeship programs, determining the list of specific activities that should be required for students undergoing the apprenticeship programs.[79]

As regards the law schools' right to determine which of their students are eligible to graduate, Section 16 of the issuance imposes residency requirements for graduation, establishing the rule that no student shall be allowed to graduate from any law school where he or she has not established academic residency for at least the two last semesters of his or her course of study. In fact, to further underscore the high level of interference and overreach exercised by the LEB, LEBMO No. 2-2013 even imposes upon the law schools certain rules on determining which students may participate in the commencement exercise of the law schools.[80]

The interference of the LEB with the manner by which law schools implement their curriculum is so pervasive that, under LEBMO No. 2-2013, in order for a law school to open another branch[81] or hold extension classes,[82] prior approval of the LEB is required.[83]

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[79] Sec. 24.

[80] *Id*. at Sec. 15.

[81] *Id*. at Sec. 25.

[82] *Id*. at Sec. 26.

[83] *Id*. at Sec. 27.

Aside from the foregoing provisions of the LEBMO, I invite the Court's attention to Article III of the said issuance, which imposes numerous restrictions on *the power of law schools to maintain discipline and to determine the manner by which they conduct administrative proceedings*.

For example, under Section 20, the LEB forces upon law schools certain rules on when and how they can preventively suspend, suspend, expel, and not readmit their students.

The law school may only preventively suspend a student "when the evidence of guilt is strong and the Dean is morally convinced that the continued stay of the student pending investigation would cause sufficient distraction to the normal operations of the law school, or would pose real or imminent threat or danger to persons and property inside the law school's premises."[84]

If the law school decides to suspend a student, its action constrained to denying the erring student from attending classes for a period not exceeding 20% of the prescribed total class days for the school term.[85]

With respect to the penalty of non-readmission, when meting out the said penalty, the law school is forced to allow the student to complete the current school term when the resolution for non-readmission was promulgated. The law school is likewise mandated to issue the transfer credentials of the erring student upon promulgation.[86]

As regards the penalty of exclusion, the LEB allows the law schools to mete out such penalty "for acts or offenses such as dishonesty, hazing that involves physical, moral or psychological violence that does not result in death of a student, carrying deadly weapons, immorality, selling and/or possession of prohibited drugs, drug dependency, drunkenness, hooliganism, vandalism and other offenses analogous to the foregoing."[87]

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[84] *Id*. at Sec. 20, par. (a).

[85] *Id*. at Sec. 20, par. (b)(1).

[86] *Id*. at Sec. 20, par. (b)(2).

[87] *Id*. at Sec. 20, par. (b)(3).

The said issuance also confines the power of law schools to expel a student. Under LEBMO No. 2-2013, the permissible instances when law schools can expel a student are limited to (a) participation of a student as a principal in a fraternity hazing that results in the death of a law student; (b) unlawful physical assault of higher education institution officials inside the school campus; and (c) commission of an offense with an imposable minimum penalty of more than 12 years.[88] Hence, based on this provision, if a student participates in a fraternity hazing wherein the death of a non-law student occurs, absurdly, the law school has no power to expel a student.

Further, in cases wherein the administrative charge filed against a student amounts to a criminal offense, Section 22 of the LEBMO requires law schools to proceed with the administrative proceedings until termination even if the criminal case has not yet been decided by the court.

Notably, under Section 19 of LEBMO No. 2-2013, if the law school imposes a sanction of expulsion against a student, the student may appeal the disciplinary action meted out by the school before the LEB. **The latter is empowered under the LEBMO to *reverse and set aside* the school's decision to expel the student.** Without a shred of doubt, this is a clear derogation of the law school's right to discipline its students.

It must be emphasized that the right of the school to discipline its students is an integral aspect of the academic freedom of how to teach.[89] Because the schools' power to instill discipline in their students is subsumed in their academic freedom, the Court has generally adopted a stance of deference and non-interference, declining to meddle with the right of schools to impose disciplinary sanctions, which includes the power to dismiss or expel, students who violate disciplinary rules.[90] In

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[88] *Id*. at Sec. 20, par. (b)(4).

[89] *Miriam College Foundation, Inc. v. Court of Appeals, supra* note 7.

[90] *Cudia v. The Superintendent of the Philippine Military Academy, supra* note 43, at 655-656.

fact, the power of schools to discipline their students is so established and recognized that, in our jurisprudence, even the power to impose disciplinary measures has extended to schools even after graduation for any act done by the student prior thereto.[91]

Hence, the various rules imposed by the LEB that control and unduly restrict the law schools' determination of the manner by which they discipline their students undoubtedly amount to a serious breach of their academic freedom to determine how to teach.

Another exemplar of the LEB's unwarranted and undue interference in the law schools' prerogative to control the manner of instruction is LEB Memorandum Order No. 10, Series of 2017 (LEBMO No. 10-2017), which imposes guidelines on the adoption of the academic/school calendar. While the said LEBMO allows law schools to establish their own academic/school calendars and set their own opening dates, it nevertheless restrictively confines the academic/school calendar to no less than 36 weeks, wherein the total number of days shall not be less than 200 per calendar year. Moreover, the issuance requires law schools to set the start of their school calendar not earlier than the last week of May, but not later than the last day of August. The law schools' discretion to determine the amount of weeks and days in their academic/school calendars, as well as the period of commencement of the academic year, is clipped.

The aforementioned issuances and their provisions are but examples of how the LEB has exercised the power of control — not supervision — over the legal education institutions' rights to determine the manner by which law courses are taught and how such institutions manage their internal affairs.

iv. Who may be admitted

With respect to the academic freedom aspect of who may be admitted to the schools, I reiterate my position that the

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[91] *Id*. at 657-658, citing *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287, 306-308 (1999).

ponencia is correct in holding that the PhiLSAT is violative of academic freedom. Mandating legal education institutions to reject examinees who failed to obtain the prescribed passing score amounts to a *complete transfer of control* over student admissions from the law schools to the LEB. To emphasize, the permissible power of the State over institutions of higher learning is limited to supervision and regulation, *not control*.

Beyond the PhiLSAT, however, the LEB has imposed other restrictions that similarly interfere with the law school's right to determine who to admit and teach.

Under LEBMO No. 1-2011, where the applicant for admission into a law school is a graduate of a foreign institution, instead of allowing the law schools to determine for themselves whether to admit the student or not, the matter is referred exclusively to the LEB, who shall determine the eligibility of the candidate for admission to law school.[92] Hence, under the LEBMO, the LEB is given complete control and discretion as to the admissions of foreign graduates. This is a clear derogation of the right of law schools to determine who to admit.

Further, under Section 16 of the same LEBMO, the LEB forces law schools to reject applicants for admission to the LLB or JD program of studies who failed to earn at least 18 units in English, 6 units in Mathematics, and 18 units of social science subjects. **Such requirement has no basis under the Rules of Court or under any law**. The aforesaid requirement is purely the creation of the LEB. The same may be said with respect to the rules on the prerequisites for admission to graduate programs in law imposed under Section 17.

B. Other Issues Under the LEB Law

i. LEB's power to accredit is too broad and unreasonable

Beyond the four essential aspects of academic freedom, several other issuances of the LEB may also be classified as unreasonable.

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[92] Sec. 15.

Under R.A. 7662, the LEB is empowered to supervise and regulate law schools or legal educational institutions through accreditation.[93] Without encroaching upon the schools' academic freedom, the LEB shall set the standards of accreditation, taking into account, among others, "the size of enrollment, the qualifications of the members of the faculty, the library and other facilities."[94] Educational institutions may only operate a law school upon accreditation by the LEB.[95] Should the law school fail to maintain these standards, the LEB may withdraw or downgrade its accreditation.[96] To implement the provisions of R.A. 7662, the LEB issued LEBMO No. 1-2011 entitled *Policies and Standards of Legal Education and Manual of Regulations for Law Schools*.

Under LEBMO No. 1-2011, accreditation is either **mandatory or voluntary**.[97] With mandatory accreditation, a law school is authorized and recognized by the LEB to operate and to endorse its graduates for the Bar Examinations.[98] On the other hand, voluntary accreditation "refers to the processes that may be devised by private accrediting agencies, recognized by [the LEB], that confer marks of distinction on law schools that surpass the minimum requirements and standards" under LEBMO No. 1-2011.[99] Mandatory accreditation consists of two stages: **Permit Stage and Recognition Stage**.[100] A Permit status, which must be obtained before each academic year, allows the law school to open and offer subjects of the first year of the law curriculum.[101] Meanwhile, a Recognition status constitutes full

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[93] R.A. 7662, Sec. 7, par. (d).

[94] *Id*. at par. (c).

[95] *Id*. at Sec. 8.

[96] *Id*. at Sec. 9.

[97] Sec. 30.

[98] *Id*.

[99] *Id*.

[100] *Id*. at Sec. 31.

[101] *Id*. at Sec. 31.1.

mandatory accreditation which allows the law school's students to graduate, to be conferred degrees and to be endorsed to the Office of the Bar Confidant for the Bar Examinations.[102]

R.A. 7662 provides that the grant, denial, withdrawal and downgrading of a school's accreditation must be subject to the standards to be set by the LEB. Under LEBMO No. 1-2011, some of these standards are that a law school: (a) shall be headed by a properly qualified dean;[103] (b) shall maintain a corps of professors drawn from the ranks of leading and acknowledged practitioners as well as academics and legal scholars or experts in juridical science;[104] (c) shall be properly equipped with the necessities of legal education, particularly library facilities, including reliable internet access, as well as suitable classrooms and a Moot Court room;[105] (d) shall have a faculty lounge for the convenience of members of the faculty;[106] and (e) shall publish a research journal.[107] A private higher education institution applying for Permit status to open a law school must include in its application, among others, the present library holdings, as well as the name and qualifications of the law librarian, and pictures of the classrooms, moot court, library, dean's office, and faculty lounge.[108]

Verily, I find these standards to be unreasonable impositions on law schools, if not a patent violation of their academic freedom, as previously discussed.

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[102] *Id.* at Sec. 31.2.

[103] *Id.* at Sec. 20.

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.* at Sec. 24. ***In LEB Memorandum Order No. 23, Series of 2019 (LEBMO No. 23-2019), the LEB saw fit, under pain of administrative sanctions, to regulate the establishment of Law Journals, including the composition, position, and powers of the Editorial Board, the frequency of publication, and even a Law Journal's format and style.***

[108] *Id.* at Sec. 33.1.

Moreover, some of the provisions in LEBMO No. 1-2011 lack legal basis in R.A. 7662 and can be classified as arbitrary. Consider the following: (a) the LEB shall assure accessibility of legal education by seeing to the proportional distribution of law schools throughout the country;[109] (b) in the exercise of LEB's "sound discretion," it may deny an application to open another law school "if x x x there is/are existing law school/s which adequately serve/s the legal education needs" in a given area;[110] and (c) it may also deny an application if it determines based on the records that a law school is "substandard in the quality of its operation or when surrounding circumstances make it very difficult for it to form a suitable faculty, or for any valid and weighty reasons," it could not deliver quality legal education.[111] Further, in spite of the serious consequences of the denial of recognition, *i.e.*, closure or phase out of the law school, there is no provision on grounds for such denial.[112]

Lastly, LEBMO No. 1-2011 also provides that the LEB shall take "cognizance of all matters involving acts or omissions" in relation to R.A. 7662, related laws and issuances and it may impose administrative sanctions.[113] While these sanctions are not defined in the said issuance, it may be inferred that it refers to a denial, withdrawal or downgrading of a law school's accreditation.

The above provisions show that the LEB's discretion to grant, deny, withdraw or downgrade a school's accreditation is too broad and overreaching, contrary to the constitutional provisions on reasonable supervision and regulation and on academic freedom.

Other issuances of the LEB which are seemingly void for being either unreasonable or issued *ultra vires* are as follows:

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[109] *Id.* at Sec. 21.

[110] *Id.* at Sec. 34, par. (d).

[111] *Id.*

[112] *Id.* at Sec. 37.

[113] *Id.* at Sec. 43.

1. LEB Resolution No. 7, Series of 2010 (LEB Resolution No. 7-2010), Declaring a 3-Year Moratorium on the Opening of New Law Schools — The Whereas Clauses stated that: (a) based on LEB's opinion, the 128 law schools as of that time are more than enough; (b) the proliferation of law schools has been identified as one of the causes of the poor quality of legal education; and (c) the LEB needs a 3-year period to inspect and monitor the performances of existing law schools and "to focus on the introduction of reform measures in our legal education system." Thus, the LEB declared a 3-year moratorium on opening of new law schools.

   This unilateral declaration, **which is merely based on the LEB's opinion**, seems to have been undertaken without consultation with stakeholders, specifically the law schools, which the LEB plans to inspect and monitor.

2. LEB Resolution No. 16, Series of 2011 (LEB Resolution 16-2011) — The LEB considers a small student population in a law school as not financially viable and would result in "substandard legal education," unless subsidized by the management. Thus, a law school with less than 15 students in the first semester of the first level or with a school population of less than 60 students is required to explain in writing why it should be allowed to continue its operations or what remedial measures it shall undertake to address the low enrollment.

   It seems that the LEB has arbitrarily determined that a law school with a school population of less than 60 students is not financially viable unless subsidized by the management. **As stated in the Whereas Clause, the basis for LEB's conclusion that the cost of legal education determines its quality is merely stated as "experience, observation and information."** To my mind, the LEB cannot dictate to a law school whether or not it is financially viable to continue its operation as the latter can, and should make its own business decisions.

3. LEB Memorandum Circular No. 2, Series of 2017 (LEBMC No. 2-2017), Submission of Schedule of Tuition and Other School Fees — All law schools are reminded to follow section/paragraph 13 of LEB Memorandum Order No.8, Series of 2016 (LEBMO No. 8-2016), *i.e.*, to submit to the LEB the approved schedule of tuition and other school fees for S.Y. 2015-2016 and S.Y. 2016-2017. This Circular also provides that failure to seasonably submit the said schedule will bar the non-compliant law school from increasing its tuition and other school fees in S.Y. 2017-2018.

   This Circular's provision on barring a non-compliant law school from increasing its tuition and other fees has no legal basis and constitutes undue interference with the law school's management and operations.

4. LEB Memorandum Circular No, 4, Series of 2017 (LEBMC No. 4-2017), Reminder to Submit Duly Accomplished LSIR Form — The LEB reminded the law schools to submit the Law School Information Report (LSIR) Form for the second semester of AY 2016-2017 as required under LEB Memorandum Order No. 6, Series of 2016, (LEBMO No. 6-2016). This Circular also served as a "warning" that "non-compliant law schools shall be subject to appropriate administrative sanctions, including the imposition of fine up to ₱10,000."

   It is not clear what these "appropriate administrative sanctions" are. Moreover, it is also unclear what the legal basis is for the said administrative sanctions and for the imposition of fine up to ₱10,000.00.

5. LEB Memorandum Circular No. 6, Series of 2017 (LEBMC No. 6-2017), Applications for LEB Certification Numbers — This Circular provides that, in lieu of Special Orders issued by the CHED, legal education institutions are required under LEB Resolution No. 2012-02 to secure LEB Certification Numbers for graduating students of law programs. This issuance also

provides that "LEIs that graduate students without LEB Certification Numbers due to late submission of applications" shall be imposed the appropriate sanctions.

Similar to the previous issuances above, it is not clear what these sanctions are. In addition, **the LEBMC unduly interferes with the management of the law schools regarding their graduating students**.

6. LEB Memorandum Order No. 16, Series of 2018 (LEBMO No. 16-2018), Policies, Standards, and Guidelines for the Academic Law Libraries of Law Schools — Pursuant to LEB Resolution No. 2018-207, this issuance contains detailed requirements for the operation of a law library, such as: (a) its size should "adequately contain the entire law collection and seat comfortably fifteen percent (15%)" of the entire law school population; (b) there should be an exclusive reading area for faculty members; (c) the operating hours shall not be less than 6 hours a day; (d) qualifications and development training of the librarian; (e) required number of copies and kinds of books, as well as foreign and online/digital sources; (f) if wireless internet connection is not available to students, the required number of internet workstations shall be increased to such number equivalent to the ratio of 1 for every 50 students; (g) transitory provisions which states that non-compliant law schools shall be given three (3) months to meet this issuance requirements; and (h) failure to meet any of the requirements shall constitute non-compliance with the prescribed minimum standards for the law program and shall be subject to the appropriate administrative sanctions under Nos. 1 and 2 of the said issuance.

While the objectives of providing for a good law library is laudable, the stringent requirements **and its corresponding costs** may strain the law school's resources, **or worse, unduly burden the students with increased fees simply to allow the law school to**

immediately comply with the provisions of the said issuance.

7. LEB Memorandum Order No. 18, Series of 2018 (LEBMO No. 18-2018), Guidelines on Cancellation or Suspension of Classes in All Law Schools — Pursuant to LEB Resolution No. 2018-344, this LEBMO provides that there will be automatic national suspension of classes upon declaration of the Office of the President or when Signal No. 3 is raised by Philippine Atmospheric, Geophysical and Astronomical Services Administration. Without these conditions, the suspension shall depend on Local Government Unit declaration.

   Since this issuance merely provides for guidelines on cancellation or suspension of classes in law schools, it is bemusing that there is a clause therein which states that failure to comply with any of its provisions shall be subject to appropriate administrative sanctions under Nos. 1 and 2 of the said issuance.

These issuances by the LEB can evidently be classified as unreasonable and unduly burdensome to the operations of the law schools — which clearly go beyond its mandate. The LEB ought to be reminded that under administrative law, "administrative authorities should not act arbitrarily and capriciously in the issuance of rules and regulations. To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they are authorized to be issued, then they must be held to be invalid."[114]

ii. R.A. 7662's provision on law practice internship

With regard to the provision in R.A. 7662 empowering the LEB to impose an internship requirement as a prerequisite to take the Bar examinations, I agree with the *ponencia*'s ruling[115]

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[114] *Lupangco v. Court of Appeals*, 243 Phil. 993, 1005 (1988).

[115] *Ponencia*, p. 102.

that the said provision of law is unconstitutional on its face. Section 7(g) of R.A. 7662 provides that the LEB is granted the power:

> g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

To my mind, the *ponencia* correctly holds that the aforequoted provision encroaches on the power of the Supreme Court to prescribe the requirement for admission to the Bar as provided under Section 2 of Rule 138 of the Rules of Court, to wit:

> SEC. 2. *Requirements for all applicants for admission to the bar.* — Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

In his *Amicus Brief*, Dean Candelaria also noted that some of the provisions of R.A. 7662 are in apparent conflict with the power of the Court to promulgate rules and that law practice internship and mandatory continuing legal education are both subjects of Court rules and issuances.[116]

From the foregoing, it is my view that the *ponencia* was justified in striking down the particular provision of R.A. 7662 for being unconstitutional.

Conclusion

To end, I reiterate my agreement with the *ponencia*'s conclusions for the reasons I have already discussed above.

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[116] *Amicus Brief,* p. 4.

Verily, after a meticulous review of the circulars, memorandum orders and other issuances of the LEB, it has become apparent that the LEB has committed acts of overreach, clearly going beyond mere supervision of law schools. A careful analysis of how the LEB exercised and continues to exercise its powers readily reveals that the LEB is already unduly interfering and meddling with the law schools' right to determine who may teach, what may be taught, how to teach and who may be admitted to study. As illustrated above, the exercise of the LEB's powers are evidently beyond *reasonable* supervision and regulation by the State.

Perhaps, if the various LEB rules and regulations cited here were merely recommendatory in nature or were mere guidelines (following the intent of the Constitutional Commissioners), then the exercise of the LEB's power could possibly pass constitutional muster. ***However, this is not the case***. As seen from the discussion above, the many issuances of the LEB were imposed on the law schools under pain of administrative sanctions — which include the closing down of the law school for non-compliance. **The questionable issuances cited here show that the LEB is exercising the power to control, manage, dictate, overrule, prohibit and dominate the law schools — in absolute disregard of the Constitutional guarantee of academic freedom.** As such, the Court is called upon ***in this case*** to curb the abuse, and to strike down these issuances for being violative of the Constitutional right of the law schools to exercise academic freedom.

In view of the foregoing, I concur with the *ponencia* in **PARTLY GRANTING** the petitions and in declaring the following:

The jurisdiction of the Legal Education Board over legal education is **UPHELD**.

The Court further declares:

As **CONSTITUTIONAL**:

1. Section 7(c) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to set the standards of accreditation

for law schools taking into account, among others, the qualifications of the members of the faculty without encroaching upon the academic freedom of institutions of higher learning; and

2. Section 7(e) of. R.A. No. 7662 insofar as it gives the Legal Education Board the power to prescribe the minimum requirements for admission to legal education and minimum qualifications of faculty members without encroaching upon the academic freedom of institutions of higher learning.

As **UNCONSTITUTIONAL** for encroaching upon the power of the Court:

1. Section 2, par. 2 of R.A. No. 7662 insofar as it unduly includes "continuing legal education" as an aspect of legal education which is made subject to State supervision and control;

2. Section 3(a)(2) of R.A. No. 7662 and Section 7(2) of LEBMO No. 1-2011 on the objective of legal education to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;

3. Section 7(g) of R.A. No. 7662 and Section 11(g) of LEBMO No. 1-2011 insofar as it gives the Legal Education Board the power to establish a law practice internship as a requirement for taking the Bar; and

4. Section 7(h) of R.A. No. 7662 and Section 11(h) of LEBMO No. 1-2011 insofar as it gives the Legal Education Board the power to adopt a system of mandatory continuing legal education and to provide for the mandatory attendance of practicing lawyers in such courses and for such duration as it may deem necessary.

As **UNCONSTITUTIONAL** for being *ultra vires*:

1. The act and practice of the Legal Education Board of excluding, restricting, and qualifying admissions to law schools in violation of the institutional academic freedom on who to admit, particularly:

    a. Paragraph 9 of LEBMO No. 7-2016 which provides that all college graduates or graduating students applying for admission to the basic law course shall be required to pass the PhiLSAT as a requirement for admission to

any law school in the Philippines and that no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within 2 years before the start of studies for the basic law course;

b. LEBMC No. 18-2018 which prescribes the taking and passing of the PhiLSAT as a prerequisite for admission to law schools.

Accordingly, the temporary restraining order issued on March 12, 2019 enjoining the Legal Education Board from implementing LEBMC No. 18-2018 is made **PERMANENT.** The regular admission of students who were conditionally admitted and enrolled is left to the discretion of the law schools in the exercise of their academic freedom; and

c. Sections 15, 16, 17 of LEBMO No. 1-2011[.]

2. The act and practice of the Legal Education Board of dictating the qualifications and classification of faculty members, dean, and dean of graduate schools of law in violation of institutional academic freedom on who may teach, particularly:

a. Sections 41.2(d), 50, 51, and 52 of LEBMO No. 1-2011;
b. Resolution No. 2014-02;
c. Sections 31(2), 33, 34, and 35 of LEBMO No. 2; [and]
d. LEBMO No. 17, Series of 2018; and (*sic*)

3. The act and practice of the Legal Education Board of dictating the policies on the establishment of legal apprenticeship and legal internship programs in violation of institutional academic freedom on what to teach, particularly:

a. Resolution No. 2015-08;
b. Sections 24(c) of LEBMO No. 2; and
c. Sections 59(d) of LEBMO No. 1-2011.[117]

Additionally, after reviewing the various issuances of the LEB beyond those covering the PhiLSAT, I also vote to declare

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[117] *Ponencia*, pp. 101-103.

the following as **UNCONSTITUTIONAL** for violating the institutional academic freedom of the law schools as well as the individual academic freedom of the law faculty:

1. The act and practice of the Legal Education Board of dictating the qualifications and classification of faculty members, dean, and dean of graduate schools of law in violation of institutional and individual academic freedom on **who may teach**, particularly:

    a. Sections 33.1(4), 33.1 (5), 34(d), 35(1) and 35(3) of LEBMO No. 1-2011.

2. The act and practice of the Legal Education Board of dictating the policies on the establishment of legal apprenticeship and legal internship programs, as well as its unreasonable intrusion into the formulation of the law schools' curricula, in violation of institutional academic freedom on **what to teach**, particularly:

    a. Sections 3 and 4 of LEBMO No. 2-2013;
    b. Sections 33(6), 53, 54, 55 and 58 of LEBMO No. 1-2011;
    c. LEBMO No. 5-2016; and
    d. LEBMO No. 14-2018.

3. The act and practice of the Legal Education Board of dictating the manner by which legal education institutions and law school professors conduct the teaching of law courses, in violation of institutional and individual academic freedom on **how to teach**, particularly:

    a. Sections 18(a), 18(c) 18(d), 20, 41.2, 58 and 59 of LEBMO No. 1-2011;
    b. Sections 4, 5, 6, 7, 8, 12, 14, 15, 16, 19, 20, 22, 24, 25, 26 and 27 of LEBMO No. 2-2013; and
    c. LEBMO No. 10-2017.

4. Other issuances of the Legal Education Board which are arbitrary, unreasonable, or issued *ultra vires*, *i.e.*:

a. Sections 20, 21, 24, 33.1, 34, 37, 43 of LEBMO No. 1-2011;
b. LEBMO No. 23-2019;
c. LEBMO No. 16-2018;
d. LEBMO No. 18-2018;
e. LEB Resolution No. 7-2010;
f. LEB Resolution No. 16-2011;
g. LEBMC No. 2-2017;
h. LEBMC No. 4-2017; and
i. LEBMC No. 6-2017.

CONCURRING OPINION

REYES, A., JR., *J.*:

The question in the instant case is simple — may the State, under the guise of improving the quality of legal education forbid its own citizens from pursuing a course in law?

In the instant consolidated Petitions for Prohibition, and *Certiorari* and Prohibition, under Rule 65 of the Rules of Court, the petitioners seek to declare as unconstitutional RA No. 7662, or the Legal Education Reform Act of 1993. They principally target Legal Education Board Memorandum Order No. 7, Series of 2016 ("LEBMO NO. 7"), which established the Philippine Law School Admission Test ("PhilSAT"), and the subsequent Legal Education Board Memorandum Orders and Circulars issued in relation thereto, particularly Legal Education Board Memorandum Order No. 11, Series of 2017 ("LEBMO No. 11") which supplies transitional provisions for LEBMO No. 7 and Legal Education Board Memorandum Circular No. 18 ("LEBMC No. 18"), which enumerates the PhilSAT eligibility requirements for freshmen law students for academic year 2018-2019.[1]

The *ponencia* focused its scrutiny on LEBMO No. 7, Series of 2016, LEBMO No. 11, Series of 2017, and LEBMC No. 18, which were all declared to be unconstitutional. This examination

[1] Petition, p. 1148.

was based on the assumption that the objection against the PhilSAT lies at the core of all the Petitions.[2]

I agree with the *ponencia* in striking as unconstitutional LEB MO No. 7, and all its adjunct orders. I further concede that they must be struck down on the basis of police power, and for being violative of the institutions' and students' academic freedom. In addition, I wish to highlight certain important matters that were not mentioned in the *ponencia*.

The Importance of Education in the Philippine Setting

Education is a continuing concern that is impressed with public interest. The importance of education in our country is apparent from the numerous Constitutional provisions highlighting the obligation of the State to nurture and protect our educational systems, *viz*.:

"**ARTICLE II. DECLARATION OF PRINCIPLES AND STATE POLICIES PRINCIPLES**

Article II, Section 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

ARTICLE XIV. EDUCATION

Article XIV, Section 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Article XIV, Section 2. The State shall:

1. Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;

2. Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;

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[2] Main Decision, p. 15.

3. Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;

4. Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and

5. Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

Article XIV, Section 4. The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions."

The common thread that runs through these Constitutional provisions is the State's priority towards education. This stems from the reality that "education and total human development [are] the gateway not only to intellectual and moral development but also to economic advancement and the cultivation of the yearning for freedom and justice."[3] It leads to the promotion of "total human liberation and development."[4]

In view of the importance of education, the State is bound to protect and promote the right of all citizens to quality education, and to undertake steps to make it accessible and affordable for all.[5] Added to this, all systems of education must be relevant to the needs of the people and the society.[6]

Pursuant thereto, on December 23, 1999, Congress passed Republic Act No. 7662 or the Legal Education Reform Act of 1993. The law was created to fulfill the State's policy to uplift the standards of legal education to prepare law students for advocacy, counseling, problem solving, and decision-making;

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[3] *Deliberations for the 1987 Constitution*, Volume IV, p. 170; Bernas, p. 91.

[4] 1987 CONSTITUTION, Article II, Sec. 17.

[5] 1987 CONSTITUTION, Article XIV, Sec. 2(3).

[6] 1987 CONSTITUTION, Article XIV, Sec. 2(1).

to infuse in them the ethics of the legal profession and impress on them the importance and dignity of the legal profession as an equal and indispensable partner of the Bench.[7] To achieve these ends, the lawmakers created a Legal Education Board ("LEB"), to pursue the following objectives, to wit:

(a) to administer the legal education system in the country in a manner consistent with the provisions of this Act;

(b) to supervise the law schools in the country, consistent with its powers and functions as herein enumerated;

(c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, without encroaching upon the academic freedom of institutions of higher learning;

(d) to accredit law schools that meet the standards of accreditation;

(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members;

(f) to prescribe the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, and such other courses of study as may be prescribed by the law schools and colleges under the different levels of accreditation status;

(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

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[7] REPUBLIC ACT NO. 7662 — An Act Providing for Reforms in the Legal Education, Creating for the Purpose, A Legal Education Board and For Other Purposes.

(h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary; and

(i) to perform such other functions and prescribe such rules and regulations necessary for the attainment of the policies and objectives of this Act. (Emphasis supplied)

Latching on to its power to prescribe the minimum standards for law admission, on December 29, 2016, the LEB released LEBMO No. 7, Series of 2016, which provides for the implementation of a nationwide uniform law school admission test — the PhilSAT. It is an aptitude exam that is designed to "measure the academic potential of the examinee to pursue the study of law," through a series of questions that gauge his/her proficiencies in communications, language, critical thinking, and verbal and quantitative reasoning."[8]

Under LEBMO No. 7, the PhilSAT shall be administered once a year on or before April 16 in Metro Manila, Baguio City, Legazpi City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City. A prospective test taker must pay a testing fee of Php 1,500.00 (later reduced to Php 1,000).[9]

Basically, the PhilSAT intends to predict the capacity of the test taker to survive in a challenging legal education program. It is surmised that if the examinee obtains a grade of 55 and above, then he/she can surely endure the rigors of law school.

In addition, it is assumed that those who graduated with honors and have been granted a professional civil service eligibility possess the basic competencies to thrive in law school. As such, they are exempt from the requirement of taking the PhilSAT, provided that they enroll in a law school within two years from their college graduation, and obtain a Certificate of Exemption from the LEB.

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[8] LEBMO No. 7.

[9] *Id*.

On the part of the law schools, they are strictly enjoined from admitting an applicant who failed to obtain the minimum required score, or an honor graduate who neglected to submit the Certificate of Exemption. Any law school who violates this rule shall be subjected to administrative sanctions, ranging from the termination or phasing-out of its law program; provisional cancellation of its government recognition and placing of its law program under Permit Status, and/or paying a fine of not less than Php10,000.00.[10]

Meanwhile, the LEB issued LEBMO No. 11, which provided for transitional provisions to LEBMO No. 7, allowing conditional admission and enrollment to those who failed to take the PhilSAT last April 16, 2017. The test takers' conditional enrollment was premised on an undertaking that they will take the next scheduled PhilSAT, and obtain the required minimum score, otherwise, their conditional admission shall be revoked. In addition, they must file a notarized application with the Chairman of the LEB, and pay an application fee of Php 300.00.

Thereafter, on June 8, 2018, LEB Chairperson Aquende issued LEBMC No. 18, putting an end to the conditional admission of students who failed to present a Certificate of Eligibility.

For sure, the LEB was properly vested with the power to prescribe minimum standards for law admission. However, this right is not unbridled, and is limited by the Constitutional admonition that said right must be exercised in a reasonable manner.[11] This means that the extent of State supervision and regulation may not transgress the cherished freedoms granted under the Constitution.

The PhilSAT is Violative of the Law Schools' Academic Freedom

Inasmuch as the State possesses the right to supervise and regulate educational institutions, the Constitution craftily ensures

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[10] LEBMO No. 7; LEBMO No. 2-2013, Section 32.

[11] 1987 CONSTITUTION, Article XIV, Section 4(1).

that the exercise thereof will not spiral into tyranny. To avoid any form of despotism in the regulation of institutions, the Constitution adds a layer of protection in favor of the academic institutions by ensuring that notwithstanding the possibility of state interference in their affairs, "[a]cademic freedom shall be enjoyed in all institutions of higher learning."[12] Law schools, as institutions of higher education, are the recipients of this boon.[13]

This institutional autonomy granted unto universities has been in existence as early as the 1935 and 1973 Constitutions.[14] Despite being strongly entrenched in our fundamental law, surprisingly, the body of jurisprudence on the matter of academic freedom is scarce. Noted Constitutionalist Fr. Joaquin G. Bernas, SJ theorizes that the scarcity stems from either a positive aspect — where occasions for litigation and controversy surrounding the matter are rare due to the unhampered freedom enjoyed by the academic world, or, in a negative aspect — due to a general ignorance or naivety regarding its meaning, purpose, and utility.[15] The instant case is one of the rare occasions where the issue of academic freedom comes to fore, and thus, presents an opportunity for the Court to further elucidate its meaning.

Interestingly, academic freedom is an amorphous concept that eludes exact definition. The framers of the Constitution intended it to remain as expansive and dynamic, in a desire to give the courts a wide latitude to develop its meaning further, *viz.*:

> In anticipation of the question as to whether and what aspects of academic freedom are included herein, ConCom Commissioner Adolfo

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[12] 1987 CONSTITUTION, Article XIV, Section 5(2).

[13] *The PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co.*, 627 Phil. 669, 683 (2010).

[14] *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287, 306-307 (1999).

[15] Bernas, p. 1294.

S. Azcuna explained: "Since academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom."

More to the point, Commissioner Jose Luis Martin C. Gascon asked: "When we speak of the sentence 'academic freedom shall be enjoyed in all institutions of higher learning,' do we mean that academic freedom shall be enjoyed by the institution itself?" Azcuna replied: "Not only that, it also includes . . . ." Gascon finished off the broken thought, — "the faculty and the students." Azcuna replied: "Yes."[16]

In Philippine jurisprudence, one of the earliest definitions of this term emerged from the case of ***Garcia v. The Faculty Admission Committee, Loyola School of Theology*** where the Court held that "the internal conditions for academic freedom in a university are that the academic staff should have de facto control of the following functions: (i) admission and examination of students; (ii) the curricula for courses of study; (iii) the appointment and tenure of office of academic staff and (iv) the allocation of income among the different categories of expenditure."[17]

In the cases that followed, the parameters of academic freedom were simplified to pertain to a general liberty to decide (i) who may teach; (ii) who may be taught; (iii) how lessons shall be taught; and (iv) who may be admitted to study.[18] Certainly, "[i]t is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation; x x x an atmosphere in which there prevail the 'four essential freedoms' of a university."[19]

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[16] *Ateneo de Manila University v. Judge Capulong*, 294 Phil. 654, 674 (1993).

[17] 160-A Phil. 929, 944 (1975).

[18] *Mercado, et al. v. AMA Computer College-Parañaque City, Inc.*, 632 Phil. 228, 251 (2010), citing *Miriam College Foundation, Inc. v. Court of Appeals*, 401 Phil. 431, 455-456 (2000).

[19] *The PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co*, *supra* note 13.

Accordingly, insofar as the academic institution is concerned, it possesses the general right to determine not only the subject matter, or manner of teaching, but likewise has a free reign to select its own students. This liberty was described in ***Garcia***[20] as "a wide sphere of autonomy."[21] Thus, the school has the right to decide its admission criteria for itself, in accordance with "its aims and objectives, and how best to attain them — free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint".[22] Moreover, the Court nips in the bud any attempts to curtail or limit this freedom, warning that "[t]his constitutional provision [academic freedom] is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purposes and nullify its intent."[23]

Similarly, in *Ateneo de Manila University v. Judge Capulong*,[24] the Court went further by characterizing the right of the schools to choose their own students as "inherent," explaining that,

> "educational institutions of higher learning are **inherently** endowed with the right to establish their policies, academic and otherwise, unhampered by external controls or pressure. In the Frankfurter formulation, this is articulated in the areas of: (1) what shall be taught, e.g., the curriculum and (2) who may be admitted to study."[25]

Indeed, institutions of higher learning are inherently endowed with the right to establish their own policies — academic and otherwise, unhampered by external controls or pressure. This includes the creation of their own distinct policies, standards

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[20] *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, *supra* note 17.

[21] *Id*. at 943.

[22] *Id*.

[23] *University of San Agustin, Inc. v. Court of Appeals*, 300 Phil. 819, 833 (1994).

[24] *Ateneo de Manila University v. Judge Capulong*, *supra* note 16.

[25] *Id*. at 673.

or criteria in the selection of their students, in accordance with their vision-mission and objectives. Remarkably, this prerogative is essential to their very functioning and identity. For sure, the schools' body politic serves as a representation of their standards, an embodiment of their vision, and a reflection of their ideals.

Equally important, in *University of San Agustin, Inc. v. Court of Appeals*,[26] the Court stressed that concomitant to the right of the schools to pursue their academic freedom, are the duties to ensure that this freedom is not jeopardized,[27] and to staunchly avert any possible encroachments thereto. They must zealously guard their liberty against the State. Correlatively, on the part of the State, it should only interfere in instances where the public welfare necessitates its intrusion.

This idea was likewise evinced by the framers of the 1987 Constitution, *viz*.:

> MR. GASCON: When we speak of state regulation and supervision, that does not mean dictation, because we have already defined what education is. Hence, in the pursuit of knowledge in schools we should provide the educational institution as much academic freedom it needs. When we speak of regulation, we speak of guidelines and others. We do not believe that the State has any right to impose its ideas on the educational institution because that would already be a violation of their constitutional rights.
>
> There is no conflict between our perspectives. When we speak of regulations, we speak of providing guidelines and cooperation in as far as defining curricular et cetera, but that does not give any mandate to the State to impose its ideas on the educational institution. That is what academic freedom is all about.[28]

In fact, even the legislative and executive branches of government protect this liberty. Particularly, under *Batas Pambansa* (B.P.) Blg. 232, as amended, the State affirms the

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[26] *Supra* note 23.

[27] *Id*. at 833 citing *Licup, et al. v. University of San Carlos (USC), et al.*, 258-A Phil. 417, 423-424 (1989).

[28] Deliberations for the 1987 Constitution, Volume IV, p. 441.

objective of establishing and maintaining a complete, adequate and integrated system of education relevant to the goals of national development.[29] Further, Section 13(2) of B.P. Blg. 232 recognizes that to achieve this goal, the determination of admission standards should be left to the schools, and not to the State, *viz.*:

> **Sec. 13. Rights of Schools.** — In addition to their rights provided for by law, school shall enjoy the following:
>
> 1. The right of their governing boards or lawful authorities to provide for the proper governance of the school and to adopt and enforce administrative or management systems.
>
> 2. The right for institutions of higher learning to determine on academic grounds **who shall be admitted to study**, who may teach, and what shall be the subjects of the study and research. (Emphasis supplied)

Of course, this is not to relegate the State to being an impotent commander or a mere passive guardian. The State may set minimum admission requirements, provided that these are reasonable and equitable in their application, both for the school and the applicant.[30] Said standards must never transgress upon Constitutional rights.

Judged against these parameters, it becomes all too apparent that LEBMO No. 7, insofar as it imposes the PhilSAT, is a constricting regulation that binds the hands of the schools from choosing who to admit in their law program. The LEB thrusts upon the law schools a pre-selected roster of applicants, and effectively deprives them of the right to select their own students on the basis of factors and criteria of their own choosing. Consequently, the law schools are left with no choice but to elect from this limited pool. Worse, they are forbidden from admitting those who failed to comply with the LEB's requirements, under pain of administrative sanctions.

Undoubtedly, the imposition of the PhilSAT is an oppressive and arbitrary measure. The LEB is bereft of power to substitute

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[29] Batas Pambansa Blg. 232, Sec. 3. Declaration of Basic Policy.

[30] Bernas, p. 1306.

its own judgment for that of the universities. Rather, the universities should be free to consider other criteria (aside from the PhilSAT) in determining their prospective students' aptitude and ability to survive in law school. In fact, during the Oral Arguments held on March 5, 2019, amicus curiae Dean Sedfrey Candelaria revealed that passing the law entrance exam is not a guarantee that the student will survive through law school:

JUSTICE A. REYES:

All right. But then you would always state that it is not a guarantee that a student will pass law school because he passed the law entrance exam?

DEAN CANDELARIA:

I agree, Your Honor, in fact in my conversations with Father Bernas who has a longer stay with me in the law school, I think he has even said that any students catch up, let [sic] say, people who may have studied in other regions, they easily catch up once they go to Manila, at least in the Ateneo when he was Dean and I've observed this also during my tenure that there are people who have caught up with the rest come second year. . ."[31]

Concededly, although the PhilSAT measures a person's aptitude or ability to cope with the rigors of law school, this is but a one-sided assessment. It fails to consider the person's diligence, drive or zeal — which are equally important in successfully obtaining a degree in law. Surely, one who may not be as proficient in language or reasoning, but is filled with a passion and a desire to learn, may perform as well as another who is innately intelligent, but who is apathetic and indifferent. There are certainly other extraneous factors, traits or characteristics that make a good student, which the law school must be allowed to consider, should it so desire.

The PhilSAT is Violative of the Students' Academic Freedom and Right to Acquire Knowledge

[31] Transcript of Oral Arguments held on March 5, 2019, p. 122.

Article XIV, Section 5(3) of the 1987 Constitution declares that "[e]very citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements."

Certainly, the right to pursue a course of higher learning is supported, no less by the State. It must endeavor to ensure a becoming respect for every citizen's right to select his/her course of study. To expand one's knowledge, to obtain a degree, or to advance one's professional growth are liberties guaranteed by the Constitution. Although these rights are not absolute, they may only be curbed by standards that are "fair, reasonable, and equitable."[32]

Although the Constitution fails to specifically mention that academic freedom is equally enjoyed by students, this lacuna was supplied by the Court in ***Ateneo de Manila University v. Judge Capulong***,[33] where for the first time, the Court affirmed that academic freedom is equally enjoyed by the students.[34]

Interestingly, the modern concept of academic freedom as it applies to students has its immediate origin from a nineteenth century German term known as "lernfreiheit."[35] This term meant that students were "'free to roam from place to place, sampling academic wares,' 'free to determine the choice and sequence of course,' 'responsible to no one for regular attendance,' and 'exempted from all tests save the final examinations.'"[36] In a sense, it is an untrammeled freedom to satiate one's thirst for knowledge. Albeit a radical sense of freedom, in our jurisdiction, this so-called thirst may be curbed by reasonable standards.

Remarkably, the framers of the 1987 Constitution supported the idea of academic freedom as a "spirit of free inquiry,"[37]

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[32] 1987 CONSTITUTION, Article XIV, Section 5(3).

[33] *Supra* note 16.

[34] *Id*.

[35] Bernas, p. 1295.

[36] *Id*.

[37] Deliberations for the 1987 Constitution, Volume IV, p. 438.

which includes the pursuit of truth and advocacy.[38] Moreover, they believed that academic freedom is essential to create an environment that will "encourage creative and critical thinking."[39] In turn, this free flow of ideas will promote the full and wholistic development of the students. Also, more than the promotion of the students' welfare, the framers even went further by saying that this freedom of thought may even lead to the country's improvement — "so far as this [academic freedom] is allowed full play in the academic institutions or in the institutions of higher learning, I think we will end up the better as people."[40]

Consequently, the framers stressed the need to protect this cherished freedom. They emphasized that the right to learn and discover, "should be protected as long as the activities fall within the canons of scholarship, and subjected as it were to the forces of the market place of ideas."[41] They believed that if the State encourages critical and creative thinking, it will naturally protect it."[42]

In addition, the law affirms the right of students to select their own course of study. This is evident from Section 9(2) of B.P. Blg. 232, otherwise known as the Education Act of 1982, as amended:

SEC. 9. Rights of Students in School. — In addition to other rights, and subject to the limitations prescribed by law and regulations, students and pupils in all schools shall enjoy the following rights:

1. The right to receive, primarily through competent instruction, relevant qualify education in line with national goals and conducive to their full development as person with human dignity.

2. **The right to freely choose their field of study subject to existing curricula and to continue their course therein up to graduation,**

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[38] *Id*. at 439.

[39] *Id*. at 438.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 439.

except in cases of academic deficiency, or violation of disciplinary regulations.[43] (Emphasis supplied)

More so, as adverted to by the *ponencia*, the Universal Declaration of Human Rights affirms that "[e]veryone has a right to education. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."[44]

Significantly, the Constitution, the law, and international conventions are one in affirming the students' right to apply to a school of their own choosing, and correspondingly, select their own course of study. Although said right of the students is subject to their compliance with the criteria dictated by the school, it must be stressed however that the student and the school are free to negotiate between themselves, without the interference of the State. This scenario should be likened to a free marketplace where the school showcases its product — its curricula, professors, environment, while a student, in turn, flaunts his/her own capabilities, skills, and talents. The parties should be left to freely decide for themselves whether they are a fit for each other. The State should not meddle, unless absolutely necessary for the public's safety and welfare. Should it decide to intervene, its power is in no way almighty, but must be circumscribed within the bounds of reasonableness.

The Right to Study law is an Adjunct of One's Fundamental Right to Acquire Knowledge. In the Same Vein, the Manner Through Which the Law School Decides to Teach the Law is an Exercise of its Freedom of Expression

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[43] *University of San Agustin, Inc. v. Court of Appeals*, *supra* note 23 at 832-833.

[44] Article 26, Universal Declaration of Human Rights.

This concept was broached during the deliberations for the 1973 Constitution. Delegate Vicente G. Sinco intimated that the freedom of the teacher and of the student may be anchored on the basic Constitutional guarantees of freedom, in addition to the specific guarantee of academic freedom:[45]

> by expressly guaranteeing academic freedom the new provision implicitly distinguishes academic freedom from a citizen's political right of free expression. Litigation on this new freedom, therefore will force the courts to search for standards of adjudication, standards not necessarily identical with those that have already been established for the general freedom of expression. **Academic freedom is freedom not just in the context of a political freedom but also in the context of a narrower academic community.** The implication of this distinction must be explored. The search for standards for academic freedom must take into consideration not just the general theory of freedom of expression but also the functions of a university.[46]

More so, beyond the Philippine laws and Constitution, the right to knowledge is a universal human right, protected no less by the International Covenant on Civil and Political Rights ("ICPR").

Specifically, Article 19 of the ICPR, affirms that:

> Article 19
>
> 1. Everyone shall have the right to hold opinions without interference.
>
> **2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;

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[45] Bernas, pp. 1298-1299.

[46] Bernas, p. 1301.

(b) For the protection of national security or of public order (order public), or of public health or morals."[47]

Indeed, freedom of expression, which includes the right to receive information and ideas of all kinds, is a civil and political right. It is an inalienable right that stems from a person's inherent dignity. It is likewise the foundation of freedom, justice and peace in the world.[48] As such, this essential guarantee may only be restricted insofar as it violates the rights and reputation of others, or if absolutely necessary to protect national security and public order.[49]

Moreover, knowledge cannot be passed without a medium. Thus, the right of the law school to teach, the information it shares, and its manner of teaching are representations of its freedom of expression. The State should only step in, should it find that "the means or methods of instruction are clearly found to be inefficient, impractical, or riddled with corruption."[50]

Furthermore, I wish to underscore that a distinction exists between the right to study law and the privilege to practice it. Although these two activities may be related, they are not one and the same. The study of law does not *ipso facto* lead to the practice thereof. This was a point that I stressed during the Oral Arguments on March 5, 2019:

"**JUSTICE A. REYES:** But you are not in the pursuit of the study of law not in the pursuit of being a lawyer. Is there a need for an entrance exam if he just wants to study the law itself as a person?

x x x x x x x x x

He doesn't want to become a lawyer, he just wants to be a student of the law. He has a lot of time on his hands, he has all the money. He just wants to study law, is there anything wrong with that?"[51]

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[47] Article 19, International Covenant on Civil and Political Rights.

[48] Preamble, International Covenant on Civil and Political Rights.

[49] Article 12, International Covenant on Civil and Political Rights.

[50] *Lupangco v. Court of Appeals*, 243 Phil. 993, 1006 (1988).

[51] Transcript of Oral Arguments, March 5, 2019, p. 123.

Lest it be forgotten, the law is not only a profession, but it is first and foremost, a field of study. It is an interesting and practical science, that proves useful for everyday life, and for one's personal growth and career. For instance, the Law on Obligations and Contracts is practical for one engaged in business; Constitutional Law piques the interest of one desirous to learn about the workings of the government and the citizen's fundamental rights; and Criminal Law, inflames one curious about society's penal laws and systems. For others, obtaining a Bachelor's Degree or a Juris Doctor in Law serves as a gateway to promotion. These are but a few examples of a myriad of realities pertaining to the law's importance as an academic field.

Certainly, the State has no legitimate interest in preventing such individuals who want to learn about the law, who have free time on their hands, and who possess resources to fund a legal education. Neither does it have the right to prevent a law school that is willing and capable of teaching such persons from admitting them in their program.[52]

This concern was likewise echoed by the eminent magistrate, Justice Antonio T. Carpio, when he said:

> Preventing anyone from going to law school who can afford to go to school pay for his own tuition fees, that's unreasonable. Even if he scores only one percent (1%), if the school is willing to accept him, he is willing to pay, you cannot stop him.[53]

Also, as eloquently articulated by Justice Marvic M.V.F. Leonen,

> Considering, Chair, that this affects a freedom and a primordial freedom at that, freedom of expression, academic freedom, the way we teach our, as Justice Andy Reyes pointed out, the way we teach law to our citizens and therefore, to me, the level of scrutiny should not be cursory. The level of scrutiny must be deep and I would think it would apply strict scrutiny in this regard. Therefore, if there was

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[52] *Id*.

[53] Transcript of Oral Arguments, March 5, 2019, p. 184.

no study that supported it, then perhaps, it may be stricken down as unreasonable, and therefore, grave abuse of discretion. x x x[54]

It is therefore apparent that an individual's right to knowledge and the manner by which such knowledge is pursued, are entitled to a high degree of protection by the State and its agencies. Our State is in no way autocratic. It is not repressive, and should not prevent its citizens from gaining knowledge that will promote their personal growth.[55] These are simple realities that cannot be ignored. To deprive a person of his right to knowledge, which is an adjunct of one's freedom of expression, may not be done under flimsy and vague pretexts. This Constitutional protection to freedom of expression enjoys an exalted place in the spectrum of rights, and is certainly entitled to the highest level of scrutiny.

A Legitimate Objective Will not in Itself Justify State Intrusion if the Means Employed Pursuant Thereto are Unreasonable and Oppressive

There is no doubt that the ultimate goal of attaining quality legal education is a legitimate and lofty objective. For sure, no country would negligently allow degenerate institutions that fail to properly educate students to persist to the detriment of the community. However, the issue is not as simple. It must be noted that the test for a valid exercise of police power is two-pronged. The presence of a legitimate State objective must be balanced alongside a reasonable means for achieving such goal. One cannot exist without the other.

Remarkably, in *Lupangco v. Court of Appeals*,[56] the Court struck down the regulation issued by the Professional Regulatory Commission which prohibited those taking the accountancy licensure examinations from attending review classes, conferences and receiving hand-outs, review materials, or tips three days immediately preceeding the examination day. The

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[54] Transcript, Oral Arguments, March 5, 2019, p. 173.

[55] *Lupangco v. Court of Appeals*, *supra* note 50 at 1005.

[56] *Id*.

Court stressed that although the measure was backed by a noble objective, this will not serve as a justification to violate constitutional freedoms, to wit:

> Of course, We realize that the questioned resolution was adopted for a commendable purpose which is "to preserve the integrity and purity of the licensure examinations." However, its good aim cannot be a cloak to conceal its constitutional infirmities. On its face, it can be readily seen that it is unreasonable in that an examinee cannot even *attend any review class, briefing, conference or the like, or receive any hand-out, review material, or any tip from any school, college or university, or any review center or the like or any reviewer, lecturer, instructor, official or employee of any of the aforementioned or similar institutions*."[57] (Emphasis in the original)

Indeed, the level of supervision and regulation granted unto the State must be reasonable. This "reasonableness" in no way grants a warrant for the State to exercise oppressive control over the schools. In the case of the PhilSAT, in addition to being arbitrary and oppressive, the LEB likewise failed to establish that the means employed will serve its purpose of improving the quality of legal education.

In fact, during the oral arguments, Chairperson Aquende admitted that the LEB issuances imposing the PhilSAT were bereft of statistical basis.[58] This presents an even greater challenge against the PhilSAT. It appears that the LEB merely operates on the hunch that the PhilSAT will improve the quality of legal education. Although I agree with the point made by Justice Alfredo Benjamin Caguioa that the schools (or the LEB) are not required to conduct statistical research regarding the effectiveness of the PhilSAT. This is only to underscore the absence of any factual basis proving the LEB's contention.

Worse, the PhilSAT renders nugatory the Constitutional provision mandating that education should be made accessible to all by limiting a legal degree to an elite few. Students who

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[57] *Id.* at 1004-1005.

[58] Transcript of Oral Arguments, March 5, 2019, p. 172.

desire to obtain a degree in law are immediately barred from this pursuit, simply on their purported inanity, as determined by the PhilSAT. In effect, the State punishes the students instead of encouraging them to learn, thereby making the law a restrictive subject that is only available to an exclusive few who possess the required aptitude and wealth.

All told, this case is riddled with paradoxes. The LEB, in its desire to achieve quality legal education, bullheadedly pursued such end and trampled upon the right to accessible education. It must be stressed that quality education may not be accomplished by excluding a segment of the population from learning. Access to education should never be sacrificed to achieve this end. Rather, these two goals should go hand-in-hand. Barring the citizens from pursuing further studies and learning more about the law, lead to stripping them of their fundamental right to knowledge. There is nothing more stifling to our democracy than repressing our own citizens' pursuit for personal growth. For sure, there are other Constitutionally permissible ways of achieving this end.

As a final note, the law is personified by Lady Justice, whose eyes are covered with a blindfold as an assurance that she will always dispense justice objectively to her suitors, regardless of their wealth and power; her scales of justice are perfectly balanced, for she delicately weighs all circumstances before her; her sword is scathing, proving that her justice is swift and firm — this is the symbol of law and justice. Ironically, however, with the PhilSAT, entry to the study of law (a field that will train one to imbibe justice and fairness) is far from objective and just. In this oppressive scenario, Lady Justice's eyes are opened wide as she peremptorily judges prospective students, barring the inane from learning the law; her scales are tilted in favor of an elite few; and her sword is sharp and piercing against those who failed to reach her criteria. This is not the law, and it should never be. **Thus, I vote to declare as unconstitutional LEBMO No. 7, and all its adjunct orders.**

SEPARATE DISSENTING AND CONCURRING OPINION

LEONEN, *J.*:

The provisions permitting the imposition of the Philippine Law School Admission Test, as well as the entire concept of the Legal Education Board, are unconstitutional for intruding on the academic freedom of law schools and the universities and colleges to which they belong. The State has no business in deciding and substituting its judgment for the academic institutions. Any government attempt to dictate upon universities the qualifications of their studentry or interfere with their curriculum undermines the school's academic freedom.

Institutions of learning perform a vital function in nurturing and sharpening the people's understanding and intellect. They ensure an educated and thriving citizenry on whom a nation's civilization and life depend. Education leads to an economically productive populace through learned skill. More importantly, it gears the people toward thinking more prudently and critically.

Without educational institutions, our country will inevitably approach a shallow and dismal future. Thus, the State has a paramount interest in guaranteeing that they flourish and function robustly. Part and parcel of this guarantee is to allow them to freely determine for themselves their "aims and objectives and how best to attain them."[1]

One (1) of the four (4) essential academic freedoms is the academic institutions' right to determine who they will admit to study. In ascertaining who to admit in their institutions, law schools should be given autonomy in establishing their own policies, including the examination that they will employ.

The Philippine Law School Admission Test is an unwarranted intrusion into this essential freedom. The government's imposition of a passing score as a bar to admission violates the educational institutions' academic freedom to determine

[1] *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 943 (1975) [Per *J.* Fernando, *En Banc*].

who to admit to study. The existence of the Legal Education Board, on the other hand, interferes with the right of academic institutions with respect to how to teach and who to teach.

I

Academic freedom, as enshrined in our present Constitution, guarantees the fundamental protection to academic institutions. Article XIV, Section 5(2) states that "[a]cademic freedom shall be enjoyed in all institutions of higher learning."

This provision is equivalent to its precursor, Article XV, Section 8(2) of the 1973 Constitution, which stated that "[a]ll institutions of higher learning shall enjoy academic freedom." This, in turn, was an expansion of its counterpart in the 1935 Constitution which limited the grant of academic freedom to state-established universities. Article XIII, Section 5 of the 1935 Constitution stated:

> SECTION 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.

From this, the 1973 Constitution provided a broader protection by giving the same guarantee to private educational institutions.[2]

The nature and scope of academic freedom was first discussed at length in the 1975 case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*.[3] This Court recognized

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[2] *J.* Makasiar, Dissenting Opinion in *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 951 (1975) [Per *J.* Fernando, *En Banc*].

[3] 160-A Phil. 929 (1975) [Per *J.* Fernando, *En Banc*].

academic freedom as an institutional facet, and not solely confined to individual academic freedom or the right of faculty members to pursue their studies without fear of reprisal. In interpreting the import of the constitutional provision, this Court said:

> For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. *It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students.* This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor."[4] (Emphasis supplied, citation omitted)

Garcia concerned a Petition for *Mandamus* filed by Epicharis Garcia, a woman, to compel the Loyola School of Theology to allow her to continue her studies in the seminary. In dismissing the Petition, this Court upheld the discretion of educational institutions to choose who may be admitted to study.[5] *Garcia* referred to the four (4) essential freedoms as the parameters of academic freedom:

> Justice Frankfurter, with his extensive background in legal education as a former Professor of the Harvard Law School, referred to what he called the business of a university and the four essential freedoms

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[4] *Id*. at 943.

[5] The institutional academic freedom reflected in *Garcia* was reiterated in the later case of *University of the Philippines v. Ayson*, 257 Phil. 580, 584-585 (1989) [Per J. Bidin, *En Banc*], where this Court held that the abolition of the UP College Baguio High School as a decision of the UP Board of Regents is within its exercise of academic freedom. Thus, as an "institution of higher learning enjoying academic freedom, the UP cannot be compelled to provide for secondary education."

in the following language: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. *It is an atmosphere in which there prevail 'the four essential freedoms' of a university — to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study*."[6] (Emphasis supplied, citation omitted)

Justice Claudio Teehankee's concurring opinion in *Garcia* is also instructive. He recognized that courts have neither the competence nor the inclination to decide who shall be admitted to an educational institution. Instead, they will only overturn the judgment of academic institutions after an exhaustion of administrative remedies and upon showing of arbitrariness on the school's part. He explained:

> Only after exhaustion of administrative remedies and when there is marked arbitrariness, will the courts interfere with the academic judgment of the school faculty and the proper authorities as to the competence and fitness of an applicant for enrollment or to continue taking up graduate studies in a graduate school. The courts simply do not have the competence nor inclination to constitute themselves as Admission Committees of the universities and institutions of higher learning and to substitute their judgment for that of the regularly constituted Admission Committees of such educational institutions. Were the courts to do so, they would conceivably be swamped with petitions for admission from the thousands refused admission every year, and next the thousands who flunked and were dropped would also be petitioning the courts for a judicial review of their grades![7]

Following the ruling in *Garcia*, this Court in *Tangonan v. Paño*[8] reiterated that it cannot compel academic institutions to admit students who fail to meet standard policies and qualifications. To rule otherwise, it held, would violate the

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[6] *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 944 (1975) [Per *J.* Fernando, *En Banc*].

[7] *J.* Teehankee, Concurring Opinion in *Garcia v. Faculty Admission Committee, Loyola School of Theology*, 160-A Phil. 929, 949 (1975) [Per *J.* Fernando, *En Banc*].

[8] 221 Phil. 601 (1985) [Per *J.* Cuevas, Second Division].

institution's discretion on the admission and enrollment of students as a major component of academic freedom:

> [S]till petitioner would want Us to compel respondent school to enroll her despite her failure to meet the standard policies and qualifications set by the school. To grant such relief would be doing violence to the academic freedom enjoyed by the respondent school enshrined under Article XV, Section 8, Par. 2 of our Constitution which mandates "that all institutions of higher learning shall enjoy academic freedom." This institutional academic freedom includes not only the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence subject to no control or authority except of rational methods by which truths and conclusions are sought and established in these disciplines, but also the right of the school or college to decide for itself, its aims and objectives, and how best to attain them — the grant being to institutions of higher learning — free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint.[9]

In *San Sebastian College v. Court of Appeals*,[10] this Court likewise ruled that a student's failure to comply with academic standards justifies the institution's refusal to admit him or her.

An institution's discretion in determining who to admit extends to its decision on who to dismiss. In *Ateneo De Manila University v. Capulong*,[11] this Court upheld the institution's discretion to dismiss erring students. It reiterated that schools have the right to establish academic and disciplinary standards, and in failing to comply with these standards, a student can be validly dismissed:

> Since *Garcia v. Loyola School of Theology*, we have consistently upheld the salutary proposition that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right. While under the Education Act of 1982, students have a right "to freely choose their field of

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[9] *Id*. at 611-612.

[10] 274 Phil. 414 (1991) [Per *J*. Medialdea, First Division].

[11] 294 Phil. 654 (1993) [Per *J*. Romero, *En Banc*].

study, subject to existing curricula and to continue their course therein up to graduation," such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution.

For private schools have the right to establish reasonable rules and regulations for the admission, discipline and promotion of students. . . .

Such rules are "incident to the very object of incorporation and indispensable to the successful management of the college. The rules may include those governing student discipline." Going a step further, the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.[12] (Citations omitted)

In *Licup v. University of San Carlos*,[13] the petitioners were students who had been denied readmission to the university after a chaotic assembly that resulted in violations of the university handbook rules. They were also found to have academic deficiencies. In upholding the university's decision, this Court held that the students were not deprived of due process during the investigation, and that their serious breach of discipline and failure to maintain the academic standard forfeited their contractual right to continue studying in the university.[14] This Court ruled similarly in *Alcuaz v. Philippine School of Business Administration*,[15] *Magtibay v. Garcia*,[16] *University of San Agustin v. Court of Appeals*,[17] and *Spouses Go v. Colegio de San Juan de Letran*.[18]

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[12] *Id*. at 675.

[13] 258-A Phil. 417 (1989) [Per *J*. Gancayco, First Division].

[14] *Id*. at 423-424.

[15] 244 Phil. 8 (1988) [Per *J*. Paras, Second Division].

[16] 205 Phil. 307 (1983) [Per *J*. Escolin, Second Division].

[17] 300 Phil. 819 (1994) [Per *J*. Nocon, Second Division].

[18] 697 Phil. 31 (2012) [Per *J*. Brion, Second Division].

In *Miriam College Foundation, Inc. v. Court of Appeals,*[19] this Court further amplified the scope of academic freedom when it upheld the institution's right to discipline its students. It pronounced:

> Section 5 (2), Article XIV of the Constitution guarantees all institutions of higher learning academic freedom. This institutional academic freedom includes the right of the school or college to decide for itself, its aims and objectives, and how best to attain them free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. The essential freedoms subsumed in the term "academic freedom" encompasses the freedom to determine for itself on academic grounds:
>
> (1) Who may teach,
> (2) What may be taught,
> (3) How it shall be taught, and
> (4) Who may be admitted to study.
>
> The right of the school to discipline its students is at once apparent in the third freedom, *i.e.*, "how it shall be taught." A school certainly cannot function in an atmosphere of anarchy.
>
> Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property.
>
> Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach."[20] (Citations omitted)

An academic institution's right to discipline its students was held applicable even to students' activities outside campus premises. In *Angeles v. Sison,*[21] this Court ruled that the school's

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[19] 401 Phil. 431 (2000) [Per *J*. Kapunan, First Division].

[20] *Id*. at 455-456.

[21] 197 Phil. 713 (1982) [Per *J*. Fernandez, Second Division].

power over its students does not absolutely cease when they set foot outside the school premises. Moreover, the students' conduct, if directly affecting the school's good order and welfare, may be subject to its discipline:

> A college, or any school for that matter, has a dual responsibility to its students. One is to provide opportunities for learning and the other is to help them grow and develop into mature, responsible, effective and worthy citizens of the community. Discipline is one of the means to carry out the second responsibility.
>
> Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property. The power of school officials to investigate, an adjunct of its power to suspend or expel, is a necessary corollary to the enforcement of such rules and regulations and the maintenance of a safe and orderly educational environment conducive to learning.
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> . . . . . .
>
> Common sense dictates that the school retains its power to compel its students in or off-campus to a norm of conduct compatible with their standing as members of the academic community. Hence, when as in the case at bar, the misconduct complained of directly affects the suitability of the alleged violators as students, there is no reason why the school cannot impose the same disciplinary action as when the act took place inside the campus.[22]

In the more recent case of *Cudia v. Superintendent of the Philippine Military Academy*,[23] this Court reiterated that a school's right to discipline its students is part of the third essential freedom. There, this Court upheld the Philippine Military Academy's enforcement of its internal rules pursuant to its academic freedom. The petitioner in *Cudia* was a graduating honor student who was dismissed for violating the institution's Honor Code. Affirming the dismissal, this Court ruled that the academy enjoys academic freedom to impose disciplinary measures and punishment as it deems fit:

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[22] *Id.* at 724-726.

[23] 754 Phil. 590 (2015) [Per *J.* Peralta, *En Banc*].

The schools' power to instill discipline in their students is subsumed in their academic freedom and that "the establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival." As a Bohemian proverb puts it: "A school without discipline is like a mill without water." Insofar as the water turns the mill, so does the school's disciplinary power assure its right to survive and continue operating. In this regard, the Court has always recognized the right of schools to impose disciplinary sanctions, which includes the power to dismiss or expel, on students who violate disciplinary rules.[24] (Citations omitted)

Nevertheless, in *Villar v. Technological Institute of the Philippines*,[25] this Court clarified that the discretion of educational institutions is not absolute as to impinge on the students' constitutional rights. In *Villar*, the petitioners took part in an assembly and were subsequently denied admission by the university, which claimed that the students flunked. In finding that some of the petitioners did not violate the school's academic standards, this Court ruled that while the institution can deny admission to students with academic deficiencies, the academic freedom it enjoys cannot be used to discriminate against qualified students who exercise their constitutional rights.[26] This Court held:

The academic freedom enjoyed by "institutions of higher learning" includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students. Once it has done so, however, that standard should be followed meticulously. It cannot be utilized to discriminate against those students who exercise their constitutional rights to peaceable assembly and free speech. If it does so, then there is a legitimate grievance by the students thus prejudiced, their right to the equal protection clause being disregarded.[27]

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[24] *Id.* at 655-656.

[25] 220 Phil. 379 (1985) [Per *C.J.* Fernando, *En Banc*].

[26] *Id.* at 384.

[27] *Id.*

Similarly, in *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*,[28] this Court ruled against the university's refusal to admit the petitioner as its student. Explaining that "academic freedom has never been meant to be an unabridged license[,]" it held that the university cannot hide behind the shroud of academic freedom to act arbitrarily in dismissing a student.[29] *Malabanan v. Ramento*,[30] *Arreza v. Gregorio Araneta University*,[31] *Guzman v. National University*,[32] *Non v. Dames II*[33] were ruled in the same vein.

An academic institution's discretion applies not only to the admission and dismissal of its students, but also to its decision to confer academic recognition. In *Morales v. Board of Regents*,[34] the petitioner was a University of the Philippines student who questioned the university's decision not to grant her the academic distinction of *cum laude* due to a contested grade computation. In upholding this decision, this Court emphasized that "the wide sphere of autonomy given to universities in the exercise of academic freedom extends to the right to confer academic honors." It held:

> [The] exercise of academic freedom grants the University the exclusive discretion to determine to whom among its graduates it shall confer academic recognition, based on its established standards. And the courts may not interfere with such exercise of discretion unless there is a clear showing that the University has arbitrarily and capriciously exercised its judgment. Unlike the UP Board of Regents that has the competence and expertise in granting honors to graduating students of the University, courts do not have the competence to constitute themselves as an Honor's Committee and substitute their judgment for that of the University officials.[35]

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[28] 298 Phil. 382 (1993) [Per *J.* Vitug, *En Banc*].

[29] *Id*. at 387-388.

[30] 214 Phil. 319 (1984) [Per *C.J.* Fernando, *En Banc*].

[31] 221 Phil. 470 (1985) [Per *C.J.* Fernando, *En Banc*].

[32] 226 Phil. 596 (1986) [Per *J.* Narvasa, *En Banc*].

[33] 264 Phil. 98 (1990) [Per *J.* Cortes, *En Banc*].

[34] 487 Phil. 449 (2004) [Per *J.* Chico-Nazario, Second Division].

[35] *Id.* at 474.

Nevertheless, this Court has affirmed in the past the State's power to intrude—in very limited circumstances—into the admission process of schools imbued with public interest. Specifically, students applying to medical schools have to take and pass a state-sponsored examination as a condition to their admission.

In *Tablarin v. Gutierrez*,[36] the petitioners questioned the constitutionality of the National Medical Admission Test, a uniform admission test required by the Board of Medical Education and administered by the Center for Educational Measurement.[37] They sought to declare as unconstitutional portions of Republic Act No. 2382 and Ministry of Education, Culture, and Sports Order No. 52-1985, which require "the taking and passing of the [National Medical Admission Test] as a condition for securing certificates of eligibility for admission."[38] The order characterizes the test as an aptitude examination that aims to upgrade "the selection of applicants for admission into the medical schools and . . . to improve the quality of medical education in the country."[39]

In denying the Petition, this Court ruled that the requirement of taking and passing the National Medical Admission Test was a valid exercise of police power. It found the objectives cited in the order to be valid. It also found a reasonable relation between prescribing the test as a condition for admission to medical schools and securing the health and safety of the general public.[40]

Tablarin characterized state-sponsored admission tests as an exercise of police power that advanced legitimate interests.

This was further elaborated in *Department of Education, Culture, and Sports v. San Diego*,[41] the issue of which also

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[36] 236 Phil. 768 (1987) [Per *J.* Feliciano, *En Banc*].

[37] *Id.* at 774.

[38] *Id.*

[39] *Id.* at 776-777.

[40] *Id.* at 782.

[41] 259 Phil. 1016 (1989) [Per *J.* Cruz, *En Banc*].

revolved around the National Medical Admission Test. In that case, the petitioners were students who questioned the three-flunk rule, which states that students may only take the exam thrice, and are barred from taking it again after three (3) successive failures.[42] They argued that this limitation violates their constitutional right to academic freedom and education.

The trial court first ruled in favor of petitioners, finding that the three-flunk rule was an arbitrary exercise of police power.[43] However, this Court reversed its decision and, reiterating its pronouncements in *Tablarin*, found the National Medical Admission Test to be a valid exercise of police power:

> The subject of the challenged regulation is certainly within the ambit of the police power. It is the right and indeed the responsibility of the State to insure that the medical profession is not infiltrated by incompetents to whom patients may unwarily entrust their lives and health.
>
> The method employed by the challenged regulation is not irrelevant to the purpose of the law nor is it arbitrary or oppressive. The three-flunk rule is intended to insulate the medical schools and ultimately the medical profession from the intrusion of those not qualified to be doctors.
>
> While every person is entitled to aspire to be a doctor, he does not have a constitutional right to be a doctor. This is true of any other calling in which the public interest is involved; and the closer the link, the longer the bridge to one's ambition. The State has the responsibility to harness its human resources and to see to it that they are not dissipated or, no less worse, not used at all. These resources must be applied in a manner that will best promote the common good while also giving the individual a sense of satisfaction.
>
> A person cannot insist on being a physician if he will be a menace to his patients. If one who wants to be a lawyer may prove better as a plumber, he should be so advised and adviced (*sic*). Of course, he may not be forced to be a plumber, but on the other hand he may not force his entry into the bar. By the same token, a student who has demonstrated promise as a pianist cannot be shunted aside to take a course in nursing, however appropriate this career may be for others.

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[42] *Id.* at 1018.

[43] *Id.* at 1019.

> The right to quality education invoked by the private respondent is not absolute. The Constitution also provides that "every citizen has the right to choose a profession or course of study, subject to fair, reasonable and equitable admission and academic requirements."
>
> The private respondent must yield to the challenged rule and give way to those better prepared. Where even those who have qualified may still not be accommodated in our already crowded medical schools, there is all the more reason to bar those who, like him, have been tested and found wanting.
>
> The contention that the challenged rule violates the equal protection clause is not well-taken. A law does not have to operate with equal force on all persons or things to be conformable to Article III, Section 1 of the Constitution.
>
> There can be no question that a substantial distinction exists between medical students and other students who are not subjected to the National Medical Admission Test and the three-flunk rule. The medical profession directly affects the very lives of the people, unlike other careers which, for this reason, do not require more vigilant regulation. The accountant, for example, while belonging to an equally respectable profession, does not hold the same delicate responsibility as that of the physician and so need not be similarly treated.[44] (Citation omitted)

Department of Education, Culture, and Sports highlighted the special character of the medical profession, which justifies the three-flunk rule in the National Medical Admission Test in force at that time. As the medical profession "directly affects the very lives of the people,"[45] this Court found that the three-flunk rule was valid insofar as it seeks to admit only those who are academically qualified to study in a medical school.

Tablarin and *Department of Education, Culture, and Sports* both resolved issues on the right to quality education and the right to choose a profession *vis-à-vis* the State's power to regulate admission to schools through a uniform aptitude test. In both cases, this Court found that administering the National Medical Admission Test was a reasonable exercise of police power.

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[44] *Id.* at 1021-1023.

[45] *Id.* at 1023.

However, it should be remembered that the parties in these cases were student-applicants who asserted their right to the course of study of their own choosing. The issue of institutional academic freedom in relation to a standardized test imposed by the State was not discussed. The medical schools covered by the order that institutionalizes the National Medical Admission Test have not asserted their exclusive right to determine who may be admitted to their institutions pursuant to their academic freedom.

Reyes v. Court of Appeals[46] comes close. There, students of the University of the Philippines College of Medicine questioned the National Medical Admission Test's cutoff grade for admission, which was prescribed by the college faculty but was not approved by the University Council. The faculty, for its part, asserted institutional academic freedom in arguing that it had the power to determine the admission requirements of the college. However, this Court found that this power was vested in the University Council, not the faculty:

> Under the UP Charter, the power to fix admission requirements is vested in the University Council of the autonomous campus which is composed of the President of the University of the Philippines and of all instructors holding the rank of professor, associate professor or assistant professor (Section 9, Act 1870). Consequently, the UC alone has the right to protest against any unauthorized exercise of its power. Petitioners cannot impugn these BOR directives on the ground of academic freedom inasmuch as their rights as university teachers remain unaffected.[47]

Reyes, therefore, resolved an issue that was not so much a question of whether the State violated institutional academic freedom, but whether it was the proper academic unit that asserted this freedom.

The crucial question before this Court now is whether the state-sponsored Philippine Law School Admission Test, in its current configuration, violates institutional academic freedom.

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[46] 272 Phil. 241 (1991) [Per *J.* Medialdea, *En Banc*].

[47] *Id.* at 254.

I agree with the majority that it does.

As found by the majority, the Philippine Law School Admission Test, unlike the National Medical Admission Test, violates institutional academic freedom[48] insofar as it prescribes a passing score that must be followed by law schools.[49] Failure to reach the passing score will disqualify the examinee from admission to any Philippine law school. This is because a Certificate of Eligibility is necessary for enrollment as a first year law student.[50] Respondent Legal Education Board, which administers the test, only allows law schools to impose additional requirements for admission, but passing the test is still mandatory.[51] The failure of law schools to abide by these requirements exposes them to administrative sanctions.[52]

In contrast, failure to achieve a certain score in the National Medical Admission Test no longer disqualifies an examinee from applying to all medical schools. For one, test scores are reported with a corresponding percentile rank that ranges from 1 to 99+. It "indicates the percentage of [National Medical Admission Test] examinees who have [test] scores the same as or lower than the examinee."[53] This percentile rank is evaluated by the medical schools against the cutoff grade that they themselves determine.[54] Hence, the percentile rank cutoff is

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[48] *Ponencia*, p. 85.

[49] Legal Education Board Memorandum Order No. 7 (2016), par. 7.

[50] Legal Education Board Memorandum Order No. 7 (2016), par. 9.

[51] Legal Education Board Memorandum Order No. 7 (2016), par. 11.

[52] Legal Education Board Memorandum Order No. 7 (2016), par. 15.

[53] Center for Educational Measurement, Inc., *National Medical Admission Test Bulletin of Information* (2019), available at <https://cem-inc.org.ph/nmat/files/upload/BOI_NMAT_Regular2019_web.pdf> (last accessed on September 9, 2019).

[54] Commission on Higher Education Memorandum Order No. 03 (2003) delegates the determination of the National Medical Admission Test cutoff score to the respective medical schools. Available at <https://ched.gov.ph/cmo-3-s-2003-2/> (last visited on September 9, 2019).

only a "minimum score that qualifies an examinee as a bonafide applicant for admission into his/her preferred medical school."[55] The test score only determines the available medical schools where a person may apply; the higher the score, the more options the applicant has.

Thus, I agree with the majority's characterization that the Philippine Law School Admission Test employs a "totalitarian scheme"[56] that leaves the actions of law schools entirely dependent on the test results.[57] It usurps the right of law schools to determine the admission requirements for its would-be students—ultimately infringing on the institutional academic freedom they possess, as guaranteed by the Constitution.

II

However, the majority ruled that the Philippine Law School Admission Test is unconstitutional only insofar as it is a mandatory requirement for the law schools' admissions processes.

I disagree. The Philippine Law School Admission Test—or, for that matter, any national admission test—even if not made mandatory, still infringes on academic freedom.

Academic freedom as a constitutional right should be interpreted with the understanding that this guarantee lies within the broader sphere of the Bill of Rights.

Academic discussions and other forms of scholarship are manifestations and extensions of an individual's thoughts and beliefs. Thus, academic freedom is constitutionally granted to students, faculty, and academic institutions alike:

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[55] Center for Educational Measurement, Inc., *National Medical Admission Test Bulletin of Information*, 6 (2019), available at <https://www.cem-inc.org.ph/National Medical Admission Test/files/upload/BOI_National Medical Admission Test_Summer_2019.pdf> (last accessed on September 9, 2019).

[56] *Ponencia*, p. 87.

[57] *Id*.

Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. *If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured.* A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. . . . Hence the main concern over developing and maintaining academic freedom in this country has focused upon encouragement and protection of the freedom of the faculty member.[58] (Emphasis supplied)

Academic freedom is anchored on the recognition that academic institutions perform a social function and its business is conducted for the common good; that is, it is a necessary tool for critical inquiry of truth and its free exposition. The guarantee of academic freedom is complementary to freedom of expression and of the mind.

Thus, to foster an environment of critical discussion and inquiry, the faculty must be given a degree of independence from their employers, and universities must have a degree of independence from the State.[59] This constitutional protection guaranteed for the students, faculty, and institutions is not merely a job-related concern or an institutional interest; rather, it "promotes First Amendment values of general concern to all citizens in a democracy."[60]

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[58] Ralph F. Fuchs, *Academic Freedom: Its Basic Philosophy, Function and History*, 28 LAW AND CONTEMPORARY PROBLEMS 431, 433 (1963), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2963&context=lcp> (last visited on September 9, 2019).

[59] David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment*, 53 LAW AND CONTEMPORARY PROBLEMS 227, 230 (1990), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4057&context=lcp> (last visited on September 9, 2019).

[60] *Id.*

As eloquently discussed by then Justice Felix Makasiar in his dissenting opinion in *Garcia,* blows against academic freedom inevitably strike at the core of freedom of expression:

> The cardinal article of faith of our democratic civilization is the preservation and enhancement of the dignity and worth of the human personality. It was Mr. Justice Frankfurter himself who emphasized that man's "inviolate character" should be "protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person", so that the individual can fully develop himself and achieve complete fulfillment. His freedom to seek his own happiness would mean nothing if the same were not given sanctuary "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments and the scorn and derision of those who have no patience with general principles".
>
> . . . This individual freedom and right to happiness should be recognized and respected not only by the State but also by enterprises authorized by the State to operate; for as Laski stressed: "Without freedom of the mind . . . a man has no protection in our social order. He may speak wrongly or foolishly, . . . Yet a denial of his right . . . is a denial of his happiness. Thereby he becomes an instrument of other people's ends, not himself an end".
>
> As Justice Holmes pronounced, "the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out".
>
> The human mind is by nature an inquiring mind, whether of the very young or of the very old or in-between; for freedom of speech in the words of John Milton is the "liberty to know, to utter, and to argue freely according to conscience above all liberties."
>
> What is involved here is not merely academic freedom of the higher institutions of learning as guaranteed by Section 8(2) of Article [X]V of the 1973 Constitution. The issue here strikes at the broader freedom of expression of the individual — the very core of human liberty.
>
> Even if the term "academic freedom" were to be limited to institutions of higher learning — which to the mind of Dr. Vicente Sinco, an eminent authority in Constitutional Law, is the right of the university as an institution, not the academic freedom of the university professor

— the term "institutions of higher learning" contained in the aforecited provision of our New Constitution comprehends not only the faculty and the college administrators but also the members of the student body. While it is true that the university professor may have the initiative and resourcefulness to pursue his own research and formulate his conclusions concerning the problem of his own science or subject, the motivation therefor may be provoked by questions addressed to him by his students. In this respect, the student — specially a graduate student — must not be restrained from raising questions or from challenging the validity of dogmas, whether theological or not. The true scholar never avoids, but on the contrary welcomes and encourages, such searching questions even if the same will have the tendency to uncover his own ignorance. It is not the happiness and self-fulfillment of the professor alone that are guaranteed. *The happiness and full development of the curious intellect of the student are protected by the narrow guarantee of academic freedom and more so by the broader right of free expression, which includes free speech and press, and academic freedom.*[61] (Emphasis supplied, citations omitted)

Academic freedom is intertwined with intellectual liberty. It is inseparable from one's freedom of thought, speech, expression, and the press.[62] Thus, the institutions' and individuals' right to pursue learning must be "free from internal and external interference or pressure."[63]

In American jurisprudence, the protection of academic freedom has been identified as a subset of the First Amendment.[64]

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[61] *J.* Makasiar, Dissenting Opinion in *Garcia v. The Faculty Admission Committee, Loyola School of Technology*, 160-A Phil. 929, 954-956 (1975) [Per *J.* Fernando, *En Banc*].

[62] *Ateneo De Manila University v. Capulong*, 292 Phil. 654, 672-673 [Per *J.* Romero, *En Banc*].

[63] *Id.* at 673.

[64] See *J.* Douglas, Dissenting Opinion in *Adler v. Board of Education*, 342 U.S. 485 (1952), where the U.S. Supreme Court first mentioned academic freedom as a constitutional right. In *Adler*, Justice Douglas stated that "[t]he Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it; and none needs it more than the teacher. The public school is in most respects the cradle of our democracy . . . the impact of this kind of censorship in the public school system illustrates the

In *Sweezy v. New Hampshire*,[65] the U.S. Supreme Court tied the First Amendment values of critical inquiry and search for truth to the autonomy of academic institutions and its faculty from the State's intrusion:

> No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.[66]

Freedom of expression is a cognate of academic freedom. Hence, the zealous protection accorded to freedom of expression must necessarily be reflected in the level of protection that covers academic freedom. Any form of State intrusion against academic freedom must be treated suspect.

Central to the resolution of this case is the freedom of academic institutions, particularly law schools, to determine *who may be admitted to study*. As part of their academic self-government, law schools are given the discretion to come up with an autonomous decision on their admission policies, including the examination they will administer. A state-sponsored examination like the Philippine Law School Admission Test, which tends to control the internal affairs of academic institutions, runs afoul of that essential freedom.

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high purpose of the First Amendment in freeing speech and thought from censorship; see also *J*. Frankfurter, Dissenting Opinion in *Wieman v. Updegraff*, 344 U.S. 183 (1952).

[65] 354 U.S. 234 (1957).

[66] *Id*. at 251.

Moreover, according to the majority, "[t]he subject of the [Philippine Law School Admission Test] is to improve the quality of legal education."[67] Thus, under the State's police power, the imposition of the test is justified by the State's interest to improve the quality of legal education.[68]

I view that the thesis that changing the admissions policy will improve the quality of law schools is non-sequitur.

The standards for choosing who to admit are entirely different from the standards for maintaining or ensuring the quality of instruction. The process of admitting students is unrelated to the quality of the law school. Even if it were indeed related, respondent Legal Education Board has done no specific study to justify the administration of the Philippine Law School Admission Test. Test makers even admit that admission tests do not measure "smartness."[69] It is not an accurate barometer of merit, but only a measure of correlation between the exam scores and the students' first-year grades.[70] At best, respondent Legal Education Board relied on anecdotal evidence, which, in academic circles, is the worst way to justify policy. The Philippine Law School Admission Test is, therefore, arbitrary.

A closer look shows that the Philippine Law School Admission Test does not merely recommend, but dictates on law schools who are qualified to be admitted. By prescribing a passing score and predetermining who may enroll in law schools, the State forces its judgment on the institutions, when it has no business doing so. Any governmental attempt to dictate upon schools the composition of their studentry undermines their institutional academic freedom.[71]

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[67] *Ponencia*, p. 81.

[68] *Id.*

[69] LANI GUINIER, *THE TYRANNY OF THE MERITOCRACY* 17-18 (2016).

[70] *Id.*

[71] David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom under the First Amendment*, 53 LAW

Moreover, the final basis of the administration of the Philippine Law School Admission Test, regardless of whether there have been consultants, will always rest on the government-appointed members of respondent Legal Education Board. Yet, as this case shows, the Chair of the Board may not have the postgraduate academic, teaching, or college or university administrator credentials. Being government appointees, its members are prone to influences by their appointing power, consequently undermining the academe's most significant roles: to inquire into the truth, to powerfully disseminate this truth, and to speak this truth to power.

In the United States, admission to law schools is usually preceded by taking a standardized aptitude examination called the Law School Admission Test. While it may seem similar to our own test, important distinctions must be made. First, the U.S. Law School Admission Test is not a state-sponsored exam. It is administered by the Law School Admission Council, a private nonprofit that promotes "quality, access, and equity in law and education[.]"[72] Hence, the Law School Admission Test is a mere creation of law schools.[73]

In some cases, an aspiring student may even be accepted to a law school without taking the test.[74] Thus, unlike in the Philippines, the adherence of U.S. law schools to the Law School

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AND CONTEMPORARY PROBLEMS 227, 272 (1990), available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4057&context=lcp> (last visited on September 9, 2019).

[72] Law School Admission Council, *About the Law School Admission Council*, available at <https://www.Isac.org/about> (last accessed on September 9, 2019).

[73] Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicions Effects of Rankings*, 81 INDIANA LAW JOURNAL 322, 323 (2006). Available at <http://ilj.law.indiana.edu/articles/81/81_1_Johnson.pdf> (last visited on September 9, 2019).

[74] The Princeton Review, *ABA Accredited Law School*, available at <https://www.princetonreview.com/law-school-advice/law-school-accreditation> (last accessed August 27, 2019).

Admission Test is purely voluntary. The test results may be used merely as one (1) of the many criteria for admission, which a law school may determine for itself.[75] The Law School Admission Test is designed merely as a tool to help law schools make sound admission decisions.[76]

The Philippine Law School Admission Test, by contrast, undermines the critical function of law schools to provide pieces of truth that may ripen into critique of government. The State's intrusion, whatever form it may be, stifles the ability of the academic institution to be critical. This Court should remain ever so vigilant on any infraction of the Constitution disguised with good intentions.

Law schools are the principal institutions that have the space to analyze, deconstruct, and even critique our laws and jurisprudence. They not only teach doctrine, but examine its fundamentals.

The kind of freedom of expression contained in academic freedom is different from political expression. Within political or creative spaces, freedom of expression takes an almost unqualified immunity. Any thought, whether or not it is hated by the dominant, finds protection without regard to its slant or falsity. In the sphere of political debate, falsehoods are platforms for testing reason and providing opportunities to publicly advocate what is true persuasively.

On the other hand, within the academe, falsities in method and content are deliberately rooted out, exposed, and marginalized so that the public debate is enriched, whether among the institution's students or the world beyond its walls. Academic freedom is the constitutional canon that protects this

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[75] See Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61RUTGERS LAW REVIEW 1014 (2009). Available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1169&context=cl_pubs> (last visited on September 9, 2019). Even the Law School Admissions Council, which administers the LSAT, cautions law schools against over-reliance on LSAT scores in the admissions process.

[76] *Id*.

space from politics. It is the freedom that assures academic intellectual debate without fear of any governmental intervention of any kind, be it coercive or suggestive.

Government-sponsored standardized admission tests infringe on this freedom without reason.

III

Due process is guaranteed under our Constitution. Its Article III, Section 1 states:

> SECTION 1. No person shall be deprived of life, liberty or property without due process of law[.]

The due process clause is commonly referred to as the "right to be let alone" from the State's interference.[77] The essence of due process is the freedom from arbitrariness. In *Morfe v. Mutuc*:[78]

> "There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any governmental action for that matter, from the imputation of legal infirmity sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty 'to those strivings for justice' and judges the act of officialdom of whatever branch 'in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought.' It is not a narrow or 'technical conception with fixed content unrelated to time, place and circumstances,' decisions based on such a clause requiring a 'close

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[77] See *Morfe v. Mutuc*, 130 Phil. 415 (1968) [Per *J.* Fernando, *En Banc*].

[78] *Id.*

and perceptive inquiry into fundamental principles of our society.' Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases."[79] (Citation omitted)

Due process is the protection of the sphere of individual autonomy. It aims to "prevent arbitrary governmental encroachment against the life, liberty and property of individuals."[80] Thus, it imposes a burden on the government to observe two (2) separate limits: (1) procedural and (2) substantive due process. In *White Light Corporation v. City of Manila*:[81]

> The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process". Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.
>
> If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.
>
> The question of substantive due process, more so than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result

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[79] *Id.* at 432-433.

[80] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009) [Per *J.* Tinga, *En Banc*].

[81] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.[82] (Citations omitted)

Substantive due process answers the question of whether "the government has an adequate reason for taking away a person's life, liberty, or property."[83] To pass this test, the State must provide a sufficient justification for enforcing a governmental regulation.[84]

While the State's intrusion is not absolutely proscribed, due process requires that the intrusion on an individual's right to life, liberty, and property is neither arbitrary nor unreasonable.[85] In *Ichong v. Hernandez*:[86]

The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power, Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.

The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of

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[82] *Id.* at 461-462.

[83] *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 311 (2005) [Per *J.* Tinga, *En Banc*].

[84] *Id.*

[85] *Ichong v. Hernandez*, 101 Phil. 1155, 1166 (1957) [Per *J.* Labrador, *En Banc*].

[86] 101 Phil. 1155 (1957) [Per *J.* Labrador, *En Banc*].

any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due process of law[.][87]

When governmental action is checked against the due process requirement under the Constitution — particularly substantive due process — it must be shown that such action was neither arbitrary nor unreasonable. Respondent failed to show this.

The creation of the Philippine Law School Admission Test was not based on scientific research. The State has not given any justification for the propriety of conducting the examination, other than it being copied from the Law School Admission Test administered in the United States. The Chairperson of respondent Legal Education Board, during the oral arguments, admitted to this:

ASSOCIATE JUSTICE LEONEN:

Okay, next. Was there a study conducted by the LEB prior to imposing the national test relating to the correlation of passing the test and passing the bar? Because according to you the declaration of policy states, to improve the quality of the bar. Or was this anecdotal in nature? And if there is a test, a scientific study, will you be able to provide the Court? Was there a study done prior to imposing the national exam in an exclusionary character prior to giving the test?

. . . . . .

DEAN AQUENDE:

We have none, Your Honor, but we relied on the LSAT study, Your Honor, in the United States.

JUSTICE LEONEN:

Yes, the LSAT study conducted by the United States. We are a different country and you are saying that you looked at a different culture so what they did in India, in America, in Canada, maybe even in Japan but not Filipinos, and the Filipinos have particular needs in our archipelago. Certainly, Tagum is different from Siargao, different from Baguio City, different from Cebu, so, you are saying that the LEB imposed this without, isn't this arbitrary, Chair?

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[87] *Id.* at 1165.

DEAN AQUENDE:
We looked at, Your Honor, at the result or the correlation result of the law school qualifying test administered by the CEM and in that particular study, the correlation is that the . . . (interrupted)

. . . . . .

JUSTICE LEONEN:
You said that it was correlation, what was the degree of confidence?

DEAN AQUENDE:
I do not have right now.

JUSTICE LEONEN:
Yes, probably you can provide us with a copy.

DEAN AQUENDE:
Yes, Your Honor.

JUSTICE LEONEN:
Because in order not to be a grave abuse of discretion, it must be reasonable.

DEAN AQUENDE:
Yes, Your Honor.

JUSTICE LEONEN:
Considering, Chair, that this affects a freedom and a primordial freedom at that, freedom of expression, academic freedom, the way we teach our, as Justice Andy Reyes pointed out, the way we teach law to our citizens and therefore, to me, the level of scrutiny should not be cursory. The level of scrutiny must be deep and I would think it would apply strict scrutiny in this regard. Therefore, if there was no study that supported it, then perhaps, may be stricken down as unreasonable and therefore, a grave abuse of discretion . . . .

. . . . . .

JUSTICE LEONEN:
. . . . the English proficiency that you mentioned, what are your statistics on that?

DEAN AQUENDE:
The . . . . (interrupted)

JUSTICE LEONEN:
That law schools are admitting law students that do not have English proficiency . . . .

DEAN AQUENDE:
That ties up, Your Honor, with the public interest that we are looking at and that is . . . . (interrupted)

JUSTICE LEONEN:
Yes, yes, what are your statistics on that?

DEAN AQUENDE:
. . . . and that is the weigh stage . . . . (interrupted)

JUSTICE LEONEN:
What are your numbers?

DEAN AQUENDE:
Actually, Your Honor, it's the weigh stage of the human capital resulting problem . . . . (interrupted)

JUSTICE LEONEN:
I'm not asking about the concept.

DEAN AQUENDE:
. . . . in the bar examination, Your Honor.

JUSTICE LEONEN:
What are your numbers?

DEAN AQUENDE:
It's the bar examination, Your Honor, that seventy-five percent (75%) of all the . . . . (interrupted)

JUSTICE LEONEN:
You see all the examinations?

DEAN AQUENDE:
Yes, Your Honor.

JUSTICE LEONEN:
You mean to say, those that flunked the exams is because of English?

DEAN AQUENDE
No, Your Honor, but that is the competency . . . . (interrupted)

JUSTICE LEONEN:
In other words, in looking at the law schools, you made a claim that the English proficiency of undergraduates going into law schools is deteriorating, correct? And because you are an academic body, you should have a scientific study to back yourself up? Can you submit that to the Court? Have you made that study?

DEAN AQUENDE:
Which particular . . . . (interrupted)

JUSTICE LEONEN:
You cannot operate to supervise academic institutions deep in science on the basis of anecdotal references. That would be unreasonable. That is grave abuse of discretion.

DEAN AQUENDE:
No. Your Honor, please, if the question is . . . . (interrupted)

JUSTICE LEONEN:
You said it was English proficiency, logic, correct? That's why you imposed this exam. By the way, Chair, how many law schools are there?

DEAN AQUENDE:
One hundred twenty-two (122) law schools, Your Honor.

JUSTICE LEONEN:
Have you taught in all those environments?

DEAN AQUENDE:
None, not, Your Honor.

JUSTICE LEONEN:
In fact, have you taught in more than five law schools?

DEAN AQUENDE:
No, Your Honor.

JUSTICE LEONEN:
How many law schools have you taught in?

DEAN AQUENDE:
Just two (2), Your Honor.

JUSTICE LEONEN:
Just two (2), and you make a conclusion based on your experience in two (2) law schools multiplied by the number of experiences of all your members of the Board with 120? Shouldn't you have done a scientific study on English proficiency of incoming first year of law schools at the very least before you put in this policy so that it becomes reasonable for us?

DEAN AQUENDE:
Well, we looked at the LSAT correlation, Your Honor.[88]

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[88] TSN dated March 5, 2019, pp. 171-179.

Respondent Legal Education Board has not conducted any scientific and empirical study prior to its decision to impose a national standardized test for the admission of students in law schools. All that it has as basis is the study for the Law School Admission Test of the United States. There was no showing of how this foreign experience is applicable, or even relevant, to the Philippine context. For lack of any substantial basis, the administration of the Philippine Law School Admission Test is arbitrary.

Moreover, the Philippine Law School Admission Test transgresses due process for being unreasonable. At the core of this test is the enforcement of a written exam that supposedly sifts and sets apart individuals who are likely to survive law school. The exclusionary result is based on a single criterion—if the applicants pass the written exam, they are deemed qualified. There is no other basis used for the evaluation of applicants. Through the Philippine Law School Admission Test, the government imposes a single determinant to ascertain who can pursue legal education. This is insufficient to hurdle the requirement of due process. Reasonableness demands that a multi-varying approach is used in evaluating law school applicants.

American jurisprudence sheds more light on this. In *Grutter v. Bollinger*,[89] the U.S. Supreme Court upheld the University of Michigan Law School's use of an applicant's race as among the criteria in its admission policy. It agreed with the use of race as a factor in its admission decisions, as it serves a "compelling interest in attaining a diverse student body."[90]

In *Grutter*, the law school's admission policy sought to admit more students from disadvantaged backgrounds, not to meet a desired quota for diversity, but to enroll a "critical mass" of minority students. Its concept of critical mass is anchored on the important educational benefits that flow from having a diverse studentry. The law school used race as one (1) of the criteria

[89] 539 U.S. 306 (2003).

[90] *Id.* at 329.

in its admission policy to avoid a monolithic student demographic that is typically admitted by traditional admissions processes.

In upholding the policy, the U.S. Supreme Court ruled that the law school's educational judgment that diversity is essential to its educational mission must be respected, and that universities must be given a degree of deference when it comes to academic decisions:

> In announcing the principle of student body diversity as a compelling state interest, Justice Powell invoked our cases recognizing a constitutional dimension, grounded in the First Amendment, of educational autonomy: "The freedom of a university to make its own judgments as to education includes the selection of its student body." From this premise, Justice Powell reasoned that by claiming "the right to select those students who will contribute the most to the 'robust exchange of ideas,'" a university "seek[s] to achieve a goal that is of paramount importance in the fulfillment of its mission." Our conclusion that the Law School has a compelling interest in a diverse student body is informed by our view that attaining a diverse student body is at the heart of the Law School's proper institutional mission, and that "good faith" on the part of a university is "presumed" absent "a showing to the contrary."[91] (Citations omitted)

In *Grutter*, the U.S. Supreme Court upheld a holistic evaluation of an applicant by considering several factors such as academic ability, talents, experiences, including other information through a personal statement, letters of recommendation, together with the applicant's undergraduate grade point average, Law School Admission Test score, and other "soft variables," including the applicant's racial and ethnic status. In effect, the law school affords an individualized consideration to all applicants regardless of race. There is no policy of automatic acceptance or rejection based on a single variable.

In this case, by enforcing an arbitrary and unreasonable measure in the law schools' admission process, the government violates the applicants' right to due process.

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[91] *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 316 (2005) [Per J. Tinga, *En Banc*].

The choice of pursuing an education is within the ambit of one's right to life and liberty. Liberty includes the "right to exist and the right to be free from arbitrary restraint or servitude."[92] It embraces the right of individuals, to enjoy the faculties they are endowed with such as the right to live, right to be married, right to choose a profession, and the right to pursue an education.[93] In *City of Manila v. Laguio, Jr.*:[94]

> While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[95]

In my concurring opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*:[96]

> Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.
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> "Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person" and the American formulation

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[92] *Id.*

[93] *Id.*

[94] 495 Phil. 289 (2005) [Per *J.* Tinga, *En Banc*].

[95] *City of Manila v. Laguio, Jr.*, 495 Phil. 289, 317 (2005) [Per *J.* Tinga, *En Banc*] citing *Roth v. Board of Regents*, 408 U.S. 564 (1972).

[96] 815 Phil. 1067 (2017) [Per *J.* Perlas-Bernabe, *En Banc*].

of "life, liberty and the pursuit of happiness." As the American Declaration of Independence postulates, they are "unalienable rights" for which "[g]overnments are instituted among men" in order that they may be secured. Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

"Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence. "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions.[97] (Citations omitted)

Ultimately, the right to life is intertwined with the right to pursue an education. Right to life, after all, is not merely the right to exist, but the right to achieve the "fullness of human potential[.]"[98] This is real in attaining a degree of one's own choice. Education does not only enhance and sharpen intellect, but also opens up better opportunities. It improves the quality of life. When a person obtains a degree, there is economic and social mobility. Thus, when the State interferes and prevents an individual from accessing education, it impliedly infringes on the right to life and liberty.

In the same vein, imposing an arbitrary and unreasonable government-sponsored standardized test violates the right to property. Applicants, forced to take the mandatory examination, are likewise required to pay testing fees. This means additional financial cost that acts as another unnecessary obstacle to aspiring law students.

Yet, more than the financial barrier, going through the bureaucracy of studying for, applying for, and actually taking

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[97] *Id.* at 1142-1143.

[98] *Id*.

the test also entails opportunity cost. This includes, among others, the foregone time, prospects, and other possibilities that could have been realized.[99] These additional costs only serve as exclusionary measures that unreasonably weed out those who simply cannot afford them.

Thus, the Philippine Law School Admission Test must be struck down for infringing on the rights to life, liberty, and property without due process of law.

IV

Moreover, standardized tests as a measure of merit should be taken with a grain of salt. A meritocratic method based on these tests does not necessarily mean that the most qualified students are admitted.[100] For one, meritocracy was originally a term of abuse, used to describe a "ludicrously unequal state."[101] Rather than measure fairness, it disproportionately benefits those who are well-off.[102] For another, entrance tests have historically been skewed in favor of elite applicants who have significant advantage and access to better education, resources, and wealth.[103]

As Stanford Law professor Richard Banks concluded:

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[99] *Racelis v. Spouses Javier*, G.R. No. 189609, January 29, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63801> [Per *J.* Leonen, Third Division].

[100] *Id.*

[101] Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, available at <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> (last accessed on September 9, 2019).

[102] *Id.*

[103] Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development* 3 (2010), available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019); and R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N. C. L. REV. 1061, 1062 (2001), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=301300&download=yes> (last visited on September 9, 2019).

Differential access to achievement-related resources may occur at the level of a child's family, school, or neighborhood.

The relative achievement formulation of socioeconomic status would encompass family characteristics such as parental income, education, occupation, and wealth. A variety of studies have demonstrated positive relationships between early academic achievement and parental income, education, and occupation.[104] (Citations omitted)

Merit is a manifestation of elitism. Meritocracy opposes democratization and opportunity for all.[105]

Even if national standardized tests were non-exclusionary, and were designed only to guide law schools, harm still persists in their mandatory character. Obviously, they entail both financial and opportunity cost for the applicant. An admission exam like the Philippine Law School Admission Test presents another financial barrier for an applicant.

This Court cannot ignore the greater disparity that prevails among income classes, ethnicities, and even geographical differences. The cost of taking the Philippine Law School Admission Test creates an additional burden and prevents applicants from the middle to low-income strata from pursuing legal education. The test morphs into a selective mechanism that unduly favors the wealthy. Even if the results of the exams are non-exclusionary, the costs virtually make the exam itself exclusionary.

Moreover, students with low scores in the national test, which was created without the participation of true academics who understand test metrics, will consider themselves inferior. Because the results are ranked, the test creates a stigma on

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[104] R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions*, 79 N. C. L. REV. 1061 (2001), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=283711> (last visited on September 9, 2019).

[105] Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development*, 7 (2010), available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019).

those who received low scores and excludes them. A national standardized exam, even as a non-exclusionary list, when state-sponsored, creates an unnecessary hierarchy.

Besides, that a law school is producing good lawyers does not automatically mean that it is a good law school. On the contrary, having a standardized national admission exam hides the defects and inadequacies of a law school. Students who ranked high in the Philippine Law School Admission Test, but went on to study in a school that may not exactly have good standards of education, may still likely pass the bar examinations. This is because students who topped the Philippine Law School Admission Test are not a random sample. Right at the start, they have already enjoyed a good foundation of education and a conducive environment to excel, equipped with the advantage of financial resources.[106]

Thus, the Philippine Law School Admission Test effectively screens applicants not on the basis of merit alone, but on the resources they possess. Through it, law schools are encouraged to work with better-equipped students. They are incentivized in catering to the elite in our society.

Ironically, we incentivize sloth among law schools.

Justice Clarence Thomas' (Justice Thomas) dissent in *Grutter* is likewise illuminating. Proposing that law schools must end their reliance on the Law School Admission Test, he suggested adopting different methods of admission "such as accepting all students who meet minimum qualifications,"[107] instead of betting on the highest scores.

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[106] Elise S. Brezis, *The Effects of Elite Recruitment on Social Cohesion and Economic Development* 3 (2010). Available at <https://www.oecd.org/dev/pgd/46837524.pdf> (last visited on September 9, 2019); R. Richard Banks, *Meritocratic Values and Racial Outcomes: Defending Class-Based College Admissions,* 79 N. C. L. Rev. 1062 (2001). Available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=301300&download=yes> (last visited on September 9, 2019).

[107] *J.* Thomas, Dissenting Opinion in *Grutter v. Bollinger*, 539 U.S. 306, 361 (2003).

Justice Thomas questioned whether standardized admission tests are reliable in predicting the success of applicants in law school. He does not believe that the test serves any real educational significance, but is only used to admit high scorers. The test, he notes, translates to selectivity—a marker of elitism:

> [T]here is much to be said for the view that the use of tests and other measures to "predict" academic performance is a poor substitute for a system that gives every applicant a chance to prove he can succeed in the study of law. The rallying cry that in the absence of racial discrimination in admissions there would be a true meritocracy ignores the fact that the entire process is poisoned by numerous exceptions to "merit."[108]

Here in the Philippines, our education system's obsession with examination-based meritocracy must be tempered, not further celebrated. Legal education must not be an exclusive good for the elite. There must be a conscious move to eliminate the socio-economic barriers that cement this elitism. The Philippine Law School Admission Test does the exact opposite by reinforcing a faulty method that does not necessarily admit the most qualified students, but only favors the economically privileged.

National standardized admission tests reward this blind and corrosive meritocracy. Crudely rewarding merit without understanding its context undermines the constitutional goal of achieving social justice. Rewarding merit alone or privileging it results in more inequality.

There has never been a level playing field in basic, secondary, and tertiary education. In the first place, not all poor and rural students who enter basic education make it to college. Fewer still are those that finish their college degrees. Most of the poor rural students will not rank high in a national standardized test due to limited access to resources in their communities. This does not mean, however, that they are so mentally deficient that they will not make it in law school. Rather, the national

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[108] *Id.* at 367-368.

standardized test will most likely exclude them because they will be put in the proverbial back of the line.

Those from privileged families, by contrast, are more likely to grow up in an environment that nurtures cognitive development.[109] They have likely received social and cultural capital that propel them to do better in school.[110] Chances are they attended good schools staffed with competent teachers and professionals, learning with other privileged students.[111]

The inevitably low ranking of poor students adds to their burden. In the meantime, rich, privileged students will, as usual, get better chances. This situation only perpetuates the status quo, ultimately putting meritocracy as a barrier to the principle of equality.[112]

On its surface, the contemporary idea of meritocracy is appealing because "it carries with it the idea of moving beyond where you start in life, of creative flourishing and fairness."[113] But this understanding is a myth, as our system rewards through wealth and it increases inequality.[114] Financially privileged students are way ahead of those who have much less, and any merit-based system will only serve to further highlight this privilege:

> In this intergenerational relay race, children born to wealthy parents start at or near the finish line, while children born into poverty start behind everyone else. Those who are born close to the finish line do

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[109] *Id.* at 107.

[110] *Id.*

[111] *Id.*

[112] Hannah Arendt, *The Crisis in Education* (1954) <http://www.digitalcounterrevolution.co.uk/2016/hannah-arendt-the-crisis-in-education-full-text/> (last accessed September 12, 2019).

[113] Jo Littler, *Meritocracy: the great delusion that ingrains inequality*, THE GUARDIAN, March 20, 2017, <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> (last accessed on September 9, 2019).

[114] *Id.*

not need any merit to get ahead. They already are ahead. The poorest of the poor, however, need to traverse the entire distance to get to the finish line on the basis of merit alone. In this sense, meritocracy strictly applies only to the poorest of the poor; everyone else has at least some advantage of inheritance that places them ahead at the start of the race.

In comparing the effects of inheritance and individual merit on life outcomes, the effects of inheritance come first, then the effects of individual merit follow — not the other way around.[115]

An educational system that rewards on the basis of loosely defined merits assumes an equality of educational opportunity.[116] It fails to recognize that the most privileged in society are provided with much greater opportunities to succeed and fewer chances to fail compared with those from less privileged backgrounds.[117]

All these privileges that are attached to a person simply by the circumstances of his or her birth snowball within an educational system that hides behind the sanitized concept of meritocracy. In truth, such concept only widens the existing economic, social, and cultural inequality.

It is, thus, inaccurate to use the results of a standardized test as proxies for measuring the capability of students to do well in law school. The competitive and individualistic meritocracy that standardized tests espouse rests on the neoliberal assumption that hard work and effort alone will result in success. It is, however, almost deliberately blind to the reality that the starting line for success is unequal, and the path toward it more challenging for those disfavored by the system. In reality, a national standardized test only rewards crude meritocracy. Meritocracy, then, disguises prejudice.

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[115] STEPHEN MCNAMEE AND ROBERT K. MILLER, JR., *THE MERITOCRACY MYTH* 49 (2004).

[116] *Id*. at 102.

[117] *Id*.

V

In this case, the majority declared unconstitutional several provisions of the Legal Education Reform Act and Memorandum Orders of respondent Legal Education Board. However, it essentially retained the Philippine Law School Admission Test. It ruled that Section 7(e) of the Legal Education Reform Act[118] is faithful to the reasonable supervision and regulation clause under the Constitution. It found that the provision only empowers respondent Legal Education Board to prescribe minimum requirements, which does not equate to control.[119]

Section 7(e) of the Legal Education Reform Act states:

> SECTION 7. Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
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> . . . . . .
>
> (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members[.]

The majority concludes that while the State may administer the Philippine Law School Admission Test, it should not be imposed on law schools as a mandatory part of their admission process.[120] Relying on *Tablarin*, it sustained admission tests as a legitimate exercise of the State's regulatory power.[121]

I find that the majority's pronouncements readily allow unwarranted State incursion on academic freedom.

An educational institution's right to determine who to admit as its students is an integral part of its institutional academic freedom. It is absolute. Any form of State intrusion into an educational institution's admission policies, no matter how benign, should be rejected.

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[118] Republic Act No. 7662 (1993).

[119] *Ponencia*, p. 77.

[120] *Id.* at 78.

[121] *Id.* at 81-84.

In this regard, I view that *Tablarin* and *Department of Education, Culture, and Sports*[122] should be overturned. Just like the Philippine Law School Admission Test, the National Medical Admission Test, and any kind of government-sponsored standardized admission test—mandatory or not—should be rejected for infringing on academic freedom.

The State cannot sponsor an admission exam under the guise of prescribing minimum qualifications when, right from the start, it already excludes those who cannot pay to take the test.

Ultimately, the results of the Philippine Law School Admission Test will affect the schools' admission decisions. To recapitulate, its mandatory character means that if an applicant fails, he or she is disqualified from enrolling in any law school, even when a law school determines that the unsuccessful examinee should be admitted as its student. Removing its mandatory character, but retaining the test nonetheless, perpetuates the stigma that attaches to an applicant who passes but scores low relative to other examinees. Thus, the power of respondent Legal Education Board to implement the Philippine Law School Admission Test, even as a minimum requirement for admission, is already a demonstration of State control over the law schools.

The academic institutions' right to determine who they will admit to study remains among their four (4) essential freedoms. In ascertaining who to admit, law schools must have autonomy in establishing their own policies, including the examination that they will employ.

The Philippine Law School Admission Test presents an unwarranted intrusion into this essential freedom. The government's imposition of a passing score as a bar to admission is a violation of the institutions' academic freedom.

The rationale of this decision in relation to the significance of academic freedom in our jurisdiction also applies to the entire concept of the Legal Education Board.

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[122] 259 Phil. 1016 (1989) [Per *J.* Cruz, *En Banc*].

The teaching of law as an academic degree is protected by Article XIV, Section 5(2)[123] of the Constitution, which also relates to Article III, Section 4[124] under the Bill of Rights. On the other hand, the requirements for a license to practice law is broadly covered by Article XIV, Section 5(3)[125] of the Constitution, and more specifically as a power granted to this Court under Article VIII, Section 5(5).[126]

The regulation on the teaching of law as an academic degree is different from the regulation on the practice of law as a profession. The former is an aspect of higher education leading to a degree, while the latter may require a degree, yet the degree alone does not qualify one to practice law.

Quality legal education should be guaranteed by the faculty and administration of a law school. A law school, on the other hand, may be part of a university or college. Thus, the law

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[123] CONST., Art. XIV, Sec. 5(2) provides:

SECTION 5. . . .

. . . . . .

(2) Academic freedom shall be enjoyed in all institutions of higher learning.

[124] CONST., Art. III, Sec. 4 provides:

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.

[125] CONST., Art. XIV, Sec. 5(3) provides:

SECTION 5. . . .

. . . . . .

(3) Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.

[126] CONST., Art. VIII, Sec. 5(5) provides:

SECTION 5. . . .

. . . . . .

(5) 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 underprivileged. 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.

school is accountable to its academic councils for its approaches to teaching, qualifications and promotion of its professors, as well as the full contents of its curriculum.

The broad and ambiguous rubric of police power should not be an excuse to provide government oversight on purely academic matters, or even academic matters that appear to be administrative issues. Academic supervision cannot be done by a statutorily appointed Legal Education Board restricting the academic freedom of institutions of higher learning which offer what amounts to a postgraduate degree. Legal education cannot be supervised in the way institutions offering pre-school or basic elementary education are supervised. The entire concept of the Legal Education Board — appointed public officials interfering with law schools' academic freedoms as if the appointment from an elective official gives them the academic expertise — is precisely what Article XIV, Section 5(2) of the Constitution proscribes.

The entire Legal Education Reform Act clearly violates the Constitution. It is, therefore, surprising that the majority is unwilling to strike it down. It is likewise astounding that the majority seems to put its trust on the evolution of law as an academic discipline to political appointees.

There are better ways to ensure the quality of legal education, none of which involves a super body similar to the Legal Education Board. While it appears to be a mere guidance for law schools, the State's infringement on academic freedom through the Philippine Law School Admission Test has far-reaching implications.

ACCORDINGLY, I vote to **GRANT** the Petitions. The entire Republic Act No. 7662, or the Legal Education Reform Act, is unconstitutional.

CONCURRING AND DISSENTING OPINION

JARDELEZA, *J.*:

Petitioners in the present consolidated cases[1] seek the Court's issuance of a writ of prohibition and a writ of preliminary injunction or temporary restraining order to keep the Legal Education Board (herein after referred to as the "LEB Law") from holding the Nationwide Uniform Law School Admission Test (PhilSAT) for, among others, its violation of academic freedom. They also ultimately pray that Republic Act No. 7662,[2] the LEB Law be stricken down as unconstitutional, for its encroachment on the exclusive jurisdiction of the Supreme Court in promulgating rules concerning the admission to the practice of law, as provided for in Article VIII, Section 5(5) of the 1987 Constitution.

I concur with the *ponencia* insofar as it holds that the Court has no jurisdiction over legal education.[3] Both statutory history and legislative intent contemplate a separation between legal education and the law profession; and the regulation and supervision of legal education, including admissions thereto, fall within the scope of the State's police power. However, and for reasons I shall hereinafter set out, I must dissent from the majority's ruling to partially nullify Legal Education Board Memorandum Order (LEBMO) No. 7-2015 "insofar as it absolutely prescribes the passing of the PhiLSAT x x x as a pre-requisite for admission to any law school which, on its face, run directly counter to institutional academic freedom."[4]

With respect, I submit that: (I) the invocation of academic freedom as a ground for the partial nullification of the challenged

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[1] *Abayata, et al. v. Hon. Salvador Medialdea, et al.* (G.R. No. 242954) and *Pimentel, et al. v. Legal Education Board* (G.R. No. 230642).

[2] Otherwise known as the Legal Education Reform Act of 1993, hereinafter referred to as "LEB Law".

[3] *Ponencia*, pp. 37-53.

[4] *Id.* at 88.

LEBMO is misplaced; (II) the provision by the State of a standardized *exclusionary* exam for purposes of admission to a law school is a valid exercise of police power; and (III) the resolution of the challenge against the State regulation's reasonableness involve underlying questions of fact which cannot be resolved by this Court at the first instance.

My above reservation is heightened by my own research which yields a conclusion different from the conclusion of fact reached by the *ponencia*[5] that the National Medical Admission Test (NMAT) upheld in *Tablarin v. Gutierrez*[6] does not have a cut-off or passing score requirement. As I shall also hereinafter show, the NMAT is no different from the PhiLSAT insofar as it also employs an exclusionary (or, in the words of the *ponencia*, "totalitarian") scheme in terms of student admissions.[7] I see no reason why both tests should merit different treatment.

I

A

My survey of its venerable history and application in Philippine jurisprudence convince me that the concept of academic freedom has different applications, depending on the character of the party invoking it as a right. And, in instances when academic freedom has been invoked as a personal right-that is, one in favor of individuals (whether an educator or a student), the same has been always been inextricably linked (or discussed in relation) to said individual's *broader* freedom of expression.

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The concept of academic freedom began in medieval Europe, where it was used as to protect universities as a community of scholars against ecclesiastical and political intrusion. It was then carried over to Latin America, where it was used to create

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[5] *Id.* at 86.

[6] G.R. No. 78164, July 31, 1987, 152 SCRA 730.

[7] *Ponencia*, p. 87.

sanctuaries out of universities for people who were under political persecution.[8] Academic freedom thereafter developed as a legal right consisting of three key concepts: (1) the philosophy of intellectual freedom for teachers and scholars; (2) the idea of autonomy for the university as a community of scholars; and (3) the guarantee of free expression in the Constitution.[9]

Similarly, the conceptualization of academic freedom in the United States (U.S.) is that it exists to protect scholarship in higher education from untoward political intrusions, mainly through allowing universities to enjoy autonomy over policies of education.[10] Furthermore, while it is conceded to overlap with *civic free speech*, academic freedom is delineated from the former by limiting it as professional speech within higher education, rather than the rights of expression granted to citizens against broader governmental interference.[11]

The first mention of academic freedom in a U.S. Supreme Court case came with the promulgation of *Adler v. Board of Education of the City of New York*.[12] This case involved a New York State statute[13] which required public employees to take loyalty oaths as a condition for their continued employment, and effectively banned state employees from belonging to "subversive groups" under pains of termination. Although the

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[8] Pacifico Agabin, *Academic Freedom and the Larger Community*, Philippine Law Journal, Vol. 52, 336, 336 (1977) Phil. L.J. 336, 336 (1977).

[9] Enrique M. Fernando, *Academic Freedom as a Constitutional Right*, Philippine Law Journal, Vol. 52, 289, 290 (1977); citing Fuchs, *Academic Freedom — Its basic Philosophy, Function and History*, in BAADE (ed.).

[10] J. Peter Byrne, *Constitutional Academic Freedom After Grutter: Getting Real about the "Four Freedoms" of a University*, Georgetown University Law Center, 77 U. Colo. L. Rev. 929-953 (2006).

[11] *Id.* at 930.

[12] 342 U.S. 485 (1952).

[13] *Id.* at 498. The Civil Service Law of New York, Section 12(a) thereof made ineligible for employment in any public school any member of any organization advocating the overthrow of the Government by force, violence or any unlawful means.

statute was upheld by the Court as a valid exercise of police power,[14] Justice William Douglas,[15] in his key Dissenting Opinion, couched the discourse of academic freedom *within the context of freedom of thought and expression*. He opined:

> x x x The Constitution guarantees freedom of thought and expression to everyone in our society. All are entitled to it, and none needs it more than the teacher.
>
> The public school is, in most respects, the cradle of our democracy. The increasing role of the public school is seized upon by proponents of the type of legislation represented by New York's Feinberg law as proof of the importance and need for keeping the school free of "subversive influences." But that is to misconceive the effect of this type of legislation. Indeed, the impact of this kind of censorship on the public-school system illustrates the high purpose of the First Amendment in freeing speech and thought from censorship.

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[14] *Id.* at 493. According to the Court:

> A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted. One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. In the employment of officials and teachers of the school system, the state may very properly inquire into the company they keep, and we know of no rule, constitutional or otherwise, that prevents the state, when determining the fitness and loyalty of such persons, from considering the organizations and persons with whom they associate.
>
> If, under the procedure set up in the New York law, a person is found to be unfit and is disqualified from employment in the public school system because of membership in a listed organization, he is not thereby denied the right of free speech and assembly. His freedom of choice between membership in the organization and employment in the school system might be limited, but not his freedom of speech or assembly, except in the remote sense that limitation is inherent in every choice. Certainly such limitation is not one the state may not make in the exercise of its police power to protect the schools from pollution and thereby to defend its own existence.

[15] As concurred in by Justice Black.

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The very threat of such a procedure is certain to raise havoc with academic freedom. Youthful indiscretions, mistaken causes, misguided enthusiasms—all long forgotten—become the ghosts of a harrowing present. Any organization committed to a liberal cause, any group organized to revolt against an (*sic*) hysterical trend, any committee launched to sponsor an unpopular program, becomes suspect. These are the organizations into which Communists often infiltrate. Their presence infects the whole, even though the project was not conceived in sin. **A teacher caught in that mesh is almost certain to stand condemned. Fearing condemnation, she will tend to shrink from any association that stirs controversy. In that manner, freedom of expression will be stifled.**[16] (Emphasis supplied.)

In the same year, the U.S. Supreme Court decided the case of *Wieman v. Updegraff*,[17] where it struck down as unconstitutional a "loyalty oath" statute[18] required of state employees, including the faculty and staff of Oklahoma Agricultural and Mechanical College, which had the effect of excluding persons from state employment solely on the basis of membership in organizations tagged as "subversive," regardless of their knowledge of the activities and purposes of said organizations.[19]

Justice Hugo Black, in his Concurring Opinion in *Wieman*, explained that test oaths were notorious tools of tyranny that inevitably stifle freedom of expression and freedom of the press,

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[16] *Supra* note 12 at 508-509 (1952).

[17] 344 U.S. 183 (1952).

[18] The Oklahoma Stat. Ann, 1950, Tit. 51, Section 37.1-37.9 required each state officer and employee, as a condition of his employment, to take a "loyalty oath" stating, *inter alia*, that he is not, and has not been for the preceding five years, a member of any organization listed by the Attorney General of the U.S. as "communist front" or "subversive."

[19] *Wieman v. Upegraff*, 344 U.S. 485, 193 (1952); The Court, in the main, found a violation of the Due Process Clause ("Indiscriminate classification of innocent with knowing activity must fall as an assertion of arbitrary power.") and held that the Government's efforts at countering threats of subversion must not be at the expense of democratic freedoms.

and is counter to the crucial uncompromising interpretation of the Bill of Rights.[20] In support, Justice Felix Frankfurter cautioned that statutes that unwarrantedly inhibit the free spirit of teachers will create a chilling effect on that spirit, which is what teachers "ought to especially cultivate and practice." He added that such "fundamental principles of liberty" inevitably go into the nature of the role that teachers play in any given democratic society, and that these freedoms of thought and expression importantly bear on the teachers' capacity to encourage open-mindedness and critical inquiry in the people.[21]

Four years after *Adler and Wieman*,[22] the U.S. Supreme Court, in the case of *Sweezy v. New Hampshire*[23] gave a landmark

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[20] *Id.* Justice Hugo elucidated thus:

Governments need and have ample power to punish treasonable acts. But it does not follow that they must have a further power to punish thought and speech, as distinguished from acts. Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have *freedom of speech* for all or we will, in the long run, have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost. (Italics supplied.)

[21] *Wieman v. Upegraff, supra* note 19 at 196; Justice Frankfurter explained:

To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective *public opinion*. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the *freedom of responsible inquiry, by thought and action*, into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the *freedoms of thought, of speech*, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by national or State government. (Italics supplied.)

[22] *Supra* note 12.

[23] 354 U.S. 234, 262 (1957).

pronouncement in its recognition and acceptance of academic freedom and its grounding in the Constitution. This case involved a New Hampshire statute, pursuant to which Paul Sweezy (Sweezy), then a professor at the University of New Hampshire, was interrogated by the New Hampshire Attorney General about his suspected affiliations with communism. Sweezy refused to answer a number of questions about his lectures in class, on the ground that they were unrelated to the purpose of the investigation and that the questions infringed upon an area protected by the First Amendment. The U.S. Supreme Court ruled in Sweezy's favor and, echoing Justice Frankfurter's concurring opinion in *Wieman*, held that academic inquiries must be left "as unfettered as possible" where "political power must abstain from intrusion into this activity of freedom."[24]

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[24] *Id.* at 262-263, Justice Frankfurter's opinion further added:

x x x This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor. x x x

To further emphasize the nature and design of a university and the import of its academic freedom as rooted in freedom of expression and thought, Justice Frankfurter quoted a statement from a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand, to wit:

"In a university, knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.

Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university.

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere

Two years after *Sweezy*, the U.S. Supreme Court, in the case of *Barenblatt v. United States*,[25] a case involving alleged infringement of First Amendment rights,[26] had occasion to qualify the liberal approach on academic freedom. Speaking through Justice John Marshall Harlan, the Court moderated the safeguarding of academic freedom, and held that it was not immune to warranted interrogation by the legislature, to wit:

> x x x Of course, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching — freedom and its corollary, learning — freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain. But this does not mean that the Congress is precluded from interrogating a witness merely because he is a teacher. An educational institution is not a constitutional sanctuary from inquiry into matters that may otherwise be within the constitutional legislative domain merely for the reason that inquiry is made of someone within its walls.[27]

Finally, in the 1967 case of *Keyishian v. Board of Regents*,[28] the Supreme Court overturned its decision in *Adler,* and extended First Amendment protection to academic freedom. *Keyishian*

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in which there prevail 'the four essential freedoms' of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study. (Emphasis supplied.)"

[25] 360 U.S. 109 (1959).

[26] *Id.* at 114-115, 130. Here, petitioner, a former graduate student and teaching fellow at the University of Michigan, refused to answer questions posed to him in an investigation being conducted by a Congressional Subcommittee into alleged Communist infiltration into the field of education. For his refusal, he was fined and sentenced to imprisonment for six months. The Court, after balancing the competing public and private interests involved, found that petitioner's claim that the "investigation was aimed not at the revolutionary aspects, but at the theoretical classroom discussion of communism x x x rests on a too constricted view of the nature of the investigatory process, and is not supported by a fair assessment of the record x x x."

[27] *Id.* at 113.

[28] 385 U.S. 589 (1967).

involved faculty members and a non-teaching employee of the State University of New York whose employment contracts were terminated or not renewed when they refused (or failed) to submit a "Feinberg Certificate"[29] required under Section 3021 of the New York Education Law. Under such document, the individual certifies that he is not a Communist and that he has never advocated or been a member of a group which advocated forceful overthrow of the Government.[30] In striking down the statute as unconstitutional, the Supreme Court, citing *Shelton v. Tucker*,[31] held that though the governmental purpose may have been legitimate and substantial, that purpose could not be undertaken too broadly as to "stifle fundamental personal liberties."[32]

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[29] *Id.* at 595-596; taken from the Feinberg Law which required the measure.

[30] *Id.*

[31] *Keyishan v. Board of Regents of Univ. of State of NY, id.* at 602; citing *Shelton v. Tucker*, 364 U.S. 479; *United States v. Associated Press*, 52 F. Sup. 362, 372 (1943).

[32] *Id.* Affirming the significance of academic freedom, and it rationalized:

"x x x The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." (*De Jonge v. Oregon*, 299 U.S. 353, 365 [1937])

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection." (*Keyishan v. Board of Regents of Univ. of State of NY, supra* note 28 at 603. Underscoring supplied.)

2

In the Philippines, the term "academic freedom" first appeared in the 1935 Constitution, under Article XIV, Section 5, as a liberty to be enjoyed by state universities:

> Sec. 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy **academic freedom**. The State shall create scholarships in arts, science, and letters for specially gifted citizens. (Emphasis supplied.)

It was restated in the 1973 Constitution in Article XV, Section 8(2) and was expanded in application to cover both private and public institutions of higher learning, to wit:

> Sec. 8. x x x
>
> x x x x x x x x x
>
> (2) All institutions of higher learning shall enjoy **academic freedom**. (Emphasis supplied.)

The above provision on academic freedom as a constitutional right was further refined and developed through its amendment in the 1987 Constitution in Article XIV, Section 5(2):

> Sec. 5. x x x
>
> x x x x x x x x x
>
> (2) **Academic freedom** shall be enjoyed in all institutions of higher learning. (Emphasis supplied.)

This amendment in the academic freedom clause was explained as a categorical shift from the previous conception that academic freedom was solely institutional in nature, to be enjoyed only by the institutions themselves, to the present belief

that said grant is given not only to the institutions themselves, but to the individual stakeholders (teachers, researchers and students) within said institution as well.[33]

Among others, the critical import of academic freedom has been seen in the dynamics of Philippine national life, where it became a necessary tool used by faculty members and students of an institution to "re-examine existing knowledge and reweigh the prevailing values so dearly cherished by the majority."[34] During the period of Martial Law, for instance, especially during the rise of student activism during the First Quarter Storm, universities served as refuge for those who were politically targeted by the ruling regime, under the protection of the academic freedom that the universities enjoyed. The nature of academic freedom as a right has been seen as a furtherance of the right to freedom of expression, that is, faculty members and students, as stakeholders of the institutions of higher learning, enjoy the freedom of expression even if they are within the university.[35] The general perception, in fact, appears to be that

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[33] Delegate Adolf Azcuna's explanation, in sponsoring said amendment, as cited in Pacifico Agabin's *Comparative Developments in the Law of Academic Freedom*, Philippine Law Journal, Vol. 64, 139-140 (1989):

MR. AZCUNA: In the 1973 Constitution, this freedom is given to the institution itself. All institutions of higher learning shall enjoy academic freedom. So, with this proposal, we will provide academic freedom in the institutions—enjoyed by students, by the teachers, by the researchers and we will not freeze the meaning and the limits of this freedom. Since academic freedom is a dynamic concept and we want to expand the frontiers of freedom, especially in education, therefore we will leave it to the courts to develop further the parameters of academic freedom. We just say that it shall be enjoyed in all institutions of higher learning.

[34] *Supra* note 8 at 338.

[35] *Id.* at 339, citing Emerson & Haber, *Academic Freedom of the Faculty Member as Citizen*, 28 Law and Contemp. Prob. 525 (1968); Dean Pacifico Agabin posited:

Expression if it is to be free, is not limited to the trivial and the inconsequential. It may strike deep at our most cherished beliefs or speak up for the most unorthodox doctrines. Expression cannot be subjected to prior censorship for fear of serious injury or controversy.

x x x x x x x x x

academic freedom is not only enshrined in the Constitution, but is part and parcel of one's freedom of expression.[36]

In the case of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,[37] the Court, in discussing the concept of academic freedom, held:

2. Nor is this all. There is, as previously noted, the recognition in the Constitution of institutions of higher learning enjoying academic freedom. It is more often identified with the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments. For the sociologist, Robert McIver it is "a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution." As for the educator and philosopher Sidney Hook, this is his version: "What is academic freedom? Briefly put, it is the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence. It is subject to no control or authority except the control or authority of the rational methods

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This does not mean that freedom of expression is confined to the four walls of the classroom. This would be a very parochial view of free speech. The spirit of free inquiry cannot be cut off, like a water tap, once the student steps out of his classes. It is therefore important that the University encourage discussion and debate outside the classroom, for an atmosphere and ferment in the academic community at large may be more meaningful to the student than freedom of discussions within the confines of the class.

[36] Agabin's *Comparative Developments in the Law of Academic Freedom, supra* note 1; see also Onofre D. Corpuz's *Academic Freedom and Higher Education: The Philippine Setting*, Vol. 52, 1977, at 273.

[37] G.R. No. L-40779, November 28, 1975, 68 SCRA 277. This case involved a *mandamus* proceeding where the student prayed that the Faculty Admission Committee of the Loyola School of Theology be ordered to allow her to continue pursuing her Master of Arts in Theology. The Court, in the name of academic freedom, would go on to uphold the school's "wide sphere of autonomy certainly extending to the choice of students."

by which truths or conclusions are sought and established in these disciplines."

3. That is only one aspect though. Such a view does not comprehend fully the scope of academic freedom recognized by the Constitution. For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a gradging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his Philippine Political Law, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor." He cited the following from Dr. Marcel Bouchard, Rector of the University of Dijon, France, President of the conference of rectors and vice-chancellors of European universities: "It is a well-established fact, and yet one which sometimes tends to be obscured in discussions of the problems of freedom, that the collective liberty of an organization is by no means the same thing as the freedom of the individual members within it; in fact, the two kinds of freedom are not even necessarily connected. In considering the problems of academic freedom one must distinguish, therefore, between the autonomy of the university, as a corporate body, and the freedom of the individual university teacher." Also: "To clarify further the distinction between the freedom of the university and that of the individual scholar, he says: The personal aspect of freedom consists in the right of each university teacher—recognized and effectively guaranteed by society—to seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen. Thus the status of the individual university teacher is at least as important, in considering academic freedom, as the status of the institutions to which they belong and through which they disseminate their learning.'" x x x[38] (Underscoring supplied.)

Garcia and subsequent cases would show the Court's attempts to outline the distinction between academic freedom as a right

[38] *Id.* at 283-284.

enjoyed by the educational institution,[39] or its individual stakeholders such as the teacher/researcher/educator[40] or student.[41]

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[39] The Court in *Garcia*, iterated the "four essential freedoms" of a university to determine for itself on academic grounds (1) who may teach, (2) what may be taught, (3) how it shall be taught, and (4) who may be admitted to study, and ultimately found that the Faculty Admission Committee had sufficient grounds to deny the student's admission. *Id.* at 293.

[40] In the case of *Montemayor v. Araneta University Foundation*, G.R. No. L-44251, May 31, 1977, 77 SCRA 321, 327, the Court, speaking through Chief Justice Fernando, quoted Robert MacIver, and echoed the *Sweezy* definition of academic freedom as "a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution."

[41] The Court's holding in *Garcia*, was subject of a strong dissent from Justice Felix Makasiar who argued that academic freedom, although at the time textually granted only to the academic institutions, should be deemed to have been granted to the students themselves as well, as the students constitute part of the institution itself, without whom the institution can neither exist nor operate. According to Justice Makasiar:

> What is involved here is not merely academic freedom of the higher institutions of learning as guaranteed by Section 8(2) of Article [V] of the 1973 Constitution. The issue here strikes at the broader freedom of expression of the individual — the very core of human liberty.
>
> Even if the term "academic freedom" were to be limited to institutions of higher learning — which to the mind of Dr. Vicente Sinco, an eminent authority in Constitutional Law, is the right of the university as an institution, not the academic freedom of the university professor (Sinco, *Phil. Political Law*, 1962 ed., 489)—the term "institutions of higher learning" contained in the aforecited provision of our New Constitution comprehends not only the faculty and the college administrators but also the members of the student body. While it is true that the university professor may have the initiative and resourcefulness to pursue his own research and formulate his conclusions concerning the problem of his own science or subject, the motivation therefor may be provoked by questions addressed to him by his students. In this respect, the student—specially a graduate student—must not be restrained from raising questions or from challenging the validity of dogmas whether theological or not. The true scholar never avoids, but on the contrary welcomes and encourages, such searching questions even if the same will have the tendency to uncover his own ignorance. It is not the happiness and self-

B

In this case, and save for petitioner-intervenor St. Thomas More School of Law and Business (St. Thomas More), all petitioners appear to be *individual* educators and students. There is no assertion (much less proof) from any of them that the challenged LEB Law, in general, and the imposition of the PhiLSAT passing requirement, in particular, infringes on their *personal* rights to freedom of expression. This, to my mind, is precisely the reason why the *ponencia* itself focused on the concept of academic freedom *as enjoyed by an educational institution*, specifically, the "freedom of law schools to determine for itself who may be admitted to legal education x x x."[42]

On this score, I have examined the petition-in-intervention filed by St. Thomas More, which raised the following causes of action and arguments:

(1) The imposition of the PHILSAT passing requirement would inevitably lead to a decrease in law student enrollees which will, in turn, "result to an increase in tuition fees x x x to recover lost revenue x x x" and "in effect puts law schools away from the reach of the poor students in the provinces;"[43]

(2) The imposition of the PHILSAT passing requirement "arbitrarily encroaches on the academic freedom of the Dean of St. Thomas More to choose its students" on the basis of "values, character, sense of honesty, ethics, and sense of service to others and to society;"[44]

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fulfillment of the professor alone that are guaranteed. The happiness and full development of the curious intellect of the student are protected by the narrow guarantee of academic freedom and more so by the broader right of free expression, which includes free speech and press, and academic freedom. (Emphasis and underscoring supplied.) *Garcia v. The Faculty Admission Committee, Loyola School of Theology, supra* note 37 at 295.

[42] *Ponencia*, pp. 59-64, 71.

[43] *Rollo*, p. 304. G.R. No. 230642 Vol. I.

[44] *Id.* at 304-305.

(3) The imposition of the PHILSAT passing requirement is unfair and unreasonable;[45]

(4) The LEB Law clearly provides that the intent was to improve legal education, not regulate access thereto;[46]

(5) The ruling of the Court in *Tablarin v. Judge Gutierrez*[47] sustaining the constitutionality of the National Medical Admissions Test (NMAT) is inapplicable;[48] and

(6) The LEB Law is an undue delegation of legislative power.[49]

Of the six foregoing issues, only one (issue No. 2) *textually* references the concept of academic freedom. Indeed, the freedom to determine who may be admitted to study is among the "four essential freedoms" accorded an educational institution. This freedom, however, is by no means absolute; it must be balanced with important state interests "which cannot also be ignored for they serve the interest of the greater majority."[50] It is beyond cavil that the State has an interest in prescribing regulations to promote the education and the general welfare of the people.[51]

In this case, the *ponencia* itself declares that "the PhiLSAT, when administered as an aptitude test, is reasonably related to the State's unimpeachable interest in improving the quality of legal education."[52] I find that, in addition to the avowed policy to improve legal education, the provision of the PhiLSAT Passing

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[45] *Id.* at 305-306.

[46] *Id.* at 307.

[47] *Supra* note 6.

[48] *Rollo*, p. 309. G.R. No. 230642 Vol. I.

[49] *Id*. at 310-313.

[50] *Secretary of Justice v. Lantion*, G.R. No. 139465, October 17, 2000, 343 SCRA 377, 390.

[51] *Council of Teachers and Staff of Colleges and Universities of the Philippines, et al. v. Secretary of Education*, G.R. No. 216930, October 9, 2018.

[52] *Ponencia*, p. 88.

Requirement may also serve to discourage the proliferation of the "great evil" sought to be corrected by the "permit system."[53] As the *ponencia* cites, Act No. 3162, back in 1924, created the Board of Educational Survey which made "factual findings" that "a great majority of schools from primary grade to the university; are money-making devices of persons who organize and administer them."[54] Dean Sedfrey M. Candelaria, in his report to the Legal Education Summit on July 31, 2019, representing the Legal Education Board Charter Cluster, admitted to the continued existence of "non-performing" law schools. Thus, it is my view that the Court should carefully weigh casting in stone a rule leaving to a law school the unbridled discretion to determine for itself the PhilSAT passing score for purposes of admission to legal education. In fact, I would argue that the provision of minimum standards (such as a minimum PhiLSAT passing score) for admission to law schools is, in principle, no different from the provision of standards on matters such as the maximum rates of tuition fee increases[55] the location and

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[53] See *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 812-813 (1955), a case involving challenges to Act No. 2706, as amended by Act No. 3075 and Commonwealth Act No. 180 which provides for a "previous permit system" before a school or any other educational institution can operate. There, the Court, quoting a report commissioned by the Philippine Legislature at the time, upheld the challenged Acts as a valid exercise of police power to correct a "great evil," thus:

> x x x An unprejudiced consideration of the fact presented under the caption Private Adventure Schools leads but to one conclusion, *viz*.: the great majority of them from primary grade to university are money-making devices for the profit of those who organize and administer them. The people whose children and youth attend them are not getting what they pay for. It is obvious that the system constitutes a great evil. That it should be permitted to exist with almost no supervision is indefensible. x x x

[54] *Ponencia*, p. 39.

[55] For example, Republic Act No. 6139, otherwise known as An Act to Regulate Tuition and Other School Fees of Private Educational Institution, Providing for the Settlement of Controversies Thereon and for other Purposes. See also *Lina, Jr. v. Carino*, G.R. No. 100127, April 23, 1993, 221 SCRA 515, where this Court sustained the legal authority of respondent DECS

construction of school buildings, the adequacy of library, laboratory and classroom facilities, the maximum number of students per teacher, and qualifications of teachers, among others. Such standards, which are also police power measures instituted in furtherance of the public interest, arguably have some effect on an educational institution's "essential freedoms."

II

While the *ponencia* would hold that the PhiLSAT, as an aptitude test, passes the test of reasonableness, it declares the challenged LEB Law issuance unreasonable to the extent that it is exclusionary, that is, it provides a cut-off score which effectively forces law schools, under pain of administrative sanctions, to choose students only from a "[s]tate-determined pool of applicants x x x."[56]

I disagree.

There is nothing constitutionally abhorrent with the provision by the State of a standardized *exclusionary* exam. This has long been settled in the case of *Tablarin v. Gutierrez*.[57] There, the Court upheld the taking and passing of the National Medical Admission Test (NMAT) as a national prerequisite for admission to all medical schools in the Philippines since academic year 1986-1987, pursuant to the Republic Act No. 2382, otherwise known as the "Medical Act of 1959," and under Department of Education, Culture and Sports (DECS) Order No. 52 series of 1985:

> x x x MECS Order No. 52, s. 1985, as noted earlier, articulates the rationale of regulation of this type: the improvement of the professional and technical quality of the graduates of medical schools, by upgrading the quality of those admitted to the student body of the medical schools. That upgrading is sought by selectivity in the process of admission, selectivity consisting, among other things, of limiting admission to those who exhibit in the required degree the aptitude

Secretary to set maximum permissible rates or levels of tuition and otherschool fees and to issue guidelines for the imposition and collection thereof.

[56] *Ponencia*, p. 85.

[57] *Supra* note 6.

for medical studies and eventually for medical practice. The need to maintain, and the difficulties of maintaining, high standards in our professional schools in general, and medical schools in particular, in the current stage of our social and economic development, are widely known.

We believe that the government is entitled to prescribe an admission test like the NMAT as a means for achieving its stated objective of "upgrading the selection of applicants into [our] medical schools" and of "improv[ing] the quality of medical education in the country." Given the widespread use today of such admission tests in, for instance, medical schools in the United States of America (the Medical College Admission Test [MCAT] and quite probably in other countries with far more developed educational resources than our own, and taking into account the failure or inability of the petitioners to even attempt to prove otherwise, we are entitled to hold **that the NMAT is reasonably related to the securing of the ultimate end of legislation and regulation in this area. That end, it is useful to recall, is the protection of the public from the potentially deadly effects of incompetence and ignorance in those who would undertake to treat our bodies and minds for disease or trauma**. (Emphasis supplied.)

Furthermore, contrary to the *ponencia*'s findings, I do not see any difference in how the NMAT and the PhiLSAT are *meant* to (or even actually) operate.[58] Both are, in fact, exclusionary exams. Permit me to explain.

Under Department of Education (DepEd) Department Order (DO) No. 52, Series of 1985, the NMAT, as a uniform admission test, was required to be "successfully hurdled by all college graduates seeking admission into medical schools in the Philippines, beginning the school year 1986-1987." Although the same DO provides that the NMAT rating of an applicant will be considered "with other admission requirements" as basis for the issuance of a Certificate of Eligibility, it also provides that no such Certificate will be issued without the required NMAT qualification (that is, meeting the **cut-off score**—which shall be determined by the Board of Medical Education on a yearly basis). **That the NMAT, similar to the PhiLSAT, was meant to be exclusionary in nature is clear from DepEd**

[58] *Ponencia*, p. 86.

DO No. 11, issued subsequently in 1987, which provides that the cut-off score of 45th percentile shall be followed for the December 6, 1987 and April 24, 1988 NMAT examinations.

In fact, this exclusionary nature appears to subsist to this day. Memorandum Order No. 18, Series of 2016[59] issued by the Commission on Higher Education[60] provides, to wit:

17.3 Minimum Standards for Admission

Applicants seeking admission to the medical education program must have the following qualifications:

a. Holder of at least a baccalaureate degree;
b. Must have taken the National Medical Admission Test **(NMAT) not more than two (2) years from the time of admission, with a percentile score equivalent to or higher than that currently prescribed by the school or the [CHED], whichever is higher**;
c. The applicant shall submit the following documents to the medical schools:

- x x x
- x x x
- **Certified true copy of NMAT score**

17.4 Certificate of Eligibility for Admission to Medical School

a. **On the basis of foregoing documents**, the medical school is responsible for and accountable for the issuance of the Certificate of Eligibility for Admission to medical school.
b. x x x
c. Likewise, it is also the responsibility of the medical school to verify the **authenticity of the NMAT score** against the master list provided by the recognized testing center.

17.5 NMAT Score cut off

- **a. An NMAT score cut-off of at least 40th percentile will be implemented by all higher educational institutions offering medical program.**

[59] Also known as the Policies, Standards and Guidelines for the Doctor of Medicine (M.D.) Program.

[60] Which now regulates the study of medicine, among others, pursuant to Republic Act No. 7722, otherwise known the Higher Education Act of 1994.

b. Medical schools are hereby required to declare their NMAT cut-off score as part of their Annual Report (electronic and hard copy) to be submitted to CHED.

x x x x (Emphasis and underscoring supplied.)

Thus, even under the present rule, students who fail to get an NMAT score of 40th percentile (or the declared cut-off score of their chosen medical school, whichever is higher) will not be issued a Certificate of Eligibility and therefore cannot be admitted to medical school. Clearly, the NMAT is no different from the PhiLSAT insofar as it also employs an exclusionary (or, in the words of the *ponencia*, "totalitarian") scheme in terms of student admissions.[61] I therefore see no reason why both tests should merit different treatment. The principle behind this Court's ruling in *Tablarin* should be applied here.

III

A

The other allegations against the LEB Law, in general, and the PhiLSAT passing requirement, in particular, seem to be challenges against its reasonableness as a police power measure. What is "reasonable," however, is not subject to exact definition or scientific formulation. There is no all-embracing test of reasonableness;[62] its determination rests upon human judgment as *applied to the facts and circumstances* of each particular case.[63]

The consolidated petitions all sought direct recourse with this Court. As We have most recently reaffirmed in *Gios-Samar,*

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[61] *Ponencia*, p. 87.

[62] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, citing *City of Raleigh v. Norfolk Southern Railway Co.*, 165 S.E.2d 745 (1969).

[63] *Mirasol v. Department of Public Works and Highways*, *supra*, citing *Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses*, 117 N.E.2d 115 (1954). Cited in Concurring and Dissenting Opinion of J. Jardeleza in *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019.

Inc. v. Department of Transportation and Communications,[64] direct resort to this Court is proper only to seek resolution of questions of law:

> x x x Save for the single specific instance provided by the Constitution under Section 18, Article VII of the Constitution, **cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions of the lower courts or regulatory agencies.** This is the *raison d'etre* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. **It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.**[65] (Citations omitted, emphasis supplied.)

I submit that the Court should refrain from resolving the challenges against the reasonableness of the LEB Law (and related issuances) at this time. Taking issue at reasonableness, equity or fairness of a state action, in a vacuum and divorced from the factual circumstances that suffer the same, would mean that this Court will have to adjudicate (in my view, wrongly) based on conjectures and unsupported presuppositions. As it appears, this Court will be settling controversies based on unsupported allegations[66] or, worse, grounds not even pleaded or raised by the parties.[67] Allegations and counter-allegations against the constitutionality and/or reasonableness of a

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[64] G.R. No. 217158, March 12, 2019.

[65] *Id*.

[66] Including, for example, that of PhiLSAT being pro-elite and anti-poor, or the converse but equally unverified arguments that PhiLSAT is sound and properly designed to measure the necessary aptitude of prospective law students.

[67] Including, for example, the power of the LEB to prescribe the qualifications and classifications of faculty members and deans of graduate schools of law.

challenged state action need to be proven in evidence, otherwise they may be no more than uncorroborated rhetoric.

Given this fact-based nature of the question of reasonableness of an exercise of police power, the present questions pertaining to the propriety or validity of the PhiLSAT should be dismissed at this point and given its turn in a trial, where the equipped lower court may first resolve questions of fact, such as whether the PhiLSAT as administered by the LEB meets the careful design that our legislators intended.

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Mere invocation of a constitutional right, in this case, academic freedom, does not excuse the parties so invoking from actually proving their case through evidence. This is chiefly true in a petition that seeks the invalidation of a law that enjoys the presumption of constitutionality. The burden of proving one's cause through evidence must rise against the bar that gives the challenged law default constitutionality. As We held in the case of *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,[68] citing *O'Gorman & Young v. Hartford Fire Insurance Co.*:[69]

> It admits of no doubt therefore that there being a presumption of validity, **the necessity for evidence to rebut it is unavoidable**, unless the statute or ordinance is void on its [face,] which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus:
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> > "The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the [specific] method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. **As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence**

[68] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.

[69] 282 U.S. 251 (1931).

> **of some factual foundation of record for overthrowing the statute.**"
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> **No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of [facts], the presumption of validity must prevail and the judgment against the ordinance set aside.**[70] (Emphasis supplied.)

The tall order, therefore, to overturn the constitutional presumption in favor of a law must be through a conclusive "factual foundation," the absence of which must inevitably result in the upholding of the constitutionality of the challenged law.

Until the decisive factual questions are determined in the context of a trial, this Court should refrain from making an effective pronouncement as to the validity or invalidity of the PhiLSAT. The wide-ranging consequences of the issues raised in these petitions, when decided, all the more call for prudence and constitutionally-intended restraint until all the factual components that bear on these issues are ascertained and definitively settled. The Philippine legal education and the legal profession are worthy of no less.

Finally, to strike down a legislative act on the basis of unalleged or unestablished factual conclusions that essentially came nowhere near their burdens of proof is the height of disservice to the causes these parties before Us sought to protect, whether that be a student's right to education, a law school's institutional academic freedom or the State's duty to supervise and regulate education that is invested with public interest.

This Court will serve no other end but expediency in insisting to deem ripe the unquestionably paramount but undoubtedly premature question of whether an examination that fundamentally seeks to improve the state of the country's legal education is succeeding or failing on its promise.

For all the foregoing reasons, I vote to **DISMISS** the petition.

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[70] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, supra* note 68 at 857.

SEPARATE CONCURRING AND DISSENTING OPINION

GESMUNDO, *J.*:

Before this Court are two consolidated petitions: in G.R. No. 230642, it seeks to nullify Republic Act No. 7662 and abolish the Legal Education Board (*LEB*); and in G.R. No. 242954, to annul and set aside LEB Memorandum Order Nos. 7-2016 and 11-2017, dated December 29, 2016 and April 20, 2017, respectively, and LEB Memorandum Circular No. 18-2018, dated October 5, 2018.

I vote to partly grant the consolidated petitions.

There is a stereotype that the study of law is a precursor for the practice of law. However, the study of law is not that simple. There may be instances when a person studies law for its philosophy, wisdom, and concepts; and choose not to take the bar examinations as he or she is not interested in becoming a lawyer. Thus, the study of law does not always result into the practice of law. Nonetheless, even after hurdling the bar, lawyers and judges are still mandated to continue the study of law. It is a well-settled rule that the study of law is a never-ending and ceaseless process.[1]

The study of the law is not an exact science with definite fields of black and white and unbending rules and rigid dogmas. The beauty of this discipline in the words of Justice Holmes, is the "penumbra shading gradually from one extreme to another," that gives rise to those honest differences of opinion among the brotherhood as to its correct interpretation. Honest differences are allowed and, indeed, inevitable, but we certainly must frown on stilted readings to suit one's motives, especially if they are less than noble. The law does not permit this, and much less, for that matter, does equity.[2]

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[1] *Heirs of Piedad v. Exec. Judge Estrera*, 623 Phil. 178, 188 (2009).

[2] *Royal Lines, Inc. v. Court of Appeals*, 227 Phil. 570, 575 (1986).

Academic Freedom of Institutions of Higher Learning

It is clear that the study of law is within the domain of academic freedom. In *Ateneo de Manila University v. Judge Capulong*,[3] the Court stated that the term "academic freedom", which has evolved to describe the emerging rights related to intellectual liberty, has traditionally been associated with freedom of thought, speech, expression and the press; in other words, it has been identified with the right of individuals in universities, such as professors, researchers and administrators, to investigate, pursue, discuss and, in the immortal words of Socrates, "to follow the argument wherever it may lead," free from internal and external interference or pressure. Obviously, its optimum impact is best realized where this freedom is exercised judiciously and does not degenerate into unbridled license. Early cases on this individual aspect of academic freedom have stressed the need for assuring to such individuals a measure of independence through the guarantees of autonomy and security of tenure.[4]

Academic freedom has long been recognized by our organic laws. Section 5, Article XIV, of the 1935 Constitution states that universities established by the State shall enjoy academic freedom. Likewise, Section 8, Article XV, of the 1973 Constitution states that all institutions of higher learning shall enjoy academic freedom. Under the present Constitution, Section 5, Article XIV, states that academic freedom shall be enjoyed in all institutions of higher learning. Verily, institutions of higher learning, such as schools, colleges, and universities offering a degree program in law, all have constitutionally enshrined academic freedom.

Academic freedom of institutions of higher learning have the following essential freedoms: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study.[5] This was first discussed in the Supreme

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[3] 294 Phil. 654 (1993).

[4] *Id*. at 672-673.

[5] *Id*. at 673.

Court of the United States (*SCOTUS*) case of *Sweezy v. New Hampshire*.[6] In that case, Paul Sweezy, who was an economist and lecturer in the University of New Hampshire, was subpoenaed by the State Attorney General to answer several questions, which included inquiries regarding his lectures on Socialism at the university. Paul Sweezy refused to answer particular questions and was declared in contempt of court. The SCOTUS reversed the contempt charge on the basis of violation of academic freedom and stated that:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.[7]

In the concurring opinion of Justice Frankfurter, he explained the importance of academic freedom in a university, *viz*:

> "In a university knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates — 'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.
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> . . . . . .

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[6] 354 U.S. 234 (1957).

[7] *Id*.

"Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university.

. . . . . .

". . . It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university — **to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study**."[8] (emphasis supplied)

In the subsequent case of *Keyishian v. Board of Regents*,[9] the SCOTUS held that a law cannot force teachers to sign an oath stating they are not members of certain communist parties pursuant to their academic freedom and because the law is overbreadth, to wit:

Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."

On the other hand, in *University of California Regents v. Bakke*,[10] the SCOTUS tackled the legality of the university policy which requires a particular number of minorities for admission. It grounded its analysis on academic freedom and stated that "the university's use of race in its admission may use for the

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[8] *Id*.

[9] 385 U.S. 589 (1967).

[10] 438 U.S. 265 (1978).

attainment of a diverse student body. Nothing less than the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this United States. **In seeking the right to select those students who will contribute the most to the 'robust exchange of ideas,' a university seeks to achieve a goal that is of paramount importance in the fulfillment of its mission.** Both tradition and experience lend support to the view that the contribution of diversity is substantial."[11] Nevertheless, while race may be considered as one of the several factors for admission, the SCOTUS ruled that the specific or fixed number of minorities for university admission is too unreasonable. The ruling in *University of California Regents v. Bakke* was affirmed in *Grutter v. Bollinger*,[12] regarding admission in the University of Michigan Law School, *Gratz v. Bollinger*,[13] regarding the point system admission policy of the University of Michigan, and *Fisher v. University of Texas*.[14]

Academic Freedom in Philippine Jurisdiction

The four essential freedoms constituting academic freedom have also been discussed by our jurisprudence. In *University of the Phils. v. Civil Service Commission*,[15] the Court discussed institutions of higher learning's freedom to determine "who may teach." In that case, a professor was on leave of absence without pay for four (4) years. Nevertheless, the university therein still accepted the professor back to work even though the Civil Service Commission had terminated his services. The Court ruled that the university has the academic freedom to determine who shall teach. This freedom encompasses the autonomy to choose who should teach and, concomitant

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[11] *Id*.

[12] 539 U.S. 306 (2003).

[13] 539 U.S. 244 (2003).

[14] 570 U.S. 297 (2013).

[15] 408 Phil. 132 (2001).

therewith, who should be retained in its rolls of professors and other academic personnel.[16] It was also stated therein that "since academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom."[17]

Jurisprudence has also recognized that institutions of higher learning have the enshrined freedom to determine "who may be admitted to study." In *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,[18] it involved a student who wanted to compel the Loyola School of Theology to accept her in their Master of Arts in Theology program. The respondent therein invoked its academic freedom to admit students in its program. The Court denied the petition and held that the respondent indeed had the academic freedom to determine who would be admitted to their school. It was highlighted that colleges and universities should not be looked upon as public utilities devoid of any discretion as to whom to admit or reject Education, especially higher education, belongs to a different, and certainly higher category.[19]

In *Ateneo de Manila University v. Judge Capulong*,[20] the law students involved in the hazing incident argued that the school imposed arbitrary rules and penalties regarding its admission policy. The Court held that the law school, which is an institute of higher learning, had the academic freedom to determine who may be admitted, including the power to promulgate rules concerning student discipline. The establishment of rules governing university-student relations, particularly those pertaining to student discipline, may be

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[16] *Id*. at 145.

[17] *Id*. at 145-146.

[18] 160-A Phil. 929 (1975).

[19] *Id*. at 945.

[20] *Supra* note 3.

regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.[21]

In *Licup v. University of San Carlos*,[22] the students involved committed demonstrations in the university that were far from peaceful and the school administration imposed the penalty of non-admission. The Court affirmed the penalty imposed by the school. While it is true that students are entitled to the right to pursue their education, the school is likewise entitled to academic freedom and has the concomitant right to see to it that this freedom is not jeopardized. The Court underscored that an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits that contractual right; and the Court should not review the discretion of university authorities.[23]

However, academic freedom of institutions of higher learning is not absolute; rather, it is subject to the limitation of reasonability and that it should not be arbitrarily exercised. In *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.*,[24] the student therein, who questioned the tuition fee hike of the school, was expelled because he allegedly had Citizen's Military Training (*CMT*) deficiencies. The Court held that the school cannot invoke academic freedom to immediately expel its student based on mere deficiencies in the CMT. The Court held that "[w]hile we ordinarily would not delve into the exercise of sound judgment, we will not, however, hesitate to act when we perceive taints of arbitrariness in the process. The punishment of expulsion appears to us rather disproportionate to his having had some unit deficiencies in his CMT course. Indeed, the DECS itself is conceding to the grant of the instant petition. The circumstances lend truth to the petitioner's claim that the private

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[21] *Id.* at 675.

[22] 258-A Phil. 417 (1989).

[23] *Id*. at 423.

[24] 298 Phil. 382 (1993).

respondent has strongly been influenced by his active participation in questioning PHCR's application for tuition fee increase."[25]

On the other hand, in *Morales v. The Board of Regents of the University of the Phils.*,[26] the Court emphasized that the discretion of schools of learning to formulate rules and guidelines in the granting of honors for purposes of graduation forms part of academic freedom. And such discretion may not be disturbed much less controlled by the courts, unless there is grave abuse of discretion in its exercise.[27]

Based on the foregoing, it is clear that institutions of higher learning are granted academic freedom by the Constitution, which includes that freedom to determine who may be admitted to study. The academic freedom of these institutions, however, are not unbridled and subject to the test of reasonableness.

LEB Memorandum Orders and Circular unreasonably restrict academic freedom

LEB Memorandum Order No. 7-2016 instituted the PhilSAT, which is an aptitude test that measures the academic potential of an examinee. Only those who pass with a 55% score on the examination shall be allowed admission in law schools. LEB Memorandum Order No. 11-2017, states that those who failed the first PhilSAT may be conditionally admitted to law schools in the first semester of school year 2017 to 2018 provided they take the next scheduled PhilSAT. On the other hand, LEB Memorandum Circular No. 18-2018 discontinued the conditional admission of students. Thus, the LEB requires the mandatory taking of the PhilSAT before being admitted to any law school; and, a student shall not be admitted if he or she fails the said examination. In other words, PhilSAT is exclusionary and those that do not pass the said test shall not be admitted in the study

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[25] *Id*. at 388.

[26] 487 Phil. 449 (2004).

[27] *Id.* at 466.

of law. The respondents argue that LEB's institution of the PhilSAT is within the State's power to regulate all educational institutions.

I concur with the *ponencia* that the LEB Memorandum Orders and Circular, requiring the PhilSAT as mandatory and exclusionary, are unconstitutional.

Institutes of higher learning have academic freedom, under the Constitution, and this includes the freedom to determine who may be admitted to study. Such freedom may only be limited by the State based on the test of reasonability. In this case, however, the assailed LEB Memorandum Orders fail to provide a reasonable justification for restraining the admission of students to law schools based on the following reasons:

First, by making the PhilSAT mandatory and exclusionary, the LEB significantly restricts the freedom of law schools to determine who shall be admitted as law students. Only those who pass the said examination shall be considered for admission to these institutions of higher learning. Consequently, the LEB, through the PhilSAT, first chooses the potential law students, and only afterwards, shall the law schools be allowed to choose their students from the limited pool of student-passers. The said institutes of higher learning are barred from considering those students who failed the examinations, regardless of their previous academic grades and achievements.

Second, the LEB does not give any justification for the required passing score of 55% and the format of the examinations. The studies cited by the LEB were conducted by different organizations, for different professions, and for foreign jurisdictions. Indeed, no concrete study conducted in the Philippines for the legal profession was provided to substantiate the passing score and the test format. It is not even clear whether the consensus of the law schools in the country was secured before the LEB imposed the PhilSAT. Without any concrete basis for the conduct of the examination, it would be unreasonable to impose the same mandatorily and without exemption to the institutes of higher learning.

Third, law schools are given no option other than to follow the LEB Memorandum Orders and Circular. Failure to comply with these shall result in administrative sanctions, ranging from closure of the law school, phase-out of the law program, provision cancellation of its recognition and/or liability to pay a fine of ₱10,000.00 for each infraction. Even without a valid reason, for the imposition of the PhilSAT requirement, the LEB completely restricts the law schools from accepting students who did not pass the said examination. The schools' exercise of academic freedom to choose their students is restricted by the threat of administrative and pecuniary sanctions.

Assuming *arguendo* that the LEB Memorandum Orders and Circular were issued under the exercise of police power of the State to regulate the rights of certain institutions, it does not justify the unreasonable restriction on the academic freedom of institutes of higher learning. Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, it may not be exercised arbitrarily or unreasonably. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. Thus, when the power is used to further private interests at the expense of the citizenry, there is a clear misuse of the power.[28]

Here, the LEB failed to establish the reasonable means to limit the academic freedom of the institutes of higher learning. Again, there is no valid explanation provided on the mandatory and exclusionary requirement of the PhilSAT, its passing grade, and format of examinations. Manifestly, to impose a penalty on law schools based on an unreasonable policy that restricts academic freedom would be an invalid exercise of police power.

PhilSAT is different from the NMAT and LSAT

One of the arguments of the LEB is that the PhilSAT is comparable to the National Medical Admission Test (*NMAT*),

[28] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 399 (1988).

which was upheld by the Court in *Tablarin v. Judge Gutierrez*,[29] and the Law School Admission Test (*LSAT*) in the United States.

I disagree.

There are too many differences between the PhilSAT and the NMAT that they cannot be treated in the same vein. One of the most notable differences is that in the NMAT, there is actually no passing or failing grade; rather, the examinees are merely given a percentile score. Medical schools have the discretion to determine the acceptable percentile score of their potential students. Thus, even with the NMAT, medical schools have full freedom and control of students they intend to admit. They have the sole discretion to impose the required percentile score in the NMAT, whether high or low, as a requirement for admission. In fact, some medical schools are even allowed to conditionally accept students who have not yet taken their NMAT.

Unlike the NMAT, the PhilSAT provides for a strict passing score of 55%. This passing score was provided by the LEB and not decided by the law schools themselves. These law schools have no option in adjusting the passing score and they can only accept students who pass the said test. Stated differently, law schools have no discretion to determine which students they will admit insofar as the PhilSAT requirement is concerned.

On the other hand, the LSAT is a nationwide admission test for law schools in the United States. The said test is administered by the Law School Admission Council (*LSAC*), which is a non-profit corporation comprised of more than 200 law schools in the United States and Canada. The institutes of higher learning themselves participate, prepare, and conduct the LSAT, and not their government.[30] Nonetheless, even if there is the LSAT in the United States, the said examination

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[29] 236 Phil. 768 (1987).

[30] See Developing and Assembling the Law School Admission Test, Ronald Armstrong, Dmitry Belov, Alexander Weissman, Interfaces, Vol. 35, No. 2, March – April 2005, p. 141.

is not an absolute requirement for law school admission. The American Bar Association Standards and Rules of Procedure merely require each student-applicant to take a valid and reliable admission test and it is not only confined to the LSAT.[31] Thus, law schools in the United States are allowed to require other admission tests provided that these are valid and reliable. Indeed, the LSAT requirement in the United States does not unreasonably restrict the academic freedom of the law schools therein.

With the PhilSAT, however, the examination is mandatory and exclusionary, and local law schools have no discretion to choose a different admission test. The law schools are only confined to choosing those students who pass the PhilSAT, which does not provide any valid justification for restricting academic freedom.

Evidently, both the NMAT and the LSAT are different from the PhilSAT. The former respect and consider the academic freedom of institutes of higher learning in their liberty of choosing their students; while with the latter, law schools are unreasonably constrained in determining the students it may accept for enrollment.

Uniform Admission Examination instituted by Foreign Law Schools

I firmly believe that PhilSAT should be set aside; instead, the law schools in the Philippines, through the Philippine Association of Law Schools (*PALS*), and under the mere supervision of LEB, should establish a unified, standardized, and acceptable law admission examination. Said examination must be unrestrictive of academic freedom, cost-efficient, accessible, and an effective tool in assessing incoming law students. At the onset, I will discuss the constitutional viability of a unified law admission examination, spearheaded by the law schools, pursuant to their right to academic freedom.

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[31] See Standard 503, Chapter 5, Admission and Student Services, 2017-2018 American Bar Association Standards and Rules of Procedure.

There was a time when law schools could follow the advice of Wigmore, who believed that "the way to find out whether a boy [or girl] has the makings of a competent lawyer is to see what he [or she] can do in a first year of law studies."[32] In those days there were enough spaces to admit every applicant who met minimal credentials, and they all could be given the opportunity to prove themselves in law school. But by the 1920's many law schools found that they could not admit all minimally qualified applicants, and a selection process began. The pressure to use some kind of admissions test mounted, and a number of schools instituted them.[33]

In the United States, the LSAT was formulated by the LSAC. The idea of LSAT began on May 17, 1945, when Frank Bowles, Admission Director at Columbia Law School, wrote to the President of College Entrance Examination Board (*CEEB*) suggesting the creation of a law capacity test to be used in admission decisions. It was discussed that the validity of the LSAT would be linked to its correlation with grades in the first year of law study. Consequently, correlation with success in taking the bar examination was rejected because candidates often take the bar exam several times and everybody passes them sooner or later. It was also highlighted that the more law schools participating in the LSAT, the greater the numbers for testing validity and the more widely the costs would be spread.[34]

On August 15, 1947, representatives of Columbia, Yale and Harvard law schools met with the representatives of the CEEB. The representative of Harvard opined, that the LSAT would help make decisions on "those borderline on college record and those from unknown colleges."[35] **It was also agreed upon**

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[32] Wigmore, *Juristic Psychopoyemetrology*—Or, How to Find Out Whether a Boy Has the Makings of a Lawyer, 24 Ill. L. Rev. 454, 463-464 (1929).

[33] Dissenting Opinion of Associate Justice William O. Douglas in *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

[34] WILLIAM P. LAPIANA, A History of the Law School Admission Council and the LSAT, Keynote Address, 1998 LSAC Annual Meeting.

[35] *Id*. at 5-6.

to invite more law schools to participate and that the creation of the test would also create a new organization of law schools. As of 2000, the LSAC now consists of a total 198 law schools.[36]

On November 10, 1947, the initial LSAT was discussed and the law schools from Rutgers, Northwestern, Syracuse, Stanford, Cornell, the University of Southern California, New York University, the University of Pennsylvania, Yale, and Harvard also participated.[37] **The founders of the test were adamant that it could not and must not be the only criterion for admission.**

Further, the LSAT has played an important role in opening the legal profession at all levels to men and women whose ancestors had been the object of merciless prejudice and overt discrimination. This does not mean that the test is a foolproof gauge of merit. It is merely what it was designed to be — a tool to aid in the admissions decision. It was not designed as a pass or fail grading system.[38] The entire rationale for the test was the need to supplement the information supplied by the undergraduate record. The scores on the test were to be used along with pre[-]law grades, recommendations, and other information as an aid in admissions.[39]

In his Dissenting Opinion in *DeFunis v. Odegaard*,[40] Justice Douglas of the SCOTUS opined that when the Law School Admission Committees consider the LSAT, undergraduate grades, and prior achievement of the applicants, it does not violate the Equal Protection Clause, to wit:

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[36] *Id*.

[37] *Id*. at 6 & 8.

[38] *Id*. at 10.

[39] *Id*. at 8.

[40] 416 U.S. 312 (1974). The *ponencia* therein denied the petition questioning the Admission Policy of University of Washington Law School in treating minorities differently in their admission to law school. It was essentially denied because the petitioner therein will already complete his law school studies, hence, the petition was moot.

The Equal Protection Clause did not enact a requirement that law schools employ as the sole criterion for admissions a formula based upon the LSAT and undergraduate grades, nor does it prohibit law schools from evaluating an applicant's prior achievements in light of the barriers that he had to overcome. A black applicant who pulled himself out of the ghetto into a junior college may thereby demonstrate a level of motivation, perseverance, and ability that would lead a fairminded admissions committee to conclude that he shows more promise for law study than the son of a rich alumnus who achieved better grades at Harvard. That applicant would be offered admission not because he is black, but because as an individual he has shown he has the potential, while the Harvard man may have taken less advantage of the vastly superior opportunities offered him. Because of the weight of the prior handicaps, that black applicant may not realize his full potential in the first year of law school, or even in the full three years, but in the long pull of a legal career his achievements may far outstrip those of his classmates whose earlier records appeared superior by conventional criteria. There is currently no test available to the Admissions Committee that can predict such possibilities with assurance, but the Committee may nevertheless seek to gauge it as best it can, and weigh this factor in its decisions. **Such a policy would not be limited to blacks, or Chicanos or Filipinos, or American Indians, although undoubtedly groups such as these may in practice be the principal beneficiaries of it.** But a poor Appalachian white, or a second generation Chinese in San Francisco, or some other American whose lineage is so diverse as to defy ethnic labels, may demonstrate similar potential and thus be accorded favorable consideration by the Committee.[41] (emphases supplied)

On the other hand, in the United Kingdom (*UK*), there is a National Admissions Test for Law (*LNAT*), which was adopted in 2004.[42] It is the only aptitude test currently used in the UK for the selection of people to the legal profession.[43] It was

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[41] *Id*.

[42] New entry test for law students, BBC News, February 2, 2014, http://news.bbc.co.uk/2/hi/uk_news/education/3451897.stm [last accessed September 3, 2019].

[43] Aptitude Testing and the Legal Profession, Dr. Chris Dewberry, Birkbeck, University of London, June 6, 2011, p. 61 (2011).

established by a consortium of Universities, comprised of the following: University of Bristol, Durham University, University of Nottingham and University of Oxford, King's College London, LSE London School of Economics and Political Science, and University College London.[44] The LNAT consists of a multiple choice test and a written essay and is designed to measure the following verbal reasoning skills: comprehension, interpretation, analysis, synthesis, induction, and deduction. The test is used by participating UK law schools to aid in the selection of law students.[45]

Similar to the LSAT in the US, the LNAT is not a substitute for undergraduate grades,[46] applications, personal statements or interviews but is used by each university in the way that best suits its own admissions policy. Different universities place different emphasis on the multiple choice score and the essay question.[47]

Likewise, in India, there is also a centralized law admission test for National Law Schools, called the Common Law Admission Test (*CLAT*). Before CLAT, each university running Bachelor of Laws courses conducted its own admission test. As a result, students aspiring for good legal education had to write a number of admission tests; and this multiplicity of admission tests caused tremendous hardship, both physically and financially, to candidates. In 2006, this issue was raised in a Writ Petition filed by Varun Bhagat against the Union of India and the various National Law Schools in the Supreme Court of India. In the course of hearing, the Chief Justice of India directed the Union of India to consult with the National Law Schools with a view to evolving a scheme for a common admission test.[48]

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[44] WHY JOIN LNAT?, LNAT National Admission Test for Law, https://lnat.ac.uk/why-join-lnat/ [last accessed September 3, 2019].

[45] *Supra* note 43 at 61-62.

[46] In the UK, undergraduate grades are measured through A-Levels and General Certificate of Secondary Education (*GCSE*).

[47] *Supra* note 44.

[48] The Pearson Guide to the LLB Entrance Examinations, Edgar Thorpe and Showick Thorpe, Pearson Education India, p. 22, 2008.

The common admission test required the consensus of all National Law Schools. The University Grants Commission of India brought all seven National Law Schools, namely: National Law School of India University, National Academy of Legal Studies and Research, National Law Institute University, National University of Juridical Sciences, National Law University, Hidayatullah National Law University, and Gujarat National Law University and they finalized the guidelines for the CLAT. It is expected that other national law schools will join in due course.[49] As of 2015, sixteen (16) national law universities in India participate in the CLAT.[50]

Law Admission Test administered by law schools in the Philippines

Accordingly, I dissent with the *ponencia* that it should still be the LEB who shall lead, control, and regulate the unified admission examinations for law schools.

While a standardized admission test for law schools is constitutionally and legally viable, it must not be the LEB spearheading the admission test. Instead, it must be initiated and organized by the law schools themselves, pursuant to their constitutionally enshrined academic freedom.

Currently, there is an organization of law schools in the country. The PALS, established in 1967, is a non-stock corporation composed of 112 law schools nationwide. It seeks to be a primary driving force in uplifting the standards of legal education in the Philippines to both meeting global standards of excellence and at the same time serve as catalyst for both the economic and human development in Philippine Society.[51]

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[49] *Id*.

[50] NLUs enter into new CLAT MoU, ensuring full participation of all 16 NLUs (except NLU Delhi), Shrivastava, Prachi, Legally India, https://www.legallyindia.com/pre-law/all-16-nlus-can-now-conduct-clat-unlike-earlier-7-20141103-5262 [last accessed September 3, 2019].

[51] PALS reelect UE Dean Valdez, University of the East News, March 16, 2012, [https://www.ue.edu.ph/news/?p=2786 last accessed August 15, 2019].

As there is an available avenue, law schools in this jurisdiction could certainly organize a standardized admission test pursuant to their academic freedom to determine whom they will admit as their students. As discussed earlier, a unified admission test for law schools proves to be one of the effective mechanisms in determining who among the applicants are mostly likely to succeed in the first year of law study. And, more importantly, this unified admission examination is conducted and organized by the law schools themselves through their academic freedom. Manifestly, this system of unified law admission examination, conducted by the law schools themselves, has been observed and successfully implemented in the United States, U.K. and India.

The flaws in the LEB Memoranda and Orders will not be followed if the law schools will organize this unified admission test. A standardized admission examination must not be the sole measure in determining whether an applicant will be accepted in law school. The answers a student can give in an admission examination is limited by the creativity and intelligence of the test-maker. A student with a better or more original understanding of the problem than the test-maker may realize that none of the alternative answers are any good, but there is no way for that student to demonstrate his or her understanding. If a student is strong-minded, nonconformist, unusual, original, or creative, that student must stifle his or her impulses and conform to the norms that the test-maker established. The more profoundly gifted the candidate is, the more his or her resentment will rise against the mental strait jacket into which the testers would force his or her mind.[52] Stated differently, the unified admission test should not be exclusionary.

Accordingly, the law admission test should not be the sole basis for admission in law schools. As discussed earlier, there are other relevant factors, such as undergraduate achievements,

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[52] See Dissenting Opinion of Associate Justice William O. Douglas in *DeFunis v. Odegaard*, 416 U.S. 312 (1974), citing B. Hoffmann, *The Tyranny of Testing,* 91-92 (1962).

motivation, or cultural backgrounds that the admission test cannot measure. Besides the admission test, the law school must still be given discretion to determine on its own, based on its academic freedom, the decision of whom to admit as students. Thus, the proposed standardized admission test should only be one of many criteria for admission to any law school. It would be the decision of each law school whether to accept or deny admission of a potential law student under their academic freedom which would not be curtailed by the unified law entrance examination since it would only be one of several factors for admission.

At the end of the day, the decision of creating a standardized admission test for law schools rests upon the law schools in the country. These institutions of higher learning may come together, through the PALS, and initiate for the creation and implementation of a standardized admission test. It would be the culmination of the collective effort of law schools in their exercise of academic freedom.

In the event that the law schools pursue drafting, creating and organizing a standardized admission test for legal studies in the Philippines, the LEB would not be entirely set aside in this endeavor. Under R.A. No. 7662, one of the powers of the LEB is to **supervise** the law schools in the country.[53]

The power of supervision is defined as the power of a superior officer to see to it that lower officers perform their functions in accordance with law. This is distinguished from the power of control or the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter.[54] An officer in control lays down the rules in the doing of an act. It they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it

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[53] See Section 7(b) of R.A. No. 7662.

[54] *Bito-onon v. Hon. Yap Fernandez*, 403 Phil. 693, 702 (2001).

that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed.[55]

Consequently, the LEB may only supervise the proposed standardized admission test of the law schools. **It cannot substitute its own judgment with respect to said test organized by the law schools; otherwise, it would violate the academic freedom of institutions of higher learning.** The LEB may only oversee whether the policies set forth by the law schools in the admission test are reasonable and just. It cannot, however, ultimately override the collective decisions of the law schools in the admission test for law students. In that manner, the LEB serves its purpose in the supervision of legal education and, at the same time, the academic freedom of law schools is respected.

Further, to ensure the success of the law admission test initiated by the law schools in the Philippines and supervised by the LEB, concrete studies on the effectiveness of this test must be conducted. There must be an effective monitoring system for the examination. It must be determined, before and after the admission test, whether said examination actually predicts and helps the success of law students, at the very least, in their first year of legal study. The admission examination should not be conducted for the sake of merely having one. It must have some tangible and definite benefit for the law schools and potential law students. To achieve this quality-control mechanism, the law schools, through PALS, and the LEB must thoroughly coordinate with each other to determine the most effective manner in conducting the admission examinations. It is only through constant cooperation and consultation with the stakeholders that the success of any admission examination will be guaranteed.

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[55] *Hon. Drilon v. Mayor Lim*, 305 Phil. 146, 152 (1994).

While the State has the power to regulate the education of its citizens, the 1987 Constitution expressly grants academic freedom in all institutions of higher learning, including law schools. Thus, the right to determine whom shall be admitted to law school should rest solely in these institutions. The State cannot absolutely control this important pillar of academic freedom of institutes of higher learning. I genuinely believe that it is only through the combined efforts of the law schools in the country that the envisioned unified admission test for law schools can achieve fruition based on the Constitution, the laws, and its practical implementation. Again, the LEB should only supervise the said unified admission examination conducted by the law schools.

Existing problems of the PhilSAT

If the law schools in the Philippines ultimately decide to conduct a unified and standardized law admission examination, as supervised by the LEB, then it must address the existing problems created by the PhilSAT. The problems were created precisely because the admission examination was solely conducted by the LEB, through its regulatory power. The law schools had no concrete voice in the formulation of the PhilSAT and their academic freedom is disrespected. Thus, it created several problems, particularly, financial burden and accessibility.

Under the PhilSAT, the LEB initially imposed a testing fee of ₱1,500.00 per examination, which was subsequently lowered to ₱1,000.00;[56] and there are only seven (7) testing centers across the entire country — Baguio City, Metro Manila, Legazpi City, Iloilo City, Cebu City, Davao City and Cagayan de Oro City.[57] Also, the LEB failed to explain why it had to impose said fee for a mere written examination. The sum collected by the LEB for the examination could amount to millions of pesos considering that there are thousands of students taking the PhilSAT. Glaringly, the LEB did not give any sufficient basis to justify the imposition of a ₱1,000.00 fee for an entrance examination.

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[56] Memorandum of petitioner in G.R. No. 245954, p. 33.

[57] Sec. 5, LEB Memorandum Order No. 7, series of 2016.

Further, the LEB also failed to consider the transportation and logistical expenses that would be incurred by an examinee coming from the far-flung areas to take the examination in the limited seven (7) testing centers. A student from the province explained the immense difficulty of taking the PhilSAT, *viz*:

6. Q: What personal experience do you have with the PhilSAT exam?
   A: I first took the PhilSAT exam last April 2018.

7. Q: Where did you take the exam?
   A: Cebu City.

8. Q: Are you a permanent resident of Cebu?
   A: No.

9. Q: Where is your permanent residence?
   A: I am from Maasin City, Leyte.

10. Q: If you are from Leyte, why did you take the exam in Cebu City?
    A: The LEB offers the exam in only seven (7) testing centers across the country, Cebu being one of them.

11. Q: What effect did this limited number of available testing centers have on your PhilSAT experience?
    A: Since the exam would not be conducted in our area, I was compelled to travel from Leyte to Cebu City. We had to travel the day after my graduation in order for me to arrive in Cebu on time to take the exam. During the registration period, we also had to travel to another town around five (5) hours away just to deposit the testing fee since the bank in our locality did not accept checkbook as a mode of payment.[58]

Thus, the unified admission test in the future, spearheaded by the law schools, must impose only reasonable fees to the examinees. **It should not be a money-making venture.** The fees of the examination should only be for the exact expense in conducting the admission test; nothing more, nothing less.

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[58] Judicial Affidavit of petitioner Gretchen M. Vasquez, Annex F of Memorandum of Abayata, *et al.*, p. 3.

There should be no additional and unnecessary financial burden imposed on the examinees.

Likewise, the admission test should be accessible to all aspiring law students, especially those from the distant regions. The unified admission test should be conducted in numerous and strategic testing sites spread throughout the country. The law schools must avoid the situation where only those privileged students living in the capital cities will have access to the said unified examination. Moreover, considering that the examination shall now be conducted by the law schools in the Philippines, **then they may consider conducting the said test in their own school at a unified time and date with the rest of the law schools in the country to guarantee the examination's accessibility**.

It must be underscored that the study of law should not be hindered by financial and geographical hardships; rather, it must be reasonable and accessible to the examinees. Otherwise, it would defeat the purpose of a unified admission examination — to ensure that those intellectually capable to become law students, regardless of social status, shall be admitted to the study of law.

The Supreme Court and the study of law

The *ponencia* states that the Court's rule-making power covers only the practice of law and cannot be unduly widened to cover the study of law. Nonetheless, it declares that the State, though statutes enacted by Congress and administrative regulations issued by the executive, consistently exercise police power over legal education. Hence, admissions, being an area of legal education, necessarily fall within the scope of the State's police power.

I dissent.

It is impossible to completely separate the interests of the Supreme Court and the law schools and the other branches of government with respect to legal education. There are several

reasons that the study of law is affected, one way or another, by the Court's rule-making power.

First, the Court has the exclusive power to promulgate rules for admission to the practice of law. Thus, the Court prescribe specific subjects that a law school must offer before its students can be admitted for the bar examinations. Section 5 of Rule 138 states:

> **Sec. 5. Additional requirements for other applicants.** — All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the examination, satisfactorily show that they have successfully completed all the prescribed courses for the degree of Bachelor of Laws or its equivalent degree, in a law school or university officially recognized by the Philippine Government or by the proper authority in the foreign jurisdiction where the degree has been granted.
>
> No applicant who obtained the Bachelor of Laws degree in this jurisdiction shall be admitted to the bar examination unless he or she has satisfactorily completed the following course in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, legal ethics, and clinical legal education program.
>
> A Filipino citizen who graduated from a foreign law school shall be admitted to the bar examination only upon submission to the Supreme Court of certifications showing: (a) completion of all courses leading to the degree of Bachelor of Laws or its equivalent degree; (b) recognition or accreditation of the law school by the proper authority; and (c) completion of all fourth year subjects in the Bachelor of Laws academic program in a law school duly recognized by the Philippine Government.[59]

Section 5 provides several requirements for the admission to the bar. Nevertheless, these requirements also affect the curriculum offered by law school. In effect, for a law school to successfully field bar examinees, it must offer all the

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[59] As amended by A.M. 19-03-24-SC, Amendment of Rule 138, Section 5 in relation to the Revision of Rule 138-A of the Rules of Court, July 23, 2019.

prescribed courses for the degree of Bachelor of Laws or its equivalent degree. Thus, it cannot simply offer a two (2)-year short course on law.

More importantly, Section 5 provides for the specific courses that must be completed in a law school before a student may be allowed to take the bar examinations, to wit: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, legal ethics, and clinical legal education program. Pursuant to this provision, a law school is mandated to offer these courses; otherwise, it will not be able to produce law graduates qualified to take the bar examinations. Stated simply, Section 5 provides for the minimum courses that a law school must offer to its law students. This is one of the direct provisions of the Rules of Court: that the Court itself participate in the legal education of law students.

Second, even before a student begins his study of law, the Supreme Court already provides the requirements for his or her pre-law studies. Section 6 of Rule 138 states:

> **Sec. 6. Pre-Law.** - No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics.

The above-quoted provision provides that any potential law student must have a four-year high school course and a bachelor's degree in arts or sciences. If a law school admits students without these completed courses, then it will not be able to produce bar examinees. Verily, this rule affects the admission policy of the institutes of higher learning with respect to law students.

Third, the precursor of Republic Act No. 7662, which is DECS Order No. 27, also recognizes that the Supreme Court

contributes to the requirements for admission in law courses, to wit:

Article VIII
Admission, Residence and Other Requirements

Section 1. No applicant shall be enrolled in the law course unless he complies with specific requirements for admission by the Bureau of Higher Education and **the Supreme Court of the Philippines**, for which purpose he must present to the registrar the necessary credentials before the end of the enrolment period.

Lastly, even after earning a law degree, the Supreme Court continues to participate in the study of law. Bar Matter No. 850, which was adopted by the Court on August 22, 2000, provides for the Mandatory Continuing Legal Education requirement for members of the Bar. Continuing legal education is required of members of the Integrated Bar of the Philippines (*IBP*) to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.[60]

Similarly, the Philippine Judicial Academy (*PHILJA*), initially created by the Supreme Court on March 12, 1996 through the issuance of Administrative Order No. 35-96, is a separate but component unit of the Supreme Court. It is an all-important factor in the promotion of judicial education in the Philippines. It receives full patronage and support from the Court which guarantees the participation of judges and court personnel in its programs and activities. PHILJA was institutionalized as a training school for justices, judges, court personnel, lawyers, and aspirants to judicial posts.[61]

Coordination and cooperation with the various stakeholders in legal education

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[60] Section 1, Bar Matter No. 850.

[61] History of PHILJA, http://philja.judiciary.gov.ph/history.html [last accessed: June 6, 2019].

The Supreme Court, either directly or indirectly, affects the legal education administered by the law schools as institutes of higher learning. The Court's authority over legal education is primarily observed in the bar examinations. Nevertheless, such authority or influence of the Court over legal education should be viewed in a coordinated and cooperative manner; and not as a limitation or restriction.

For more than a century, the bar examinations conducted by the Court have been the centerpiece of every law student's plight. The preparation, success and defeat of bar examinees are annual recurrences. The low passing percentage of the bar examinations proves it as one of the most difficult tests in the country. There are on-going initiatives to remedy this predicament and improve the legal education.

However, it must be stressed that the bar examination is not the sole and penultimate goal of the study of law. There is no clear evidence that grades and other evaluators of law school performance, and even the bar examination, are particularly good predictors of competence or success as a lawyer.[62] The legal education is a wide spectrum of discipline, ranging from the traditional subjects of political, civil, and remedial laws, to the liberal and innovative subjects of media, sports, and competition laws. It is not confined to litigation practice, court hearings, and drafting pleadings and other legal documents. The study of law is a dynamic concept that seeks to analyze, comprehend and apply the effects and interrelationships of the Constitution, laws, rules, and regulations, in view of a just and humane society.

Thus, instead of restricting the study of law only to the bar examinations, the Court must endeavor to promote its liberalization. The bar-centric mindset of law schools must be amended. It must be emphasized that legal education should

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[62] See Dissenting Opinion of Associate Justice William O. Douglas in *DeFunis v. Odegaard*, 416 U.S. 312 (1974); citing Rosen, *Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Criteria*, 1970 U. Tol. L. Rev. 321, 332-333.

not confine law students to the syllabi for bar examinations. Instead, law schools must encourage their students to freely take elective subjects that spark their interests; participate in legal aid clinics to render free legal service; experience debate and moot court competitions; and publish law journal articles for their respective schools. These liberalizations of legal education must be accomplished for the enrichment of the law student's knowledge. In order to implement these innovative measures, various stakeholders in the entire country must be consulted and conferred with to ensure active, wide, and effective participation.

Notably, the Court has recently issued A.M. No. 19-03-24-SC,[63] otherwise known as the Revised Law Student Practice Rule, which liberalizes the Law Student Practice. It was issued to ensure access to justice for the marginalized sectors, to enhance learning opportunities of law students, to instill among them the value of legal professional social responsibility, and to prepare them for the practice of law. Further, the completion of clinical legal education courses was made a prerequisite of the bar examinations to produce practice-ready lawyers. Thus, the Court recognizes that, aside from the written bar examination, the practical aspect of legal education is an essential component in the formation of competent and able lawyers.

Again, while the Supreme Court has some authority over the legal education, this should be channeled in cooperation and coordination with different law schools of the country and even with the legislative and executive branch of the government, through the LEB. At best, the Court should only provide the minimum course requirements for the purpose of the bar examinations and should not be considered as a hindrance the study of law. Beyond that, law schools are directed to promote the innovative measures in legal education in furtherance of their academic freedom. Through a comprehensive and novel approach, the goal of improving the legal education is definitely within reach.

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[63] Dated June 25, 2019.

Constitutionality of R.A. No. 7662

One of the issues raised by the parties is that R.A. No. 7662 is unconstitutional because it infringes on the power of the Court to supervise the bar examination and legal education.

With respect to that issue, the Court must emphasize the doctrine of constitutional avoidance. The doctrine states that this Court may choose to ignore or side-step a constitutional question if there is some other ground upon which the case can be disposed of.[64] To remain true to its democratic moorings, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained.[65] In other words, if the determination of the constitutionality of a particular statute can be avoided based on some other ground, then the Court will not touch upon the issue of unconstitutionality.

Here, the powers of the LEB enumerated under Section 7 of R.A. No. 7662 are assailed because they contradict the judicial power of the Court. Section 5, Article VIII of the 1987 Constitution states:

Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) 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

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[64] See Dissenting Opinion of Justice Del Castillo, *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 357-363 (2016).

[65] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 575 (2016).

of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Some of the powers of the LEB under R.A. No. 7662 can be harmonized with the Constitution. For instance, Section 7(c) of R.A. No. 7662 states:

Section 7. Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

x x x x x x x x x

(c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, **without encroaching upon the academic freedom of institutions of higher learning[.]** (emphasis supplied)

Said provision states that the LEB has the power to set the standards of accreditation for law schools. However, it also provides for a reasonable limitation on the exercise of such power: it should not encroach the academic freedom of institutions of higher learning. With this, the law schools are safeguarded that the LEB will not arbitrarily exercise its power to set the standards of accreditation because of the reasonable limitation of academic freedom. This reasonable limitation should also be read together with the other powers provided by R.A. No. 7662 so that the LEB will not encroach upon the constitutional rights of law schools. Pursuant to this interpretation, majority of the powers of the LEB listed under the law will conform to the organic law and the Court will not be required to pass upon the constitutionality of these statutory provisions.

However, under Section 7 of R.A. No. 7662, there is a provision that is inescapably unconstitutional. No amount of judicial interpretation can evade the inevitable conclusion that this provision violates the Constitution. Section 7(h) of R.A. No. 7662 states:

Section 7. Powers and Functions. — For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:

x x x x x x x x x

(h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of **practicing lawyers** in such courses and for such duration as the Board may deem necessary[.] (emphasis supplied)

The provision clearly covers the continuing legal education of practicing lawyers. However, Section 5(5), Article VIII of the Constitution states that the Supreme Court has the exclusive judicial power to: "[p]romulgate 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." Accordingly, only the Court has the power to prescribe rules with respect to the continuing practice of lawyers.

Pursuant to this judicial power, the Court issued Bar Matter No. 850 dated August 22, 2000, adopting the rules on Mandatory Continuing Legal Education for members of the Integrated Bar of the Philippines (*IBP*). Continuing legal education is required of members of the IBP to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.[66]

Here, Section 7(h) covers the continuing legal education of practicing lawyers. Evidently, this encroaches upon the power of the Court to promulgate rules on the practice of lawyers. The objective of R.A. No. 7662 is only to effect reforms in the Philippine legal education, not in the legal profession. In his Explanatory Note in B.M. No. 979-B, Associate Justice Jose C. Vitug stated that the concept of continuing legal education encompasses not only law students but also the members of the legal profession. The inclusion of the continuing legal

[66] Section 1, Bar Matter No. 850.

education under R.A. No. 7662 implies that the LEB has jurisdiction over the education of persons who have finished the law course and are already licensed to practice law. In other words, this particular power, directly involves members of the legal profession, which is outside the realm of R.A. No. 7662. Undeniably, Section 7(h) of R.A. No. 7662 is unconstitutional because it violates Section 5(5), Article VIII of the Constitution.

Fate of the Legal Education Board

The *ponencia* states that LEB Memorandum Orders and Circular regarding the PhilSAT are unconstitutional because these do not meet the fair, reasonable, and equitable admission and academic requirements. Nevertheless, it states that Section 7(e) of R.A. No. 7662 is constitutional insofar as it gives the LEB, an agency of the executive branch, the power to prescribe the minimum requisites for admission to legal education.

I concur.

Although PhilSAT is declared unconstitutional for employing unreasonable means for the admission of students to law schools, the LEB still has numerous powers and responsibilities under its charter. As stated above, one of its vital functions is its power to accredit and set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities.[67] If a law school is underperforming, the LEB may withdraw or downgrade the accreditation status of such law school, especially if it fails to maintain the required standards. This is an important role in ensuring that law schools keep an adequate, satisfactory, and respectable curriculum program for its law students.

Likewise, I agree with the Office of the Solicitor General that the powers and functions of the LEB should be read in accordance with its mandate to guide law students and law schools.[68] R.A. No. 7662 should not be interpreted to include

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[67] Section 7(c) & (d).

[68] See Memorandum of the Office of the Solicitor General, pp. 38-39.

matters that are already within the exclusive jurisdiction of Court, such as the bar examinations, law student practice, and the practice of law.

In addition, the powers and functions of the LEB should always be interpreted in light of the institutes of higher learning's academic freedom. Thus, the LEB should consider the academic freedom of law schools when it issues orders, circulars, and regulations under its power of supervision. The Constitution bestows institutes of higher learning academic freedom, which is further compromised of several freedoms. These freedoms may only be subjected to reasonable limitations. Anything beyond reasonable, or arbitrary, shall be considered an infringement of such freedoms.

The importance of LEB's role in improving the legal education in our country cannot be overemphasized. It can bridge the gap between the different law schools from the capital cities to the far-flung areas in the provinces. It can conduct studies and give recommendations on how to improve the state of legal education. It can also promote the innovative approaches in the holistic study of law. This can be achieved if the LEB is open and willing to coordinate, through consultations and meetings, with the various stakeholders, law schools, government agencies, and the Supreme Court.

However, the LEB should be strictly warned that it should not gravely abuse its discretion. Otherwise, the Court will not think twice in striking down any arbitrary exercise of power, including those that violate the fundamental rights of institutions of higher learning under their academic freedom.

Conclusion

I sincerely believe that it is now high time to develop, innovate, modernize, and improve the legal education system in our country. The petitions at bench are valuable opportunities for the esteemed members of the Court to discuss and examine the current and future state of legal education in the country. The different stakeholders must assess and recommend innovations and improvements in the country's state of legal

education in view of the changes brought about by the developments in law, the needs of the people, and technological innovations. Verily, the stakeholders should be concerned in remodeling legal education because it is an indisputable fact that legal education is the very foundation upon which the exercise of the law profession rests.

The Court has repeatedly emphasized that the practice of law is imbued with public interest, and that a lawyer owes substantial duties, not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain, not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[69]

This goal of remodeling legal education will be realized through a multi-sectoral approach of cooperation, initiative, and the promotion of free-thinking. The outdated, obsolete, and unproductive aspects in legal education that cause disadvantageous effects to the study of law should definitely be set aside. It must be underscored that the purpose of the study of law is not only to successfully hurdle the bar examinations, but also to produce competent and noble lawyers who shall represent and stand up for justice, truth, and equity for the benefit and welfare of the Filipino people.

I vote to **PARTLY GRANT** the consolidated petitions. The PhilSAT should be **SET ASIDE**. It must be the law schools of the Philippines, through the Philippine Association of Law Schools, under the supervision of the Legal Education Board, which should formulate the unified and standardized law admission examination, carrying only reasonable fees and accessible to all aspiring law students.

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[69] *Atty. Villonco v. Atty. Roxas*, A.C. No. 9186, April 11, 2018.

CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, *J.*:

> We all have different competencies. Some of us are intellectually gifted, some of us athletically gifted, some of us are great listeners. Everyone has a different level of what they can do.[1]
>
> Don't take on things you don't believe in and that you yourself are not good at. Learn to say no. Effective leaders match the objective needs of their company with the subjective competencies. As a result, they get an enormous amount of things done fast.[2]

PREFATORY

The pursuit of excellence has never been a bad thing. From our ranks, we shower accolades to the best, brightest, most efficient, most innovative — the cut above the rest. Soon, the Court will again be recognizing excellence of execution among our judges and clerks of court, conferring on them the judicial excellence awards. These awards do not come cheap. They are laden with perks and advantages that are sorely denied others. Yet this is not discrimination. The differential treatment is not based on something like the color of one's skin or the circumstances regarding one's birth — the differential treatment arises not from an unchanging and unchangeable characteristics and traits, but from circumstances largely within the awardees' control and efforts. Exclusion necessarily comes with quality.

To strive for excellence and to require others to also trail this path in matters of privilege is not usurping that other's role in this regard. This is the case where the *requirer* of excellence shares the same goal of excellence as the *required*.

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[1] *A to Z Quotes* at https://www.azquotes.com/quotes/topics/competencies.html (last accessed July 23, 2019), attributed to Michelle Bachmann.

[2] *A to Z Quotes* at https://www.azquotes.com/quotes/topics/competencies.html (last accessed July 23, 2019), attributed to Peter Drucker.

More in point to the present cases, who would *not* want something more from a law student whose answer to the following question is as follows —

Teacher: Q - What are fruits as they relate to our study of Obligations & Contracts?

Student - "The Obligations and contracts is very beneficial to our life. The fruit I relate is Banana. This fruit have a vitamins and it gave the beneficial like became taller."[3]

Each of us has distinct competencies. Some run quicker than others. A few love to ruminate. There are fifteen (15) Justices in the Court, and in a room full of lawyers and judges, this is as exclusive as it can get. Of the several hundreds who take the Bar, not everyone gets over the hurdle. In any World Cup, there are only a number of aspirants. The top-tier law schools cannot accommodate a slew of the applicants. It is not society's fault that not every Army officer comes from the Philippine Military Academy, or a lawyer can claim blue, maroon, red, yellow, or green as the color of his or her scholastic pedigree. The right of each citizen to select a course of study is subject to fair, reasonable, and equitable admission and academic requirements.

If we are agreed that quality and excellence and their resulting exclusionary effect are valid objectives in any institution of higher learning like law schools, we next ask, who decides whom to accept in such institutions, like law schools? We should also be concerned with things like curriculum, faculty, internal administration, library, laboratory class and other facilities.[4] This is because when we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in

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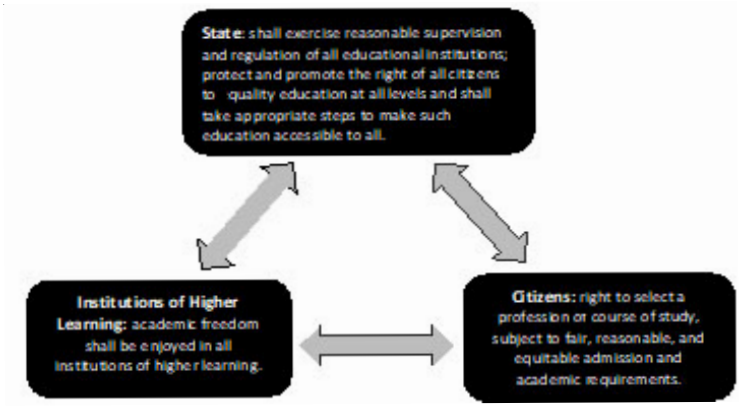
[3] Quoted with permission, name of school, teacher, and student purposely withheld.

[4] *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018.

educational technology and teaching methodologies, improvement of research quality, and others.[5] Who speaks for these requisites?

ANALYTICAL FRAMEWORK

To resolve the cases here, it is important to understand the relationship of the intersecting constitutional rights and interests as visually reflected below:



Not one of these rights and interests is superior to any of the others. Each has an impact on any of the others in terms of meaning and application. It is the Court's duty to weigh and balance these rights and interests according to the circumstances of each case.

In the exercise of the **State's power to reasonably supervise and regulate all educational institutions**, the State is mandated to protect and promote not just any access to education but access to ***quality*** education. So the State is expected to initiate, innovate, and implement measures to achieve this objective.

It is established that "the **duty of providing quality education entails the duty of screening those who seek education**.

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[5] *Ibid*.

Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**. . . . As already seen, however, there is also recognition of the right of the school to impose admission standards. **The State itself may also set admission standards."**[6]

Which of the State agencies is responsible for this task? The Court has already recognized that —

. . . . the Constitution indeed mandates **the State to provide quality education**, the **determination of what constitutes quality education** is **best left with the political departments who have the necessary knowledge, expertise, and resources to determine the same**. The deliberations of the Constitutional Commission again are very instructive:

Now, Madam President, **we have added the word "quality" before "education" to send appropriate signals to the government that, in the exercise of its supervisory and regulatory powers, it should first set satisfactory minimum requirements in all areas: curriculum, faculty, internal administration, library, laboratory class and other facilities, et cetera, and it should see to it that satisfactory minimum requirements are met by all educational institutions**, both public and private. When we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in educational technology and teaching methodologies, improvement of research quality, and others.

Here and in many other provisions on education, the principal focus of attention and concern is the students. I would like to say that in my view there is a slogan when we speak of quality of education that I feel we should be aware of, which is, "Better than ever is not enough." In other words, even if the quality of education is good now, we should attempt to keep on improving it.[7] (*emphasis added*)

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[6] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003)* at 1228, 1256, citing IV RECORD 258-260, 414-418.

[7] *Council of Teachers and Staff of Colleges and Universities of the Philippines, Supra* note 4.

A citizen — not any individual but a citizen — has the right to select a profession or a course of study leading to that chosen profession; however, the citizen is not guaranteed admission to the profession or to the course of study and school of his or her choosing. The right given to every citizen is ***to select*** — a profession or course of study. BUT this right ***does not necessarily give rise to and guarantee*** *a right to pursue, and engage in, the chosen profession of the citizen or a right to be admitted to the course of study and school of the citizen's choosing*. The citizen must have to consider the **State's duty to regulate and supervise *reasonably* educational institutions**, which *would have to include measures* to assure the citizen's access to ***quality*** education, as well as the **express limitation inherent in every citizen's right to select** a profession or course of study, *i.e.* - - - ***fair, reasonable, and equitable admission and academic requirements***.

As the intersecting rights and interests show, the **State** has a stake in the determination and imposition of the **fair, reasonable, and equitable admission and academic requirements** *through* the **duty** of the ***political departments*** **of the State to reasonably regulate and supervise educational institutions** towards, among others, assuring the citizen of access to ***quality*** education.

In addition, the *Constitution* also recognizes the important role that **academic freedom** plays in providing ***quality*** education. **Institutions of higher learning including law schools enjoy academic freedom in the highest legal order possible.** Written in jurisprudence are the substance and parameters of this constitutional privilege and duty which entitles its holders to determine for itself on academic grounds *who may teach, what may be taught, how it shall be taught, and who may be admitted to study*. Subsumed under this entitlement is the capacity of institutions of higher learning to determine and impose ***fair, reasonable, and equitable admission and academic requirements***.

Both the State through its political departments ***and*** **the institutions of higher learning** have roles to play in providing

our **citizens** access to ***quality*** education. It is **our duty** to **balance** the **academic freedom of institutions of higher learning** and the **State's exercise of reasonable supervision and regulation**. ***Academic freedom is not absolute.***

The foregoing rights and interests of the State, the citizen, and the institutions of higher learning interplay in the present cases. These rights and interests very strongly suggest that these cases ***are not and have never been about*** a ***willy-nilly*** and ***free-wheeling intellectual inquiry*** of individuals on the nature of the law or its relevance to everyday life and its application to real life situations, or about those individuals whose only interest in obtaining legal education is to get qualified for some higher civil service postings.

Individuals **are not forbidden** from learning the law for whatever motives or purposes they may each have. Every individual has the freedom of intellectual and non-intellectual inquiry, a cognate of each one's freedom of thought, expression, and speech that is not in any way restricted by the discussion and ruling which follows.

It is important that *we see through the distinction between intellectual inquiry within the narrow confines of educational institutions like law schools and a citizen's political right of free expression*. In this light, **academic freedom** and **the State's power of reasonable supervision and regulation of all educational institutions bear upon** the **context** of the **narrower academic community.**[8] This is **different from** an **individual's freedom of expression** which **encompasses his or her freedom of intellectual inquiry** for whatever purposes it may serve him or her.

For clarity and emphasis, what we are dealing with here is ***different*** from merely wanting to study law for its own sake or for immediate career advancement which a law degree carries in the civil service. Our endeavour here is a ***distinct*** proposition that has a life of its own. In the words of the Court in *Garcia v. Faculty Admissions Committee*,[9] "[i]t is equally ***difficult to***

[8] *Id.* at 1251-1252.

[9] G.R. No. L-40779, November 28, 1975.

yield conformity to the approach taken that **colleges and universities should be looked upon as public utilities devoid of any discretion as to whom to admit or reject. Education, especially higher education, belongs to a different, and certainly, higher category**."

Here, the **issues** are defined by the **education of** and **learning by citizens within the confines of an educational institution** whose **existence and operation are imbued with public concern**, to **pursue a course of study subject to reasonable regulation and supervision** by **both the State and the law school**, as to **access, quality** and **admission, and academic requirements**, where the **citizen** if successful gets **entitled to qualify for** and **engage in** a **profession** that *we all admit* to be **noble** and **suffused with public interest**.

I understand that some eager students would have their dreams of becoming law students scuttled. To this situation, I have only to stress the advice reflected in my chosen epigraphs above —

> We all have different competencies. Some of us are intellectually gifted, some of us athletically gifted, some of us are great listeners. Everyone has a different level of what they can do.
>
> Don't take on things you don't believe in and that you yourself are not good at. Learn to say no. Effective leaders match the objective needs of their company with the subjective competencies. As a result, they get an enormous amount of things done fast.

In the context of the Philippine Law School Admission Test (PhiLSAT), whose validity as a screening mechanism I stand by as my resolution to this Opinion's second issue. Indeed, nothing can be more liberating than taking the epigraphs to heart and to bear on one's aspirations in life.

Our task is to consider carefully, weigh and balance the rights and interests of these stakeholders. Each is equally important, compelling, and relevant as the next right and interest. Not one is superior to another, though one may qualify the other. When considered, weighed, and balanced properly, these rights and interests will form the tapestry against which we

will be able to judge the validity of the assailed statutory provisions and the relevant founding regulation. I now endeavour to do this and more.

THOUGHTFUL RUMINATIONS

First. I have been confronted with the idea that as regards **education in institutions of higher learning**, the State's supervisory and regulatory power is only an ***auxiliary*** power in relation to educational institutions, be it basic, secondary, or higher education. It has been said that this must be necessarily so because the right and duty to educate, being part and parcel of youth-rearing, does not inure to the State at the first instance. Rather, it belongs essentially and naturally to the parents who surrender it by delegation to the educational institutions.

I beg to differ. It is well-taken if this idea were referring only to ***pre-school*** or ***elementary school*** students. But the cases here are not about the education of young and impressionable children. They are about *the education which molds an individual into a legal professional*, the one whom another would meet to seek help about his or her life, liberty, or property. Nor are the cases here about nurturing generally socially acceptable values.

They are about piecing together building blocks *to develop focused core values essential to professions, including the legal profession*. With respect to the latter, regardless of how a potential student of law has been reared by his or her or its natural or surrogate parents, **he or she must learn focused core values that the confluence of private and public communities relevant to the legal profession has judged to be important**. In fact, **some of these focused core values may be different from the basic values which the potential student of law may have been taught at home**.

For example:

Home Values	Lawyer's Values
1. Be Honest	1. Duty of Confidentiality

2. Defend Only The Good Ones	2. Right to Counsel and Duty of Loyalty to Client
3. Love and Defend Your Family	3. Avoid Conflict of Interest in the Performance of Lawyer's Duties

To stress, "the **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression** . . . ."[10]

The **State's supervisory and regulatory power in relation to prescribing the minimum admission requirements** has been said to be a component of police power, which as explained in *Tablarin v. Gutierrez*,[11] "is the **pervasive** and **non-waivable power and authority** of the **sovereign to secure and promote all the important interests and needs** — in a word, **the public order — of the general community**." Hence, the *State's supervisory and regulatory power over institutions of higher learning* ***cannot be characterized*** as a mere auxiliary power in the ordinary sense of being just a spare, substitute, or supplementary power.

Second. There are three (3) issues to be resolved here:

1. Which State agent - the Supreme Court or the Legal Education Board or both - is responsible for exercising reasonable regulation and supervision of all educational institutions? In this regard, is the reasonable regulation and supervision of legal education within the jurisdiction of the Supreme Court? If it is, what is the exact jurisdiction of the Supreme Court over the reasonable regulation and supervision of legal education? May this jurisdiction be assigned or delegated to or shared with the Legal Education Board created under RA 7662?

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[10] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (*2003*) at 1228, citing IV RECORD 258-260.

[11] G.R. No. 78164, July 31, 1987.

2. Do Subsection 7(e) of RA 7662[12] and Legal Education Board Memorandum Order No. 7, series of 2016, (LEBMO No. 7) fall within the constitutionally-permissible supervision and regulation?

3. Are Subsections 7(g) and (h) of RA 7662[13] *ultra vires* for encroaching into the constitutional powers of the Supreme Court.

Let me address these issues sequentially.

1. Which State agent — the Supreme Court or Congress and the Legal Education Board or both — is responsible for exercising reasonable regulation and supervision of all educational institutions? In this regard, is the reasonable regulation and supervision of legal education within the jurisdiction of the Supreme Court? If it is, what is the exact jurisdiction of the Supreme Court over the reasonable regulation and supervision of legal education? May this jurisdiction be assigned or delegated to or shared with Congress and the Legal Education Board created under RA 7662?

I **accept** the *Decision's* ruling that **Congress and the Legal Education Board have primary and direct jurisdiction** to exercise reasonable supervision and regulation of legal education and the law schools providing them. The **Supreme Court has no primary and direct jurisdiction** over legal education and law schools.

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[12] The Subsection reads: "(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members . . . ."

[13] The Subsections read: "(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar. (h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary."

The Supreme Court, however, is **not entirely irrelevant when it comes to legal education**. *Although the primary and direct responsibility* rests with Congress and the Legal Education Board to reasonably supervise and regulate legal education and law schools, the Supreme Court **can and will intervene** when a justiciable controversy hounds the discharge of the Legal Education Board's duties. The Supreme Court **will also have to intervene when its power to administer admission to the Bar** is infringed. **Admission to law school is far different from admission to the Bar.** As the *Decision* has aptly discussed, **historically, textually, practicably**, and **legally**, there has been **no** demonstrable assignment of the function to supervise and regulate legal education to the Supreme Court.

Textual. The confusion regarding the Supreme Court's supervisory and regulatory role stems from Subsection 5(5) of Article VIII of the *Constitution* which enunciates *the power of the Supreme Court to promulgate rules concerning the admission to the practice of law*.

Admission to the practice of law, however, **is not the same as** *law school admission*, which is part and parcel of legal education regulation and supervision. The former presupposes the completion of a law degree and the submission of an application for the Bar examinations, among others. In terms of proximity to membership in the Bar, *admission to the practice of law* is **already far deep into the process**, the *outcome of legal education* **plus compliance with so many more criteria**.[14] On the other hand, *law admission* signals **only the start of the long and arduous *process* of legal education**. It is therefore speculative and somehow presumptuous to consider an applicant for *law admission* as already a candidate for *admission to the practice of law*.

Clearly, Subsection 5(5) of Article VIII **cannot be the source of power of the Supreme Court** to exercise reasonable supervision and regulation of legal education and law schools as a primary and direct jurisdiction.

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[14] Rules of Court, Rule 138, Secs. 2, 5, 6, 7, 10, 11, 13, 14, 16, 17, 18 and 19.

Historical. The Supreme Court **has not played a primary and direct role** in regulating and supervising legal education and law schools. Legal education and law schools **have been consistently placed** for supervision and regulation under the jurisdiction of the legislature, and in turn, the country's education departments.

For instance, it was the *University of the Philippines College of Law* which pioneered the legal education curriculum in the Philippines. **On the basis of statutory authority**, the *Bureau of Private Schools* acted as supervisor of law schools and national coordinator of law deans. Thereafter, the *Bureau of Higher Education* regulated law schools. Still further later, *DECS Order No. 27-1989, series of 1989* outlined the policies and standards for legal education, qualifications, and functions of a law dean, and qualifications, compensation and conditions of employment of law faculty, formulated a law curriculum, and imposed law admission standards.

Impracticable. The Supreme Court **has no office and staff** dedicated to the task of supervising and regulating legal education and law schools. It also **has no expertise** as educators of these tertiary students. It has **no budget item** for this purpose.

Legal. Section 12 of Article VIII of the Constitution[15] **prohibits members of the Supreme Court** from being designated to any agency (*which includes functions*) **performing quasi-judicial** or **administrative functions**. The spirit of this prohibition **precludes the Court from** *exercising reasonable supervision and regulation of legal education and law schools*. The **reason** is that **this task involves administrative functions** - "those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence."[16]

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[15] The provision reads: "The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions."

[16] In Re: Designation of Judge Manzano as Member of the Ilocos Norte Provincial Committee on Justice, 248 Phil. 487 (1988).

Manila Electric Co. v. Pasay Transportation Co.[17] has emphasized that **the Supreme Court should only exercise judicial power** and **should not assume any duty** which **does not pertain to the administering of judicial functions**. In that case, a petition was filed requesting the members of the Supreme Court, sitting as a board of arbitrators, to fix the terms and the compensation to be paid to Manila Electric Company for the use of right of way. The Court held that it would be improper and illegal for the members of the Supreme Court, sitting as a board of arbitrators, whose decision shall be final, to act on the petition of Manila Electric Company. The Court explained:

> We run counter to this dilemma. Either the members of the Supreme Court, sitting as a board of arbitrators, exercise judicial functions, or as members of the Supreme Court, sitting as a board of arbitrators, **exercise administrative or *quasi* judicial functions**. The first case would appear not to fall within the jurisdiction granted the Supreme Court. Even conceding that it does, it would presuppose the right to bring the matter in dispute before the courts, for any other construction would tend to oust the courts of jurisdiction and render the award a nullity. But if this be the proper construction, **we would then have the anomaly of a decision by the members of the Supreme Court, sitting as a board of arbitrators, taken therefrom to the courts and eventually coming before the Supreme Court, where the Supreme Court would review the decision of its members acting as arbitrators**. Or in the second case, **if the functions performed by the members of the Supreme Court, sitting as a board of arbitrators, be considered as administrative or *quasi* judicial in nature, that would result in the performance of duties which the members of the Supreme Court could not lawfully take it upon themselves to perform**. The present petition also furnishes an apt illustration of another anomaly, for we find the Supreme Court as a court asked to determine if the members of the court may be constituted a board of arbitrators, which is not a court at all.
>
> The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. **It is judicial power and judicial power only which is exercised by the Supreme Court.**

[17] 57 Phil. 600 (1932).

Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions. (*emphasis added*)

Imposing regulatory and supervisory functions upon the members of the Court constitutes judicial overreach by usurping and performing executive functions. In resolving the first issue, we are duty bound **not to overstep** the Court's boundaries by taking over the functions of an administrative agency. We **should abstain from** exercising any function which is not strictly judicial in character and is not clearly conferred on the Court by the Constitution.[18] To stress, "the Supreme Court of the Philippines and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions."[19]

2. Do Subsection 7(e) of RA 7662 and Legal Education Board Memorandum Order No. 7, series of 2016 (LEBMO No. 7) fall within the constitutionally- permissible supervision and regulation?

I submit that both Subsection 7(e) of RA7662 and LEBMO No. 7, series of 2016, as a minimum standard for admission to a law school, fall within the constitutionally-permissible reasonable supervision and regulation by the State over all educational institutions.

Subsection 7(e) of RA 7662 states "[f]or the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions . . . (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members . . . ."

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[18] *Manila Electric Co. v. Pasay Transportation Co., Id.*

[19] *Noblejas v. Teehankee*, 131 Phil. 931 (1968).

On the other hand, LEBMO No. 7 imposes as an admission requirement to a law school *passing* (*defined as obtaining a 55% cut-off score*[20]) the "one-day aptitude test that can measure the academic potential of the examinee to pursue the study of law [by testing] communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning."[21] This one-day test is the Philippine Law School Admission Test (PhiLSAT).

PhiLSAT is *offered at least once a year*,[22] recently, twice a year, and an applicant can take PhiLSAT *as many times as one would want if unsuccessful in the attempt*.[23] A law school *may prescribe* admission requirements, but these ***must be*** *in addition to passing the PhiLSAT*.[24]

There is **no doubt** that Subsection 7(e) of RA7662 and LEBMO No. 7 are measures to regulate and supervise law schools. The issue: are these measures ***reasonable***?

I appreciate the *Decision's* ruling that the State can conduct the PhiLSAT. But I do not agree with its ruling that passing the PhiLSAT **cannot** be a minimum requirement for admission to a law school. ***This is a ruling that takes with its left hand, what it gives with the right.*** After stating that PhiLSAT is ***within the State's reasonable supervisory and regulatory power*** to design and provide or conduct as a minimum standard for admission to a law school, the *Decision* then ***disempowers*** the State of such power and authority, **when it gave discretion to the law schools *to ignore* PhiLSAT completely**.

The *Decision* **accepts** that PhiLSAT is a minimum standard for law school admission and is therefore **valid** under the State's power to regulate and supervise education in a reasonable manner.

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[20] Nos. 7 and 9, LEBMO No. 7.

[21] No. 2, LEBMO No. 7.

[22] No. 5, LEBMO No. 7.

[23] No. 3, LEBMO No. 7.

[24] No. 11, LEBMO No. 7.

Since PhiLSAT is valid, though it may infringe a portion of a law school's academic freedom, then it cannot be set aside. It is a **contradiction in terms** to say that PhiLSAT is a valid regulation but that it can be ignored.

Reasonableness is the **standard endorsed by the *Constitution***. **Reasonableness** requires **deference**. It is the *stark opposite* of the search for ***the* correct measure** of regulation and supervision, which means there **can only be one proper means** of regulating and supervising educational institutions. Where the power, however, refers to the exercise of ***reasonable*** regulation or supervision, a reviewing court **cannot substitute** its own appreciation of the appropriate solution; rather it **must determine** if the **outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law**.[25]

Where the standard is **reasonableness**, there **could be more than one solution, so long as each of them is *reasonable***. If the process and the solution fit comfortably with the principles of **justification** (*i.e., existence of a rational basis for the action*),

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[25] *Manila Memorial Park Inc. v. Secretary of the Department of Social Welfare and Development*, G.R. No. 175356, December 3, 2013: **"Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it. On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity** absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. **Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales** due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, **Congress may have, likewise, legitimately concluded that the establishments**, which will be required to extend the 20% discount, **have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain** because of sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. **As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive.** (*emphasis added*).

transparency, and **intelligibility** (*i.e., the adequacy of the explanation of that rational basis*), it is **not open** to a reviewing court **to substitute** its own view of the **preferable solution**.

Conversely, where a regulation or supervision is determined to be ***unreasonable***, it means that while there **could have been many appropriate measures** to regulate or supervise, the **particular regulation or supervision** which was adopted is **not reasonable**.

The **existence of justification** or whether there exists a ***rational basis*** to support the regulation, lies at the core of the definition of **reasonableness**. The **test of justification** is a **test of proportionality**.[26] Accordingly:

First, the **objective of the regulation** must be **pressing and substantial** in order **to justify a limit on a right**. This is a threshold requirement, which is analyzed without *yet* considering the scope of the infringement made by the regulation, the means employed, or the effects of the measure. The integrity of the justification analysis requires that the **objective of the regulation be properly stated**. The **relevant objective** is ***the very objective of the infringing measure***, *not the objective of the broader provision upon which the regulation hinges*.

Second, the **means** by which the objective is furthered **must be proportionate**. The **proportionality inquiry** comprises **three (3) components:** (i) **rational connection to the objective**, (ii) **minimal impairment of the right**, and (iii) **proportionality between the effects of the measure (a balancing of its salutary and deleterious effects)** and the **stated objective of the regulation**. The proportionality inquiry is both normative and contextual, and requires that a court balances the interests of society with the interests of individuals and groups.

The **question at the first step** of the proportionality inquiry is **whether the measure** that has been adopted **is rationally connected to this objective**. This can be proved by **evidence of the harm** that the regulation is meant to address. In cases

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[26] *Ichong v. Hernandez*, 101 Phil. 1155 (1957).

where such a causal connection is not scientifically measurable, **the rational connection can be made out on the basis of reason or logic**.

The **second component** of the **proportionality test requires evidence** that **the regulation at issue impairs the right as little as reasonably possible**. This can be shown by what the regulation seeks to achieve, what the effects of the regulation could be (*i.e., if they are overinclusive or underinclusive*) or how the regulation is tailored to respond to a specific problem.

At the **final stage** of the **proportionality analysis**, it must be asked **whether there is proportionality between the overall effects of the infringing regulation and the objective**. This involves **weighing the salutary effects of the objectives** *and* **the deleterious effects of the regulation**. Are the benefits of the impugned regulation illusory and speculative? Or are these benefits real? Is it clear how the objectives are enhanced by the regulation? Are the deleterious effects on affected rights holders serious? What are these deleterious effects? What is the harm inflicted on these rights holders?

Let me deal first with Subsection 7(e) of RA 7662.

Existence of Justification. Subsection 7(e) of RA 7662 states:

> (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members . . . .

The **State objectives** in the enactment of Subsection 7(e) of RA 7662 are found in Sections 2 and 3 of the same statute:

> **Section 2.** *Declaration of Policies*. — It is hereby declared the policy of the State **to uplift the standards of legal education** in order **to prepare law students for advocacy, counselling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice** and **to develop social competence**.
>
> Towards this end, the State shall undertake appropriate reforms in the legal education system, **require proper selection of law students**,

maintain quality among law schools, and require legal apprenticeship and continuing legal education.

Section 3. *General and Specific Objective of Legal Education*. — (a) Legal education in the Philippines is geared to attain the following objectives:

(1) **to prepare students for the practice of law;**
(2) **to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;**
(3) **to train persons for leadership;**
(4) **to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions** in the light of the historical and contemporary development of law in the Philippines and in other countries.

(b) Legal education shall aim to accomplish the following specific objectives:

(1) **to impart among law students a broad knowledge of law and its various fields and of legal institutions;**
(2) **to enhance their legal research abilities** to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues;
(3) **to prepare law students for advocacy, counselling, problem-solving and decision-making,** and **to develop their ability to deal with recognized legal problems of the present and the future;**
(4) **to develop competence in any field of law** as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and **to develop in them the desire and capacity for continuing study and self-improvement;**
(5) **to inculcate in them the ethics and responsibilities of the legal profession;** and
(6) **to produce lawyers who conscientiously pursue the lofty goals of their profession** and **to fully adhere to its ethical norms.** (*emphasis added*)

The **objectives of Subsection 7(e)** of RA 7662 are **pressing and substantial**. This is because **they arise from**, or at least **relate to**, the objective of achieving **quality of education *(including of course legal education)***, which the *Constitution* has seen proper to *elevate* as a **normative obligation**.

The foregoing objectives **justify** a limitation on a citizen's right to select a profession and course of study because they fall under the **express limit** to this right, "*subject to fair,*

reasonable, and equitable admission and academic requirements." As well, the **oversearching power of the State** to exercise reasonable supervision and regulation of all educational institutions justifies this qualification. The objectives also **justify a limitation on the academic freedom** of every law school as an institution of higher learning because **quality legal education** is a **constitutional obligation** of the State **to protect** and **promote**.

In real terms, **why would we not want law students** *who have the basic abilities to communicate clearly and concisely, analyze fact situations and the legal rules that apply to them,* and *understand the texts assigned to them for reading and discussion*? Why should we be *content* with *just* legal education when the *Constitution* no less and our practical wisdom demand that *we conjoin education with* **quality**?

As the assailed measures prescribe ***mere*** **minimum standards for law admission** and **minimum qualifications** and **compensation of faculty members**, Subsection 7(e) of RA7662 and LEBMO No. 7 are **proportionate to** the foregoing **objectives**.

Minimum *law admission* and ***minimum*** *faculty competence and compensation* requirements are **rationally** connected to ***quality*** legal education and **to each of the objectives** mentioned in Sections 2 and 3 above-quoted. This **rational connection** is *intuitive, logical,* and *common-sensical*. **Prescribing these minimum standards** can lead to and accomplish the **objectives** of Subsection 7(e) as they favorably affect the **quality of students** that a law school admits as well as the **quality of law faculty** who in turn **mentors** the students whose aptitude for law studies has been tested. In the words of Professor Bernas, paraphrasing the Constitutional Commission:

> . . . . the **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**. . . . However, as already seen, there is also recognition of the right of

school to impose admission standards. **The state itself may also set admission standards.**[27]

Subsection 7(e) **impairs** the **right of a citizen to select** a profession and a course of study *and* the **academic freedom** of every law school only **as little as reasonably possible**. For Subsection 7(e) prescribes only **minimum** standards of law admission and faculty competence and compensation.

This provision is **not overinclusive** or **underinclusive** as the **minimum** standards **do not impact** on aspects of a citizen's right to select a profession or course of study *or* the academic freedom of a law school **other than** the *admission of students* into a *law degree program* of a *law school*.

Subsection 7(e) is tailor-fit to the objective of **fostering law student success** in law school and **ensuring competent law faculty** to teach these students.

It is **reasonable to assume** that *every self-respecting law school* would see Subsection 7(e)'s requirements of *minimum standards for law admission* and *faculty compensation and competence* as **necessary ingredients** of **quality** legal education, and that these minimum requisites would **coincide** with each law school's good practices in administering legal education.

At the **final stage** of the **proportionality analysis**, there is **proportionality between** the **overall salutary effects of the objectives of Subsection 7(e)** and the **deleterious impact of prescribing minimum standards for admission of students in law schools and minimum qualifications and compensation for the law faculty**.

The **benefits** obtained from **achieving the objectives** are obvious. *No one can argue* against students who are **academically competent** and have a **personality** ready for the rigors of legal education. It will spare both the law student and

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[27] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003)* at 1228, 1256, citing IV RECORD 258-260, 414-418.

the law school of the waste of time, expense, and trauma of not being able to fit in and succeed. **Minimum** standards for law admission and law faculty competence and compensation are base-line **predictors of success in law school and quality of the legal education** it offers. Professor Bernas and the Constitutional Commission, as quoted above, shared this observation.[28]

On the other hand, the **deleterious effect** of the **imposition of such minimum standards** is speculative.

In the first place, **petitioners offered no evidence** of the **oppressive** or **discriminatory nature** and **other evils** that could be attributed to the prescription of such minimum standards. In fact, the converse is true — **easily more than half** of the applicants passed the first versions of PhiLSAT.

YEAR, MONTH	PASSING RATE
2017, April	81.43%
2017, September	57.76%
2018, April	61.39%
2018, September	56.78%
2019, April	Unreleased[29]

Accepting that **quality** legal education is a pressing and substantial objective, the **screening of law students** and the **provision of minimum levels of competency and compensation standards for law faculty** are logical necessary steps towards achieving this objective.

Existence of Transparency and Intelligibility. It cannot be denied that Subsection 7(e) of RA 7662 was **adopted by**

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[28] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003)* at 1228, 1256, citing IV RECORD 258-260, 414-418.

[29] The list of names of passers for the April 2019 PhiLSAT exam has been released. However, the passing rate has not been released by either the official PhiLSAT website or any other media outlet, article, or post.

Congress after deliberations. These **deliberations articulate the reasons** behind the enactment of Subsection 7(e). The policy declaration and the list of objectives mentioned in RA 7662 also **adequately explain** the basis for Subsection 7(e).

Action as being within a range of possible, acceptable, and defensible outcomes. The **Congress** enacted Subsection 7 (e) as **one of several measures** to achieve the constitutional objective of **quality education**, which includes **quality legal education**. **Prescribing minimum enforceable standards** upon the admission of law students and the compensation and qualifications of law faculty **is one of these courses of action**. Actually, it is *difficult to imagine how the narrative of quality legal education* **could not lead to** the *imposition of standards referred to in Subsection 7(e)*. This **intuitive justification** for these measures was **not lost on the Constitutional Commission** who believed that the duty to provide and promote **quality education** demanded the screening of students for base-line competencies:

> [T]he **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**. . . . However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards.**[30]

I now apply the proportionality test to determine the reasonableness of LEBMO No. 7.

LEBMO No. 7, series of 2016, **governs** not only the **mechanics** but also the ***regulatory and supervisory aspects*** of PhiLSAT.

Like Subsection 7(e) of RA 7662, the **general objective of PhiLSAT** is **to improve the quality of legal education**. LEBMO No. 7's **particular objective** is **to measure the academic**

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[30] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003)* at 1228, 1256, citing IV RECORD 258-260, 414-418.

potential of an examinee to pursue the study of law.

The **means** to these objectives is *PhiLSAT's one-day testing of communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning*.

To enforce compliance, **admission** to a **law degree program** and a **law school** requires or is dependent upon **obtaining** the **cut-off score of 55% correct answers in PhiLSAT**.

As stated, PhiLSAT is *offered at least once a year*,[31] recently, twice a year, and an applicant can take PhiLSAT *as many times as one would want if unsuccessful in any of the attempts*.[32]

There is **also a penalty for non-compliance** by a law school, that is, if it admits students flunking the PhiLSAT.[33]

Law schools **may impose other admission requirements** such as but not limited to a **score higher than 55%** from an examinee.

I have already established above that **protecting and promoting quality legal education (*including legal education*) as an objective** is **pressing and substantial**.

Part and parcel of the objective of **quality** legal education is the **objective** of **being able to screen students** for the purpose of ascertaining their academic competencies and personal readiness to pursue legal education. As quoted above:

> [T]he **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**. . . . However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards.**[34]

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[31] No. 5, LEBMO No. 7.

[32] No. 3, LEBMO No. 7.

[33] No. 15, LEBMO No. 7.

[34] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC*

PhiLSAT as devised is **proportionate to** PhiLSAT's **objectives**. The following proportionality inquiry proves this conclusion.

PhiLSAT is **rationally connected** to ***quality*** legal education and the **measurement of one's academic potential** to pursue the study of law. To repeat, "the **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**. . . . However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards."**[35]

PhiLSAT **helps determine** if *an examinee has the basic skills to be able to complete successfully the law school coursework.*

It is true that PhiLSAT **limits** both the *right of a citizen to select a profession and a course of study* and the *academic freedom of every institution of higher learning*. But it does so only **as little as reasonably possible**.

In the first place, the **right of a citizen to select** a profession and a course of study has an **internal limitation**. The Constitution **expressly limits this right subject to fair, reasonable, and equitable admission and academic requirements**. This **right** therefore is **not absolute**, and **PhiLSAT** as an admission requirement **falls within the limitation to this right**.

In fact, as it **measures only the basic competencies necessary to survive the coursework** in a law school, PhiLSAT enhances a law school applicant's sense of dignity and self-worth as it prevents potential unmet expectations and wastage of time, resources and efforts.

OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

[35] Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003)* at 1228, 1256, citing IV RECORD 258-260, 414-418.

If an applicant **does not obtain a score of at least 55% in this test** involving the **most basic of skills required** in a law school, despite the unlimited chances to write PhiLSAT, then **the applicant's aptitude must lie somewhere else**.

Secondly, it is **inconceivable** to think of a university program without any admission criteria whatsoever. A *self-respecting* law school — *a law school that abhors being referred to as a diploma mill* — subscribes to some *means to measure the academic* and *personal readiness of its students*, and as a *badge of honor* and *pride*, to *distinguish its students from the rest*. And, if a law school can impose standards, the **State can also do in accordance with its powers and duties under the Constitution.**

The **impact of PhiLSAT** on the *right of law schools as an institution of higher learning to select their respective students* **must be reconciled with** the *State's power to protect and promote quality education and to exercise reasonable supervision and regulation of all educational institutions*.

Verily, the **impact of PhiLSAT on academic freedom** is for sure, **minimal**.

The analysis takes us first to **Nos. 1** and **2 of LEBMO No. 7**, which state the "**Policy and Rationale**" of the "administration of a nationwide uniform law school admission test for applicants to the basic law courses in all law schools in the country." Thus:

> 1. Policy and Rationale. — **To improve the quality of legal education**, all those seeking admission to the basic law courses leading to either a Bachelor of Laws or Juris Doctor degree shall be **required to take** the Philippine Law School Admission Test (PhiLSAT), a nationwide uniform admission test to be administered under the control and supervision of the [Legal Education Board].
>
> 2. Test Design. — The PhiLSAT shall be designed as a **one-day aptitude test that can measure the academic potential of the examinee to pursue the study of law**. It shall **test communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning**. (*emphasis added*)

No. 1 of LEBMO No. 7 states the **animating purpose, *to improve the quality of legal education***, for requiring the **taking** of the **PhiLSAT** by applicants for admission to a law school.

No. 2 of LEBMO No. 7 **provides the mechanism for achieving** No. 1.

Nos. 7 and **9 of LEBMO No. 7** further clarify **how PhiLSAT would be used to measure** the **academic potential** of an applicant to a law school:

> 7. Passing Score — The **cut off or passing score** for the PhilSAT shall be **FIFTY-FIVE PERCENT (55%) correct answers**, or such percentile score as may be prescribed by the LEB.
>
> 8. Test Results — Every examinee who passed the PhilSAT shall be issued by the testing administrator a CERTIFICATE OF LEGIBILITY (COE), which shall contains the examinees test score/ rating and general average to the bachelor's degree completed. Examinees who fail to meet the cut-off or passing score shall by issued a Certificate of Grade containing his/her test score/rating. The COE shall be valid for two (2) years and shall be submitted to the admitting law school by the applicant.
>
> 9. Admission Requirement — All college graduates or graduating students **applying for admission to the basic law course** shall be **required to pass the PhilSAT as a requirement for admission to any law School in the Philippines**. Upon the affectivity of this memorandum order, no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhilSAT taken within 2 years before the start of studies for the basic law course and presents a valid COE as proof thereof. (*emphasis added*)

This stage of the analysis requires us to refer to **Nos. 10** and **11 of LEBMO No. 7**:

> 10. Exemption. — Honor graduates granted professional civil service professional eligibility pursuant to Presidential Decree No. 907 who are enrolling within two (2) years from their college graduation are exempted from taking and passing the PhiLSAT from for purposes of admission to the basic law course.

11. Institutional Admission Requirements. — The PhiLSAT shall be without prejudice to the right of a law school in the exercise of its academic freedom to prescribe or impose **additional** requirements for admission, ***such as but not limited to***:

a. A score in the PhiLSAT higher than the cut-off or passing score set by the LEB;

b. Additional or supplemental admission tests to measure the competencies and/or personality of the applicant; and

c. Personal interview of the applicant (*emphasis added*)

No. 11 of LEBMO No. 7 itself **expressly recognizes** the **right of law schools** to **impose screening measures in addition to** the **taking** or **writing** of **PhiLSAT**, ***such as but not limited to*** a **PhiLSAT score of higher than 55%, additional admission tests**, and **personal interview** of the **applicant**.

The law school **may also opt to rely solely on the result of the PhiLSAT** in accepting students.

The **additional requirements** that **a law school** may **impose** would have to be **of the same kind** as a **PhiLSAT score of higher than 55%, additional admission tests**, or a **personal interview of the applicant** — the ***defining characteristic*** of the specie in the enumeration is the ***ability to measure the competencies and/or personality of the applicant relevant to and indicative of an applicant's success in law school*** — an applicant's *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning,* and *personality fit for success in law school*. So **any screening module** that **makes such measurements** could be imposed as an **additional measure**.

On the other hand, **No. 10 of LEBMO No. 7** provides for an exemption from both writing and passing PhiLSAT. This, however, **does not exempt** an applicant from the **other admission requirements of a law school** if one has been imposed.

Thus, the **scheme** under LEBMO No. 7 can be summarized as follows:

1. **Objective**: to measure the **academic potential** of an applicant to a law school to pursue a law degree **in terms of baseline competencies** in *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning*.

2. **Means:** (a) **writing** the one-day aptitude test on communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning, and **passing** this test with a score of 55% of correct answers; (b) **non-admission** of applicants who score less than 55% in PhiLSAT and **imposition of administrative fine** against law schools admitting law students who did not write or pass PhiLSAT; and (c) **law school admission requirements in addition** to writing and passing PhiLSAT, if any.

3. **Exemption:** as stated in No. 10 of LEBMO No. 7.

PhiLSAT as an admission requirement is **reasonable** because it is **minimally impairing** of **academic freedom**.

The **scope of the area** measured by PhiLSAT is **limited to academic potential** — *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning* — and **does not extend to an applicant's personality or emotional quotient**.

PhiLSAT **competencies** are the **most basic of skills needed to survive as** and **gain something from being**, a law student. There is **nothing fancy, whimsical** or **arbitrary** about these competencies. PhiLSAT **does not intrude** into a law school's decision to prescribe **other admission requirements** covering other sets of skills.

Further, PhiLSAT's **passing score** is ***minimal — 55%***. If an applicant **cannot even obtain a score of at least 55% in this test** involving the **most basic of skills required** in a law school, then **the applicant's aptitude must lie somewhere else.**

A snapshot or sample of PhiLSAT questions bears this out:

TEST A. COMMUNICATION AND LANGUAGE PROFICIENCY

Section 1. Identifying Sentence Errors

Directions: Read each sentence carefully but quickly, paying attention to the underlined word or phrase. Each sentence contains either a single error or no error at all. If the sentence contains an error, select the underlined word or phrase that must be changed to make the sentence correct. If the sentence is correct, select option D.

In choosing your answers, follow the requirements of standard written English.

1. I was paying my bill (A) in a restaurant when my childhood best friend suddenly come (B) to have a short chitchat with me (C). No error (D)

2. Marco and Alea had been close friends for more than a decade (A), but people who knew them thought (B) that her relationship (C) was something beyond friendship. No error (D)

3. The manager said that John needed to change his ways (A) because he often came late, failed to complete his tasks (B) on time, and his enthusiasm was not evident (C). No error (D)

4. Most of my cousins (A) wanted to be a teacher (B), except Santino who wanted to be an engineer (C). No error (D)

5. The supervisor and me (A) would always discuss if we need to check (B)

the items so that we could avoid unexpected circumstances.
C

No error
D

6. We believe that it is you who has committed a grave mistake
A B

for which a sincere apology should be extended. No error
C D

7. While the Middle Ages produced many great writers, Dante
A

Alighieri, the iconic author of the Divine Comedy, is more

celebrated than any writer from that period. No error
B C D

8. At the forum, the candidate said that he/she did not have nothing
A B

to offer but a promise to produce more employment

opportunities in the country. No error
C D

9. Matthew's potential to be an eloquent speaker was evident in
A

his speech which won the admiration of not a few of his
B C

batchmates. No error
D

10. A mother who knows the original value of an item can't help
A

questioning the price of the same product when advertised on
B C

television. No error

11. Some students today readily post their opinions and statuses on facebook (A), twitter, or instagram; but others, for diverse reasons (B), (C) choose to post using viber. No error (D)

12. The voters think (A) Lovely would have won (B) the election if she hasn't become (C) haughty. No error (D)

13. While attending the University, I used to have (A) three roommates — one was an engineer (B), the second was one who wrote (C) for the local dailies, and the third was a teacher. No error (D)

14. Two days before (A) my father's death, he complained that he could not (B) hardly breathe, so we had (C) to take him to the hospital. No error (D)

Section 2. Sentence Completion

Directions: Choose the word or phrase that, when inserted in the sentence, best fits the meaning of the sentence as a whole.

23. Cecilia's mother _____ from Switzerland 30 years ago, and she found a haven in the Philippines.

(A) emigrated
(B) immigrated
(C) has emigrated
(D) has immigrated

24. After seeing the movie, Andrea took her eyeglasses off and put them _____ her lap.

(A) to
(B) on
(C) in
(D) at

25. Contemporary Manila, with its images of urbanization and poverty, is _____ from Old Manila, once romantically described as the Queen City of the Pacific.

(A) a far cry
(B) a grain of salt
(C) the last straw
(D) the wrong tree

26. _____ the presenter had rehearsed the part she thought the most difficult, the participants did not appreciate her effort and went home unhappy.

(A) Since
(B) Because
(C) If only
(D) Even though

27. Yosef presented to the team _____ than what the company purchased three years ago.

(A) a powerfuller device
(B) the powerfuller device
(C) a more powerful device
(D) the more powerful device

28. She was answering her assignment on historical background of a short story _____ she discovered she was in the wrong page.

(A) after
(B) but
(C) and
(D) when

29. After a tight and exhausting schedule yesterday, Ramon _____ in bed since early this morning.

(A) lay
(B) lying
(C) has lain
(D) had lied

30. The passengers are informed that they have the next four hours _____ leisure, and can go wherever they wish.

    (A) at
    (B) by
    (C) on
    (D) as

31. Because the problem is rather insoluble, even those who initially wanted to take it up have now dropped it like a _____.

    (A) penny for your thoughts
    (B) piece of cake
    (C) spilt milk
    (D) hot potato

32. We are expected to _____ our outputs on or before Thursday next week.

    (A) turn to
    (B) turn off
    (C) turn in
    (D) turn into

33. She was (the) _____ among the researchers in this institution, despite her formidable credentials.

    (A) humbler
    (B) humblest
    (C) more humble
    (D) most humble

LEBMO No. 7 also **respects the academic freedom of law schools to impose additional admission measures** as they see fit. It is **only this minimal requirement** of *writing and passing PhiLSAT at the very reasonable score of 55%* on *multiple choice questions* that reflects an *applicant's capacity for reading, writing, computing and analyzing individual questions and fact scenarios,* **which the State demands of every law school to factor in as an admission requirement**.

More, a law school **may admit as students** those *who have not written and passed PhiLSAT but have obtained professional*

civil service eligibility within two years from the date of their graduation in college.

In addition, a law school *desirous of proving the propriety of another exemption from taking and passing PhiLSAT* can very well **petition the Legal Education Board** for this purpose.

To repeat, **While LEBMO No. 7 impacts on a law school's academic freedom, the impairment is minimal and based on rational considerations**.

As regards individual applicants to law school, the **demand** and **effect** of PhiLSAT upon them **thoughtfully account for** their **dignity** as individuals. This is because **PhiLSAT relieves an applicant** of the *potential pain and agony of unmet expectations* and *wastage of time, resources and efforts*. Unsuccessful PhiLSAT examinees may have their aptitude in something else.

In any event, the **scheme** under LEBMO No. 7 **is also very accommodating** of applicants who fail the test. PhiLSAT is now **offered twice a year**, and an applicant **can write it as many times** as he or she is willing to take.

To stress anew, PhiLSAT as envisioned in LEBMO No. 7 **minimally impairs** the limited *right of a citizen to select a profession or a course of study* and a *law school's academic freedom*, is **consistent with** the *State's power of reasonable regulation and supervision of all educational institutions*, and is therefore **reasonable**.

I conclude, therefore, that there is **proportionality** between the **overall salutary effects of the objectives of PhiLSAT** and the **deleterious effect of passing PhiLSAT** as an admission requirement.

As in the case for Subsection 7(e), the **benefits obtained from achieving the objectives** are obvious — *no one can argue against students who have been measured to have the necessary skills in communications and language, critical thinking, and verbal and quantitative reasoning*. On the other hand, the **deleterious effect of the imposition of PhiLSAT** to stress

anew is **speculative**. There is in fact **no evidence of the evils** that could be attributed to this minimal admission requirement. It **has not been shown** that *PhiLSAT questions are arbitrary*, the *test results are oppressive to the examinees (in fact, as shown above, **easily more than half** of the applicants have passed the first versions of PhiLSAT),* **or** *the scope of PhiLSAT has occupied the* **entire field of admission standards** and *has left nothing for law schools to prescribe*. These allegations **have not been proven** to be true.

Existence of Transparency and Intelligibility. PhiLSAT has had a **long history of validation and re-validation** that both the *Decision* and the *Memorandum* of the Office of the Solicitor General have been able to recount succinctly. The **bases for which PhiLSAT** was **conceived** and **required** for applicants to law school have thus been **made transparent and intelligible**. One can therefore concede that **PhiLSAT** was **not the result** of an *arbitrary and capricious exercise of wisdom* by its authors.

Action as being within a range of possible, acceptable and defensible outcomes. It is open to the Legal Education Board to impose PhiLSAT as one of several measures to achieve the constitutional objective of **quality education**. In fact, a **mandatory law school admission test** was **one of the reform agenda to improve the quality of the instruction** given by law schools as recommended by the Court's *Special Study group on Bar Examination Reforms*, and later, by the *Committee on Legal Education and Bar Matters* and the Court's *Bar Matter No. 1161*.

To reiterate, **both** Subsection 7(e) of RA 7662 and LEBMO Order No. 7 on PhiLSAT are **reasonable** forms of State regulation and supervision of law schools.

I also reflect on some of the *Decision's* ratio.

I refer to the **presumption that the legislature intended to enact a valid, sensible and just law** and **one which operates no further than may be necessary to effectuate the specific**

purpose of the law. In a word, Subsection 7(e) and LEBMO No. 7 are **presumed to be reasonable**.

As **reasonableness is a fact-heavy determination**, *absent evidence of unreasonableness from petitioners,* it would be **speculative to jump to the conclusion** that *PhiLSAT is in fact unreasonable*. Petitioners need to prove facts to disprove the presumption.[36]

I agree that the subject of PhiLSAT is to improve the quality of legal education, which falls squarely within the scope of police power.

But I do not agree that PhiLSAT is irrelevant to such purpose and that it is further arbitrary and oppressive. In the first place, I do not share the view that there is an apparent discord between the purpose of improving legal education and prescribing a qualifying and restrictive examination because the design of the PhiLSAT itself appears to be disconnected with the aptitude for law that it seeks to measure. The discussions above should

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[36] *Ermita-Malate Motel and Hotel Operators Association Inc. v. City Mayor of Manila,* G.R. No. L-24693, July 31, 1967: "**Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance**. As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity . . . The action of the elected representatives of the people cannot be lightly set aside . . . ." It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co*., where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: 'The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.' **No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside.**" (emphasis added)

prove that PhiLSAT is **not only relevant** to the objectives set out by the *Constitution* and RA 7662 **but is also proportionate** as a means to these objectives.

Notably, **petitioners presented no evidence on these factual issues**. Hence, it cannot be said that the ratio in the *Decision* is based on facts and circumstances. There is not even a discussion in the *Decision* on the structure and contents of the PhiLSAT tests that have been administered thus far. To be sure, the **absence of an evidentiary record makes the *Decision's* conclusions at best speculative**.

An evidentiary record is important because the *Decision* itself recognizes the presumption that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Yet, although petitioners adduced no contrary evidence, the *Decision* goes on to conclude that the presumption of validity has been rebutted.

If there is any **evidence on record** here, **it is to the effect that LEBMO No. 7's PhiLSAT actually measures a potential law student's aptitude for law**. As the *Decision* itself acknowledges, the PhiLSAT is essentially an aptitude test measuring the examinee's communications and language proficiency, critical thinking, verbal and quantitative reasoning, and that it was designed to measure the academic potential of the examinee to pursue the study of law.

There is **no denying** that the **ability to read a large volume of material in English** and **write, think and argue in English** are **important indicators** of **one's ability to complete a law degree**. While PhiLSAT is **not an exact predictor of success** in law school, it is its **undeniable** role in **measuring a student's strong potentials for success** that must be taken into account.

Further, as the *Decision* itself notes, the Court, through *Resolution* dated September 4, 2001, **approved the recommendations** of our own Committee on Legal Education and Bar Matters, including "d) to prescribe minimum standards

for admission to law schools **including a system of law aptitude examination**[.]" The Court *could not have recommended a measure* that would have been an unreasonable imposition on potential students of law or on academic freedom.

Some law schools are already imposing strict admission standards. That is true. **But** this fact does not automatically render PhiLSAT irrelevant or unreasonable.

PhiLSAT would not have come into being had there been no legitimate concerns about improving the state of our legal education. The top law schools are precisely top law schools **because of strict admission standards** they have in place.

These law schools, however, are **not the only law schools** in the Philippines. They do **not have the monopoly of law students** in the country. In fact, **they are only a minority**. There are so many more law schools and law students out there, whose state of competencies LEBMO No. 7 seeks to capture.

It is also a contradiction in terms that we *laud the best admission standards and practices of some law schools*, **yet reject the passing of PhiLSAT as a requirement for law school admission**. **Their standards and practices indubitably prove a reasonable connection** *between the regulation of admissions to legal education* **and** *in ensuring that those allowed to study law and eventually allowed to practice law are competent, knowledgeable or morally upright*.

But these law schools are not the reason why we are debating about how to improve legal education standards. If **every** law school has exercised responsibly their role in ensuring that admission standards and practices are up to par with quality legal education, we would not be talking about requiring PhiLSAT anymore.

The indubitable social and legislative facts prove that a screening mechanism like PhiLSAT is necessary. If we are again going the way of making such screening mechanism an optional device for law school admission, as the *Decision* does, then **the Court is not just overhauling the undeniable social and**

legislative facts upon which Subsection 7(e) of RA 7662 was based, the *Decision* is also turning its back to the problems that have long beset our legal education.

Common sense dictates that the *absence of filters would clog sooner than later the pipeline of knowledge*. **PhiLSAT acts as that filter** which *removes students whose capacity, values, forbearance and aptitude may not be for the study of law*. This is **true for aspiring law students** (there must be a State-imposed method to determine an entry level student's aptitude, capacity, forbearance and values for law study) as **it is true for those who want to be appointed to the Bench** (where the battery of tests administered by the JBC presumably makes not only for a fair selection process but also for a pool of competent aspirants).

I **do not agree** that the imposition of the PhiLSAT cut off score was made without the benefit of a prior scientific study, thereby making it arbitrary. To my mind, this is a **reversal of the onus** of who proves what. Since the *Decision admits the existence of the presumption* that the **legislature intended to enact a valid, sensible and just law** and one which **operates no further than may be necessary to effectuate the specific purpose of the law**, it is **up to the petitioners to establish** that Congress — both the House and the Senate — and the Legal Education Board acted arbitrarily. **Petitioners did not adduce evidence to this effect.**

On the contrary, the other Branches of Government have tests validating PhiLSAT. It is **not for these Branches of Government to explain the relevance and validity** of these studies if, on their face, these studies appear to be relevant. The **actions of these Branches of Government are entitled to deference** not only because of the presumption above-mentioned but also due to their status as agents of sovereignty. Again, the **burden is on petitioners to prove by evidence their claim** that PhiLSAT is arbitrary for having been imposed without prior scientific study, or that petitioners' own studies disprove the presumption.

I also do not think that it is arbitrary and harsh to impose penalties upon law schools that do not make PhiLSAT a requirement for law school admission.

Again, **petitioners have not adduced evidence** that *unduly oppressiveness* will be the case. In any event, **there is nothing oppressive about penalizing an entity that does not comply with regulations**. This set-up of regulatory and even criminal penalties **has been done so often** to deter violations and enforce obedience. This is especially true *where the regulation involved is intended towards a socially positive and uplifting goal*, but *compliance is not assured*.

In addition, **whether to attach a penalty to a measure is a policy and not a legal decision**. The decision to impose a penalty **speaks to the utility and wisdom or desirability** of the manner by which breach of the regulation is deterred, and compliance, maximized.

There is, too, further **nothing abusive about the scoring methodology** in LEBMO No. 7. It is **common among law schools that examinations are graded based on a minimum percentage of correct answers** and **not on a percentile score**. The **Supreme Court's Bar examinations** are **scored on the basis of correct and wrong answers**, and **passers are those who reach the minimum required scores**.

The ruling in *Tablarin*[37] is relevant. This case law focused on the validity of the National Medical Admissions Test (NMAT) as a valid and reasonable police power measure as an admission standard into medical schools. *Tablarin* held that NMAT is an educational regulatory tool related to one of the legitimate objectives of police power — public order, specifically, securing of the health and physical safety and wellbeing of the population. *Tablarin* also recognized that though NMAT is at the most initial and lowest rung of the requisites to attain this police power objective, NMAT is nonetheless an essential part of the police power objective. *Tablarin* confirmed that **NMAT serves**

[37] 236 Phil. 768, (1987).

as a gate-keeping measure to weed out misfits in the sense of those whose aptitude and inclinations are not for the field of medicine. The fact that NMAT was described by the Court as a factor in becoming better doctors (or medical practitioners) does not detract from the ruling in *Tablarin* that **NMAT is first and foremost a legitimate screening device for those wishing to be admitted to medical schools**.

Hence, **NMAT serves the same function as that of PhiLSAT**. Because PhiLSAT is the NMAT equivalent in essential respects, the ruling in *Tablarin* justifying NMAT as a legitimate police power exercise should also apply to the cases-at-bar about PhiLSAT.

PhiLSAT serves an equivalent function as the LSAT. LSAT is a standardised test designed to identify individuals who are likely to succeed in first year law school. **Unlike in PhiLSAT which is a State-sponsored measure**, all law schools in North America require applicants to take LSAT. LSAT is administered by a non-profit corporation located in the United States.

LSAT, like PhiLSAT, is a screening device for entry into the great learning of the law. The **theory** behind both LSAT and PhiLSAT is that **law schools seek students who have substantial promise for success in law school, and as a result, a strong likelihood of succeeding in the practice of law as shown by their preliminary aptitude for law**.

To be sure, we **cannot distance** or **segregate law school experience from the practice of law** because the former should ideally segue to the latter. Law schools **do not exist exclusively just to teach law students**; law schools **are also there to transform their students into lawyers**. It is unrealistic to say otherwise.

If law schools were to simply exist to teach *without regard to whether their students become lawyers*, **law school education would lose both its clientele and its relevance in the real world** - this is the common sensical and obvious context of the educative process. Despite the division of authority as between legal education and practice of law and the obvious

difference between them, in reality, **one bridges to the other as one cannot be dissociated from the other**.

The difference between LSAT and PhiLSAT is not conceptual but operational — that is, how much weight is to be given by institutions of higher learning — the law schools — to the scores obtained by an examinee. They also differ in the scoring system — LSAT is percentile-based while PhiLSAT as now envisioned is raw score-based.

Most law schools in common law countries **have several streams** about how an applicant is to be admitted as a law student. The **most common if not the only stream** is through high LSAT scores and grade point averages. So it is a common goal for those aspiring to enter law schools in those countries to take LSAT and aim for high LSAT percentiles and GPAs.

Among these law schools, there may be other streams of admission — those who have achieved extensive relevant experiences abroad or in-country and those who would bring interesting diversity to the law school student population. **But the number of these students *vis-à-vis* the entire population of law students in a law school is miniscule.** The students admitted through these other streams **constitute a very small minority** of the entire population of law students.

The majority are still required to show competence through LSAT scores. The **lower scores an applicant has**, the **lower the chance the applicant can get to enroll in a law school** — IF THEY HAVE ANY CHANCE AT ALL.

In any event, LSAT is not anchored on a State sponsored measure. Why the countries under LSAT regimes do not require State supervision and regulation could be attributed to their perception that their law societies (the equivalent of our Integrated Bar) and law schools are mature enough to self-regulate.

If we had no concerns about law schools which have no proportionate standards to the nobility of legal education, then perhaps we can adopt as liberal a policy as the countries utilizing

LSAT and having different admission streams. But obviously, our experiences are not the same as their experiences; our situation is not similar to their situations.

In any case, **PhiLSAT tries to mirror the admission practices** where LSAT is the screening device. If LSAT *can be waived in exceptional circumstances, this exceptional stream where LSAT is waived* **is akin**, in the case of PhiLSAT, to recall from above, **to the *exemption under No. 10 of LEBMO No. 7 for honor graduates***.

PhiLSAT as embodied in LEBMO No. 7 is not objectionable for being unreasonable. Having been imposed by a law that carries the presumption of validity and reasonableness that has not been disproven by contrary evidence from petitioners' end, PhiLSAT cannot be ignored or set aside as this has been imposed by the State through an administrative regulation — LEBMO No. 7 — which finds its basis in RA 7662.

I agree with the *Decision* that the reasonable supervision and regulation clause is not a stand-alone provision but must be read in conjunction with the other constitutional provisions which include, in particular, the clause on academic freedom. I agree as well that institutions of higher learning has a wide sphere of autonomy certainly extending to the choice of students.

Yet, this sphere of autonomy is not absolute or limitless. Autonomy cannot result in arbitrary or discriminatory admission policies. If autonomy were to have such a result, restrictive police power can curb such actuality or tendency. **Autonomy too cannot disregard the constitutional power of the State to exercise reasonable regulation and supervision of all educational institutions.** Thus, I agree with the *Decision* that affirmative police power can be legitimately exercised in the regulation and supervision of institutions of higher learning. The *Decision* aptly ruled that institutions of higher learning enjoy ample discretion to decide for itself who to admit, being part of their academic freedom, but the State, in the exercise of its reasonable supervision and regulation over education, can impose minimum regulations. ***This is what RA 7662 and LEBMO No. 7 have done.***

The **issue is not** whether the State can intervene in the admission requirements of law schools or any other institution of higher learning — **the rule of law has already said *the State can*. The issue is whether the degree and breadth of the intervention that the State can legally do is reasonable supervision and regulation**.

In this light, I do not agree that the PhiLSAT cut off score is a direct intrusion into the law school's essential freedom to choose *who may be admitted to study*. I maintain that PhiLSAT plays a viable and vital role in determining an entry law student's aptitude for law. The ability to read a large volume of materials in English and write in English are important indicators of the ability to complete a law degree. Again, while the PhiLSAT is not an exact predictor of success in law school, it is a factor that must be taken into account.

For the reasons I have stated, I **disagree with the *Decision*** that in mandating that only students who scored at least 55% correct answers shall be admitted to any law school, PhiLSAT usurps the right and duty of the law school to determine for itself the criteria for the admission of students and thereafter, to apply such criteria on a case to case basis. **There is a way to read reason into LEBMO Order No. 7 that is neither strained nor unwarranted.** I have shown this in the foregoing disquisition.

Another. **I disagree with the *Decision*** that the law schools are left with absolutely no discretion to choose its students in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants. **This is a hyperbole that finds no basis in fact and law.** It is **highly speculative** that the **complexion of the student body** and the **number of students** a **law school admits will be different** just because PhiLSAT was put in place. There is no evidence of that in the records. In any case, *the State is also a stakeholder in our educational institutions. The State cannot lightly be disregarded when it comes to reasonable minimal regulation and supervision.*

I therefore do not concur with the ruling that the requirement of passing the PhiLSAT insofar as admission to law school is concerned should be struck down not only for being unreasonable but also for encroaching upon the law school's exercise of discretion as to who to admit in its law program.

In practical terms, PhiLSAT is the default means by which one could become a law student. Hence, one desirous of becoming a law student would want to take and pass PhiLSAT. If he or she fails the first time, he or she can try again and again and again. Then perhaps if one still fails PhiLSAT, legal education is not for his or her aptitude. It is not of course the end of the world. It is the door that opens to other fitting opportunities for self-improvement if not self-aggrandizement.

Accordingly, I vote to affirm the constitutionality in full of Subsection 7(e) and LEBMO Order No. 7, series of 2016.

3. Are Subsections 7(g) and (h) of RA 7662 *ultra vires* for encroaching into the constitutional powers of the Supreme Court.

These provisions read:

(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of practicing lawyers in such courses and for such duration as the Board may deem necessary.

We can opt to read these provisions *niggardly or reasonably*, the *first* resulting in an obvious conflict with the Supreme Court's jurisdiction over the practice or procedure before our courts and other decision-making bodies and over members of the Bar, while the *second* seeks a middle way that does not strain

the wording of these provisions.[38] **I opt to read these provisions with respect and deference to the legislative intent not to violate the constitutional powers of the Supreme Court.** This is **consistent with enshrined principles of statutory construction.**

A rule of statutory construction *long cherished* by the Court is that *law should not be construed as to allow the doing of an act which is prohibited by law*, and that *a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution*.[39]

Each part or section of a rule should be construed in connection with every other part or section as to produce a harmonious whole.[40]

More, the "*meaning of a word or a phrase used in a statute is qualified by the purpose which induced the legislature to enact the statute. In construing a word or phrase, the court should adopt that interpretation that accords best with the manifest purpose of the statute or promotes or realizes its object*."[41]

A "*statute must always be construed as a whole, and the particular meaning to be attached to any word or phrase is*

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[38] *Uy Ha v. City Mayor of Manila*, 108 Phil. 400 (1960): "A law should not be construed as to allow the doing of an act which is prohibited by law." *Philippine Long Distance Co. v. Collector of Internal Revenue*, 90 Phil. 674 (1952): ". . . a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution."

[39] *Uy Ha v. City Mayor of Manila*, 108 Phil. 400 (1960): "A law should not be construed as to allow the doing of an act which is prohibited by law;" *Philippine long Distance Co. v. Collector of Internal Revenue*, 90 Phil. 674 (1952): ". . . a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution."

[40] Ruben E. Agpalo, *STATUTORY CONSTRUCTION (1995)* 196-197, citing *Tamayo v. Gsell*, 35 Phil. 953 (1916).

[41] Ruben E. Agpalo, *STATUTORY CONSTRUCTION (1995)* 148, *Supra* note 40, citing *Luzon Stevedoring Co. v. Natividad*, 43 Phil. 803 (1922), *Molina v. Rafferty*, 38 Phil. 167 (1918).

usually to be ascertained from the context, the nature of the subject treated and the purpose or intention of the body which enacted or framed the statute."[42] In other words, the rule's purpose or context must be the controlling guide in interpreting every provision thereof.[43]

Accordingly, I read Subsections 7(g) and (h) with the caveat that the Legal Education Board's exercise of power over these matters is neither final, direct, primary nor exclusive for the simple reason that the subject-matters of Subsections 7(g) and (h) are **no longer about promoting the quality of legal education**.

Law practice internship or articling as it is called elsewhere *already involves the practice of law. It calls for putting one's legal education to apply to real life situations. Continuing legal education covers lawyers, not law students.* It is *part and parcel of ensuring a lawyer's competence*, **not** a *law student's aptitude for legal education*. Clearly, **the Legal Education Board cannot decide on these matters primarily, directly, and much less, exclusively**.

Subsections 7(g) and (h) **so as not to render them unconstitutional or illegal**, must be **read consistent with the objective of RA 7662:** is **to focus on enhancing the quality of legal education**, and these provisions **cannot be given effect beyond that objective**.

Here, the Legal Education Board *may establish a law practice internship* or *adopt a continuing legal education program* for lawyers, *as any service provider can*, **but these programs must be consistent with the rules already promulgated and vetted by the Court**.

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[42] Ruben E. Agpalo, *STATUTORY CONSTRUCTION (1995)* 198, *Supra* note 40, citing *Sotto v. Sotto*, 43 Phil. 688 (1922), *Araneta v. Concepcion*, 99 Phil. 709 (1956).

[43] Ruben E. Agpalo, *STATUTORY CONSTRUCTION (1995)* 198, *Supra* note 40.

In other words, the **law practice internship would have to be vetted and sanctioned by the Supreme Court — nothing of this sort moves without the imprimatur of the Court**. This requirement of **Supreme Court regulation and control** is **deemed written** into Subsection 7(g). This arises from the rule that **statutes and regulations are inferior to the Constitution,** and that **statutes and regulations are presumed to have been intended to be valid** and thus **must be read in a way that upholds the Constitution**.

Continuing legal education may also be provided by the Legal Education Board as a service provider. It **may** *innovate means* **to serve** the Supreme Court's mandatory continuing legal education program. But like the law practice internship, the **continuing legal education program the Legal Education Board will have to be vetted and sanctioned by the Court**. As in the case of Subsection 7(g), the requirement of vetting and sanctioning by the Court is **deemed written** into Subsection 7(h) of RA 7662.

As a result, I vote to affirm the constitutionality of Subsections 7 (g) and (h) of RA 7662.

CONCLUSION

With due respect to the majority, the dispositive portion of the Decision is quite ambivalent, and if I may so, engages in circular reasoning. It reads in part:

> The Court further declares:
>
> As **CONSTITUTIONAL**:
>
> 1. Section 7(c) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to set the standards of accreditation for law schools taking into account, among others, the qualifications of the members of the faculty without encroaching upon the academic freedom of institutions of higher learning; and
>
> 2. Section 7(e) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to prescribe the minimum requirements for admission to legal education and minimum qualifications of faculty members without encroaching upon the academic freedom of institutions of higher learning.

Pray tell, what can the LEB do now without encroaching on the academic freedom of law schools — if it is unconstitutional for LEB to require a qualifying examination such as PhiLSAT, when LEB can only recommend but not impose? Where does the exercise of regulation and supervision in this kind of ruling come in? Truly, the *Decision* takes with its left hand what it gives with its right. We are back to square one.

EN BANC

[G.R. No. 246328. September 10, 2019]

VICE MAYOR SHIRLYN L. BAÑAS-NOGRALES, *ET AL.*,* *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

POLITICAL LAW; LEGISLATIVE DEPARTMENT; MEMBERS OF THE HOUSE OF REPRESENTATIVES; ELECTIONS FOR CONGRESS; SHOULD BE HELD ON THE SECOND MONDAY OF MAY UNLESS OTHERWISE PROVIDED BY LAW, AND THE WINNING CANDIDATES SHALL SERVE A TERM OF THREE YEARS, UNLESS ANOTHER

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* Petitioners Vice Mayor Shirlyn L. Bañas-Nograles is joined by her co-petitioners Councilor Atty. Franklin M. Gacal, Jr., Noel Samillano Elicancan, Brgy. Capt. Roger A. Gomez, Brgy. Kagawad Emmanuel Dolorosa Labrador, Valentin Gunto Mariano, Jr., Alexander Avena Robleza, Eliberto Landicho Prudente, Jeffrey Del Mundo Mariano, Joselito Gabriel Yabut, Manolito Magno Gonzales, Nestor Galngan Tamblik, Wenonah Guerrero Sambog, Bienvenido Fermo Barroso, Charlotte Uy Hassan, Richard Ross Calonzo Barroso, Jose Nilo Galino Vargas, Charlotte Aspiras Reyna, Osiel Alexis Piñol Par, Celso Yñiguez Derecho, Jr., Juan Anciano Yñiguez, Mario Hortillano Navales, and Melanette Moralde Lastima.

TERM IS OTHERWISE PROVIDED BY LAW; CASE AT BAR.— In resolving the merits of the instant petition, We refer to Sections 7 and 8, Article VI of the 1987 Constitution x x x. The 1987 Constitution is clear: Elections for Congress should be held on the 2nd Monday of May unless otherwise provided by law. The term "unless otherwise provided by law" contemplates two situations (1) when the law specifically states when the elections should be held on a date other than the second Monday of May; and (2) when the law delegates the setting of the date of the elections to COMELEC. Section 1 of R.A. 11243 categorically states that the reapportionment of the 1st District shall "commence in the ***next*** national and local elections after the effectivity of this Act." R.A. 11243 did not specifically provide for a different date. Neither did it delegate unto COMELEC the setting of a different date. x x x The law was passed with the view of implementing the reapportionment of the First Legislative District of the Province of South Cotabato at the most feasible and practicable time, *i.e.*, during the next elections on the second Monday of May **2022**. Congress could **not** have intended to enforce R.A. 11243 during the 2019 general elections as the election period had already begun when R.A. 11243 was enacted. To require implementation last May 13, 2019 would lead COMELEC to act precipitously. Also, if We were to follow COMELEC's interpretation, an incongruity would result as the winning candidate in COMELEC's special elections would serve a term ***less*** than that provided for in Section 7, Article VI of the 1987 Constitution. Similar to Section 8, the only exception is when another term is "otherwise provided by law." Again, R.A. 11243 did not provide for a term less than three years, as provided in the 1987 Constitution.

APPEARANCES OF COUNSEL

Abdulgafffar A. Mohammad for petitioners.
Lopoz Adin & Yap Law Firm, co-counsel for petitioners.
Imran Law Office for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

CARANDANG, *J.*:

This instant Petition for Review[1] under Rule 64 of the Rules of Court assails Commission on Elections' (COMELEC) Resolution No. 10524[2] dated April 11, 2019. The assailed Resolution suspended the May 13, 2019 national and local elections (2019 general elections) for the Representative of the First Legislative District of South Cotabato, including General Santos City (1st District).

Factual Antecedents

On March 11, 2019, President Rodrigo Roa Duterte signed into law Republic Act No. (R.A.) 11243.[3] Under R.A. 11243, the 1st District was reapportioned, thereby creating the lone legislative district of General Santos City. Under Section 1 of the said law, the creation of the lone legislative district of General Santos City was "to commence in the next national and local elections after the effectivity of this Act." Consequently, R.A. 11243 took effect on April 4, 2019 — just over a month before the 2019 general elections.

The same law directed the incumbent Representatives of First and Second Legislative Districts of South Cotabato to continue representing their respective districts "until new representatives shall have been elected and qualified."[4] Thereafter, COMELEC was mandated to issue the necessary rules and regulations to implement R.A. 11243.[5]

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[1] *Rollo*, pp. 3-34.

[2] "Implementing Rules and Regulations of Republic Act No. 11243 entitled, 'An Act Reapportioning the First Legislative District of the Province of South Cotabato Thereby Creating the Lone Legislative District of General Santos City,'" promulgated April 11, 2019; *id*. at 109-111.

[3] "An Act Reapportioning the First Legislative District of the Province of South Cotabato Thereby Creating the Lone Legislative District of General Santos City," approved March 11, 2019; *id*. at 107-108.

[4] R.A. 11243, Sec. 2; *id*. at 108.

[5] R.A. 11243, Sec. 3; *id*.

On April 11, 2019, COMELEC issued the assailed Resolution, the pertinent portions of which read:

Sec 3. *First Regular Elections.* — The electoral data for the position of Member, House of Representatives for the First Legislative District of South Cotabato, which included General Santos City, as well as the names of the candidates for the said position, have already been configured into the automated election system.

As configured, voters of the First Legislative District of the Province of South Cotabato will vote for one (1) position for Member, House of Representatives. This configuration is inconsistent with Section 1 of R.A. 11243 which reapportioned the First Legislative District of the Province of South Cotabato thereby creating the Lone Legislative District of General Santos City.

The present configuration can no longer be revised or modified in time for the May 13, 2019 national and local elections, without jeopardizing the preparations for the election of other positions, due to the following operational and logistical constraints, such as but not limited to:

a) Filing of Certificates of Candidacy for the newly created legislative districts;
b) Finalization of the list of candidates;
c) Finalization of the ballot face;
d) Printing of ballots.

In view of the above reasons, the Commission:

a) **SUSPENDS** the election of Representatives for the First Legislative District, including General Santos City, in the Province of South Cotabato, scheduled on May 13, 2019. In case the position for Member, House of Representatives in the First Legislative District, including General Santos City, is voted upon in the May 13, 2019 elections, all votes for the said position shall be considered stray; and

b) **SETS** the first regular election for the new Representatives of the First and Third Legislative Districts of the Province of South Cotabato, within six (6) months from May 13, 2019.

Sec. 4. *Incumbent Representative*. – The Incumbent Representatives of the First and Second Legislative

> Districts of the Province of South Cotabato shall continue to represent the legislative districts until noon of June 30, 2019.
>
> x x x.[6] (Emphasis in the original)

Petitioners contest the validity of the assailed Resolution for violating R.A. 7166.[7] Under R.A. 7166, the elections for elective members of the House of Representatives shall be on the second Monday of May, every three years.[8] While they admitted that special elections may be held, petitioners claim that none of the exceptional circumstances are present to warrant the same.[9]

Petitioners also averred that scheduling the first regular election "within six (6) months from May 13, 2019"[10] violated R.A. 11243. R.A. 11243 intended the reapportionment to commence in the **next** national and local elections after the effectivity of the said Act, or on the second Monday of May 2022 — not May 13, 2019. According to petitioners, the legislators were well aware that the election period for the 2019 general elections have already begun at the time R.A. 11243 was passed.

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[6] *Id.* at 110-111.

[7] "An Act Providing for Synchronized National and Local Elections for Electoral Reforms, Authorizing Appropriations therefor, and for Other Purposes," approved on November 26, 1991.

[8] R.A. 7166, Sec. 2 provides:

> Sec. 2. *Date of Elections*. — In accordance with the policy hereinbefore stated, there shall be an election for President, Vice-President, twenty-four (24) Senators, all elective Members of the House of Representatives, and all elective provincial, city and municipal officials on the second Monday of May, 1992. Thereafter, the President and Vice-President shall be elected on the same day every six (6) years; while the Senators, elective Members of the House of Representatives and all elective provincial, city and municipal officials shall be elected on the same day every three (3) years, except that with respect to Senators, only twelve (12) shall be elected.

[9] *Rollo*, p. 20.

[10] *Id.* at 110-111.

Furthermore, petitioners doubted the feasibility of conducting a special election within six months from May 13, 2019.[11]

Petitioners also questioned COMELEC's directive to consider votes for the 1st District as stray votes in the 2019 general elections. They claim that if the same were implemented, there would be no representatives for the 1st District from July 1, 2019 until the time elections for such position are held. On the other hand, to allow the 1st District's incumbent representative to continue in a holdover capacity "would be extending his term of office for another three years without being elected by the people."[12]

Lastly, petitioners sought for the issuance of a *Status Quo Ante* Order in order to "restor[e] the right of the people to vote for their representative for the [1st District] in [the] upcoming May 13, 2019 Mid-term Elections[.]"[13]

Without issuing a *Status Quo Ante* Order, this Court ordered COMELEC to file its comment on the petition in a Resolution[14] dated May 3, 2019.

The scheduled elections ensued on May 13, 2019. Inevitably, votes were cast for the representative of the 1st District. Out of the 284,351[15] votes cast, 194,929 votes (68.55%) were for Shirlyn L. Bañas-Nograles (Bañas-Nograles). However, following Section 3 of the assailed Resolution, all the votes for the 1st District's representative were considered stray. Thus, Bañas-Nograles was not proclaimed as the 1st District's representative-elect.

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[11] *Id*. at 20-26.

[12] *Id*. at 28.

[13] *Id*. at 32.

[14] *Id*. at 120-121.

[15] Computed as 194,929 votes for petitioner Bañas-Nograles + 42,005 votes for Art Cloma + 44,802 votes for Menchie Dinopol-Cataluna + 2,615 votes for Abelardo Plaza; *id*. at 128.

As a result, Bañas-Nograles filed multiple manifestations on May 24,[16] May 27,[17] June 6,[18] July 17,[19] and August 22, 2019.[20] praying for: (1) the petition to be granted; (2) her to be proclaimed the winning candidate for the 1st District; and (3) a *Status Quo Ante* Order be issued in the interim.[21] Meanwhile, COMELEC filed its Comment[22] on May 24, 2019.

Petitioners likewise brought to this Court's attention the passage of R.A. 11257, which was approved on April 5, 2019. In R.A. 11257, the Sixth Legislative District of the Province of Cebu was reapportioned, thereby creating the Lone Legislative District of the City of Mandaue. While both laws were passed during the election period, there was a proclamation for the winning candidate of the Sixth Legislative District of the Province of Cebu. The same outcome allegedly arose for the Province of Southern Leyte after the passage of R.A. 11198.[23] Thus, petitioners cried foul over the difference in treatment between the Provinces of Cebu and Southern Leyte, on one hand, and the Province of South Cotabato, on the other.[24]

For its part, COMELEC[25] averred that the petition should be dismissed. It claims to be authorized under Section 2(1),[26]

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[16] *Id*. at 126-135.

[17] *Id*. at 188-198.

[18] *Id*. at 199-205.

[19] *Id*. at 208-215.

[20] *Id*. at 217-221.

[21] *Id*. at 213.

[22] *Id*. at 154-183.

[23] *Id*. at 131.

[24] *Id*.

[25] Through the Office of the Solicitor General.

[26] CONSTITUTION, Sec. 2, paragraph 1, provides:

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

Article IX-C of the 1987 Constitution, Section 5[27] of Batas Pambansa Blg. (B.P.) 881, and its overall power of "ensuring free, orderly and honest elections,"[28] to postpone and to set the elections relating to the legislative districts of the Province of South Cotabato. Postponement was allegedly warranted because at the time R.A. 11243 took effect: (1) COMELEC was already finished with most of the pre-election activities; and (2) it had no time to revise or modify electoral data in the automated election system in the remaining 38 days before the 2019 general elections.[29] Given the logistical and financial impediments, it was thus constrained to reset the elections for the First and Third Legislative Districts for the Province of South Cotabato to a period "within six months from May 13, 2019."[30]

Anent the assailed Resolution's declaration that incumbent officials shall hold office only until June 30, 2019, COMELEC reasoned that such was more in compliance with Section 7,[31] Article VI of the 1987 Constitution.[32]

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(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

x x x x

[27] B.P. 881, Sec. 5 provides:

Sec. 5. *Postponement of election*. – When for any serious cause such as violence, terrorism, loss or destruction of election paraphernalia or records, *force majeure*, and other analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.

[28] B.P. 881, Sec. 52.

[29] *Rollo*, p. 175.

[30] *Id.* at 179.

[31] CONSTITUTION, Article VI, Sec. 7, provides:

Our Ruling

The petition is meritorious.

In resolving the merits of the instant petition, We refer to Sections 7 and 8, Article VI of the 1987 Constitution, which provide:

> Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their elections.
>
> No Member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.
>
> Sec. 8. Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May. (Underscoring ours)

The 1987 Constitution is clear: Elections for Congress should be held on the 2nd Monday of May unless otherwise provided by law. The term "unless otherwise provided by law" contemplates two situations (1) when the law specifically states when the elections should be held on a date other than the second Monday of May; and (2) when the law delegates the setting of the date of the elections to COMELEC.

Section 1 of R.A. 11243 categorically states that the reapportionment of the 1st District shall "commence in the ***next*** national and local elections after the effectivity of this Act." R.A. 11243 did not specifically provide for a different date.

Sec. 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[32] *Rollo*, pp. 179-180.

Neither did it delegate unto COMELEC the setting of a different date.

COMELEC insists that R.A. 11243 contemplated the 2019 general elections to be the "next" elections. As a result, COMELEC's act of adjusting the scheduled election to a date "within six (6) months from May 13, 2019" was due to "logistic and financial impossibility x x x analogous to *force majeure* and administrative mishaps covered in Section 5 of [the OEC]."[33]

We need not discuss COMELEC's powers under Section 5 of the Omnibus Election Code. The issue lies in ascertaining when Congress intended R.A. No. 11243 to be implemented. The law was passed with the view of implementing the reapportionment of the First Legislative District of the Province of South Cotabato at the most feasible and practicable time, *i.e.*, during the next elections on the second Monday of May **2022**. Congress could **not** have intended to enforce R.A. 11243 during the 2019 general elections as the election period had already begun when R.A. 11243 was enacted. To require implementation last May 13, 2019 would lead COMELEC to act precipitously.

Also, if We were to follow COMELEC's interpretation, an incongruity would result as the winning candidate in COMELEC's special elections[34] would serve a term ***less*** than that provided for in Section 7, Article VI of the 1987 Constitution. Similar to Section 8, the only exception is when another term is "otherwise provided by law." Again, R.A. 11243 did not provide for a term less than three years, as provided in the 1987 Constitution.

The elections for the First Legislative District of the Province of South Cotabato scheduled on May 13, 2019 should not have been suspended, and the candidate obtaining the most number of votes for the said position must be proclaimed. Consequently,

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[33] *Id.* at 175.

[34] Which COMELEC planned to hold within six months from May 13, 2019.

the holdover provision under Section 2 of R.A. 11243 would be inapplicable since there would already be a newly elected and qualified Representative.

WHEREFORE, the instant petition is hereby **GRANTED**. COMELEC Resolution No. 10524 is hereby declared **NULL** and **VOID**. The elections for the representative of the First Legislative District of South Cotabato, including General Santos City is **UPHELD**. COMELEC is hereby **DIRECTED** to **CONVENE** a Special Provincial Board of Canvassers to **PROCLAIM** petitioner Shirlyn L. Bañas-Nograles, the winning candidate, as Representative of the First Legislative District of South Cotabato, including General Santos City.

SO ORDERED.

Bersamin C.J., Carpio, Peralta, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

Hernando, J., on official business.

EN BANC

[G.R. No. 246679. September 10, 2019]

GOVERNOR EDGARDO A. TALLADO, *petitioner, vs.* **COMMISSION ON ELECTIONS, NORBERTO B. VILLAMIN, and SENANDRO M. JALGALADO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION *VIS-À-VIS* THE LOCAL GOVERNMENT CODE (LGC); THREE-TERM LIMIT RULE OF ELECTIVE

LOCAL OFFICIALS; TWO CONDITIONS THAT MUST CONCUR FOR THE DISQUALIFICATION UNDER THE THREE-TERM LIMIT RULE TO APPLY; SECOND REQUISITE, NOT PRESENT IN CASE AT BAR.— For the application of the disqualification under the three-term limit rule, therefore, two conditions must concur, to wit: (1) that the official concerned has been elected for three consecutive terms to the same local government post; and (2) that he or she has fully served three consecutive terms. x x x The first requisite for the application of the three-term limit rule is present inasmuch as the petitioner was elected as Governor of Camarines Norte for three consecutive terms, specifically in the 2010, 2013 and 2016 elections. But the second requisite was not satisfied because his intervening dismissals from the service truly prevented him from fully serving the third consecutive term.

2. ID.; ID.; ID.; ID.; INTERRUPTION OF TERM AND FAILURE TO RENDER SERVICE, DISTINGUISHED; INTERRUPTION OCCURS WHEN THE TERM IS BROKEN BECAUSE THE OFFICE HOLDER LOST THE RIGHT TO HOLD ON TO HIS OFFICE WHILE FAILURE TO RENDER SERVICE OCCURS DURING AN OFFICE HOLDER'S TERM WHEN HE RETAINS TITLE TO THE OFFICE BUT CANNOT EXERCISE HIS FUNCTIONS FOR REASONS ESTABLISHED BY LAW.— Interruption of term entails the involuntary loss of title to office, while interruption of the full continuity of the exercise of the powers of the elective position equates to failure to render service. In this regard, *Aldovino* is instructive, as follows: x x x [W]e conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office. The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its strint intent are to be faithfully served, *i.e.*, to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption. Thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, as we held

in *Montebon*. On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from exercising the function of his office for a reason provided by law. **An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost.**

3. ID.; ID.; ID.; ID.; PETITIONER'S DISMISSALS RESULTED IN PERMANENT VACANCY BECAUSE HE WAS FULLY DIVESTED OF HIS TITLE TO THE OFFICE OF GOVERNOR; THE LOSS OF HIS TITLE TO THE OFFICE DENIED HIM THE EXPECTANCY TO RE-ASSUME HIS TERM.— [I]nasmuch as Section 46 of the LGC textually applied to succession where the local chief executive was "temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office," the provision was certainly not the proper basis for the COMELEC to characterize as temporary the vacancy in the office of Governor ensuing from the petitioner's dismissal. As earlier explained, the vacancy was not temporary because the petitioner was fully divested of his title to the office of Governor in both instances of his dismissal. Under Section 44 of the LGC, a permanent vacancy arises whenever an elective local official fills a higher vacant office, or refuses to assume office, or fails to qualify, or dies, or is removed from office, or voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. In contrast, Section 46 of the LGC enumerates as resulting in a temporary vacancy in the office of the local chief executive leave of absence, travel abroad, and suspension from office. Although Section 46 of the LGC specifically states that the causes of a temporary vacancy are not limited to such

circumstances, what is evident is that the enumeration therein share something in common, which is that there is a definite term to be re-assumed. However, the petitioner's dismissals, even if still not final, were not akin to the instances enumerated in Section 46 of the LGC because the loss of his title to the office denied to him the expectancy to re-assume his term. Lastly, Section 44 of the LGC includes removal from office as one of the instances triggering a permanent vacancy. Such permanent vacancy was precisely the outcome that the OMB directed in its decisions. Consequently, when the petitioner was ousted in the period from November 8, 2016 to December 30, 2016, in the first instance of dismissal, and in the period from March 14, 2018 to September 26, 2018, in the second instance of dismissal, the permanent vacancy in the office of Governor ensued.

4. ID.; ID.; ID.; ID.; THE FULL IMPLEMENTATION OF THE DECISIONS OF DISMISSAL CARRIED LEGAL REPERCUSSIONS THAT NO DEVELOPMENTS IN RELATION TO PETITIONER'S APPEAL COULD CHANGE OR UNDO; SUCH DEVELOPMENTS DID NOT ALTER THE FACT THAT PETITIONER HAD ACTUALLY BEEN OUSTED FROM OFFICE.— The COMELEC considered developments in the petitioner's appeals in holding that the DILG's execution of the decisions did not result into the loss of title to the office. This holding was grounded on two matters, namely: (1) the non-finality of the decisions under the OMB's Rules; and (2) the fact that the petitioner was able to re-assume his seat as Governor. The holding of the COMELEC was unjustified because it thereby disregarded the fact that the DILG had fully implemented the decisions of dismissal. The full implementation immediately carried legal repercussions that no developments in relation to the petitioner's appeals could change or undo. Among others, the petitioner effectively lost his title to the office by the DILG's act of directing Pimentel to take his oath of office as Governor, and by the latter then assuming and discharging the office and functions of such office. The provision of the OMB's Rules allowing the petitioner to re-assume on the basis of the interim being considered as a period of preventive suspension after his appeals resulted in the imposition of lesser penalties did not alter the reality that he had actually been ousted from office. In other words, there was still an interruption of the term of office. As aptly put in

Latasa v. COMELEC, the interruption, to be considered as interruption of the term, "contemplates a rest period during which the *local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit."* Conformably with said ruling, the period during which the petitioner was not serving as Governor should be considered as a rest period or break in his service because he had then ceased to exercise power or authority over the people of the province. Indeed, it was Pimentel who then held title to the office and exercised the functions thereof. As such, the petitioner did not fully serve his entire third term even if his re-assumption to office subsequently occurred.

5. ID.; ID.; ID.; ID.; HAVING BEEN DISMISSED THAT CLEARLY CONSTITUTED LOSS OF HIS TITLE TO THE OFFICE, PETITIONER CANNOT BE DEEMED TO HAVE FULLY SERVED A THIRD SUCCESSIVE TERM OF OFFICE AND THEREFORE HE WAS NOT DISQUALIFIED FROM SEEKING THE SAME ELECTIVE POST DURING THE 2019 ELECTIONS.— The DILG's execution of the OMB decisions for the petitioner's dismissal clearly constituted loss of the petitioner's title to the office. The dismissals were involuntary interruptions in the petitioner's 2016-2019 term. As such, he cannot be considered to have fully served a third successive term of office. In fine, the petitioner was not disqualified from seeking the same elective post during the 2019 elections. The COMELEC thus gravely abused its discretion in ordering the cancellation of the petitioner's Certificate of Candidacy for the 2019 elections.

JARDELEZA, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION *VIS-À-VIS* THE LOCAL GOVERNMENT CODE (LGC); THREE-TERM LIMIT RULE OF ELECTIVE LOCAL OFFICIALS; REQUISITES THAT MUST CONCUR FOR AN ELECTIVE OFFICIAL TO BE DISQUALIFIED TO RUN FOR AN ELECTIVE LOCAL OFFICE.— The Constitution provides that the term of elective local officials, except barangay officials, shall be three years, and no such official shall serve for more than three consecutive terms. Subsequently, We held in a number of cases that the

following requisites must concur for an elective official to be disqualified to run for an elective local office: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms.

2. ID.; ID.; ID.; RATIONALE BEHIND THE THREE-TERM LIMIT RULE; IN SEVERAL CASES, THE COURT INTERPRETED THE TERM LIMIT RULE IN FAVOR OF LIMITATION RATHER THAN ITS EXCEPTION AND THIS CASE MUST BE VIEWED WITH THE SAME MEASURE.— The Court has adopted the yardstick of strict interpretation in favor of term limitation. Section 8, Article X of the 1987 Constitution provides that the term of office of elective local officials, except *barangay* officials, shall be three years and no such official shall serve for more than three consecutive terms. The framers of the Constitution deemed it best to define the term of office of elective officials to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. We have held that the wording and circumstances surrounding the provision's formulation impresses upon the Court "the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth." Thus, in a number of cases, We interpreted the term limit rule in favor of limitation rather than its exception. Consistency, prudence, and a due regard to the Constitutional value espoused by the above provision demand that We view this case through the same measure. This necessitates a ruling that Tallado was merely interrupted in the exercise of his functions but did not lose title to his office involuntarily. His third term was not interrupted, so that he should have been held ineligible to run in the 2019 national and local elections.

3. ID.; ID.; OFFICE OF THE OMBUDSMAN RULES OF PROCEDURE; EFFECTS OF REMOVAL FROM OFFICE BY VIRTUE OF NON-FINAL BUT IMMEDIATELY EXECUTORY DECISION OF THE OMBUDSMAN; PETITIONER SHOULD HAVE BEEN CONSIDERED AS PREVENTIVELY SUSPENDED AND NOT

PERMANENTLY DISMISSED.––Tallado's removal from office was by virtue of non-final but immediately executory Decisions of the Ombudsman. The Ombudsman Rules do not attach permanent effect to dismissals pending appeal. Section 7, Rule III of Administrative Order No. 07 (A.O. No. 7), as amended, otherwise known as the Rules of Procedure of the Office of the Ombudsman, states that a Decision rendered by the Ombudsman dismissing an elective official from the service in an administrative case is immediately executory but not yet final pending a timely appeal with the Court of Appeals (CA). If respondent wins such appeal, he shall be considered as having been under preventive suspension. In this connection, We have held that in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile. However, he does not vacate and lose title to his office. Loss of office is a consequence that only results upon an eventual finding of guilt or liability. x x x I am unable to subscribe to the majority opinion because it attributes permanent effect to the dismissals pending appeal, when such permanency is not contemplated by the very Rules that sanction such dismissal. The Ombudsman rules provide a remedy when the non-final but executory dismissal is overturned, *i.e.*, the respondent is considered to have been under preventive suspension for which he shall be paid the salary and other emoluments that he did not receive by reason of his removal. This is a glaring indication that no permanent effect of the dismissal pending appeal is contemplated so that none should attach. While the Ombudsman's Rules admittedly do not contemplate every situation, the effects of the dismissals in this case should not be construed outside the intention of such Rules. Any interpretation of its provisions should not depart from its spirit. Accordingly, if there is any provision in the Rules by which guidance may be obtained to resolve a situation that was not directly provided for, then the Court must apply the Rules by analogy and not venture into its own interpretation. This is a becoming deference to the Ombudsman who was authorized by the Constitution to promulgate its own rules of procedure, and thus remains the authority in their interpretation. Hence, Tallado should have been considered as preventively suspended under the Ombudsman Rules and not permanently dismissed, since he was eventually restored to his post.

4. ID.; ID.; LOCAL GOVERNMENT CODE (LGC); PERMANENT AND TEMPORARY VACANCY, DISTINGUISHED AND EXPLAINED; BY TREATING THE SUSPENSION IMPOSED BY THE COURT OF APPEALS AS CAUSE OF PERMANENT VACANCY IN PETITIONER'S OFFICE THAT INTERRUPTED HIS TERM, THE *PONENCIA* SETS A DANGEROUS PRECEDENT BY PLACING THE SUSPENDED OFFICIAL IN A BETTER SITUATION THAN THE PREVENTIVELY SUSPENDED ONE; PETITIONER'S INCAPACITY WAS ONLY TEMPORARY SINCE HE WAS ABLE TO REASSUME THE GUBERNATORIAL POST.— Section 44 of the Local Government Code (LGC) states that "a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to quality, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." On the other hand, Section 46 of the LGC states that there is temporary vacancy when the local elective official is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office. It is clear from these definitions that the nature of the vacancy, whether permanent or temporary, *depends* on the cause of the elective official's incapacity to hold office. In other words, the nature of the vacancy is merely a *consequence* of such incapacity. Being merely a consequence, it may not be construed independently of the cause of incapacity. Thus, if an elective official is temporarily unable to hold office for the enumerated or analogous reasons, the vacancy created is merely temporary. On the other hand, permanent incapacity to hold office would lead to a permanent vacancy in that office. The law does not contemplate a situation where a temporary incapacity would lead to a permanent vacancy, and *vice versa*. Going back to Section 44 of the LGC, its enumeration of what creates a permanent vacancy in a local elective office is not exhaustive and is qualified by the phrase "or is otherwise permanently incapacitated to discharge the functions of his office." This is the guiding parameter in determining whether a permanent vacancy exists. x x x [B]y treating the suspension imposed by the CA as cause of permanent vacancy in Tallado's office that interrupted his term, the *ponencia* sets a dangerous precedent by placing the suspended official in a better situation

than the preventively suspended one. In holding that a suspended official's term had been involuntarily interrupted, the majority decision in effect rewards administratively sanctioned officials by allowing them to perpetuate themselves in office; while preventively suspended officials, especially those that have not been subsequently found administratively liable, would have suffered a term interruption. In light of the foregoing, to state that a permanent vacancy in the Governor's office was created when Tallado was dismissed by non-final Ombudsman Decisions is a strained interpretation of the law. His incapacity was only temporary since he was able to reassume the gubernatorial post. Any interpretation of the law that will lead to unjust or absurd results must be rejected.

5. ID.; ID.; THE 1987 CONSTITUTION *VIS-À-VIS* LGC; THREE-TERM LIMIT RULE; THE FINALITY OR NON-FINALITY OF THE OMBUDSMAN'S DECISIONS IS CRUCIAL; THE FACTS OF THIS CASE SUFFICIENTLY ESTABLISH THE SECOND REQUISITE FOR DISQUALIFICATION TO RUN FOR AN ELECTIVE LOCAL OFFICE, HENCE, PETITIONER IS DISQUALIFIED TO RUN FOR A FOURTH TERM IN THE 2019 ELECTIONS.— I am unable to agree with the majority position that the finality or non-finality of the Ombudsman's Decisions would not have made any difference since they would produce the same effect of removal of the incumbent official from office. x x x [T]he finality or non-finality of the Ombudsman's Decisions is not inconsequential, but rather crucial. From it springs all legal consequences. In declaring that "[t]he full implementation [of the decisions of dismissal] immediately carried legal repercussions that no developments in relation to the petitioner's appeals could change or undo," the *ponencia* focused on Tallado's momentary loss of title to office, without more. This is akin to taking a snapshot—which does not reflect the entire reality. To be sure, by any angle, the non-finality of the Ombudsman's Decisions brought about temporary results in terms of Tallado's inability to function as Governor. Intuitively, there could not have been two permanent vacancies in the Governor's Office in a single term as a result of the supposed permanent incapacity of the same Governor to exercise his duties. If the initial vacancy had been permanent, then the succeeding one should not have arisen. It is the *ponencia's* own perspective that appears to produce dire legal repercussions. Overall, the

majority decision rewards recidivists and wrongdoers in public service. The facts have amply demonstrated Tallado's propensity to commit infractions during his incumbency as Governor. Yet, by the majority decision which declared an involuntarily interruption in his supposed third and last term as Governor, he now enjoys the present fresh three-year term that paves the way to two more terms and a possible 18 years in public office. Accordingly, even on equitable grounds, the petition should have been dismissed. Equity does not favor, nor may it be used to reward a wrongdoer. The Court should not have allowed Tallado to benefit from his own fault. In sum, the facts of the case sufficiently establish that the second requisite for disqualification to run for an elective local office—that Tallado fully served three consecutive terms as Governor of Camarines Norte—was satisfied. What transpired in this case was not an involuntary interruption of Tallado's term, but merely an interruption of the continuity of the exercise of his powers as Governor. A contrary ruling would run roughshod Section 8, Article X of the Constitution and its strict intent to limit an elective official's continuous stay in office to no more than three consecutive terms.

APPEARANCES OF COUNSEL

G.E. Garcia Law Office for petitioner.
The Solicitor General for Commission on Elections.
Romulo B. Macalintal, Antonio Carlos B. Bautista, and *Emilio L. Marañon III* for private respondent Norberto B. Villamin.
Archimede O. Yanto for private respondent Senandro M. Jalgado.

D E C I S I O N

BERSAMIN, *C.J.*:

Once the order of the Office of the Ombudsman to dismiss an elective local official is executed, the dismissed official thereby loses title to the office even if he or she has filed a timely appeal assailing the dismissal which would have prevented it from attaining finality. The loss of title to the office constitutes an involuntary interruption of the official's service of his or her full term.

The Case

Before the Court is the petition for *certiorari* initiated under Rule 64 of the Rules of Court by the petitioner assailing the resolution promulgated on March 29, 2019 by the Commission on Elections (COMELEC) First Division in SPA No. 18-041 (DC) and SPA No. 18-137 (DC) granting the private respondents' petitions to deny due course and/or to cancel the petitioner's Certificate of Candidacy (COC),[1] and the resolution promulgated on May 9, 2019 by the Commission on Elections *En Banc* denying the petitioner's verified motion for reconsideration.[2]

Antecedents

The petitioner was duly elected as Governor of the Province of Camarines Norte in the 2010, 2013 and 2016 elections. He fully served his 2010-2013 and 2013-2016 terms. It is the turn of events in respect of the petitioner's 2016-2019 term that has spawned the controversy under review.

Relevant are three administrative cases decided by the Office of the Ombudsman (OMB).

It appears that on January 28, 2013, one Edgardo Gonzales filed in the OMB an administrative complaint charging the petitioner with grave misconduct, oppression or grave abuse of authority.[3] While the case was pending, the petitioner won as Governor in the 2013 elections. On October 2, 2015, while he was serving his 2013-2016 term, the OMB found and declared him administratively liable and imposed upon him the penalty of suspension for one year,[4] which suspension was immediately implemented by the Department of Interior and Local Government (DILG).[5]

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[1] *Rollo,* pp. 56-63.

[2] *Id.* at 51-55.

[3] *Id.* at 10.

[4] *Id.* at 125.

[5] *Id.* at 57.

The petitioner timely appealed the suspension to the Court of Appeals (CA) by petition for review,[6] docketed as C.A.-G.R. SP No. 142737.

Acting on the petitioner's appeal, the CA promulgated its decision reducing the imposed penalty of suspension from one year to six months.[7] He immediately re-assumed his position after the lapse of six months, and his re-assumption later became the subject of the third OMB case.[8] Under the resolution issued on December 1, 2016 in C.A.-G.R. SP No. 142737, however, the CA restored the one-year suspension of the petitioner.[9]

On November 4, 2015, several persons (namely: Milline Marie B. Dela Cruz, Mark Anthony J. Mago, Maria Joanabelle L. Crisostomo, and Shanta V. Baraquiel) initiated the second OMB case against the petitioner.[10]

In the decision dated April 18, 2016 and approved by then Ombudsman Conchita Carpio Morales on September 13, 2016, the OMB held the petitioner guilty of grave misconduct and oppression/abuse of authority and ordered his dismissal from the service.[11]

Although the petitioner appealed to the CA,[12] the DILG implemented the OMB decision on November 8, 2016 by ordering the petitioner to vacate his position as Governor.[13]

On the same date, the DILG issued another memorandum addressed to then Vice Governor Jonah Pedro G. Pimentel (Pimentel) directing him to assume as Governor of Camarines Norte.[14] The memorandum stated that there was a permanent

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[6] *Id*. at 577-594.

[7] *Id*.

[8] *Id*. at 58.

[9] *Id*. at 58, 145.

[10] *Id*. at 131-141.

[11] *Id*.

[12] *Id*. at 232-237.

[13] *Id*. at 215.

[14] *Id*. at 216.

vacancy in the office of Governor as a consequence of the petitioner's dismissal from the service. In ordering Pimentel to assume as Governor, the DILG cited Section 44 of Republic Act No. 7160, or the *Local Government Code* (LGC).

On November 16, 2016, Pimentel took his oath of office as Governor of Camarines Norte,[15] and thereupon assumed office and exercised the functions of Governor.[16]

On December 12, 2016, the CA issued a temporary restraining order enjoining the DILG from implementing or continuously implementing the decision of the OMB.[17] Thus, the petitioner was able to re-assume his post as Governor.[18]

The third OMB case, as noted above, concerned the petitioner's re-assumption of the office of Governor after the CA had initially reduced the penalty imposed in the first OMB case to suspension for six months. The complainant thereat initiated another complaint on the basis that the petitioner had violated the first OMB decision by re-assuming office without having fully served his suspension.[19]

On January 11, 2018, the OMB rendered another decision finding the petitioner guilty of grave misconduct, and ordering his dismissal from the service.[20]

The petitioner appealed the decision to the CA.[21]

To implement the decision of the OMB, the DILG issued the Memorandum dated March 14, 2018 ordering Pimentel to assume as Governor,[22] this time citing Section 46 of LGC as legal basis therefor.

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[15] *Id*. at 382.

[16] *Id*. at 384-397.

[17] *Id*. at 398-403.

[18] *Id*. at 58.

[19] *Id*. at 58, 238-245.

[20] *Id*. at 243-244.

[21] *Id*. at 142-160.

[22] *Id*. at 413.

On March 15, 2018, Pimentel again took his oath of office as Governor, and assumed office and exercised the functions of Governor.[23]

On September 26, 2018, the CA ruled on the petitioner's appeal by modifying the penalty of dismissal to six months suspension.[24]

On October 29, 2018, the DILG issued its memorandum directing the implementation of the decision of the CA, and the reinstatement of the petitioner as Governor if he had already served the six-month suspension.[25]

On October 30, 2018, the petitioner took his oath of office as Governor of Camarines Norte.[26]

In the meanwhile, on October 15, 2018, the petitioner filed his Certificate of Candidacy (COC) for Governor of Camarines Norte for the May 2019 elections.[27] This prompted respondents Norberto B. Villamin and Senandro M. Jalgalado to file their separate petitions (respectively docketed as SPA No. 18-041 (DC) and SPA No. 18-137 (DC)) with the COMELEC praying for the denial of due course to and/or for the cancellation of the petitioner's COC,[28] which petitions were consolidated and predicated on the application of the three-term limit rule.

In its March 29, 2019 resolution, the COMELEC First Division granted the petitions and ordered the cancellation of the petitioner's COC.[29] The COMELEC First Division concluded that the petitioner had fully served three consecutive terms considering that his suspension and dismissals from the service were not interruptions of his term because he had not thereby lost title to the office;

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[23] *Id*. at 414-452.

[24] *Id*. at 483-501.

[25] *Id*. at 505.

[26] *Id*. at 507.

[27] *Id*. at 19, 112.

[28] *Id*. at 56-63.

[29] *Id*. at 56-63.

that the OMB's decisions ordering his dismissals were not yet final; and that there had been no permanent vacancy and no succession in accordance with Section 44 of the LGC.

The COMELEC First Division disposed as follows:

WHEREFORE, premises considered, the Petitions are hereby **GRANTED**. The Certificate of Candidacy filed by Respondent **EDGARDO A. TALLADO** is **CANCELLED**.

SO ORDERED.

It is notable that the COMELEC First Division was not unanimous. Commissioner Al A. Parreño dissented and voted to deny the petitions, opining that the dismissals from the service had effectively interrupted the petitioner's 2016-2019 term, and that the petitioner had thereby involuntarily lost title to the office.[30]

In the resolution promulgated on May 9, 2019,[31] the COMELEC *En Banc,* with Commissioner Parreño maintaining his dissent, denied the petitioner's verified motion for reconsideration and affirmed the ruling of the COMELEC First Division, to wit:

WHEREFORE, premises considered, the Commission *(En Banc)* **AFFIRMS** the *Resolution dated 29 March 2019* of the Commission *(First Division)* and **RESOLVES** to **DENY** the Motion for Reconsideration of Respondent Edgardo A. Tallado.

SO ORDERED.

The COMELEC *En Banc* declared that the petitioner's dismissal from the service had been temporary inasmuch as he had appealed the OMB decisions; that the DILG's implementation of the dismissals, the petitioner's removal from office, and the Vice-Governor's assumption as Governor did not affect the temporariness of the vacancy in the office of the Governor; that the petitioner had later on re-assumed his post

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[30] *Id*. at 69-73.

[31] *Id*. at 51-55.

as Governor; and that the DILG's implementation of the ruling on the third OMB case, on the basis of Section 46 of the LGC, had corrected its earlier erroneous reliance on Section 44 of the LGC in implementing the ruling in the second OMB case. The COMELEC *En Banc* took the view that it was Section 46 of the LGC that was applicable inasmuch as there was only a temporary vacancy.

Undeterred, the petitioner lodged the petition for *certiorari* with the Court.

On May 10, 2019, the Court issued a *status quo ante* order requiring the parties to observe the *status quo* prevailing before the issuance of the COMELEC *En Banc* resolution.[32] In the resolution of June 4, 2019, the Court *En Banc* confirmed the *status quo ante* order.[33]

The petitioner eventually garnered the highest number of votes for the position of Governor of Camarines Norte in the May 13, 2019 elections. On May 16, 2019, the petitioner was proclaimed as the duly elected Governor of Camarines Norte.[34]

Issues

The petitioner contends that his third term as Governor of Camarines Norte was involuntarily interrupted when the Ombudsman's dismissal orders were implemented, thereby preventing the application of the three-term limit rule. According to him, it is immaterial that the CA subsequently modified the Ombudsman's decisions to reduce the penalty because the modification did not change the fact that he had involuntarily ceased to hold his title when the DILG ordered him to vacate his office on November 8, 2016 and again on March 14, 2018 pursuant to the decisions. He thereby lost his title to the office, and the continuity of his service as Governor was involuntarily interrupted.[35]

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[32] *Id.* at 940-942.

[33] *Id.* at 985-A.

[34] *Id.* at 992-1000.

[35] *Id.* at 27.

The petitioner argues that contrary to the findings of the COMELEC, his removal from office caused a permanent vacancy that necessitated the appointment of Pimentel as his successor, and that even the DILG itself had recognized the existence of the permanent vacancy and consequently ordered Pimentel to succeed him pursuant to Section 44 of the LGC.[36]

After directing the respondents to file their comment,[37] the Office of the Solicitor General (OSG) filed a *Manifestation and Motion in Lieu of Comment*,[38] averring therein that the COMELEC had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding and holding that the petitioner was ineligible to run for Governor in the May 2019 elections under the three-term limit rule.[39]

The OSG, as tribune of the people, submits that the implementation of the Ombudsman's decisions on the petitioner's removal from office must be considered as term interruption because he thereby ceased to exercise the functions and prerogatives of the office; and that he must be deemed not to have fully served his third term as Governor considering that he involuntarily lost his title to the office.[40]

To support its submission, the OSG cites *Lonzanida v. COMELEC (Lonzanida)*[41] wherein this Court has held that an elective official could not be deemed to have served the full term if he was ordered to vacate his post before the expiration of the term; that the petitioner's third term as Governor was validly interrupted twice when he complied with the DILG's memoranda ordering him to vacate his post; and that the petitioner's loss of title to the office was manifested by the

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[36] *Id*. at 32.

[37] *Id*. at 940-942.

[38] *Id*. at 1059-1080.

[39] *Id*. at 1076.

[40] *Id*. at 1076.

[41] G.R. No. 135150, July 28, 1999, 311 SCRA 602.

fact that Pimentel took his oath of office as Governor, and discharged all the functions and responsibilities thereof.[42]

On its part, the COMELEC contends that the three-term limit rule must be strictly construed in order to avoid attempts to circumvent and evade the application of the same;[43] that under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (OMB's Rules), the petitioner's exoneration from the charge of grave misconduct rendered the "dismissal" nothing more than a mere preventive suspension,[44] which was not the term interruption that effectively precluded the application of the three-term limit rule;[45] that the dismissal and its resultant legal effects must not be recognized in view of the reduction of the penalty from dismissal to suspension;[46] that because the petitioner's position as Governor was never permanently vacant, he was able to re-assume the office and functions of Governor, thus warranting the conclusion that the vacancy was only temporary.[47]

In his comment,[48] respondent Villamin claims that because the two OMB decisions suspending and/or removing the petitioner did not become final despite their immediate execution, the petitioner never lost his title even if he could no longer exercise the powers and authority attached to the position;[49] that while the petitioner's suspension resulted to a vacancy in the office of the Governor, the vacancy was only temporary; that Pimentel only held the office of Governor in an acting

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[42] *Rollo,* p. 1074.

[43] *Id*. at 1139.

[44] *Id*. at 1143.

[45] *Id*. at 1145.

[46] *Id*. at 1148.

[47] *Id*. at 1152.

[48] *Id*. at 952-966.

[49] *Id*. at 955.

capacity, with the full title being still held by the petitioner.[50] On his part, respondent Jalgalado adopted Villamin's comment.[51]

The petitioner specifies the following issues for the Court's consideration and resolution, to wit:

I.

WHETHER THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUSTAINED THE FINDINGS OF THE COMELEC FIRST DIVISION[,] WHICH CANCELLED PETITIONER'S CERTIFICATE OF CANDIDACY[.]

II.

WHETHER THERE WAS LOSS OF TITLE TO PETITIONER'S OFFICE DURING HIS THIRD TERM WHICH CONSTITUTED AN INVOLUNTARY TERM INTERRUPTION[,] WHICH PREVENTS THE APPLICATION OF THE THREE-TERM LIMIT RULE, THEREBY MAKING HIM ELIGIBLE TO RUN FOR THE POSITION OF GOVERNOR OF CAMARINES NORTE IN THE FORTHCOMING MAY 13, 2019 NATIONAL AND LOCAL ELECTIONS[.]

III.

WHETHER PETITIONER'S TWICE REMOVAL *(sic)* FROM OFFICE DURING HIS THIRD TERM CREATED A PERMANENT VACANCY IN THE GUBERNATORIAL POST[.]

Ruling of the Court

The petition for *certiorari* is meritorious.

I.
The three-term limit rule

Section 8, Article X, of the Constitution embodies the three-term limit rule, *viz.*:

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[50] *Id.* at 956.

[51] *Id.* at 1001-1004.

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

To implement the Constitutional provision, Section 43(b) of the LGC states:

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(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

x x x x x x x x x

For the application of the disqualification under the three-term limit rule, therefore, two conditions must concur, to wit: (1) that the official concerned has been elected for three consecutive terms to the same local government post; and (2) that he or she has fully served three consecutive terms.[52]

In *Abundo v. COMELEC (Abundo)*,[53] the Court, upon reviewing the applicable jurisprudence on consecutiveness of terms, summarized the rules for the determination of involuntary interruptions to an elective local official's term thusly:

To summarize, hereunder are the prevailing jurisprudence on issues affecting consecutiveness of terms and/or involuntary interruption, *viz.*:

1. When a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the LGC, then his service for the unexpired portion

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[52] *Lonzanida v. COMELEC*, G.R. No. 135150, July 28, 1999, 311 SCRA 602, 611.

[53] G.R. No. 201716, January 8, 2013, 688 SCRA 149.

of the term of the replaced official cannot be treated as one full term as contemplated under the subject constitutional and statutory provision that service cannot be counted in the application of any term limit *(Borja, Jr.)*. If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (Montebon).

2. An elective official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth term, but later won in a recall election, had an interruption in the continuity of the official's service. For, he had become in the interim, *i.e.*, from the end of the 3rd term up to the recall election, a private citizen (Adormeo and Socrates).

3. The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service (Latasa).

4. Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period (Aldovino, Jr.).

5. When a candidate is proclaimed as winner for an elective position and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disenabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed (Lonzanida and Dizon). The break or interruption need not be for a full term of three years or for the major part of the 3-year term; an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service (Socrates, citing Lonzanida).

6. When an official is defeated in an election protest and said decision becomes final after said official had served the full term for said office, then his loss in the election contest does not constitute an interruption since he has managed to serve the term from start to finish. His full service, despite the defeat, should be counted in the application of term limits because the nullification of his proclamation came after the expiration of the term (Ong and Rivera).

Based on the foregoing, there is an involuntary interruption in the term of an elective local official when there is a break in the term as a result of the official's loss of title to the office.

II.
The petitioner was dismissed from office, and lost his title thereto

Nonetheless, there is no definitive ruling yet on whether or not an elective local official's dismissal from the service pursuant to the executory decision of the OMB may be considered as an effective interruption in the official's term.

The first requisite for the application of the three-term limit rule is present inasmuch as the petitioner was elected as Governor of Camarines Norte for three consecutive terms, specifically in the 2010, 2013 and 2016 elections. But the second requisite was not satisfied because his intervening dismissals from the service truly prevented him from fully serving the third consecutive term.

In ruling that the petitioner had fully served three consecutive terms as Governor and was, therefore, disqualified from running for a fourth consecutive term, the COMELEC cited *Aldovino v. COMELEC (Aldovino)*[54] under which the three-term limit rule must be read in the context of interruption of term, not in the context of interrupting the full continuity of the exercise of the powers of the elective position.[55]

The COMELEC explained that despite clearly mandating the dismissal of the petitioner, the OMB's decisions of dismissal against him did not deprive him of his title to the office because the dismissals were not yet final by virtue of their being timely appealed; that, consequently, there was no vacancy in the office of Governor and the petitioner's service of the penalty could only be considered as preventive suspension; and that following *Aldovino*, the preventive suspension could not be considered as an interruption of the petitioner's term.

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[54] G.R. No. 184836, December 23, 2009, 609 SCRA 234.

[55] *Id.*

We cannot subscribe to the COMELEC's explanation.

Interruption of term entails the involuntary loss of title to office, while interruption of the full continuity of the exercise of the powers of the elective position equates to failure to render service. In this regard, *Aldovino* is instructive, as follows:

> From all the above, we conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office. The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its strint intent are to be faithfully served, *i.e.*, to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption.
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> Thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, as we held in *Montebon*. On the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from exercising the function of his office for a reason provided by law.
>
> **An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost**.[56]

The COMELEC relies on the OMB's Rules to support its view that the execution of the orders of dismissal against the petitioner did not create a permanent, but only a temporary, vacancy.

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[56] *Id*. at 259-260.

A review reveals that the OMB's Rules did not justify the COMELEC's reliance.

The OMB's Rules, promulgated in Administrative Order No. 07, Series of 1990, as amended by Administrative Order No. 17, Series of 2003, stated in Section 7 of its Rule III as follows:

> Section 7. Finality and execution of decision.- Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
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> **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.**
>
> **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented.** The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

Section 10 of Rule III of the OMB's Rules also stated:

> Section 10. Penalties. — (a) For administrative charges under Executive Order No. 292 or such other executive orders, laws or rules under which the respondent is charged, the penalties provided thereat shall be imposed by the Office of the Ombudsman; (b) in administrative proceedings conducted under these Rules, **the Office of the Ombudsman may impose the penalty of** reprimand, suspension without pay for a minimum period of one (1) month up to a maximum period of one (1) year, demotion, **dismissal from the service,** or a fine equivalent to his salary for one (1) month up to one (1) year, or from Five Thousand Pesos (₱5,000.00) to twice the amount malversed,

illegally taken or lost, or both, at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charge.

The penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision.

Based on the foregoing, the OMB's Rules mandated that decisions handed down in administrative cases should be immediately executory despite being timely appealed. Thus, it was clear that what were to be executed were the decisions of the Ombudsman without consideration as to their finality.

That the second paragraph of Section 7 of Rule III of the OMB's Rules, *supra,* characterizes the penalty of suspension or dismissal meanwhile enforced as a preventive suspension should the public officer later win his or her appeal of the OMB's decision is absurd and illogical as to the penalty of dismissal. The characterization also lacks legal and factual support. In his case, the petitioner was twice fully divested of his powers and responsibilities as Governor by the DILG immediately transferring the discharge of the office of Governor and the exercise of the functions and powers thereof to another person, Vice Governor Pimentel. The latter forthwith took his oath of office as Governor and unconditionally assumed and discharged such office. Without doubt, the execution of the OMB's dismissals in that manner resulted in the petitioner's loss of title to the office of Governor.

Neither did the non-finality of the decisions render any less the petitioner's loss of his title to the office. It would be unwarranted to differentiate the dismissals enforced against him from the dismissal based on and pursuant to a decision that was already final. Both dismissals would produce the same effect – the ouster of the official from his title to the office.

Indeed, even the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) imposes this effect of dismissal as the "permanent separation" of the guilty civil servant from

his or her title to the office by explicitly providing in its Section 56(a), *viz.*:

> Section 56. Duration and Effect of Administrative Penalties.— The following rules shall govern the imposition of administrative penalties:
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> a. The penalty of dismissal shall **result in the permanent separation of the respondent from the service,** without prejudice to criminal or civil liability.[57]
>
> x x x x x x x x x

Moreover, it should be pointed out that the decisions directing the dismissal of the petitioner included no indication of the petitioner being thereby placed under any type of suspension. In fact, the decisions did not state any conditions whatsoever. As such, he was dismissed *for all intents and purposes of the law* in the periods that he was dismissed from office even if he had appealed. In that status, he *ceased* to hold the title to the office *in the fullest sense.*

The length of time of the involuntary interruption of the term of office was also immaterial. The Court adopts with approval the following excerpt from the dissent of COMELEC Commissioner Parreño, which dealt with such issue, *viz.*:

> It matters not that the duration of such loss of title to office appears to be brief and short. In fact, in ***Aldovino,*** it was held that the elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur, thus:
>
> > From all the above, we conclude that the interruption of a term exempting an elective official from the three-term limit

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[57] Section 51(a) of the Revised Rules on Administrative Cases in the Civil Service, the predecessor of the 2017 RRACCS, similarly provided:

> Section 51. Duration and effect of administrative penalties. – The following rules shall govern the imposition of administrative penalties:
>
> a. **The penalty of dismissal shall result in the permanent separation of the respondent from the service, without prejudice to criminal or civil liability.**
>
> x x x x x x x x x

rule is one that involves no less than the involuntary loss of title to office; The **elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur**.[58] (Bold and underscoring emphases are part of the original text)

Verily, the COMELEC failed to recognize the true effect of the executed decisions of dismissal because it strained its reading of the OMB's Rules, and ignored the relevant law and jurisprudence in so doing. Thus, it gravely erred.

III.
Petitioner's dismissals resulted in permanent vacancy

The COMELEC opined that the DILG's reliance on Section 44[59] of the LGC in respect of the second OMB case was erroneous because the order of succession therein applied pertained to a permanent vacancy despite the lack of such permanent vacancy in view of the OMB's dismissal of the petitioner being still not final; that Section 46[60] of the LGC, which provided for

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[58] *Supra* note 30, at 73.

[59] Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* — (a) **If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor.** If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein.

x x x x x x x x x

[60] Section 46. *Temporary Vacancy in the Office of the Local Chief Executive.* — (a) **When the governor, city or municipal mayor, or *punong barangay* is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor, city or municipal vice-mayor, or the highest ranking *sangguniang barangay* member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend,**

succession in cases of a temporary vacancy, was applicable to the petitioner's case; and that the DILG corrected itself by now citing Section 46 of the LGC when it implemented the second dismissal decision issued in relation to the third OMB case.

We find that contrary to the opinion of the COMELEC, the DILG did not err in citing Section 44 of the LGC as its legal basis when it implemented the dismissal of the petitioner under the second OMB case.

To start with, the DILG executed against the petitioner two decisions of dismissal handed down in two *different* and *separate* cases. As such, the COMELEC had neither factual nor legal basis to conflate the DILG's actions in the two OMB cases for the reason that its action on the second OMB case could not be prejudiced by its action on the third OMB case.

Secondly, the DILG's opinion on what provision of the LGC properly applied was far from binding or controlling. It was even irrelevant. We ought to observe that the DILG, as the mere implementor of the decisions, had no legal competence to interpret or to render its opinion on the succession ensuing from the dismissals. As the implementing body, the DILG was acting in a ministerial capacity, and, as such, was absolutely bereft of the discretion to determine what provision of the LGC specifically governed. Instead, the DILG was duty-bound to execute the directives of the OMB's decisions *exactly as they were written in the decisions.* Otherwise, the DILG could literally supplant the prerogative of the OMB itself to decide the administrative cases of the petitioner.

Thirdly, inasmuch as Section 46 of the LGC textually applied to succession where the local chief executive was "temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office," the provision was certainly not the proper basis for the COMELEC to characterize as temporary

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or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

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the vacancy in the office of Governor ensuing from the petitioner's dismissal. As earlier explained, the vacancy was not temporary because the petitioner was fully divested of his title to the office of Governor in both instances of his dismissal.

Under Section 44 of the LGC, a permanent vacancy arises whenever an elective local official fills a higher vacant office, or refuses to assume office, or fails to qualify, or dies, or is removed from office, or voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office. In contrast, Section 46 of the LGC enumerates as resulting in a temporary vacancy in the office of the local chief executive leave of absence, travel abroad, and suspension from office. Although Section 46 of the LGC specifically states that the causes of a temporary vacancy are not limited to such circumstances, what is evident is that the enumeration therein share something in common, which is that there is a definite term to be re-assumed. However, the petitioner's dismissals, even if still not final, were not akin to the instances enumerated in Section 46 of the LGC because the loss of his title to the office denied to him the expectancy to re-assume his term.

Lastly, Section 44 of the LGC includes removal from office as one of the instances triggering a permanent vacancy. Such permanent vacancy was precisely the outcome that the OMB directed in its decisions. Consequently, when the petitioner was ousted in the period from November 8, 2016 to December 30, 2016, in the first instance of dismissal, and in the period from March 14, 2018 to September 26, 2018, in the second instance of dismissal, the permanent vacancy in the office of Governor ensued.

IV.
Developments in the appeals did not change the fact that the petitioner was dismissed

The COMELEC considered developments in the petitioner's appeals in holding that the DILG's execution of the decisions did not result into the loss of title to the office. This holding was grounded on two matters, namely: (1) the non-finality of

the decisions under the OMB's Rules; and (2) the fact that the petitioner was able to re-assume his seat as Governor.

The holding of the COMELEC was unjustified because it thereby disregarded the fact that the DILG had fully implemented the decisions of dismissal. The full implementation immediately carried legal repercussions that no developments in relation to the petitioner's appeals could change or undo. Among others, the petitioner effectively lost his title to the office by the DILG's act of directing Pimentel to take his oath of office as Governor, and by the latter then assuming and discharging the office and functions of such office.

The provision of the OMB's Rules allowing the petitioner to re-assume on the basis of the interim being considered as a period of preventive suspension after his appeals resulted in the imposition of lesser penalties did not alter the reality that he had actually been ousted from office. In other words, there was still an interruption of the term of office. As aptly put in *Latasa v. COMELEC*,[61] the interruption, to be considered as interruption of the term, "contemplates a rest period during which the *local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit.*"[62] Conformably with said ruling, the period during which the petitioner was not serving as Governor should be considered as a rest period or break in his service because he had then ceased to exercise power or authority over the people of the province. Indeed, it was Pimentel who then held title to the office and exercised the functions thereof. As such, the petitioner did not fully serve his entire third term even if his re-assumption to office subsequently occurred.

V.
Conclusion

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[61] G.R. No. 154829, December 10, 2003, 417 SCRA 601.

[62] *Id.* at p. 614.

The DILG's execution of the OMB decisions for the petitioner's dismissal clearly constituted loss of the petitioner's title to the office. The dismissals were involuntary interruptions in the petitioner's 2016-2019 term. As such, he cannot be considered to have fully served a third successive term of office.

In fine, the petitioner was not disqualified from seeking the same elective post during the 2019 elections. The COMELEC thus gravely abused its discretion in ordering the cancellation of the petitioner's Certificate of Candidacy for the 2019 elections.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the resolution issued on March 29, 2019 by the Commission on Elections First Division and the resolution issued on May 9, 2019 by the Commission on Elections *En Banc* in SPA No. 18-041 (DC) and SPA No. 18-137 (DC); **DISMISSES** the consolidated petitions in SPA No. 18-041 (DC) and SPA No. 18-137 (DC) for the cancellation of petitioner Edgardo A. Tallado's Certificate of Candidacy for the position of Provincial Governor of Camarines Norte in the 2019 Local Elections; **DECLARES** this decision immediately executory; and **ORDERS** respondents Norberto B. Villamin and Senandro M. Jalgalado to pay the costs of suit.

SO ORDERED.

Peralta, Perlas-Bernabe, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

Jardeleza, J., dissents, see dissenting opinion.

Carpio, Leonen, Caguioa, and *Carandang, JJ.,* join the dissenting opinion of *J. Jardeleza.*

Hernando, J., on official business.

DISSENTING OPINION

JARDELEZA, *J.*:

The Constitution provides that the term of elective local officials, except barangay officials, shall be three years, and

no such official shall serve for more than three consecutive terms.[1] Subsequently, We held in a number of cases that the following requisites must concur for an elective official to be disqualified to run for an elective local office: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms.[2]

This controversy centers on the second requisite. Edgardo A. Tallado (Tallado) was elected to the post of Governor of Camarines Norte for three consecutive national and local elections. On his third term, the Office of the Ombudsman (Ombudsman), in two successive adverse Decisions, dismissed him from the service. These Decisions, being executory even pending appeal pursuant to the Ombudsman's rules of procedure,[3] Tallado was removed from office. He was first removed on November 8, 2016 by virtue of the DILG Order[4] of even date implementing the Ombudsman's April 18, 2016 Decision finding him guilty of grave misconduct and oppression/abuse of authority, and imposing upon him the penalty of dismissal from the service.[5] On December 12, 2016, however, the Court of Appeals (CA) issued a temporary restraining order[6] (TRO) enjoining the implementation of the Ombudsman Decision. Consequently, Tallado reassumed his post.[7] On January 10, 2018, the Ombudsman issued another Decision[8]

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[1] CONSTITUTION, Article X, Sec. 8.

[2] *Abundo, Sr. v. Commission on Elections,* G.R. No. 201716, January 8, 2013, 688 SCRA 149, 167; *Bolos, Jr. v. Commission on Elections,* G.R. No. 184082, March 17, 2009, 581 SCRA 786, 793; and *Latasa v. Commission on Elections,* G.R. No. 154829, December 10, 2003, 417 SCRA 601, 609.

[3] See Sec. 7, Rule III of Administrative Order No. 7, the Rules of Procedure of the Office of the Ombudsman, as amended.

[4] *Rollo,* p. 215.

[5] *Id.* at 232-237.

[6] *Id.*

[7] *Rollo,* p. 58.

[8] *Id.* at 238-245.

finding Tallado administratively liable for grave misconduct and dismissing him from the service. Tallado was removed from his post by virtue of the DILG's March 14, 2018 memorandum,[9] but reinstated on October 29, 2018 pursuant to a DILG Order[10] confirming Tallado's service of six months' suspension imposed by the CA in lieu of dismissal.

Ultimately, the issue brought for the Court's consideration is whether the implementation of the Ombudsman's Decisions dismissing Tallado from the service caused an involuntary interruption in his term that prevented the application of the three-term limit rule. The *ponencia* ruled in the affirmative. However, I disagree. While the Court has not heretofore made a ruling on similar facts, this does not place the case in a gray area. Law and jurisprudence dictate that the case be dismissed.

The Court has adopted the yardstick of strict interpretation in favor of term limitation. Section 8, Article X of the 1987 Constitution provides that the term of office of elective local officials, except barangay officials, shall be three years and no such official shall serve for more than three consecutive terms. The framers of the Constitution deemed it best to define the term of office of elective officials to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.[11] We have held that the wording and circumstances surrounding the provision's formulation impresses upon the Court "the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth."[12] Thus, in a number of

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[9] *Id.* at 246.

[10] *Id.* at 502.

[11] *Latasa v. Commission on Elections,* G.R. No. 154829, December 10, 2003, 417 SCRA 601, 614.

[12] *Aldovino, Jr. v. Commission on Elections,* G.R. No. 184836, December 23, 2009, 609 SCRA 234, 253.

cases, We interpreted the term limit rule in favor of limitation rather than its exception.[13] Consistency, prudence, and a due regard to the Constitutional value espoused by the above provision demand that We view this case through the same measure. This necessitates a ruling that Tallado was merely interrupted in the exercise of his functions but did not lose title to his office involuntarily. His third term was not interrupted, so that he should have been held ineligible to run in the 2019 national and local elections.

Tallado submits that when the Ombudsman's Decisions dismissing him from the service were implemented, he was divested of his title to the office of the Governor. He had to vacate his office twice and was relegated to the status of a private citizen. He was unable to discharge the functions of his office and collect the salaries and benefits that came with the post. He asserts that his eventual reinstatement did not change the fact that he had lost his title to office so that the continuity of his service was involuntarily interrupted.[14]

The *ponencia* agrees, ruling that "[w]ithout doubt, the execution of the OMB's dismissals x x x resulted in the petitioner's loss of title to the office of Governor."[15] Even as it acknowledges the non-finality of the Ombudsman's Decisions dismissing Tallado from office, it held that "he was dismissed *for all intents and purposes of the law* x x x even if he had appealed. In that status, he *ceased* to hold the title to the office

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[13] In *Aldovino, Jr. v. Commission on Elections, supra* at 255-256, We held that *Ong v. Alegre* (G.R. No. 163295, January 23, 2006, 479 SCRA 473) and *Rivera v. COMELEC* (G.R. No. 167591, May 9, 2007, 523 SCRA 41) "are important rulings for purposes of the three-term limitation because of what they directly imply. Although the election requisite was not actually present, the Court still gave full effect to the three-term limitation because of the constitutional intent to strictly limit elective officials to service for three terms. By so ruling, the Court signalled how zealously it guards the three-term limit rule. Effectively, these cases teach us to strictly interpret the term limitation rule in favor of limitation rather than its exception."

[14] *Rollo,* p. 27.

[15] *Ponencia,* p. 13.

in the fullest sense."[16] The *ponencia* goes further to state that when Tallado was dismissed, "the vacancy [created] was not temporary because the petitioner was fully divested of his title to the office of Governor in both instances of dismissal." Instead, "permanent vacancy in the office of Governor ensued."[17] In effect, the *ponencia* compels Us to consider Tallado's dismissals as having existed in a vacuum and discount the law, jurisprudence, and the realities of the situation.

I am unable to subscribe to the majority ruling for the following reasons:

First, Tallado's removal from office was by virtue of non-final but immediately executory Decisions of the Ombudsman. The Ombudsman Rules do not attach permanent effect to dismissals pending appeal.

Section 7, Rule III of Administrative Order No. 07 (A.O. No. 7), as amended, otherwise known as the Rules of Procedure of the Office of the Ombudsman, states that a Decision rendered by the Ombudsman dismissing an elective official from the service in an administrative case is immediately executory but not yet final pending a timely appeal with the Court of Appeals (CA). If respondent wins such appeal, he shall be considered as having been under preventive suspension.[18] In this connection, We have held that in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile. However, he does not vacate and lose title to his office. Loss of office

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[16] *Id.* at 14. Italics in the original.

[17] *Id.* at 16.

[18] Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) as amended, Rule III, Section 7 pertinently provides: Sec. 7. Finality and execution of decision. x x x

x x x x x x x x x

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

x x x x x x x x x

is a consequence that only results upon an eventual finding of guilt or liability.[19]

Here, Tallado timely filed respective petitions for review with the CA to question the Ombudsman's Decisions dismissing him from the service. Hence, he stepped down from his post on two occasions with the consciousness that he can obtain a favorable outcome from his appeals and that his predicament may only be temporary. And temporary it had been indeed, as the CA restrained the implementation of the Ombudsman Decision in the Dela Cruz case and reduced to six months suspension the penalty of dismissal imposed in the second Gonzales case. These rulings enabled Tallado to be reinstated to his gubernatorial post.

To my mind, what is decisive is Tallado's reinstatement to office, which occurred not once, but twice. I am unable to subscribe to the majority opinion because it attributes permanent effect to the dismissals pending appeal, when such permanency is not contemplated by the very Rules that sanction such dismissal. The Ombudsman rules provide a remedy when the non-final but executory dismissal is overturned, *i.e.*, the respondent is considered to have been under preventive suspension for which he shall be paid the salary and other emoluments that he did not receive by reason of his removal. This is a glaring indication that no permanent effect of the dismissal pending appeal is contemplated so that none should attach.

While the Ombudsman's Rules admittedly do not contemplate every situation, the effects of the dismissals in this case should not be construed outside the intention of such Rules. Any interpretation of its provisions should not depart from its spirit. Accordingly, if there is any provision in the Rules by which guidance may be obtained to resolve a situation that was not directly provided for, then the Court must apply the Rules by analogy and not venture into its own interpretation. This is a becoming deference to the Ombudsman who was authorized

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[19] *Aldovino, Jr. v. Commmission on Elections, supra* note 12 at 262.

by the Constitution to promulgate its own rules of procedure,[20] and thus remains the authority in their interpretation. Hence, Tallado should have been considered as preventively suspended under the Ombudsman Rules and not permanently dismissed, since he was eventually restored to his post.

In this regard, I fully agree with the Commission on Elections (COMELEC) *En Banc*'s finding, to wit:

> The undeniable fact that [Tallado] was able to reassume his post as Governor when the Court of Appeals, in OMB-L-A-15-0480, issued the Temporary Restraining Order staying the dismissal order and, in OMB-L-A-16-0360, modified the dismissal order to a penalty of suspension for 6 months, only proves that the vacancies created by the implementation of the dismissal orders were temporary and did not result in the loss of title of [Tallado] to the Office of the Governor. Therefore, there is no valid interruption that would cause a break in the continuity of the service on the part of [Tallado] as would entitle him to be qualified to run again for a fourth (4th) term as Governor of Camarines Norte.[21] (Emphasis omitted.)

Second, there is an inherent incongruity between the *ponencia*'s characterization of the vacancy created in the Governor's office as "permanent" and the absence of permanent incapacity on the part of Tallado to reassume as Governor.

Section 44 of the Local Government Code (LGC) states that "a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to quality, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." On the other hand, Section 46 of the LGC states that there is temporary vacancy when the local elective official is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office.

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[20] See CONSTITUTION, Article XI, Section 13(8).

[21] *Rollo*, pp. 53-54.

It is clear from these definitions that the nature of the vacancy, whether permanent or temporary, *depends* on the cause of the elective official's incapacity to hold office. In other words, the nature of the vacancy is merely a *consequence* of such incapacity. Being merely a consequence, it may not be construed independently of the cause of incapacity. Thus, if an elective official is temporarily unable to hold office for the enumerated or analogous reasons, the vacancy created is merely temporary. On the other hand, permanent incapacity to hold office would lead to a permanent vacancy in that office. The law does not contemplate a situation where a temporary incapacity would lead to a permanent vacancy, and vice versa.

Going back to Section 44 of the LGC, its enumeration of what creates a permanent vacancy in a local elective office is not exhaustive and is qualified by the phrase "or is otherwise permanently incapacitated to discharge the functions of his office." This is the guiding parameter in determining whether a permanent vacancy exists.

In light of the *ponencia*'s ruling that Tallado's dismissal resulted in the permanent vacancy in the Governor's office,[22] the fundamental point of inquiry becomes: *Did Tallado become permanently incapacitated to discharge the functions of his office when non-final but immediately executory dismissal orders of the Ombudsman were implemented?* Again, this proceeds from the premise that a permanent vacancy can only result from a permanent incapacity of the local elective official to hold office.

The question should be answered in the negative, and this is for obvious reasons. *First*, there was no final judgment dismissing Tallado from the service. Anything less than a final judgment of dismissal cannot create a permanent void in the Governor's office. *Second,* by actions rendered by the CA, Tallado was reinstated as Governor. Not much legal calisthenics is required for one to recognize that the vacancy caused by Tallado's dismissals were only temporary. Verily, Tallado was not permanently incapacitated to discharge the functions of

[22] *Ponencia,* p. 15.

his office, and the vacancy created in his absence was not permanent.

To my mind, the first dismissal that was enjoined by the CA should be understood as akin to a preventive suspension under the second paragraph of Section 7, Rule III of A.O. No. 7.[23] While Tallado did not yet win in his appeal, the provision should be applied by analogy since the TRO issued by the CA is obviously a provisional win for Tallado. In *Aldovino v. Comelec*,[24] We held that in all cases of preventive suspension, the suspended official is barred from performing the functions of his office but does not vacate and lose title thereto. By nature, it is a temporary incapacity to render service during an unbroken term and does not result to an involuntary interruption of a term.

The second dismissal that was reduced by the CA to suspension, on the other hand, should all the more be treated as a temporary vacancy since Section 44 of the LGC specified "suspension from office" as a cause for temporary vacancy. Likewise, the enforcement of a suspension as a penalty[25] may prevent an office holder from exercising the functions of his office for a time but does not forfeit his title to office. It is not an effective interruption of a term.

In reality, by treating the suspension imposed by the CA as cause of permanent vacancy in Tallado's office that interrupted his term, the *ponencia* sets a dangerous precedent by placing the suspended official in a better situation than the preventively suspended one. In holding that a suspended official's term had

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[23] The second paragraph of this section reads: "An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal."

[24] *Supra* note 12.

[25] The suspension imposed by the CA in lieu of dismissal in the second Gonzales case was of course not a final verdict, but We consider its effects in the term under consideration.

been involuntarily interrupted, the majority decision in effect rewards administratively sanctioned officials by allowing them to perpetuate themselves in office; while preventively suspended officials, especially those that have not been subsequently found administratively liable, would have suffered a term interruption.

In light of the foregoing, to state that a permanent vacancy in the Governor's office was created when Tallado was dismissed by non-final Ombudsman Decisions is a strained interpretation of the law. His incapacity was only temporary since he was able to reassume the gubernatorial post. Any interpretation of the law that will lead to unjust or absurd results must be rejected.

Third, We cannot ignore the legal presumptions and legal consequences that arise from a declaration of a permanent vacancy in the Governor's office. As mentioned, loss of office is a consequence that only results upon an eventual finding of guilt or liability.[26] For this matter, I am unable to agree with the majority position that the finality or non-finality of the Ombudsman's Decisions would not have made any difference since they would produce the same effect of removal of the incumbent official from office.[27]

It is a final judgment affirming the Ombudsman's dismissal orders that would lead to Tallado's permanent incapacity to wield the functions of his office and create a permanent vacancy in his post. But, as we have seen in this case, the non-final Decisions of the Ombudsman produced a different effect. Tallado momentarily lost his title to office, but was subsequently able to reassume when the CA acted favorably on his appeals. If there had been a final judgment affirming Tallado's dismissal, there would not have been a legal foothold for his re-assumption to office in the same term. Contrary to the *ponencia*'s finding that Tallado's loss of title to office denied him the expectancy to re-assume his term,[28] the fact is that his term remained and he reassumed.

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[26] See *Aldovino v. Comelec, supra* note 12 at 262.

[27] *Ponencia,* p. 13.

[28] *Id.* at 16.

Moreover, a final judgment of dismissal would require Tallado to suffer the accessory penalties attached to the penalty of dismissal. The January 11, 2018 Decision of the Ombudsman, for example, imposed the accessory penalty of perpetual disqualification from holding any public office. Under Article 30 of the Revised Penal Code, this has the effect of depriving the offender of the public office he has held even if conferred by popular election. Thus, as a permanently-discharged official, Tallado should have lost any right to the position and his return to office would have become a legal anomaly. Again, since the Ombudsman's Decisions were not yet final, their implementation produced a different effect.

Additionally, a final judgment removing Tallado from his post would have called for a permanent replacement of the Governor under the rules of succession in the LGC. If a permanent vacancy occurs in the Office of the Governor, the Vice-Governor shall become the governor. The assumption of the successor is permanent. Since the vacancy is permanent, the appointment of the successor authorized by law to fill the vacancy has to be permanent.[29] Consequently, the Vice Governor should serve as Governor until the end of the term that the Governor should have served. In this case, however, when the Ombudsman's Decisions dismissing Tallado from office were implemented, Vice Governor Pimentel assumed as Governor; but when Tallado was reinstated Pimentel also returned to his old post. This situation betrays the existence of a temporary, not permanent, vacancy in the Governor's office and arose only because there was no final judgment on Tallado's dismissal.

As seen from the foregoing circumstances, the finality or non-finality of the Ombudsman's Decisions is not inconsequential, but rather crucial. From it springs all legal consequences. In declaring that "[t]he full implementation [of the decisions of dismissal] immediately carried legal repercussions that no developments in relation to the petitioner's appeals could change

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[29] *Guekeko v. Santos,* G.R. No. L-128, March 2, 1946.

or undo,"[30] the *ponencia* focused on Tallado's momentary loss of title to office, without more. This is akin to taking a snapshot—which does not reflect the entire reality. To be sure, by any angle, the non-finality of the Ombudsman's Decisions brought about temporary results in terms of Tallado's inability to function as Governor. Intuitively, there could not have been two permanent vacancies in the Governor's Office in a single term as a result of the supposed permanent incapacity of the same Governor to exercise his duties. If the initial vacancy had been permanent, then the succeeding one should not have arisen. It is the *ponencia*'s own perspective that appears to produce dire legal repercussions.

Overall, the majority decision rewards recidivists and wrongdoers in public service. The facts have amply demonstrated Tallado's propensity to commit infractions during his incumbency as Governor. Yet, by the majority decision which declared an involuntarily interruption in his supposed third and last term as Governor, he now enjoys the present fresh three-year term that paves the way to two more terms and a possible 18 years in public office. Accordingly, even on equitable grounds, the petition should have been dismissed. Equity does not favor, nor may it be used to reward a wrongdoer.[31] The Court should not have allowed Tallado to benefit from his own fault.

In sum, the facts of the case sufficiently establish that the second requisite for disqualification to run for an elective local office—that Tallado fully served three consecutive terms as Governor of Camarines Norte—was satisfied. What transpired in this case was not an involuntary interruption of Tallado's term, but merely an interruption of the continuity of the exercise of his powers as Governor. A contrary ruling would run roughshod Section 8, Article X of the Constitution and its strict

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[30] *Ponencia,* p. 17.

[31] *Tirazona v. Philippine EDS Techno-Service Inc. (PET, Inc.),* G.R. No. 169712, January 20, 2009, 576 SCRA 625, 633.

intent to limit an elective official's continuous stay in office to no more than three consecutive terms. Considering that Tallado is disqualified from running for a fourth term in the 2019 elections, the COMELEC committed no grave abuse of discretion in cancelling his Certificate of Candidacy.

I vote to **DENY** the petition.

FIRST DIVISION

[G.R. No. 199469. September 11, 2019]

GERTRUDES D. MEJILA, *petitioner, vs.* **WRIGLEY PHILIPPINES, INC., JESSELYN P. PANIS, *ET AL.*,** *respondents*.

[G.R. No. 199505. September 11, 2019]

WRIGLEY PHILIPPINES, INC., *petitioner, vs.* **GERTRUDES D. MEJILA,** *respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; EXISTS WHEN THE SERVICES OF AN EMPLOYEE ARE IN EXCESS OF WHAT IS REASONABLY DEMANDED BY THE ACTUAL REQUIREMENTS OF THE ENTERPRISE, AND THE DETERMINATION THAT THE EMPLOYEE'S SERVICES ARE NO LONGER NECESSARY IS AN EXERCISE OF THE EMPLOYER'S BUSINESS JUDGMENT.— The Labor Code recognizes redundancy as an authorized cause for the termination of employment x x x [, pursuant to] Article 298

(formerly Article 283) x x x. Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. x x x The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the labor tribunals and the courts, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. Of course, a company cannot simply declare redundancy without basis. It is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof that such is the actual situation to justify the dismissal of the affected employees for redundancy. We have considered evidence such as the new staffing pattern, feasibility studies, proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring, among others, as adequate to substantiate a claim for redundancy.

2. ID.; ID.; ID.; ID.; ID.; THE COMPANY BEARS THE BURDEN OF PROVING THAT THE DISMISSAL OF THE EMPLOYEE ON THE GROUND OF REDUNDANCY IS JUSTIFIED, BUT THE ONUS OF ESTABLISHING THAT THE COMPANY ACTED IN BAD FAITH LIES WITH THE EMPLOYEE MAKING SUCH ALLEGATION.— Mejila failed to prove her accusation that WPI acted with ill motive in implementing the redundancy program. The pieces of evidence presented by Mejila to support her allegation were mainly hearsay and speculative at best. On the contrary, WPI's prior actions showed that it was implementing its Headcount Optimization Program without singling out Mejila. Prior to her termination, WPI had released at least 10 other employees as part of the program. It must be emphasized that while the company bears the burden of proving that the dismissal of employees on the ground of redundancy is justified, the onus of establishing that the company acted in bad faith lies with the employee making such allegation. This follows the basic precept that bad faith can never be presumed; it must be proved by clear and convincing evidence.

3. ID.; ID.; ID.; ID.; ID.; THE POLICY OF NON-INTERFERENCE WITH THE EMPLOYER'S EXERCISE OF BUSINESS JUDGMENT IS APPLIED WHEN THE EMPLOYEE FAILS TO DISCHARGE HER BURDEN THAT THE MANAGEMENT ACTED IN A MALICIOUS OR ARBITRARY MANNER.— Management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. It has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. Contracting out of services is an exercise of business judgment or management prerogative. Mejila's failure to discharge her burden of proving that WPI's management acted in a malicious or arbitrary manner constrains Us to apply the policy of non-interference with the employer's exercise of business judgment.

4. ID.; ID.; ID.; ID.; ID.; WRITTEN NOTICE REQUIREMENT; MUST BE STRICTLY OBSERVED TO GIVE LIFE TO THE CONSTITUTIONAL PROTECTION AFFORDED TO LABOR, SINCE THE DISMISSAL IS INITIATED BY THE EMPLOYER'S EXERCISE OF ITS MANAGEMENT PREROGATIVE.— In implementing a redundancy program, Article 298 requires employers to serve a written notice to both the affected employees and the DOLE at least one month prior to the intended date of termination. Under Book V, Rule XXIII, Section 2 of the Implementing Rules and Regulations of the Labor Code, this procedural requirement is "deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination." x x x Where termination is based on authorized causes under Article 298, substantial compliance is not enough. Since the dismissal is initiated by the employer's exercise of its management prerogative, strict observance of the proper procedure is required in order to give life to the constitutional protection afforded to labor. The language of the Implementing Rules and Regulations of the Labor Code is clear and does not require any interpretation. It provides that written notice must be served upon "the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination." In this regard, the Regional Director of DOLE Regional Office IV-A, Atty. Ricardo S.

Martinez, Sr., certified that the office did not receive a copy of WPI's termination notice.

5. ID.; ID.; ID.; ID.; GARDEN LEAVE; HAS BEEN COMMONLY USED IN RELATION TO THE 30-DAY NOTICE PERIOD FOR AUTHORIZED CAUSES OF TERMINATION AND IT REFERS TO THE PRACTICE OF THE EMPLOYER DIRECTING AN EMPLOYEE NOT TO ATTEND WORK DURING THE PERIOD OF NOTICE OF RESIGNATION OR TERMINATION OF THE EMPLOYMENT.— The practice of the employer directing an employee not to attend work during the period of notice of resignation or termination of the employment is colloquially known as "'garden leave" or "gardening leave." The employee might be given no work or limited duties, or be required to be available during the notice period to, for example, assist with the completion of work or ensure the smooth transition of work to their successor. Otherwise, the employee is given no work and is directed to have no contact with clients or continuing employees. During the period of garden leave, employees continue to be paid their salary and any other contractual benefits as if they were rendering their services to the employer. x x x In the Philippines, garden leave has been more commonly used in relation to the 30-day notice period for authorized causes of termination. There is no prohibition under our labor laws against a garden leave clause in an employment contract.

6. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS; FAILURE OF THE EMPLOYER TO COMPLY THEREWITH ENTITLES THE DISMISSED EMPLOYEE TO NOMINAL DAMAGES.— An employer's failure to comply with the procedural requirements under the Labor Code entitles the dismissed employee to nominal damages. If the dismissal is based on an authorized cause under Article 298 but the employer failed to comply with the notice requirement, the sanction is stiffer compared to termination based on Article 297 because the dismissal was initiated by the employer's exercise of its management prerogative. After finding that both notices to Mejila and the DOLE were defective, We accordingly hold that WPI is liable to pay nominal damages in the sum of ₱50,000.00.

7. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES;

ORDINARY AND EXTRAORDINARY CONCEPTS, DISTINGUISHED.— There are two commonly accepted concepts of attorney's fees: the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith. Article 111 of the Labor Code is another example of the extraordinary concept of attorney's fees. The provision allows the recovery of attorney's fees in cases of unlawful withholding of wages equivalent to the amount of wages to be recovered. Unlike in Article 2208 of the Civil Code, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. But there must still be an express finding of facts and law to prove the merit of the award.

APPEARANCES OF COUNSEL

Bernardino P. Salvador, Jr. for Gertrudes D. Mejila.

Angara Abello Concepcion Regala & Cruz for Wrigley Phils., Inc., Jesselyn P. Panis, *et al.*

D E C I S I O N

JARDELEZA, *J.*:

These consolidated petitions challenge the Decision[1] dated July 12, 2011 and Resolution[2] dated November 21, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 116203. The CA found that Wrigley Philippines, Inc. (WPI) validly dismissed Gertrudes D. Mejila (Mejila) on the ground of redundancy but failed to observe procedural due process, which warranted the award of nominal damages and attorney's fees in favor of Mejila. In G.R. No. 199469, Mejila assails the CA's finding that there was authorized cause for her dismissal. In G.R. No. 199505, WPI questions the finding that it failed to comply with due process requirements.

WPI is a corporation engaged in the manufacturing and marketing of chewing gum. It engaged the services of Mejila, a registered nurse, as an occupational health practitioner for its Antipolo manufacturing facility sometime in April 2002. Her employment status was initially on a contractual basis until she was regularized effective January 1, 2007.[3]

On October 26, 2007, WPI sent a memorandum to Mejila informing her that her position has been abolished as a result of the company's manpower rationalization program and that her employment will be terminated effective November 26, 2007. The memorandum stated that Mejila is no longer required to work beginning the same day, October 26, although her salary will be paid until November 26. It also required Mejila to turn over all company properties no later than October 26. WPI granted her separation pay at the rate of 1.5 months every year of service, cash conversion of unused leaves, one-year extension

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[1] *Rollo* (G.R. No. 199469), pp. 90-106, penned by Associate Justice Isaias Dicdican, with the concurrence of Associate Justices Stephen C. Cruz and Edwin D. Sorongon.

[2] *Id.* at 108-111.

[3] *Rollo* (G.R. No. 199505), p. 489.

of medical insurance, and *pro rata* 13th month pay, New Year pay, and mid-year pay, which shall be released upon return of all properties and completion of the exit clearance process.[4] On the same date, WPI notified the Department of Labor and Employment's (DOLE) Rizal Field Office of its decision to terminate Mejila and two others due to redundancy.[5]

In the meantime, WPI engaged the services of Activeone Health, Inc. to take over the services previously handled by the occupational health practitioners starting November 1, 2007.[6] The abolition of WPI's in-house clinic services and decision to hire an independent contractor for clinic operations was part of the management's Headcount Optimization Program designed to improve cost efficiency, considering that clinic management is not an integral part of WPI's business.[7] Like Mejila, Dr. Marilou L. Fonollera and nurse Soccoro Laarni B. Edurise were also terminated due to redundancy.[8]

Mejila filed a complaint for illegal dismissal against WPI and its officers, Jesselyn Panis, and Michael Panlaqui, who are WPI's Factory Director and People Learning and Development Manager, respectively. The Labor Arbiter[9] ruled that Mejila was illegally dismissed and held that WPI failed to comply with the procedural due process requirements, particularly when it sent the notice to DOLE's Rizal Field Office, instead of the Regional Office. In addition, the Labor Arbiter found that the outsourcing of clinic operations is more expensive for WPI, which belies its intention to economize. Accordingly, WPI was ordered to reinstate Mejila and to pay her full backwages, moral damages, exemplary damages, and attorney's fees.[10]

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[4] *Id.* at 152.

[5] *Id.* at 154.

[6] *Id.* at 156.

[7] *Id.* at 146.

[8] *Rollo* (G.R. No. 199469), pp. 93, 131.

[9] *Id.* at 154: Labor Arbiter Edgar B. Bisana.

[10] *Id.* at 127-154.

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter. It held that as early as February 2007, WPI management had already deliberated on the feasibility of a Headcount Optimization Program for the purpose of streamlining the organization and increasing productivity. Contrary to the Labor Arbiter's pronouncement, the NLRC found that the outsourcing of clinic operations actually resulted in an overall cost savings of ₱500,000.00 for WPI. The NLRC noted that while the monthly basic income of the outsourced nurses are higher, the gross annual income of the displaced in-house nurses such as Mejila was actually higher because of additional monetary benefits granted by WPI on top of the monthly salary. With respect to the due process issue, the NLRC held that notice to the Rizal Provincial Office is sufficient compliance since it is a satellite office of the Regional Office.[11]

Mejila elevated the case to the CA on *certiorari*. The CA affirmed the NLRC's finding that Mejila was not illegally dismissed. It ruled that "WPI presented evidence as to the increased productivity and cost efficiency brought about by the Headcount Optimization Program" and that "the outsourcing of the clinic operations to Activeone Health Inc. enabled WPI to focus more on its core business of gum manufacturing."[12] However, the CA held that WPI failed to properly serve the notice of termination to the DOLE Regional Office as required by the Implementing Rules and Regulations of the Labor Code. This is supported by the certification of the Regional Director himself that his office did not receive any notice from WPI. Thus, the CA awarded nominal damages to Mejila, as well as attorney's fees pursuant to Article 111 of the Labor Code.[13]

After the CA denied their partial motions for reconsideration,[14] both parties filed their respective petitions for review challenging the CA ruling insofar as it was unfavorable to them.

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[11] *Id.* at 113-124.

[12] *Id.* at 101-102.

[13] *Id.* at 104-105.

[14] *Id.* at 108-111; penned by Associate Justice Isaias Dicdican, with the concurrence of Associate Justices Stephen C. Cruz and Edwin D. Sorongon.

I

The Labor Code recognizes redundancy as an authorized cause for the termination of employment. Article 298 (formerly Article 283)[15] provides:

> Art. 298. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. In the seminal case of *Wiltshire File Co., Inc. v. NLRC*,[16] the Court, speaking through Justice Feliciano, held that:

> [R]edundancy in an employer's personnel force necessarily or even ordinarily refers to duplication of work. That no other person was holding the same position that private respondent held prior to the termination of his services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. We believe that redundancy,

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[15] Department Advisory No. 1 s. 2015, "Renumbering of the Labor Code of the Philippines, as Amended."

[16] G.R. No. 82249, February 7, 1991, 193 SCRA 665.

for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[17]

The determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer. The wisdom or soundness of this judgment is not subject to discretionary review of the labor tribunals and the courts, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act.[18]

Of course, a company cannot simply declare redundancy without basis. It is not enough for a company to merely declare that it has become overmanned. It must produce adequate proof that such is the actual situation to justify the dismissal of the affected employees for redundancy. We have considered evidence such as the new staffing pattern, feasibility studies, proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring, among others, as adequate to substantiate a claim for redundancy.[19]

In the present case, We agree with the CA and the NLRC that WPI substantially proved that its Headcount Optimization Program was a fair exercise of business judgment. The decision to outsource clinic operations can hardly be considered as whimsical or arbitrary. As both the CA and the NLRC found,

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[17] *Id.* at 672.

[18] *Asufrin, Jr. v. San Miguel Corporation*, G.R. No. 156658, March 10, 2004, 425 SCRA 270, 274.

[19] *Panlilio v. National Labor Relations Commission*, G.R. No. 117459, October 17, 1997, 281 SCRA 53, 56.

WPI had deliberated on the feasibility of the Headcount Optimization Program as early as February 2007 for the purpose of streamlining the organization and increasing productivity. WPI's rationale for outsourcing its clinic operations is reasonable—it wanted to focus on the core business of gum manufacturing, and clinic operations is not an integral part of it. WPI's business projections showed a correlation between an increase in volume and a decrease in headcount,[20] and its computation of cost savings amounting to ₱522,713.79 as a result of the engagement of Activeone has not been adequately rebutted. Mejila's proposed computation takes into account only the basic monthly salary of the clinic personnel.[21] But, as the CA and the NLRC noted,[22] the average monthly salary of Mejila and her co-nurses is higher than the service fees paid to Activeone when the added benefits of 13th to 15th month pay, holiday pay, cash gift, factory incentives, leave conversions, and allowances are taken into account.[23]

On the other hand, Mejila failed to prove her accusation that WPI acted with ill motive in implementing the redundancy program. The pieces of evidence presented by Mejila to support her allegation were mainly hearsay and speculative at best.[24] On the contrary, WPI's prior actions showed that it was implementing its Headcount Optimization Program without singling out Mejila. Prior to her termination, WPI had released at least 10 other employees as part of the program.[25] It must be emphasized that while the company bears the burden of proving that the dismissal of employees on the ground of redundancy is justified, the onus of establishing that the company acted in bad faith lies with the employee making such allegation. This

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[20] *Rollo* (G.R. No. 199505), p. 155.

[21] *Rollo* (G.R. No. 199469), pp. 40-42.

[22] *Id.* at 101, 120.

[23] *Id.* at 187-188.

[24] *Id.* at 28-29; see petitioner's allegations.

[25] *Rollo* (G.R. No. 199505), pp. 379-385.

follows the basic precept that bad faith can never be presumed; it must be proved by clear and convincing evidence.[26]

Management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation. It has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies. Contracting out of services is an exercise of business judgment or management prerogative.[27] Mejila's failure to discharge her burden of proving that WPI's management acted in a malicious or arbitrary manner constrains Us to apply the policy of non-interference with the employer's exercise of business judgment.

II

In implementing a redundancy program, Article 298 requires employers to serve a written notice to both the affected employees and the DOLE at least one month prior to the intended date of termination. Under Book V, Rule XXIII, Section 2 of the Implementing Rules and Regulations of the Labor Code,[28] this procedural requirement is "deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination."

A

The CA initially held that the termination notice served upon Mejila was not valid because it effectively "caused the immediate severance from work of [Mejila] as it required that the latter need not report for work unless notified that her services are needed until November 26, 2007."[29] In resolving WPI's partial motion for reconsideration, however, the CA upheld WPI's assertion that the notice did not immediately cause Mejila's

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[26] *Padillo v. Rural Bank of Nabunturan, Inc.*, G.R. No. 199338, January 21, 2013, 689 SCRA 53, 67.

[27] *Manila Electric Company v. Quisumbing*, G.R. No. 127598, February 22, 2000, 326 SCRA 172, 185.

[28] DOLE Order No. 40-03, February 17, 2003.

[29] *Rollo* (G.R. No. 199469), p. 102.

severance from work, although it denied reconsideration for want of valid notice to DOLE.[30] We find that the CA acted correctly.

The practice of the employer directing an employee not to attend work during the period of notice of resignation or termination of the employment is colloquially known as "garden leave" or "gardening leave." The employee might be given no work or limited duties, or be required to be available during the notice period to, for example, assist with the completion of work or ensure the smooth transition of work to their successor. Otherwise, the employee is given no work and is directed to have no contact with clients or continuing employees. During the period of garden leave, employees continue to be paid their salary and any other contractual benefits as if they were rendering their services to the employer.[31]

In the United Kingdom (UK), where the practice originated, the garden leave clause has been used as an alternative to post-employment non-competition covenants. The employee remains employed for the period of the leave but is expected to do no work; he could, then, "stay home and tend the garden."[32] The provision is typically in place to prevent departing employees from having access to confidential and commercially sensitive information, business contacts, and intellectual property, which can be used by a new employer. Since the employee remains an "employee," he remains bound by a duty of loyalty and, thus, cannot go to work for a competitor or do anything else to harm the employer. This arrangement provides employers with the protection they need, is fair to employees, and has been generally accepted and enforced by the UK courts.[33] The practice

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[30] *Id.* at 109.

[31] Amanda Coulthard, *Recent Cases: Garden Leave, The Right to Work and Restraints on Trade*, (2009) AJLL LEXIS 19.

[32] Charles A. Sullivan, *Tending the Garden, Restricting Competition via "Garden Leave,"* 37 Berkeley J. Emp. & Lab. L. 293 (2016).

[33] Greg T. Lembrich, *Garden Leave: A Possible Solution to the Uncertain Enforceability of Restrictive Employment Covenants*, 102 Colum. L. Rev. 2291.

has been adopted by employers in the United States, and their courts have generally upheld garden leave clauses.[34]

In the Philippines, garden leave has been more commonly used in relation to the 30-day notice period for authorized causes of termination.[35] There is no prohibition under our labor laws against a garden leave clause in an employment contract.

B

WPI concedes that the Implementing Rules and Regulations of the Labor Code textually require that the notice of termination should be submitted to the appropriate DOLE Regional Office. However, it argues that many functions of the regional offices have been devolved to the provincial, field and/or satellite offices. Thus, it posits that it "substantially complied with the requirement that the DOLE should be notified thirty (30) days prior to the effective date of the employee's separation" when it gave notice to the DOLE Rizal Field Office.[36]

Where termination is based on authorized causes under Article 298, substantial compliance is not enough. Since the dismissal is initiated by the employer's exercise of its management prerogative, strict observance of the proper procedure is required in order to give life to the constitutional protection afforded to labor.[37] The language of the Implementing Rules and Regulations of the Labor Code is clear and does not require any interpretation. It provides that written notice must be served upon "the

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[34] *Maltby v. Harlow Meyer Savage Inc.*, 633 N.Y.S. 2d 926 (1995); *Lumex, Inc. v. Highsmith and Life Fitness*, 919 F. Supp. 624 (1996); *Natsource LLC v. Paribello*, 151 F. Supp. 2d 465 (2001); *Estee Lauder Co., Inc. v. Batra*, 430 F. Supp. 2d 158 (2006).

[35] *Rollo* (G.R. No. 199469), p. 121.

[36] *Rollo* (G.R. No. 199505), pp. 14-20.

[37] *Andrada v. National Labor Relations Commission*, G.R. No. 173231, December 28, 2007, 541 SCRA 538, 557; see also *Wah Yuen Restaurant v. Jayona*, G.R. No. 159448, December 16, 2005, 478 SCRA 315; *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302.

appropriate Regional Office of the Department at least thirty days before the effectivity of the termination."[38] In this regard, the Regional Director of DOLE Regional Office IV-A, Atty. Ricardo S. Martinez, Sr., certified that the office did not receive a copy of WPI's termination notice.[39]

WPI has not pointed to any issuance by the DOLE authorizing the service of the termination notice to the field offices. It appears that WPI merely assumed that this is allowed because certain functions have been devolved to these satellite offices. However, this assumption is unwarranted in the absence of any clear devolution of the authority to receive the notice of termination. The only thing WPI can palpably point to is the Establishment Termination Report (RKS Form 5)[40] which has a blank section at the header allowing employers to fill in the appropriate regional office, district, office or provincial extension unit. The argument, apart from being tenuous, is contradicted by the form itself because it states that it must be accomplished "upon filing of notice of termination."[41] The form, therefore, is not the equivalent or substitute for the notice required by law. Thus, regardless of whether DOLE allows the form to be filed with its field offices, it does not change the rule that the notice must be filed with the regional office.

C

An employer's failure to comply with the procedural requirements under the Labor Code entitles the dismissed employee to nominal damages. If the dismissal is based on an authorized cause under Article 298 but the employer failed to comply with the notice requirement, the sanction is stiffer compared to termination based on Article 297 because the dismissal was initiated by the employer's exercise of its

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[38] Implementing Rules of the Labor Code, Book V, Rule XXIII, Sec. 2.

[39] *Rollo* (G.R. No. 199505), p. 538.

[40] *Id.* at 781.

[41] *Id.*

management prerogative.[42] After finding that both notices to Mejila and the DOLE were defective, We accordingly hold that WPI is liable to pay nominal damages in the sum of ₱50,000.00.[43]

III

WPI finally insists that there is no basis to grant attorney's fees in the absence of proof of bad faith on its part. On this score, We agree with WPI.

There are two commonly accepted concepts of attorney's fees: the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code, specifically in its paragraph 7 on actions for recovery of wages, and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.[44] The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith.[45]

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[42] *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, March 28, 2005, 454 SCRA 119, 125-126.

[43] *Nippon Housing Phil., Inc. v. Leynes*, G.R. No. 177816, August 3, 2011, 655 SCRA 77, 90.

[44] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, G.R. No. 174179, November 16, 2011, 660 SCRA 263, 273-274.

[45] *Philippine National Construction Corporation v. APAC Marketing Corporation*, G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449.

Article 111 of the Labor Code is another example of the extraordinary concept of attorney's fees. The provision allows the recovery of attorney's fees in cases of unlawful withholding of wages equivalent to the amount of wages to be recovered. Unlike in Article 2208 of the Civil Code, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. But there must still be an express finding of facts and law to prove the merit of the award.[46]

The CA found that there was no sufficient proof of bad faith on the part of WPI, which rules out an award under Article 2208 of the Civil Code. However, the CA erred in awarding the attorney's fees based on Article 111 of the Labor Code. The provision only applies when there is unlawful withholding of wages. This scenario is non-existent in the present case because WPI did not withhold Mejila's wages. On the contrary, WPI has, from the onset, offered to pay Mejila's salaries, separation pay and other payments.[47] It was Mejila who refused to accept the payment out of the mistaken view that it is conditioned upon the execution of a quitclaim. However, there is nothing in the records which support Mejila's position—the termination notice itself states that the execution of a quitclaim would be *after* Mejila receives the amounts owed by WPI.[48] Accordingly, the award of attorney's fees is improper and should be deleted.

WHEREFORE, the petitions are **DENIED**. The Decision dated July 12, 2011 and Resolution dated November 21, 2011 of the Court of Appeals in CA-G.R. SP No. 116203 are hereby **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees is **DELETED**.

SO ORDERED.

Bersamin (Chairperson), Perlas-Bernabe (Working Chairperson), Gesmundo, and *Carandang, JJ.*, concur.

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[46] *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 527, 601.

[47] *Rollo* (G.R. No. 199505), p. 152.

[47] *Id.*

[48] *Id.*

FIRST DIVISION

[G.R. No. 201396. September 11, 2019]

YUSHI KONDO, *petitioner, vs.* **TOYOTA BOSHOKU (PHILS.) CORPORATION, MAMORU MATSUNAGA, KAZUKI MIURA, and JOSELITO LEDESMA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDUR E; RULE 45 PETITION *VIS-A-VIS* RULE 65 PETITION, EXPLAINED AND DISTINGUISHED.— To emphasize, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review under Rule 45 of the Rules of Court. Through this remedy, the Court reviews *errors of judgment* allegedly committed by the CA. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action restricted to resolving *errors of jurisdiction* and grave abuse of discretion, not errors of judgment. Jurisprudence instructs that where a Rule 65 petition alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. An error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*. The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court—on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Errors of judgment and errors of jurisdiction as grounds in availing the appropriate remedy are mutually exclusive.

2. ID.; ID.; ID.; IN A RULE 45 PETITION FOR REVIEW OF THE COURT OF APPEALS' (CA) DECISION IN A LABOR

CASE RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), THE COURT IS TASKED TO DETERMINE WHETHER THE CA CORRECTLY FOUND THAT THE NLRC ACTED OR DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN RENDERING ITS DECISION; CONFLICTING FACTUAL FINDINGS OF THE LABOR TRIBUNALS ARE NOT BINDING ON THE COURT.— Decisions of the NLRC are reviewable by the CA through Rule 65 of the Rules of Court. The CA is tasked in the proceeding to ascertain if the NLRC decision merits a reversal exclusively on the basis of the presence of grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, when a CA decision is brought before the Court through a petition for review on *certiorari* under Rule 45, the question of law that must be tackled is whether the CA correctly found that the NLRC acted or did not act with grave abuse of discretion in rendering its challenged decision. The Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, nor substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible. However, if the factual findings of the LA and the NLRC are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings. Under this situation, such conflicting factual findings are not binding on the Court, and We retain the authority to pass on the evidence presented and draw conclusions therefrom.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, INSTANCES OF; IT IS ESSENTIAL THAT THERE IS LACK OF VOLUNTARINESS IN THE EMPLOYEE'S SEPARATION FROM EMPLOYMENT.— Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. It also exists when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. What is essential is that there is a lack of "voluntariness in the employee's separation from employment."

4. ID.; ID.; DIMINUTION OF BENEFITS; REQUISITES THAT MUST BE PRESENT, ENUMERATED AND EXPLAINED.— The Court has held that there is diminution of benefits when the following are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer. Under the first requisite, the benefit must be based on express policy, a written contract or has ripened into a practice. x x x To be considered as a regular company practice, it must be shown by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. There must be an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring the grant thereof. In sum, the benefit must be characterized by regularity and voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time. The burden of proving that the benefit has ripened into practice rests in the employee.

5. ID.; ID.; ID.; ID.; WHERE THE EMPLOYEE FAILED TO PROVE THAT THE GRANT OF SERVICE CAR AND LOCAL DRIVER AS WELL AS THE CALTEX CARD FOR FREE GASOLINE WAS BASED ON EXPRESS POLICY OR WRITTEN CONTRACT OR CONSIDERED AS COMPANY PRACTICE, PETITIONER CANNOT DEMAND CONTINUED USE OF SUCH BENEFITS.— [T]he grant of service car and local driver to petitioner was based neither on express policy or a written contract. It may also not be considered company practice. x x x In this case, petitioner failed to prove that the car and driver benefits were also being enjoyed by other employees who held positions equivalent to his position, or that the benefits were given by the company itself with voluntary and deliberate intent. On the contrary, the record shows that these benefits were granted by Toyota's former President specifically to petitioner at the time he was hired, in a verbal agreement. As such, the grant of the benefits may be viewed more as an accommodation given to petitioner by virtue of him being a fellow Japanese working

in a foreign, and presumably unfamiliar, land. Petitioner cannot demand a right to the service car and driver indefinitely, especially under new administration, when the benefit ostensibly sprung only from the magnanimity of his former superior rather than actual company practice. As regards the Caltex card, Toyota consistently argued that the free gasoline that may be availed with it is provided only to Japanese expatriates, and not to local hires like petitioner. The latter was able to enjoy the benefit as it came with the car assigned to him. On this point, there is likewise no showing that petitioner's entitlement to the Caltex card is based on an express policy, a written contract, or company practice. Considering that petitioner did not sign an employment contract, he can only anchor his claim on company practice. However, he also failed to prove that the card was being enjoyed by other employees or officials similarly situated as him, as would indicate Toyota's intention to give the benefit consistently and deliberately. Hence, petitioner cannot demand continued use of the card.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, NOT ESTABLISHED IN CASE AT BAR.— [P]etitioner did not raise any objections to his transfer prior to the filing of the complaint, nor did he amply demonstrate why he was unsuited for the new job. x x x Petitioner did not allege and prove specific facts that would indicate his inability to function fully in the new department as a result of his lack of expertise, or that his transfer constituted clear discrimination or harassment. He also did not address Toyota's assertion that his new function required him merely to oversee the department and carry out management policies, rather than participate in production and technical development. Indeed, the mere fact of petitioner's transfer to the new department does not support his claim of constructive dismissal.

7. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; ABANDONMENT, NOT A CASE OF; PETITIONER'S VIGOROUS PURSUIT OF THIS CASE SHOWS HIS INTENT TO RESUME WORK WITH RESPONDENT COMPANY.— [T]he Court does not agree that petitioner abandoned his job. For abandonment to exist, two requisites must concur: a) the employee failed to report for work or was absent without valid or justifiable reason; and b) there was a clear intention to sever the employer-employee relationship

manifested by some overt acts. The CA upheld the NLRC's finding that petitioner's refusal to report for work despite receiving notices from Toyota is tantamount to abandonment. In the first place, the NLRC should not have considered abandonment as an issue since Toyota never raised it before the LA. Well-settled is the rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal, because of basic considerations of due process. Moreover, petitioner's prayer for reinstatement negates the existence of a clear intention to sever the employment relationship. He may have been mistaken in assuming that he was dismissed, but his vigorous pursuit of this case shows his intent to resume work with Toyota.

8. ID.; ID.; ID.; WHERE IT WAS NOT SHOWN THAT PETITIONER WAS CONSTRUCTIVELY DISMISSED, MUCH LESS THAT RESPONDENT ACTED IN BAD FAITH, PETITIONER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.— [P]etitioner is not entitled to moral and exemplary damages and attorney's fees. Moral damages may be awarded to an employee if his dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and that social humiliation, wounded feelings, grave anxiety and the like resulted therefrom. Exemplary damages, on the other hand, are awarded when dismissal of the employee was done in a wanton, oppressive or malevolent manner. As for attorney's fees, it is granted in actions for recovery of wages where an employee was forced to litigate and thus incur expenses to protect his rights and interests. Here, it was not established that petitioner was constructively dismissed, much less that respondents acted in bad faith or in an oppressive or malevolent manner. There is also no showing that he was not paid his wages. Consequently, he cannot rightfully claim moral and exemplary damages and attorney's fees.

APPEARANCES OF COUNSEL

Jose P. Calinao for petitioner.
Tan Venturanza Valdez for respondents.

D E C I S I O N

JARDELEZA, *J.*:

In this case, We reiterate that the employee bears the burden to prove by substantial evidence the fact of his dismissal from employment. Absent any showing of an overt or positive act proving that the employer had dismissed the employee, the latter's claim of illegal dismissal cannot be sustained as it would be self-serving, conjectural, and of no probative value.[1]

Yushi Kondo (petitioner), a Japanese citizen, applied with and was hired by respondent Toyota Boshoku Philippines Corporation (Toyota) on September 26, 2007 as Assistant General Manager for Marketing, Procurement and Accounting. His net monthly salary was ₱90,000.00, to be increased to ₱100,000.00 after six months.[2] He was assured of other benefits such as 13th month bonus, financial assistance to be given before Christmas, and 15 days each of sick leave and vacation leave per year. Petitioner was also provided a service car and a local driver by Toyota's President at the time, Fuhimiko Ito (Ito).[3] Toyota caused the issuance of petitioner's Alien Employment Permit (AEP).[4]

As Assistant General Manager, petitioner implemented policy and procedural changes in his department, which have been approved by Ito.[5] After working for three months, petitioner was subjected to a performance evaluation, the result of which was "perfect." Two months later, he was again subjected to another performance evaluation. This time, his performance rating was only slightly above average. Petitioner protested the result of this evaluation, reasoning that it was impossible

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[1] *Cosue v. Ferritz Integrated Development Corporation*, G.R. No. 230664, July 24, 2017, 831 SCRA 605, 616.

[2] *Rollo*, p. 84.

[3] *Id.* at 84-85.

[4] *Id.* at 85.

[5] *Id.* at 109.

to get that rating after only two months from the initial evaluation.[6] The evaluation supposedly coincided with the discovery by Toyota's Japan headquarters of the anomalies committed by Ito.[7]

Petitioner was thereafter allegedly assigned the oldest company car and prevented from using other company cars tor business travels. He was also prevented from further using his Caltex card for gasoline expenses, and instructed to pay for gas expenses with his own money, subject to reimbursement. He was restrained by Toyota's security personnel from going out of the office even if it were for the purpose of performing his official duty, and prevented from attending the meeting for the evaluation of employees.[8]

When respondent Mamoru Matsunaga (Matsunaga) took over as President of Toyota, petitioner was transferred to the Production Control, Technical Development and Special Project department as Assistant Manager.[9] Respondent Kazuki Miura (Miura) took over his former post. Petitioner allegedly objected to the transfer on the ground that it is in violation of the terms of his AEP, and admitted having no knowledge, skills, and experience in production control and technical development. Nonetheless, petitioner assumed his new post on July 1, 2008.[10]

On September 1, 2008, petitioner was notified that his service car and driver will be withdrawn.[11] He pleaded with Matsunaga for the benefits to be retained since he would be helpless without them. Nonetheless, Matsunaga allegedly brushed aside his plea and told him that he must shoulder his own transportation expenses.[12]

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[6] *Id.* at 85.

[7] *Id.*

[8] *Id.*

[9] *Rollo,* p. 85.

[10] *Id.* at 85-86.

[11] *Id.* at 86.

[12] *Id.*

On October 13, 2008, Toyota terminated the services of petitioner's driver. Since petitioner could not report for work, he considered himself constructively dismissed.[13] On the same day, he filed a complaint with the NLRC for constructive dismissal, illegal diminution of benefits, illegal transfer of department, harassment, and discrimination against Toyota, Matsunaga, Miura, and Joseph Ledesma (Ledesma), corporate officers of Toyota (collectively, respondents).[14]

Respondents denied petitioner's allegations, arguing that petitioner was entitled to the service car and driver only for a period of one year, after which he was expected to drive himself to and from work. The driver assigned to petitioner was discharged due to the termination of his employment contract.[15] Moreover, the free gasoline that may be availed with the Caltex card is a benefit exclusively given to Japanese expatriates, which petitioner was not, being a local hire. The reason why petitioner was able to use the card is that the service car he used was previously assigned to an expatriate and it had an accompanying Caltex card.[16] Petitioner also purportedly abused the Caltex card by using it for personal trips.[17] Respondents denied that petitioner was given the oldest company car, as in fact he was given a year 2000 Toyota Corolla model.[18] They denied excluding petitioner from any meeting, stating that the only meeting he was excluded from was the one exclusively for top corporate officers. Finally, petitioner's transfer to another department was an exercise of management prerogative. Petitioner had skills in planning, development, and special projects, and was thus competent for his new position. Toyota allegedly had no intention of dismissing petitioner, as it actually later sent him two notices to return to work.[19]

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[13] *Id.*

[14] *Rollo,* p. 84.

[15] *Id.* at 86.

[16] *Id.* at 86-87.

[17] *Id.* at 87.

[18] *Id.* at 101.

[19] *Id.* at 87.

On November 25, 2009, Labor Arbiter Michaela A. Lontoc (LA) issued a Decision[20] holding that petitioner was constructively dismissed. Consequently, she directed the latter's reinstatement to his old department without loss of seniority rights, and ordered respondents to pay him backwages, moral and exemplary damages for their "dishonorable, unrighteous and despicably oppressive" acts toward petitioner,[21] and attorney's fees. However, the LA denied petitioner's claim for *pro rata* 13th month pay and other benefits for not having been raised in the complaint, as well as his claim for actual damages for being unsubstantiated.

First, the LA held that Toyota failed to prove that petitioner was entitled to the service car and driver for a limited period of one year. None of the respondents had personal knowledge of the extent and limitation of the benefits granted to petitioner, who was hired by Toyota's former President, Ito. Respondents did not even attempt to obtain Ito's statement to support their allegation.[22] They merely assumed that the benefits have a duration based on the limited employment contract of petitioner's driver. Hence, the withdrawal of the benefit was without justification, and thus unwarranted.[23]

Second, there was no valid justification for the withdrawal of petitioner's Caltex card. According to respondents, petitioner was not entitled to the benefit in the first place, and that he abused his use of the card.[24] However, the LA concluded that the gasoline allowance policy showed by respondents does not apply to petitioner as it applies only to employees occupying the rank of assistant manager and up, who use their own vehicle in reporting to work. Petitioner was not using his own vehicle but the service car provided by Toyota. Respondents also failed

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[20] *Id.* at 125-157.

[21] *Id.* at 150-152.

[22] *Id.* at 132.

[23] *Id.* at 133-134.

[24] *Id.* at 134.

to submit the complete copy of Toyota's manual of operations, which supposedly contains the policy that only expatriates are entitled to a Caltex card. On the contrary, there is a statement in the policy which indicates that the benefit is not exclusive to expatriates.[25] The LA further ruled that respondents' assessment of abuse of the Caltex card was only presumed and not based on any mathematical computation.[26]

Third, the LA held that petitioner's transfer from the Marketing, Procurement and Accounting Department to the Production Control, Technical Development and Special Project Department of Toyota lacked justification. Petitioner did not have the technical knowledge, skills and experience for his new post, as his background pertains to trading, brokering and business consultancy.[27] His transfer was not an exercise of management prerogative as he was not appropriately trained for his new functions. Rather, it was a scheme for him to commit mistakes and create a valid reason for his subsequent termination and deportation.[28] Moreover, petitioner's transfer should have been approved by the Secretary of Labor and Employment pursuant to Article 41[29] of the Labor Code.

The LA concluded that the foregoing circumstances amount to constructive dismissal as they made petitioner's work conditions unbearable.[30] Further, the removal of his service car,

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[25] *Id.* at 136-138.

[26] *Id.* at 141.

[27] *Id.* at 144.

[28] *Id.* at 151.

[29] Art. 41. *Prohibition against Transfer of Employment.* – (a) After the issuance of an employment permit, the alien shall not transfer to another job or change his employer without prior approval of the Secretary of Labor. (b) Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 289 and 290 of the Labor Code. In addition, the alien worker shall be subject to deportation after service of his sentence.

[30] *Rollo,* p. 149.

driver and Caltex card amounted to a violation of the public policy of non-diminution of employee benefits.[31] Consequently, the LA adjudged respondents to be jointly liable to pay the abovementioned monetary awards to petitioner.[32]

Respondents appealed to the NLRC which, on May 24, 2010 rendered a Decision[33] reversing and setting aside the LA Decision and dismissing petitioner's complaint. It held that the award for damages and attorney's fees should be deleted pursuant to the NLRC Rules of Procedure since these were not asked for in the complaint.[34] Moreover, there was no constructive dismissal to speak of since petitioner claimed to have been "forced to resign" as a result of respondents' acts.[35] Hence, he had no more intention of going back to work. In fact, despite receipt of notices to report for work, petitioner failed to do so. He is considered to have abandoned his job or voluntarily terminated his employment relations with Toyota.[36] Moreover, the primary and immediate cause of petitioner's claim of constructive dismissal is the withdrawal of the car and driver assigned to him, which he considered essential requisites for his continued employment.[37] To make it appear that he was constructively dismissed, petitioner made various allegations, but he failed to support them with substantial evidence.[38] Further, his transfer to another department was an exercise of Toyota's management prerogative. His position remained the same and there was no diminution of his benefits. He also agreed to the transfer and assumed his new post.[39] As regards the alleged diminution of

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[31] *Id.* at 151.

[32] *Id.* at 157.

[33] *Id.* at 107-119.

[34] *Id.* at 113.

[35] *Id.*

[36] *Rollo,* p. 114.

[37] *Id.*

[38] *Rollo,* p. 115.

[39] *Id.* at 116.

benefits, the NLRC gave credence to Toyota's claim that the service car and driver benefits were limited to one year. Also, considering that the benefit was not embodied in an employment contract and the driver's contract of employment had expired, the privilege may be withdrawn anytime without amounting to a diminution of benefits.[40] Finally, the NLRC believed Toyota's explanation that petitioner was not entitled to the Caltex card because the benefit is extended to Japanese expatriates only and not to local hires.[41]

Petitioner filed a motion for reconsideration, but NLRC denied it. Hence, he filed a petition for *certiorari*[42] with the Court of Appeals (CA).

On October 24, 2011, the CA rendered the assailed Decision[43] denying the petition. It held that it is not the function of *certiorari* proceedings to review the factual findings of the NLRC, which findings are binding on the court if supported by substantial evidence.[44] Moreover, even if petitioner claimed that the NLRC gravely abused its discretion in reversing the Decision of the LA, he nonetheless failed to allege that it was done capriciously or whimsically. He merely claimed that the NLRC was "not correct" in deciding the issues. Thus, he conceded that the NLRC merely committed errors in judgment and not errors in jurisdiction, which is the exclusive concern of a Rule 65 petition. The petition was dismissible on this premise alone.

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[40] *Id.* at 117.

[41] *Id.* at 117-118.

[42] *Id.* at 158-210. The case is entitled Y*ushi Kondo, Petitioner, v. National Labor Relations Commission, Third Division, Hon. Gregorio O. Bilog III, Hon Alex A. Lopez, Hon. Pablo E. Espiritu, Jr., in their official capacities as Commissioners of the NLRC–Third Division, Public Respondents; Toyota Boshoku (Phils.) Corporation, Mamoru Matsunaga. Kazuki Miura and Joselito Ledesma, Private Respondents,* docketed as CA-G.R. SP No. 116167.

[43] *Id.* at 83-103; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Francisco P. Acosta and Angelita A. Gacutan, concurring.

[44] *Id.* at 94.

Even if the petition were to be treated as an appeal, the CA held that it is still dismissible. Petitioner insisted that he claimed damages and attorney's fees in his complaint, but he failed to attach a certified true copy of the complaint which would have proved his point.[45] On the issues of constructive dismissal, abandonment and not reporting for work when required, the CA merely adopted the findings of the NLRC on the rationale that it is not the function of *certiorari* proceedings to review findings of fact of the NLRC.[46]

Petitioner filed a motion for reconsideration, but the CA denied it in its Resolution[47] dated April 3, 2012. He thus filed the present petition on the following grounds:

1. Whether or not the Honorable Court of Appeals gravely abused its discretion amounting to lack of or in excess of jurisdiction in ruling that petitioner failed to allege capriciousness or whimsicality in the issuance of the Honorable NLRC's assailed decision; and

2. Whether or not the Honorable Court of Appeals gravely abused its discretion amounting to lack of or in excess of jurisdiction when it concluded that what petitioner brought as issues in the petition for *certiorari* were mere errors in judgment and not errors of jurisdiction.[48]

Petitioner insists that he alleged as ground for the allowance of his CA petition that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Decision of the LA and dismissing his complaint. The fact that he did not specifically use the words "capricious" or "whimsical" does not remove his petition from the ambit of *certiorari* under Rule 65 of the Rules of Court.[49] Moreover,

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[45] *Id.* at 96-98.

[46] *Id.* at 98.

[47] *Id.* at 105.

[48] *Id.* at 31.

[49] *Id.* at 32.

the phrase "grave abuse of discretion amounting to lack of or in excess of jurisdiction" means a capricious and whimsical exercise of judgment, such that to state that the NLRC acted capriciously and whimsically would have been repetitive.[50] On the second ground, petitioner alleges that he raised only one issue in his CA petition, *i.e.*, that the NLRC committed grave abuse of discretion amounting to lack or in excess of jurisdiction. The "issues" he subsequently enumerated supported the charge of "grave abuse of discretion."[51]

The petition lacks merit.

At the outset, the Court notes that the petition was correctly filed under Rule 45 of the Rules of Court. However, it alleges grave abuse of discretion on the part of the CA, which is the proper subject of a petition for *certiorari* under Rule 65. In the CA petition, on the other hand, counsel made a general allegation of grave abuse of discretion committed by the NLRC, but formulated the issues as if the NLRC committed errors of judgment. The difference between petitions filed under Rule 45 and Rule 65 of the Rules of Court is so fundamental that it is extremely lamentable that counsel still confounds one for the other and misapprehends their purpose.

To emphasize, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review under Rule 45 of the Rules of Court.[52] Through this remedy, the Court reviews *errors of judgment* allegedly committed by the CA. On the other hand, a petition for *certiorari* under Rule 65 is not an appeal but a special civil action restricted to resolving *errors of jurisdiction* and grave abuse of discretion, not errors of judgment.[53]

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[50] *Id.* at 33.

[51] *Id.* at 34.

[52] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 218901, February 15, 2017, 818 SCRA 68, 74.

[53] *Guzman v. Guzman*, G.R. No. 172588, March 13, 2013, 693 SCRA 318, 327. Italics supplied.

Jurisprudence instructs that where a Rule 65 petition alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[54] An error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari.* The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court—on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari.*[55] Errors of judgment and errors of jurisdiction as grounds in availing the appropriate remedy are mutually exclusive.[56] Hence, it is inexcusable for petitioner to state that "x x x grave abuse of discretion, in *certiorari* proceedings, contemplates errors in judgment committed in excess of or with lack of jurisdiction"[57] to justify his deplorable lapses in making the proper allegations in the Rule 65 petition it filed with the CA.

As regards the present petition, We note that it fundamentally raises errors of judgment allegedly committed by the CA. Indeed, the measure is that as long as the lower courts act within their jurisdiction, alleged errors committed in the exercise of their

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[54] *Miranda v. Sandiganbayan,* G.R. Nos. 144760-61, August 2, 2017, 833 SCRA 614, 633.

[55] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation,* G.R. No. 156067, August 11, 2004, 436 SCRA 123, 134.

[56] In *Madrigal Transport, Inc. v. Lapanday Holdings Corp., supra,* the Court held that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction *(Id.* at 133).

[57] *Rollo,* p. 34.

discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[58] We thus excuse petitioner's erroneous allegation of grave abuse of discretion on the part of the CA.

This brings Us now to the discussion of the main issue, which is whether the CA erred in *not* finding grave abuse of discretion on the part of the NLRC when it reversed the LA's Decision and dismissed petitioner's labor complaint.

Decisions of the NLRC are reviewable by the CA through Rule 65 of the Rules of Court. The CA is tasked in the proceeding to ascertain if the NLRC decision merits a reversal exclusively on the basis of the presence of grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, when a CA decision is brought before the Court through a petition for review on *certiorari* under Rule 45, the question of law that must be tackled is whether the CA correctly found that the NLRC acted or did not act with grave abuse of discretion in rendering its challenged decision.[59] The Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, nor substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible.[60]

However, if the factual findings of the LA and the NLRC are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings. Under this situation, such conflicting factual findings are not binding on the Court, and We retain the authority to pass on the evidence presented and draw conclusions therefrom.[61]

In his *pro forma* complaint, petitioner indicated the following causes of action: illegal diminution of benefits, acts of harassment

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[58] *Guzman v. Guzman, supra* note 53 at 327.

[59] *Philippine National Bank v. Gregorio,* G.R. No. 194944, September 18, 2017, 840 SCRA 37, 50.

[60] *Career Philippines Shipmanagement, Inc. v. Serna,* G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684.

[61] *Paredes v. Feed the Children Philippines, Inc.,* G.R. No. 184397, September 9, 2015, 770 SCRA 203, 216-217.

forcing him to resign, receiving threats through text messages, car assignment discrimination, illegal transfer of department, incomplete issuance of uniform, and discrimination of company activities.[62] In ruling that petitioner was constructively dismissed, the LA considered only the circumstances of diminution of benefits pertaining to the withholding of the Caltex card and petitioner's car and driver benefits, and his transfer to another department. She did not discuss the other causes of action.[63] Accordingly, the main issue that was brought on appeal by respondents to the NLRC was the alleged grave abuse of discretion on the part of the LA in ruling that petitioner was constructively dismissed based on those particular circumstances.

Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[64] It also exists when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. What is essential is that there is a lack of "voluntariness in the employee's separation from employment."[65]

Petitioner claimed that he was forced to resign.[66] Hence, it is incumbent upon him to prove that his resignation was involuntary and that it was actually a case of constructive dismissal, with clear, positive and convincing evidence.[67] This he failed to do.

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[62] *Rollo,* p. 112.

[63] In her Decision, the Labor Arbiter held that "It is also well to note that all other acts of discrimination. *i.e.*, the prohibition for complainant to attend officers' meeting[s], the harassing text messages, the inappropriate monitoring of complainant's official travels by the security guards, alleged by complainant were never considered in the final resolution of this case (*Id.* at 156).

[64] *Galang v. Boie Takeda Chemicals, Inc.*, G.R. No. 183934, July 20, 2016, 797 SCRA 501, 513.

[65] *Id.*

[66] *Rollo,* p. 113.

[67] *Paredes v. Feed the Children Philippines, Inc., supra* note 61 at 219.

We agree with the NLRC that, "[t]he primary and immediate cause for [petitioner's] claim of constructive dismissal is the withdrawal of his assigned car and driver," which petitioner claimed as "essential requisites of [his] continued employment."[68] In fact, despite all the allegations in his complaint, petitioner started to not report for work on October 13, 2008, the day Toyota terminated the services of his driver.[69]

To place matters in perspective, what petitioner essentially alleges is diminution of benefits. It just so happened that the benefit allegedly unreasonably withdrawn was the means used by him to report for work.

The Court has held that there is diminution of benefits when the following are present: (1) the grant or benefit is founded on a policy or has ripened into a practice over a long period of time; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilateral1y by the employer.[70]

Under the first requisite, the benefit must be based on express policy, a written contract or has ripened into a practice.[71] Here, the grant of service car and local driver to petitioner was based neither on express policy or a written contract. It may also not be considered company practice.

To be considered as a regular company practice, it must be shown by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. There must be an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring the grant thereof.

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[68] *Rollo,* p. 114.

[69] *Id.* at 127.

[70] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 176985, April 1, 2013, 694 SCRA 273, 279.

[71] *Id.*

In sum, the benefit must be characterized by regularity and voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time. The burden of proving that the benefit has ripened into practice rests in the employee.[72]

In this case, petitioner failed to prove that the car and driver benefits were also being enjoyed by other employees who held positions equivalent to his position, or that the benefits were given by the company itself with voluntary and deliberate intent. On the contrary, the record shows that these benefits were granted by Toyota's former President specifically to petitioner at the time he was hired, in a verbal agreement.[73] As such, the grant of the benefits may be viewed more as an accommodation given to petitioner by virtue of him being a fellow Japanese working in a foreign, and presumably unfamiliar, land. Petitioner cannot demand a right to the service car and driver indefinitely, especially under new administration, when the benefit ostensibly sprung only from the magnanimity of his former superior rather than actual company practice.

As regards the Caltex card, Toyota consistently argued that the free gasoline that may be availed with it is provided only to Japanese expatriates, and not to local hires like petitioner. The latter was able to enjoy the benefit as it came with the car assigned to him.[74] On this point, there is likewise no showing that petitioner's entitlement to the Caltex card is based on an express policy, a written contract, or company practice. Considering that petitioner did not sign an employment contract, he can only anchor his claim on company practice. However, he also failed to prove that the card was being enjoyed by other employees or officials similarly situated as him, as would indicate Toyota's intention to give the benefit consistently and deliberately. Hence, petitioner cannot demand continued use of the card.

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[72] *Vergara, Jr. v. Coca-Cola Bottlers Philippines, Inc.*, *supra* note 70 at 279-280.

[73] *Rollo,* pp. 127-128.

[74] *Id.* at 128.

Granting *arguendo* that the benefit amounted to company practice, there is essentially no diminution to speak of. The record bears that the Caltex card was withdrawn by Toyota prior to the withdrawal of the car and driver benefits. Petitioner did not raise this as an issue, verbally or in a written memorandum to his superior. Even then, petitioner's gasoline expenses were subject to reimbursement. Hence, at the end of the day, it was still Toyota that paid for his gasoline consumption.

Finally, petitioner argues that his transfer from the Marketing, Procurement and Accounting Department to the Production Control, Technical Development and Special Project Department was an indication of constructive dismissal because he lacked technical expertise and experience for the new position. Toyota justified this move as an exercise of management prerogative which did not entail any change in the salary and benefits being enjoyed by petitioner, who was expected to exercise the same managerial functions.[75]

Notably, petitioner did not raise any objections to his transfer prior to the filing of the complaint, nor did he amply demonstrate why he was unsuited for the new job. There was no proof of any verbal or written opposition to the transfer. In fact, as pointed out by respondents, he was assigned to the new department on July 1, 2008, but he did not complain of his new assignment until after more than three months, or on October 13, 2008, when he filed a complaint with the NLRC. Petitioner did not allege and prove specific facts that would indicate his inability to function fully in the new department as a result of his lack of expertise, or that his transfer constituted clear discrimination or harassment. He also did not address Toyota's assertion that his new function required him merely to oversee the department and carry out management policies, rather than participate in production and technical development.[76] Indeed, the mere fact of petitioner's transfer to the new department does not support his claim of constructive dismissal.

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[75] *Id.* at 143.

[76] *Id.* at 496.

The Court reiterates the basic rules of evidence that each party must prove his affirmative allegation, and that mere allegation is not evidence. We also stress that the evidence to prove the fact of the employee's constructive dismissal must be clear, positive, and convincing. Absent any showing of an overt or positive act proving that respondents had dismissed petitioner, the latter's claim of illegal dismissal cannot be sustained.[77]

Even so, the Court does not agree that petitioner abandoned his job. For abandonment to exist, two requisites must concur: a) the employee failed to report for work or was absent without valid or justifiable reason; and b) there was a clear intention to sever the employer-employee relationship manifested by some overt acts.[78] The CA upheld the NLRC's finding that petitioner's refusal to report for work despite receiving notices from Toyota is tantamount to abandonment.[79] In the first place, the NLRC should not have considered abandonment as an issue since Toyota never raised it before the LA.[80] Well-settled is the rule, also applicable in labor cases, that issues not raised below cannot be raised for the first time on appeal, because of basic considerations of due process.[81] Moreover, petitioner's prayer for reinstatement negates the existence of a clear intention to sever the employment relationship. He may have been mistaken in assuming that he was dismissed, but his vigorous pursuit of this case shows his intent to resume work with Toyota.

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[77] *Doctor v. NII Enterprises,* G.R. No. 194001, November 22, 2017, 846 SCRA 53, 67-68.

[78] *Tamblot Security & General Services, Inc. v. Item,* G. R. No. 199314, December 7, 2015, 776 SCRA 211, 215, citing *Protective Maximum Security Agency, Inc. v. Fuentes,* G.R. No. 169303, February 11, 2015, 750 SCRA 302, 328-329.

[79] *Rollo,* pp. 98-99.

[80] *Id.* at 237-242, 424-436.

[81] See *Halili v. Justice for Children International,* G.R. No. 194906, September 9, 2015, 770 SCRA 241, 249 and *Pag-asa Steel Works, Inc. v. Court of Appeals,* G.R. No. 166647, March 31, 2006, 486 SCRA 475, 490.

Finally, petitioner is not entitled to moral and exemplary damages and attorney's fees. Moral damages may be awarded to an employee if his dismissal was attended by bad faith or fraud, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy, and that social humiliation, wounded feelings, grave anxiety and the like resulted therefrom.[82] Exemplary damages, on the other hand, are awarded when dismissal of the employee was done in a wanton, oppressive or malevolent manner.[83] As for attorney's fees, it is granted in actions for recovery of wages where an employee was forced to litigate and thus incur expenses to protect his rights and interests.[84]

Here, it was not established that petitioner was constructively dismissed, much less that respondents acted in bad faith or in an oppressive or malevolent manner. There is also no showing that he was not paid his wages. Consequently, he cannot rightfully claim moral and exemplary damages and attorney's fees.

WHEREFORE, the petition is **DENIED**. The Decision dated October 24, 2011 and Resolution dated April 3, 2012 of the Court of Appeals in CA-G.R. SP No. 116167 are **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe (*Working Chairperson*), *Gesmundo,* and *Carandang, JJ.,* concur.

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[82] *Philippine National Oil Company-Energy Development Corporation v. Buenviaje,* G.R. Nos. 183200-01, June 29, 2016, 795 SCRA 79, 111.

[83] *Id.*

[84] *Philippine National Oil Company-Energy Development Corporation v. Buenviaje, supra* at 110.

SECOND DIVISION

[G.R. No. 206767. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ORLANDO RAMOS ORDIZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) **the identity of the buyer and the seller, the object and the consideration;** and (2) **the delivery of the thing sold and the payment therefor**.

2. ID.; ID.; ID.; SHEER RELIANCE ON THE LONE TESTIMONY OF AN ALLEGED POSEUR-BUYER IN CONVICTING THE ACCUSED DOES NOT SATISFY THE QUANTUM OF EVIDENCE REQUIRED IN CRIMINAL CASES, THAT IS, PROOF BEYOND REASONABLE DOUBT.— It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the x x x elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense. In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. *Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.*

3. ID.; ID.; DRUG CASES; CONSIDERING THAT THE VERY *CORPUS DELICTI* IS THE DANGEROUS DRUG ITSELF,

ESTABLISHING THE INTEGRITY OF THE SPECIMEN IS IMPERATIVE, AND COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IS CRUCIAL IN PROVING THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT.— In cases involving dangerous drugs, the State bears not only the burden of proving the x x x elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. Therefore, considering that the very *corpus delicti* is the drug specimen itself, establishing the integrity of the specimen is imperative. Hence, compliance with the chain of custody rule is *crucial* in establishing the accused's guilt beyond reasonable doubt. The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

4. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CONSIDERED CRUCIAL, AS IT IS ESSENTIAL THAT THE PROHIBITED DRUG RECOVERED FROM THE SUSPECT IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT, AND THAT THE IDENTITY OF SAID DRUG IS ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT.— As applied in illegal drugs cases, chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until their destruction. In particular, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal

drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. The chain of custody rule is crucial, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.

5. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; THE LAW REQUIRES THE STRICT OBSERVANCE OF CERTAIN SPECIAL RULES THAT PROVIDE FOR PROCEDURAL SAFEGUARDS WHICH ENSURE MORAL CERTAINTY IN THE CONVICTION OF THE ACCUSED, OWING TO THE PECULIAR NATURE OF THE *CORPUS DELICTI* OF THE CRIME, WHICH MAKES IT EASILY SUSCEPTIBLE TO MANIPULATION IN THE HANDS OF THE STATE.— The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the *corpus delicti* of the crime, which makes the same easily susceptible to manipulation in the hands of the State. Jurisprudence has held that "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Therefore, as the innocence and liberty of the accused are pitted unevenly against the powerful machinery of the State, the law requires the ***strict observance*** of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused. These special rules are contained in Section 21 of RA 9165, which, at the time of the incident, mandates the x x x procedure in the seizure, custody, and disposition of dangerous drugs x x x. Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 provides additional custody requirements and likewise added a "saving clause" in case of non-compliance with such requirements x x x. In sum, in the conduct of buy-bust operations, the law provides that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and

(2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media,** and (d) **a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

6. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF SEIZED DRUGS; SHOULD BE MADE IMMEDIATELY AFTER OR AT THE PLACE OF APPREHENSION, AND IT IS ONLY WHEN THE SAME IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING BE DONE AS SOON AS THE APPREHENDING TEAM REACHES THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING TEAM, AND THIS ALSO MEANS THAT THE THREE REQUIRED WITNESSES SHOULD ALREADY BE PHYSICALLY PRESENT AT THE TIME OF THE APPREHENSION.— To elaborate, the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the apprehending team considering that the buy-bust operations are most often than not well-planned activities.

7. ID.; ID.; ID.; ID.; DEPARTURE FROM THE MANDATORY PROCEDURE IS PERMISSIBLE AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER, AND THE SEIZURES AND CUSTODY OVER THE SEIZED ITEMS SHALL NOT BE RENDERED VOID AND INVALID.— [T]here are instances wherein departure from the x x x mandatory procedures is permissible. Section 21 of the IRR provides that "non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized

items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." For this provision to be effective, however, the prosecution must first (1) r**ecognize any lapses on the part of the police officers** and (2) **be able to justify the same.**

8. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT OVERCOME THE CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY.— In convicting accused-appellant Ordiz, both the RTC and CA relied so much on the presumption of regularity and the weak defense offered by accused-appellant Ordiz. It is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict accused-appellant Ordiz. Simply stated, **the presumption of regularity in the conduct of police officers cannot trump the constitutional right to be presumed innocent until proven guilty.** x x x **The Court stresses that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

9. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; CAN BE OVERTURNED ONLY WHEN THE PROSECUTION HAS DISCHARGED ITS BURDEN OF PROOF IN CRIMINAL CASES AND HAS PROVEN THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that *the accused has the constitutional right to be presumed innocent.* And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt, by proving each and every element of the crime charged in the information, to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that ***this burden of proof never shifts***.

> Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent. In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of establishing the elements of the crime, as well as compliance with the procedure outlined in Section 21 of RA 9165.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

The campaign against dangerous drugs, no matter how relentlessly and vigorously it is pursued, can never be won by resorting to shortcuts, quick fixes, and convenient circumventions of the law. It can only be won through the conduct of well-prepared and well-organized operations that strictly comply with the mandatory requirements of the law. Otherwise, by disregarding the rule of law as a means of curtailing the proliferation of illegal drugs, the war on drugs becomes a self-defeating enterprise that ends up assaulting the very persons it aims to protect from harm — the Filipino people.

The Case

Before the Court is an ordinary appeal[1] filed by accused-appellant Orlando Ramos Ordiz (accused-appellant Ordiz), assailing the Decision[2] dated August 2, 2012 (assailed Decision) of the Court of Appeals, Cebu City (CA)[3] in CA-G.R. CR HC

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[1] See Notice of Appeal dated August 24, 2012, *rollo*, pp. 13-14.

[2] *Id*. at 3-12. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Zenaida T. Galapate-Laguilles concurring.

[3] Twentieth Division.

No. 00895, which affirmed the Decision[4] dated November 12, 2007 rendered by the Regional Trial Court of Cebu City, Branch 58 (RTC) in Criminal Case No. CBU-71128, entitled *People of the Philippines v. Orlando Ramos Ordiz*, finding accused-appellant Ordiz guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

For allegedly selling a plastic sachet containing 0.03 gram of a white crystalline substance containing methamphetamine hydrochloride, commonly called *shabu*, in a buy-bust operation conducted by members of the Philippine National Police (PNP) at about 1:00 p.m. at Sampaguita Street, Barangay Capitol Site, Cebu City, accused-appellant Ordiz was charged with violation of Section 5, Article II of RA 9165.

The Information[6] dated October 4, 2004 reads as follows:

> That on October 3. 2004 at about 1:00 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without being authorized by law, did then and there sell, deliver or give away to a poseur buyer the following:
>
> one (1) [h]eat-sealed transparent plastic packet containing 0.03 gram of white crystalline substance
>
> locally known as "shabu" containing Methylamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to law.[7]

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[4] CA *rollo*, pp. 39-48. Penned by Presiding Judge Gabriel T. Ingles.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

[6] Records, pp. 1-2; underscoring in the original.

[7] *Id*. at 1.

As gathered from the testimonies of the prosecution's witnesses presented during the trial, namely, SPO1 Narciso Ursal, Jr. (SPO1 Ursal, Jr.), PO2 Raniel Capangpangan (PO2 Capangpangan), and SPO1 Rene Cerna (SPO1 Cerna),[8] the prosecution's version of events is as follows:

> In the afternoon of October 3, 2004, a buy-bust operation was conducted by members of the Philippine National Police (PNP) against accused Orlando Ordiz who was reported to be selling shabu in the Capitol area. During the entrapment, SPO1 Cerna, as the designated poseur-buyer, approached accused with the intention of purchasing ₱100.00 worth of *shabu* from him while SPO1 Ursal, Jr. and PO2 Capangpangan placed themselves at strategic positions while they waited for the pre-arranged signal of waving Cerna's hand that would indicate the consummation of the transaction. SPO1 Cerna, accompanied with a confidential asset, who knows the accused negotiated to buy ₱100.00 of *shabu*, which transaction was done in front of accused house. After the transaction was consummated, accused was arrested in the presence of his parents. He was informed of his constitutional rights and brought to the police station, along with the suspected shabu and the recovered buy-bust money. In the meantime, the crystallized substance that was bought from the accused was marked and brought to PNP Crime Laboratory for examination. The results revealed that the substance was positive for the presence of Methylamphetamine hydrochloride, a dangerous drug.
>
> After the witnesses' testimonies, the prosecution formally offered their Exhibits "A" to "E" which were admitted by the trial court as part of the testimonies of the witnesses.[9]

On his part, accused-appellant Ordiz vehemently denied the prosecution's version of the incident and alleged that he was a victim of police frame-up, asserting the following:

> For his defense, [accused-appellant Ordiz] stated that he was at his girlfriend's house where he spent the night of October 3, 2004. He went back to his house at around 10:00 in the morning of the following day and ate lunch at a nearby eatery owned by one Abendan. While he was eating, Abendan and PO Vicente Diola were having

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[8] CA *rollo*, pp. 40-41.

[9] *Rollo*, pp. 5-6; citations omitted, italics in the original.

a drinking spree at a table in front of him. The police officer told accused to come over and when he did, he was asked about the incident involving Abendan's store which was ransacked. When he denied any knowledge about the said incident, PO Diola called someone on his cellular phone. After some time, police officers arrived and took him to the police station.

Upon his arrival at the police station, police officers Capangpangan, Ursal and Cerna, who were with an unidentified civilian, asked him about the ransacking incident of Abendan's store. When accused said he had no knowledge about such incident, he was boxed by one of the officers while officer Capangpangan hit him with a plastic chair. PO Diola, who also arrived at the police station, pointed a firearm towards the head of the accused. The officers also demanded the amount of ₱40,000.00 from accused and when he could not produce the money, he was detained without being informed of the nature of the charge against him.[10]

The Ruling of the RTC

In its Decision[11] dated November 12, 2007, the RTC found accused-appellant Ordiz guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

The dispositive portion of the RTC's Decision reads:

Accordingly, this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of ₱500,000.00.

The pack of shabu, Exh. "B", is confiscated in favor of the state for proper disposition.

SO ORDERED.[12]

In sum, the RTC believed that the prosecution was able to fulfill its burden of proof in establishing all the essential elements of illegal sale of dangerous drugs under Section 5 of RA 9165.

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[10] *Id*. at 6-7; citations omitted.

[11] *Supra* note 4.

[12] CA *rollo*, p. 48.

Insisting on his innocence, accused-appellant Ordiz appealed before the CA.

The Ruling of the CA

In the assailed Decision,[13] the CA affirmed the RTC's conviction of accused-appellant Ordiz. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the appeal is **DISMISSED** and the November 12, 2007 Decision rendered by the Regional Trial Court Branch 58, Cebu City is **AFFIRMED** *in toto.*
>
> **SO ORDERED**.[14]

The CA found that "the prosecution successfully proved the existence of all the essential elements of the illegal sale of the dangerous drug."[15]

Hence, this appeal before the Court of Last Resort.

The Issue

For the Court's resolution is the issue of whether accused-appellant Ordiz is guilty beyond reasonable doubt for the crime charged.

The Court's Ruling

The foregoing question is answered overwhelmingly in the *negative*. A simple review of the records of the instant case would lead to the inescapable conclusion that *accused-appellant Ordiz's conviction is a travesty of justice*. The Court remedies this injustice and acquits accused-appellant Ordiz of the crime charged.

The essential elements of illegal sale of dangerous drugs

Accused-appellant Ordiz was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5 of RA 9165.

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[13] *Supra* note 2.

[14] *Rollo*, p. 11.

[15] *Id*. at 8.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) **the identity of the buyer and the seller, the object and the consideration;** and (2) **the delivery of the thing sold and the payment therefor**.[16]

The dearth of evidence establishing the elements of illegal sale of dangerous drugs in the instant case

It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the aforesaid elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[17]

In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. *Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.*[18]

In the instant case, the prosecution relied on the testimonies of its three witnesses, *i.e.*, SPO1 Ursal, Jr., PO2 Capangpangan, and SPO1 Cerna.

A closer look at the testimonies of SPO1 Ursal, Jr. and PO2 Capangpangan reveal that they did not actually see firsthand

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[16] *People v. Opiana*, 750 Phil. 140, 147 (2015); emphasis supplied.

[17] *People v. Escalona*, 298 Phil. 88, 91 (1993); citation omitted.

[18] *Id.*; italics supplied.

the alleged sale of illegal drugs between accused-appellant Ordiz and the alleged poseur-buyer, SPO1 Cerna, as they were positioned at some considerable distance away from the area where SPO1 Cerna purportedly transacted with accused-appellant Ordiz.

In fact, the RTC itself made the observation that the testimonies of SPO1 Ursal, Jr., and PO2 Capangpangan are ***unclear***, holding in its Decision that "**[t]he declaration of SPO1 Narciso Ursal, Jr. and PO2 Raniel Capangpangan are *not clear* whether they actually saw the transaction or simply rushed up to arrest the accused after a pre-arranged signal was given.**"[19]

Hence, with the testimonies of SPO1 Ursal, Jr. and PO2 Capangpangan being unreliable in establishing the elements of illegal sale, the RTC itself held that the prosecution's theory rested mainly on the testimony of SPO1 Cerna, the supposed poseur-buyer.

Making a critical observation on the testimony of SPO1 Cerna, the RTC itself noted that when SPO1 Cerna was directly examined by the prosecution, "**[i]t does appear that the details of the transaction are not clearly presented thru such testimony**."[20] And while the RTC found that SPO1 Cerna was eventually able to expound more on the supposed transaction on cross-examination, it must be emphasized that such testimony on the specific details of the drug transaction was left ***uncorroborated*** by the other witnesses' testimonies.

Simply stated, the prosecution's case hinged mostly on the uncorroborated testimony of the supposed poseur-buyer, whose testimony on direct examination was found by the RTC to be unclear and lacking in details. To reiterate, sheer reliance on the sole testimony of an alleged poseur-buyer fails to satisfy the quantum of evidence of proof beyond reasonable doubt.

For this reason alone, as there is reasonable doubt as to the elements of illegal sale of dangerous drugs, accused-appellant Ordiz's acquittal is warranted.

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[19] CA *rollo*, p. 44; emphasis supplied.

[20] *Id.* at 46; emphasis supplied.

Blatant non-compliance with the chain of custody rule

Aside from the foregoing, the acquittal of accused-appellant Ordiz is likewise warranted due to the *patent non-observance of the chain of custody rule*.

In cases involving dangerous drugs, the State bears not only the burden of proving the aforesaid elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[21]

Therefore, considering that the very *corpus delicti* is the drug specimen itself, establishing the integrity of the specimen is imperative. Hence, compliance with the chain of custody rule is *crucial* in establishing the accused's guilt beyond reasonable doubt.

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony about every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[22]

As applied in illegal drugs cases, chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/

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[21] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[22] *People v. Punzalan, et al.*, 773 Phil. 72, 90-91 (2015); citation omitted.

confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until their destruction.[23]

In particular, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[24]

The chain of custody rule is crucial, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[25]

Applying the foregoing discussion in the instant case, it is plain to see that **the prosecution failed to establish an unbroken chain of custody of the allegedly seized drug specimen.**

As readily admitted by the RTC in its Decision, "[a]t the outset, it is noted that neither the Forensic Chemical Officer, PSI Medardo Palapo, nor the custodian was presented to identify the Chemistry Report x x x."[26] Through the testimony of SPO1 Ursal, Jr., the prosecution merely established that there was a request to examine the allegedly seized specimen and that the specimen was transferred from the police station to the PNP Crime Laboratory for examination.

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[23] *People v. Guzon*, *supra* note 21 at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[24] *People v. Ubungen*, G.R. No. 225497, July 23, 2018; citation omitted.

[25] *People v. Guzon*, *supra* note 21 at 451, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

[26] CA *rollo*, p. 43.

Aside from the bare fact that the specimen was transferred to the PNP Crime Laboratory, there was no evidence on the condition of the specimen and how the same was exactly turned over to the forensic chemist for laboratory examination. There is likewise no evidence on record as to the conduct of the supposed laboratory examination. No testimony was provided showing the procedures undertaken by the forensic chemist in examining the specimen, assuming in the first place that an examination was really undertaken.

Moreover, there is no evidence providing details on how the specimen was returned by the forensic chemist back to the evidence custodian. In fact, the identity of the evidence custodian, assuming there was even a custodian, is unknown. *In sum, there is absolutely no evidence establishing how the specimen was stored and maintained while in the custody of the PNP.*

With the transmittal and examination of the subject specimen having no solid evidentiary basis, indubitably, there is serious doubt cast, to say the least, as to the identity, integrity, and evidentiary value of the *corpus delicti*. Inevitably, accused-appellant Ordiz must be acquitted.

The PNP's wholesale violation of Section 21 of RA 9165

As if the prosecution's blatant failure to establish beyond reasonable doubt the existence of the elements of the crime charged and the patent non-observance of the chain of custody rule were not enough, the integrity and credibility of the seizure and confiscation of the prosecution's evidence are further put into serious doubt due to the indisputable and wholesale failure of the authorities to observe the *mandatory* procedural requirements laid down in Section 21 of RA 9165.

The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the *corpus delicti* of the crime, which makes the same easily susceptible to manipulation in the hands of the State.

Jurisprudence has held that "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[27]

Therefore, as the innocence and liberty of the accused are pitted unevenly against the powerful machinery of the State, the law requires the ***strict observance*** of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused.

These special rules are contained in Section 21 of RA 9165, which, at the time of the incident, mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**[.][28]

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[27] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[28] Emphasis supplied; Section 21 of RA 9165 was amended by RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 provides additional custody requirements and likewise added a "saving clause" in case of non-compliance with such requirements:

> SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.][29]

CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.'" RA 10640, which imposed less stringent requirements in the procedure under Section 21, became effective only on July 15, 2014.

[29] Emphasis supplied; IRR of RA 9165, Sec. 21.

In sum, in the conduct of buy-bust operations, the law provides that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media,** and (d) **a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

To elaborate, the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[30] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the apprehending team considering that the buy-bust operations are most often than not well-planned activities.

To reiterate, the Court stresses that the aforementioned procedural requirements laid down in Section 21 of RA 9165 and the related administrative issuances are ***mandatory*** in nature. The CA's belief that, as a general rule, the requirements found under Section 21 of RA 9165 "do not require strict compliance"[31] and that non-observance of the said provision of the law "is not a serious flaw that can render void the seizures and custody of drugs recovered from the accused"[32] is *grossly erroneous.*

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[30] IRR of RA 9165, Art. II, Sec. 21(a).

[31] CA *rollo*, p. 100.

[32] *Id*. at 100-101.

In *People v. Tomawis*,[33] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

> **The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug**. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
>
> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at

[33] G.R. No. 228890, April 18, 2018.

the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[34]

Concededly, however, there are instances wherein departure from the aforesaid mandatory procedures is permissible. Section 21 of the IRR provides that "non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." For this provision to be effective, however, the prosecution must first (1) r**ecognize any lapses on the part of the police officers** and (2) **be able to justify the same**.[35]

Applying the foregoing discussion in the instant case, the Court stresses that ***the authorities failed to observe literally ALL the mandatory requirements under Section 21 of RA 9165. Worse, the prosecution failed to recognize these lapses and offer sufficient justification to warrant the non-observance of these mandatory rules*.**

As borne by the evidence of the prosecution, **no inventory and photographing were conducted whatsoever**. As testified by the prosecution's witnesses, after the alleged drug transaction, accused-appellant Ordiz was immediately apprehended and brought to the police station. **In fact, the record is silent as to whether any inventory receipt or certificate of inventory was executed. Surely, no such document was admitted and offered as evidence for the prosecution**.

To make matters worse, **none of the required witnesses was present during the buy-bust operation**. The testimonies of the witnesses reveal that only the parents of accused-appellant Ordiz witnessed the apprehension of the accused-appellant.

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[34] *Id.* at 11-12; emphasis and underscoring supplied, citations omitted.

[35] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

Moreover, **the marking of the allegedly seized drug specimen was not made immediately after and at the place of apprehension**. No justification was made as to why the marking was done in the police station and not in the place of apprehension. Worse, it was not even shown that the police station where the marking was conducted was the nearest police station.

In sum, without any shred of recognition and explanation whatsoever on the part of the authorities justifying the serious lapses it had committed, the buy-bust team blatantly and utterly failed to observe even a single mandatory requirement under Section 21 of RA 9165. Therefore, the Court finds that the integrity and evidentiary value of the *corpus delicti* have been seriously compromised due to the PNP's complete and unjustified non-observance of Section 21 of RA 9165.

The presumption of innocence of the accused and the prosecution's burden of proof to establish guilt beyond reasonable doubt

In convicting accused-appellant Ordiz, both the RTC and CA relied so much on the presumption of regularity and the weak defense offered by accused-appellant Ordiz. It is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict accused-appellant Ordiz. Simply stated, **the presumption of regularity in the conduct of police officers cannot trump the constitutional right to be presumed innocent until proven guilty.**

Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that *the accused has the constitutional right to be presumed innocent.*[36] And

[36] CONSTITUTION, Art. III, Sec. 14(2) provides:

"In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases: and has proven the guilt of the accused beyond reasonable doubt,[37] by proving each and every element of the crime charged in the information, to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[38] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent. In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of establishing the elements of the crime, as well as compliance with the procedure outlined in Section 21 of RA 9165. As the Court stressed in *People v. Andaya*:[39]

> xxx We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us**. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool**

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[37] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

[38] *People v. Belocura*, 693 Phil. 476, 503-504 (2012); citation omitted.

[39] 745 Phil. 237 (2014).

intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.[40]

The Court stresses that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[41] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[42] As the Court, in *People v. Catalan*,[43] reminded the lower courts:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence**. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the**

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[40] *Id*. at 250-251; emphasis supplied, citation omitted.

[41] *People v. Mendoza*, 736 Phil. 749, 770 (2014); emphasis supplied.

[42] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[43] *Id*.

records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[44]

Premises considered, owing to the prosecution's miserable failure in establishing beyond reasonable doubt the elements of the crime of illegal sale of dangerous drugs, coupled with the blatant non-observance of the chain of custody rule due to the non-establishment of the key links of the chain of custody, as well as the wholesale violation of Section 21 of RA 9165 on the part of the PNP, *the Court acquits accused-appellant Ordiz of the crime charged.*

The Court is aware that, in several instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[45] In light of this grim reality, the Court finds highly reprehensible the police authorities' complete and utter disregard of the mandatory requirements under RA 9165 that ensure the integrity and reliability of buy-bust operations. Equally reprehensible is the RTC's and CA's attitude of obliviousness over the PNP's clear and palpable failure to establish accused-appellant Ordiz's guilt beyond reasonable doubt. For the guidance of the Bar, the Bench, and the public, the instant case is ***an exemplar of ineptitude and careless abandon*** on the part of the PNP, the prosecution, the trial court, and the appellate court in upholding the basic constitutional right of presumption of innocence. The clear and manifest negligence exhibited in convicting accused-appellant Ordiz has led to the unjust incarceration of an innocent person for almost ***15 years***. No decision overturning the conviction of accused-appellant Ordiz can fully rectify this grave injustice.

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[44] *Id*. at 621; emphasis supplied, citation omitted.

[45] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

Therefore, the Court *sternly* reminds the trial and appellate courts to exercise extra vigilance in trying drug cases and *directs the PNP to conduct an investigation on this incident and other similar cases*, lest innocent persons, most of whom come from the marginalized sectors of society, be made to unjustly suffer the unusually severe penalties for drug offenses.

Epilogue

According to Charles de Montesquieu, in his treatise The Spirit of the Laws, ***there is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice***.[46]

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. Our Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[47] Nevertheless, the authorities' perpetration of violations of the constitutional rights of due process and the presumption of innocence in the name of peace and order cannot be accepted.

By sacrificing the sacred and indelible rights to due process and presumption of innocence for the sheer sake of convenience and expediency, the very maintenance of peace and order sought after is rendered wholly nugatory. By thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. This cannot be so in our constitutional order.

It is in this light that the Court restores the long-deserved liberty of accused-appellant Ordiz.

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[46] See quote on https://www.goodreads.com/quotes/612411-there-is-no-greater-tyranny-than-that-which-is-perpetrated, last accessed on October 24, 2019.

[47] CONSTITUTION, Art. II, Sec. 5.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 2, 2012 of the Court of Appeals, in CA-G.R. CR HC No. 00895 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Orlando Ramos Ordiz is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Further, let a copy of this Decision be furnished the Chief of the Philippine National Police, the Regional Director of the Police Regional Office 7, and the City Director of the Philippine National Police Cebu City Police Office. The Philippine National Police is **ORDERED** to **CONDUCT AN INVESTIGATIO**N on the brazen violation of Section 21 of RA 9165 and other violations of the law committed by the buy-bust team, as well as other similar incidents, and **REPORT** to this Court within thirty (30) days from receipt of this Decision the action taken.

SO ORDERED.

Carpio (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier,* and *Zalameda, JJ.*, concur.

SPECIAL FIRST DIVISION

[G.R. No. 223712. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR SUMILIP *y* TILLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; IN CRIMINAL CASES, CONVICTION DEMANDS THAT THE PROSECUTION PROVE AN ACCUSED'S GUILT BEYOND REASONABLE DOUBT.— Conviction in criminal cases demands that the prosecution prove an accused's guilt beyond reasonable doubt. This quantum of proof imposes upon the prosecution the burden to overcome the constitutional presumption of innocence. The prosecution must do so by presenting its own evidence, without relying on the weakness of the arguments and proof of the defense. This proceeds from the constitutional mandate of due process. In *Daayata v. People*: Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Conviction for illegal sale of dangerous drugs requires proof of its elements: In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

3. ID.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE THEREWITH IS NECESSARY TO ESTABLISH THE *CORPUS DELICTI*; FOUR LINKS TO BE ESTABLISHED.— Establishing the *corpus delicti* requires

strict compliance with the chain of custody requirements spelled out by the Comprehensive Dangerous Drugs Act. Section 21 of Republic Act No. 9165 lists steps that must be observed from the moment of seizure of drugs and drug paraphernalia to their examination until their presentation before a court. x x x Without credible proof of the *corpus delicti*, there can be no crime of illegal sale of dangerous drugs. There is no nexus between whatever items are presented in court and the transaction or activity attributed to an accused. Ultimately, then, the accused cannot be said to have been the author of the alleged illegal act. Section 21's mandated chain of custody consists of four (4) links. In each of these links, the prosecution must account for the manner of handling and turnover of the seized items to every designated person or officer forming part of the chain. In *People v. Nandi*: [T]he following links should be established in the chain of custody of the confiscated item: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. A failure to make such an account at any stage amounts to a broken chain of custody and diminishes the evidentiary value of whatever items are eventually presented in court.

4. ID.; ID.; ID.; ID.; NONCOMPLIANCE MAY BE EXCUSED WHEN THE PROSECUTION ESTABLISHES THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— There are, however, instances when strict compliance with Section 21 is concededly impossible or impracticable. Noncompliance may be excused when the prosecution establishes that: (1) there is a justifiable ground for noncompliance; and (2) the integrity and evidentiary value of the seized items are properly preserved. The prosecution must address every procedural lapse. To satisfy a court that the drugs or drug-related items it is presenting are authentic and have been preserved, the prosecution must plead and prove justifiable grounds and the specific measures taken by law enforcers to maintain the seized items' integrity.

5. ID.; ID.; ID.; REQUIREMENTS ON MARKING, INVENTORY AND TAKING OF PHOTOGRAPHS OF THE SEIZED ITEMS; AS A RULE, MUST BE DONE AT THE ACTUAL PLACE OF APPREHENSION IN THE PRESENCE OF REQUIRED WITNESSES; VIOLATED IN CASE AT BAR.— In *People v. Tomawis*, this Court discussed the requirement of immediacy in relation to the presence of the necessary witnesses: The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses. x x x The inventory and taking of photographs must, as a rule, be done at the actual place of apprehension. Likewise, the required witnesses must be present right during the apprehension and not only during the subsequent marking, inventory, and taking of photographs. In this case, the marking, inventory, and taking of photographs were not done immediately after the apprehension. Rather, the police officers took time to transfer to the San Fernando Police Station. Only barangay officials were claimed by the prosecution to be present during the belated marking, inventory, and taking of photographs. There was no Department of Justice Representative. Neither was there a media representative. Worse, there is no showing that even those barangay officials were present during the actual apprehension.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; ONLY BENEFITS OFFICERS WHO WERE SHOWN TO HAVE ACTED IN KEEPING WITH ESTABLISHED STANDARDS; CASE AT BAR.— The police officers' failure to properly adhere to the chain of custody requirements cannot be swept away by the convenient presumption that they acted

accordingly. This Court has previously explained that the presumption of regularity in the performance of official duties only benefits officers who were shown to have acted in keeping with established standards. It cannot cure irregularities and manifest deviations from what is legally required: A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. This case is littered with fatal gaps in the custody of the item, which is at the core of accused-appellant's prosecution. Far from displaying the diligence apropos to establishing guilt beyond reasonable doubt, the prosecution has been content on relying on its own assurances and misplaced presumptions. This Court takes this opportunity to correct the error validated by the Regional Trial Court and the Court of Appeals. Accused-appellant's guilt has not been shown beyond reasonable doubt. He must be acquitted.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

LEONEN,[*] *J.*:

The Comprehensive Dangerous Drugs Act of 2002 spells out strict chain of custody requirements. Noncompliance with these requirements may only be excused upon a showing of justifiable grounds *and* specific measures taken by law enforcers to preserve the integrity of items allegedly seized from an accused. The prosecution's failure to demonstrate these amounts to its failure to establish the *corpus delicti* of drug offenses. The accused's acquittal must then ensue.

[*] Designated additional Member per Raffle dated Februry 12, 2018.

This Court resolves an appeal from the Decision[1] of the Court of Appeals. The Court of Appeals affirmed the October 3, 2011 Decision of the Regional Trial Court, which convicted Victor Sumilip *y* Tillo (Sumilip) of the charge of illegal sale of dangerous drugs.[2]

In an Information, Sumilip was charged with violation of Section 5 of Republic Act No. 9165,[3] or the Comprehensive Dangerous Drugs Act, for the illegal sale of dangerous drugs. The Information read:

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[1] *Rollo*, pp. 2-12. The May 21, 2015 Decision was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Ricardo R. Rosario of the First Division, Court of Appeals, Manila.

[2] *Id.* at 12. A copy of the Decision of the Regional Trial Court, Branch 66, San Fernando City, La Union was not attached to the *rollo*.

[3] Republic Act No. 9165 (2002), Sec. 5 provides:

SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

That on or about the 4th day of July 2009, in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, without the necessary permit or authority from the proper governmental agency or office, did then and there, unlawfully and feloniously for and in consideration of the sum of money in the amount of FIVE HUNDRED Pesos (PHP500.00) Philippine Currency, sell and deliver FIFTY ONE point FIFTEEN (51.15) GRAMS OF Marijuana, a dangerous drug, wrapped in newspaper to PO2 Ricardo Annague who posed as buyer thereof using marked money, a five hundred pesos bill bearing serial No. CQ318210.

CONTRARY TO LAW.[4] (Citation omitted)

On arraignment, Sumilip pleaded not guilty to the offense charged.[5] During trial, the prosecution presented three (3) witnesses: (1) Police Officer 2 Ricardo Annague (PO2 Annague); (2) Police Officer 3 Paul Batnag (PO3 Batnag); and (3) Police Senior Inspector Anamelisa Bacani.[6]

According to the prosecution, at about 1:00 p.m. on July 4, 2009, a confidential informant reported to PO2 Annague that a certain "Victor Sumilip" was selling illegal drugs along Ancheta Street, Catbangen, San Fernando City, La Union. A buy-bust

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If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] *Rollo*, p. 3.

[5] *Id*.

[6] *Id.*

team was then formed with PO2 Annague as the designated poseur-buyer and PO3 Batnag as back-up. A ₱500.00 bill was prepared as the buy-bust money. It was agreed on that PO2 Annague would remove his cap to signify to the rest of the team that the sale of drugs had been consummated.[7]

The team later went to La Union Medical Diagnostic Center on Ancheta Street, where PO2 Annague and the informant approached Sumilip. After the informant had introduced PO2 Annague as an interested marijuana buyer, Sumilip took out of his left pocket marijuana leaves wrapped in newspaper and handed them to PO2 Annague. In exchange, PO2 Annague handed Sumilip the marked ₱500.00 bill. At this, PO2 Annague removed his cap, signaling the consummation of the sale. Then, with PO3 Batnag's aid, PO2 Annague arrested Sumilip and informed him of his constitutional rights.[8]

Sumilip and the marijuana were then taken to the San Fernando Police Station. There, PO2 Annague marked, inventoried, and photographed the seized marijuana in the presence of Sumilip and some barangay officials. Thereafter, the marijuana was brought to the Philippine National Police Crime Laboratory for examination.[9]

Sumilip, his sister Carla Maanes, and his cousin Julie Estacio, testified for the defense. From their testimonies, the defense alleged that while Sumilip was eating in a *turo-turo* restaurant on Ancheta Street at around 11:10 a.m. on July 4, 2009, two (2) men in civilian clothing approached and aimed a gun at him. After they had ordered Sumilip to get up, the men held his hand, frisked him, and searched his bag. They forced him to board a car and brought him to Tanqui Police Station. Later on, he was brought back to the restaurant where the two (2) men simulated his arrest for supposedly selling marijuana.[10]

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[7] *Id*. at 3-4.

[8] *Id*. at 4.

[9] *Id.*

[10] *Id*. at 4-5.

In its October 3, 2011 Decision,[11] the Regional Trial Court found Sumilip guilty beyond reasonable doubt of illegal sale of dangerous drugs. The dispositive portion of this Decision read:

> WHEREFORE, premises considered, accused VICTOR SUMILIP Y Tillio (*sic*) is hereby found GUILTY beyond reasonable doubt for violating Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos Php)500,000). (*sic*)
>
> SO ORDERED.[12] (Citation omitted)

In its assailed Decision,[13] the Court of Appeals affirmed the Regional Trial Court Decision, as follows:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The Decision dated October 3, 2011 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 66 in Criminal Case No. 8384 is hereby **AFFIRMED**.
>
> **SO ORDERED.**[14] (Emphasis in the original)

In affirming Sumilip's conviction, the Court of Appeals reasoned that the prosecution demonstrated an unbroken chain of custody of the marijuana taken from Sumilip.[15] It did not lend credence to Sumilip's denial and allegation of being framed.[16]

Thus, Sumilip filed his Notice of Appeal.[17]

In a February 14, 2018 Resolution,[18] this Court's First Division dismissed Sumilip's appeal.

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[11] *Id*. at 5.

[12] *Id*.

[13] *Id*. at 2-12.

[14] *Id*. at 12.

[15] *Id*. at 8.

[16] *Id*. at 10.

[17] *Id*. at 13-15.

[18] *Id*. at 34-35.

On June 14, 2018, Sumilip filed a Motion for Reconsideration.[19] He maintains that the prosecution failed to show an unbroken chain of custody of the marijuana supposedly seized from him. He emphasizes that the prosecution failed to account for how the marijuana was handled upon seizure. He notes that the identity of the person who had custody of the marijuana from the place of his arrest to the police station was never disclosed.[20]

Acting on the Motion for Reconsideration, this Court, in its August 28, 2019 Resolution,[21] reinstated Sumilip's appeal.

For this Court's resolution is the issue of whether or not accused-appellant Victor Sumilip *y* Tillo is guilty beyond reasonable doubt of the offense of illegal sale of dangerous drugs.

Conviction in criminal cases demands that the prosecution prove an accused's guilt beyond reasonable doubt.[22] Rule 133, Section 2 of the Rules of Court provides:

> SECTION 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This quantum of proof imposes upon the prosecution the burden to overcome the constitutional presumption of innocence.[23] The prosecution must do so by presenting its own evidence, without relying on the weakness of the arguments

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[19] *Id*. at 36-42.

[20] *Id*. at 37.

[21] *Id*. at 43.

[22] RULES OF COURT, Rule 133, Sec. 2.

[23] CONST., Art. III, Sec. 14(2).

and proof of the defense.[24] This proceeds from the constitutional mandate of due process.[25] In *Daayata v. People*:[26]

> Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.[27]

II

Conviction for illegal sale of dangerous drugs requires proof of its elements:

> In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[28]

Establishing the *corpus delicti* requires strict compliance with the chain of custody requirements spelled out by the Comprehensive Dangerous Drugs Act. Section 21 of Republic Act No. 9165[29] lists steps that must be observed from the moment of seizure of drugs and drug paraphernalia to their examination until their presentation before a court:

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[24] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 499-500 [Per J. Leonen, Third Division], citing *Macayan, Jr. v. People*, 756 Phil. 202 (2015) [Per J. Leonen, Second Division]; CONST. Art. III, Sec. 1; CONST., Art. III, Sec. 14 (2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[25] *Id*.

[26] 807 Phil. 102 (2017) [Per J. Leonen, Second Division].

[27] *Id*. at 104.

[28] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479 (2009) [Per J. Corona, First Division].

[29] Section 21 of Republic Act No. 9165 has since been amended by Republic Act No. 10640 in 2014. However, the incidents concerning this case transpired in 2009; as such, the police officers' actions here are governed by Republic Act No. 9165.

SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and

essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided,* That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further,* That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein

> which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

In *People v. Holgado*,[30] this Court explained the importance of preserving the integrity of items seized during drug operations:

> The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[31]

Similarly, in *People v. Belocura*,[32] where the identity of the allegedly seized drug was not established, this Court discussed:

> Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.
>
> In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto. This is the reason why

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[30] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[31] *Id.* at 93 citing *People v. Lorenzo*, 633 Phil. 393, 401 (2010) [Per *J.* Perez, Second Division].

[32] 693 Phil. 476 (2012) [Per *J.* Bersamin, First Division].

authentication and laying a foundation for the introduction of evidence are important.[33] (Citations omitted)

Without credible proof of the *corpus delicti*, there can be no crime of illegal sale of dangerous drugs. There is no nexus between whatever items are presented in court and the transaction or activity attributed to an accused. Ultimately, then, the accused cannot be said to have been the author of the alleged illegal act.[34]

The chain of custody requirements are not a trivial, hollow list of procedural niceties. Rather:

> . . . they are calibrated to preserve the even greater interest of due process and the constitutional rights of those who stand to suffer from the State's legitimate use of force, and therefore, stand to be deprived of liberty, property, and, should capital punishment be imposed, life. This calibration balances the need for effective prosecution of those involved in illegal drugs and the preservation of the most basic liberties that typify our democratic order.[35]

Section 21's mandated chain of custody consists of four (4) links. In each of these links, the prosecution must account for the manner of handling and turnover of the seized items to every designated person or officer forming part of the chain. In *People v. Nandi*:[36]

> [T]he following links should be established in the chain of custody of the confiscated item: ***first***, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission

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[33] *Id*. at 495-496.

[34] *Id.*

[35] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 491 [Per *J.* Leonen, Third Division].

[36] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

of the marked illegal drug seized from the forensic chemist to the court.[37] (Emphasis supplied)

A failure to make such an account at any stage amounts to a broken chain of custody and diminishes the evidentiary value of whatever items are eventually presented in court.

There are, however, instances when strict compliance with Section 21 is concededly impossible or impracticable. Noncompliance may be excused when the prosecution establishes that: (1) there is a justifiable ground for noncompliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.[38] The prosecution must address every procedural lapse. To satisfy a court that the drugs or drug-related items it is presenting are authentic and have been preserved, the prosecution must plead and prove justifiable grounds and the specific measures taken by law enforcers to maintain the seized items' integrity. In *People v. Angeles*:[39]

> [B]efore substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a justifiable ground for its noncompliance in the first place. *The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.*[40] (Emphasis supplied)

III

The assailed Court of Appeals Decision glossed over the police officers' glaring failure to comply with the Comprehensive Dangerous Drugs Act's chain of custody requirements.

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[37] *Id.* at 144-145 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

[38] *People v. Viterbo*, 739 Phil. 593, 603 (2014) [Per *J.* Perlas-Bernabe, Second Division].

[39] *People v. Angeles*, G.R. No. 218947, June 20, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64269> [Per *J.* Martires, Third Division].

[40] *Id.*

The apprehending officers failed to credibly mark, inventory, and take photographs of the allegedly seized marijuana. Section 21(1) of the Comprehensive Dangerous Drugs Act requires inventory and taking of photographs "*immediately after seizure and confiscation*[.]"[41] It also requires the presence of the accused, an elected public official, a Department of Justice representative, and a media representative.[42]

In *People v. Tomawis*,[43] this Court discussed the requirement of immediacy in relation to the presence of the necessary witnesses:

> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.[44]

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[41] Republic Act No. 9165 (2002), Sec. 21(1).

[42] Republic Act No. 9165 (2002), Sec. 21(1). As amended by Republic Act No. 10640, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: (1) the accused or the person/s from whom the items were seized; (2) an elected public official; and (3) a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (*i.e.*, the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.

[43] G.R. No. 228890, April 18, 2018, 862 SCRA 131 [Per *J.* Caguioa, Second Division].

[44] *Id*. at 146.

This Court further explained:

> [T]he presence of the [four] witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[45]

The inventory and taking of photographs must, as a rule, be done at the actual place of apprehension. Likewise, the required witnesses must be present right during the apprehension and not only during the subsequent marking, inventory, and taking of photographs.

In this case, the marking, inventory, and taking of photographs were not done immediately after the apprehension. Rather, the police officers took time to transfer to the San Fernando Police Station.[46] Only *barangay* officials were claimed by the prosecution to be present during the belated marking, inventory, and taking of photographs. There was no Department of Justice Representative. Neither was there a media representative. Worse, there is no showing that even those *barangay* officials were present during the actual apprehension.

Yet, just as glaring is the prosecution's failure to specify any justification for the police officers' lapses or a satisfactorily detailed account of measures they had taken to preserve the allegedly seized marijuana's identity. The prosecution appears content to have courts merely accept its own self-serving guarantees.

Unfortunately, the Court of Appeals was quick to conclude that "the prosecution has sufficiently established the continuous and unbroken chain of custody of the illegal seized item."[47] According to it:

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[45] *Id.* at 150.

[46] *Rollo*, p. 4.

[47] *Id.* at 10.

First, the seizure of the confiscated marijuana was established thru the statements of both PO2 Annague and PO3 Batnag and the Certification of Inventory. According to their testimonies, after they arrested accused-appellant, they took pictures, together with the *barangay* officials of the seized illegal drug and prepared the certificate of inventory. The marking is evident in the newspaper used in wrapping the marijuana leaves and the marked money, which revealed the initial "RAA". The occurrence of the second link is illustrated when Police Inspector Jessie L. Quesada prepared a Request for Laboratory Examination of the seized illegal drug. The third and final link does not need to be established as the parties have stipulated that the specimen subject of this case is the same specimen submitted to the forensic chemist for examination.[48] (Citations omitted)

The Court of Appeals failed to consider that the prosecution did not identify the person who had custody of the allegedly seized marijuana from the time of arrest to when it was marked, inventoried, and photographed. Worse, the prosecution made no averments as to the measures taken by that custodian to maintain the identity and integrity of the allegedly seized marijuana.

In *People v. Dela Cruz*,[49] this Court was not impressed by the guarantees of a police officer who, having initial custody of seized sachets supposedly containing *shabu*, merely kept those sachets in his pocket up until they were handed over for examination:

The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.

Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.

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[48] *Id.* at 8-9.

[49] 744 Phil. 816 (2014) [Per. *J.* Leonen, Second Division].

Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.

Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.

Section 21, paragraph 1, of the Comprehensive Dangerous Drugs Act of 2002, includes a proviso to the effect that "noncompliance of (sic) these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." Plainly, the prosecution has not shown that — on September 14, 2004, when dela Cruz was arrested and the sachets supposedly seized and marked — there were "justifiable grounds" for dispensing with compliance with Section 21. All that the prosecution has done is insist on its self-serving assertion that the integrity of the seized sachets has, despite all its lapses, nevertheless been preserved.[50]

In *Dela Cruz*, this Court considered as unreliable the keeping of allegedly seized sachets in an officer's pockets. This, even as the prosecution insisted that the officer's act of segregating sachets in different pockets was an ample safeguard.

The situation here is significantly worse than that in *Dela Cruz*. The prosecution here not only failed to allege a semblance of precautionary measures, but it never even named the person having custody of the drug alleged seized. Where the prosecution in *Dela Cruz* failed to impress, with greater reason should this Court, in this case, refrain from condoning the prosecution's inadequacies. The utter dearth of specific and detailed accounts on how the allegedly seized marijuana's identity and integrity were preserved while in transit is a glaring, fatal flaw *vis-à-vis* Section 21's mandate.

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[50] *Id.* at 834-835.

IV

The police officers' failure to properly adhere to the chain of custody requirements cannot be swept away by the convenient presumption that they acted accordingly. This Court has previously explained that the presumption of regularity in the performance of official duties only benefits officers who were shown to have acted in keeping with established standards. It cannot cure irregularities and manifest deviations from what is legally required:

> A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.[51]

This case is littered with fatal gaps in the custody of the item, which is at the core of accused-appellant's prosecution. Far from displaying the diligence apropos to establishing guilt beyond reasonable doubt, the prosecution has been content on relying on its own assurances and misplaced presumptions. This Court takes this opportunity to correct the error validated by the Regional Trial Court and the Court of Appeals. Accused-appellant's guilt has not been shown beyond reasonable doubt. He must be acquitted.

WHEREFORE, the May 21, 2015 Decision of the Court of Appeals in CA-G.R. CR. HC No. 05301 is **REVERSED** and **SET ASIDE**. Accused-appellant Victor Sumilip *y* Tillo is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

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[51] *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487, 507-508 [Per *J.* Leonen, Third Division] citing *People v. Kamad*, 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementaion. The Director of the Bureau of Corrections is directed to report to this Court within (5) days from receipt of this Resolution the action he has taken. Copies shall also be furnished to the Director General of Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.,* concur.

SECOND DIVISION

[G.R. No. 224039. September 11, 2019]

DANILO DE VILLA *y* GUINTO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ISSUES THAT ARE FACTUAL AND EVIDENTIARY IN NATURE CANNOT BE RAISED THEREIN.— [T]he Court notes that the issues raised in the Petition are factual and evidentiary in nature, which are outside the Court's scope of review in Rule 45 petitions. In this regard, it is settled that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts due to the unique opportunity afforded them to observe the witnesses when placed on the stand. While questions of fact have been entertained by the Court in justifiable circumstances, Danilo failed to establish that the instant case falls within the allowable exceptions. Hence, not being a trier of facts but of law, the

Court must necessarily defer to the concurrent findings of fact of the CA and the RTC.

2. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; PLAIN VIEW DOCTRINE; ELEMENTS.— It is undeniable that the seizure of the prohibited items in this case was valid under the "*plain view*" doctrine. x x x [A]ll the elements of the plain view doctrine were established. *First*, the police officers were conducting a routine checkpoint when they flagged down the accused on board his motorcycle. The police officers noticed that the accused x x x was committing several traffic infractions, thus the police officers had a prior justification for their act of flagging down the accused and their subsequent intrusion. *Second*, upon asking the accused for his registration papers, the accused opened his utility box, and the two (2) sachets of *shabu* were plainly visible to the police officers. The discovery of the sachets was inadvertent and the illicit items were immediately apparent. *Lastly*, PO2 Hamilton Salanguit (PO2 Salanguit) confiscated the sachets containing white crystalline substance since it appeared that the same could be evidence of a crime, contraband, or otherwise subject to seizure.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; REQUIREMENTS; STRICT COMPLIANCE THEREWITH IS MANDATORY AND IT IS ONLY IN EXCEPTIONAL CASES THAT NON-COMPLIANCE IS ALLOWED; REQUISITES.— As a general rule, strict compliance with the requirements of Section 21, RA 9165 is mandatory. It is only in exceptional cases that the Court may allow non-compliance with these requirements, provided the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

4. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE INTEGRITY OF THE *CORPUS DELICTI* IS ESTABLISHED BY THE PROSECUTION BY PROVING ALL THE LINKS IN THE CHAIN OF CUSTODY.— [T]he prosecution was able to establish the integrity of the *corpus delicti* and an unbroken chain of custody. The Court has explained in a catena of cases

the four (4) links that should be established in the chain of custody of the confiscated *item*: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; *and fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. In this case, the prosecution was able to prove all the links that should be established in the chain of custody.

5. ID.; ID.; INVESTIGATION AND PROSECUTION OF DRUG-RELATED CASES; NON-PARTICIPATION OF THE PHILIPPINE DRUG ENFORCEMENT AGENCY DOES NOT AUTOMATICALLY AFFECT THE VALIDITY OF A BUY-BUST OPERATION, ESPECIALLY AS IN THE CASE WHERE THERE IS NO BUY-BUST OPERATION, BUT AN *IN FLAGRANTE DELICTO* ARREST AND SEIZURE BY REASON OF A ROUTINE CHECKPOINT OPERATION.— The defense x x x posits that the arresting officers are not members of the PDEA, nor did they contact or coordinate with the latter in relation to the instant case. However, as correctly pointed out by the Office of the Solicitor General and settled by the CA, non-participation of the PDEA does not automatically affect the validity of a buy-bust operation. Especially as in the case where there was no buy-bust operation, but an *in flagrante delicto* arrest and seizure by reason of a routine checkpoint operation. Thus, there is no expectation for the police officers to have pre-coordinated with the PDEA. x x x It is thus clear that the PDEA is merely the lead agency, but is not the sole agency in the investigation and prosecution of drug-related cases. There is nothing in RA 9165 which even remotely indicates the intention of the legislature to make an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible. Thus, the accused's argument that his arrest and the seizure of the illegal drugs is not legal due to the non-participation of the PDEA must necessarily fail.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition) questioning the Decision[1] dated October 16, 2015 and Resolution dated April 4, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 36057, which affirmed the Decision[2] dated July 17, 2013 rendered by the Regional Trial Court, Branch 9, Balayan, Batangas (RTC) in Criminal Case No. 6623, which found herein accused-appellant Danilo De Villa *y* Guinto (Danilo) guilty beyond reasonable doubt of violating Section 11(3), Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information[3] filed against Danilo for violation of Section 11(3), Article II of RA 9165 pertinently read:

> That on or about the 4th day of May, 2011, at about 4:25 o'clock in the afternoon, at Barangay Rizal, Municipality of Tuy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully and unlawfully have in his possession, custody and control four (4) heat-sealed transparent plastic sachets each containing methamphetamine hydrochloride commonly known as "*shabu*", having a total weight of 0.12 gram, a dangerous drug.

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[1] *Rollo*, pp. 82-92. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr., and Maria Elisa Sempio Diy, concurring.

[2] *Id*. at 42-58. Penned by Presiding Judge Carolina F. De Jesus.

[3] Records, p. 1.

Contrary to law.[4]

Upon arraignment, Danilo pleaded not guilty to the offense charge.[5]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

From the narratives of prosecution's witnesses, PO2 Hamilton Salanguit and SPO1 Edward Plata, it is gathered that on 04 May 2011, at around 3:10 o'clock p.m., they and other police officers from Tuy (Batangas) Police Station were conducting a checkpoint in Barangay Rizal when they flagged down a Green Honda Wave motorcycle driven by accused-appellant with his wife Josefina Maria de Villa as backrider. Accused-appellant was not wearing helmet and shoes, and was only clad in *sando*. PO2 Salanguit approached accused-appellant and thereupon noticed that the motorcycle did not have a license plate. He asked accused-appellant to show his driver's license, but the latter could not present the same. PO2 Salanguit then requested accused-appellant to show the registration papers. Accused-appellant opened the motorcycle's utility box and took out a plastic containing the LTO — issued license plate (WG-7720) as well as the photocopies of the motorcycle's expired registration papers under the name of Alex Dayandayan which he handed to SPO1 Plata. At this instance, PO2 Sanlanguit saw two (2) plastic sachets containing white crystalline substance inside the utility box which he confiscated. Immediately, the police officers bodily searched accused-appellant and ordered him to empty the contents of his pocket. From accused-appellant's right pocket, two (2) more plastic sachets were recovered. PO2 Salanguit then marked the confiscated sachets with "*DGD-1*," ["]*DGD-2*," "*DGD-3*," and "*DGD-4*," which stands for the initials of "*Danilo Guinto De Villa.*"

Afterwards, accused-appellant and his wife, along with the seized items and the motorcycle, were brought to the *barangay* hall where accused-appellant was photographed with the seized plastic sachets; and an Inventory of the Property Seized/Confiscated was prepared by PO2 Salanguit and signed by Department of Justice representative Benilda Diaz, media representative Napoleon Cabral and Barangay Chairman Ramil Sanchez. Thereafter, the seized items were brought

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[4] *Id*.

[5] *Rollo,* p. 13.

by PO2 Salanguit and SPO1 Plata to the Batangas Provincial Crime Laboratory Office for forensic examination. In Chemistry Report No. BD-119-2011 dated 05 May 2011 issued by P/Insp. Herminia Carandang Llacuna, the test yielded a positive result for *methamphetamine hydrochloride*, a prohibited drug. Further investigation revealed that accused-appellant and his family were reportedly involved in the illicit drug trade in Poblacion, Tuy, Batangas. Neverthless, being a mere backrider, accused-appellant's wife was released for lack of evidence. A Traffic Citation Ticket was also issued against accused-appellant for traffic offenses, *viz*: driving without license, using the vehicle with expired registration papers, unattached plate number, and driving with sleeveless shirt and without shoes and helmet.[6]

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

> On the other hand, the defense witnesses were accused-appellant and his wife Josefina Maria de Villa. They averred that on 04 May 2011, at around 3:00 o'clock in the afternoon, he and his wife went to Balayan, Batangas — using the motorcycle of his friend Alexander Dayandayan — to purchase goods. While they were traversing Barangay Rizal in Tuy, Batangas, they noticed a police patrol car was tailing them, and eventually flagged them down. A police officer, whose nameplate reads "*SPO1 Buhay*", alighted and asked him why the vehicle did not have [a] license number. Accused-appellant answered that it was inside the utility box which he immediately opened to retrieve the license plate and the registration papers. He handed them to SPO1 Buhay, but a certain police officer named Romasanta approached and told them that it is better to go to the police station for further investigation. At the Tuy police station, they entered a room where a police officer inspected his pocket and the goods they bought from Balayan, Batangas. At that point, accused-appellant's wife was permitted to leave in order to get the original copy of the Certificate of Registration from their house. Accused-appellant was then transferred to another room by SPO1 Plata who asked him about a person who was not known to him. After staying in the room for four (4) hours, accused-appellant was directed to board the patrol car, along with an old person and a media man, and

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[6] *Id*. at 83-85.

proceeded to the *barangay* hall. There, he was photographed, with the plastic sachets of *shabu* placed on top of the table, in the presence of the barangay chairman, the media representative, and the DOJ representative. When they returned to the police station, accused-appellant was informed that he is being charged with illegal possession of *shabu.*[7]

Ruling of the RTC

In the Decision dated July 17, 2013, the RTC ruled that the prosecution was able to sufficiently prove the existence of all the elements of illegal possession of dangerous drugs.[8] The apprehending officers properly observed the legal requirements laid down under Section 21(1), Article II of RA 9165.[9] Lastly, it ruled that the defense of frame-up raised by the accused is without merit.[10] The accused failed to present clear and convincing evidence to support his claim.[11] He even admitted that he did not file any complaint against the apprehending officers who allegedly framed him up and supposedly planted evidence against him.[12]

The dispositive portion of the Judgment reads:

WHEREFORE, in view of the foregoing, this Court hereby finds accused Danilo De Villa *y* Guinto **GUILTY** beyond reasonable doubt for Violation of Section 11, Paragraph 3, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to suffer the penalty of **imprisonment** for **Twelve (12) Years, Four (4) Months** and **One (1) Day** as **minimum**, to **Fourteen (14) Years** and **Six (6) Months,** as **maximum**, and to pay a **fine** of **Three Hundred Thousand Pesos (₱300,000.00)** with subsidiary imprisonment in case of non-payment thereof. With costs.

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[7] *Id*. at 85-86.

[8] *Id*. at 55.

[9] *Id*. at 55-56.

[10] *Id*. at 57.

[11] *Id*.

[12] *Id*. at 57-58.

SO ORDERED.[13]

Aggrieved, Danilo appealed to the CA.

Ruling of the CA

In the assailed Decision dated October 16, 2015, the CA affirmed Danilo's conviction. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The appealed Decision dated 17 July 2013 of the Regional Trial Court, Branch 09, Balayan, Batangas in Criminal Case No. 6623 is **AFFIRMED**.
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> **SO ORDERED**.[14]

The CA likewise ruled that all the elements of Illegal Possession of Dangerous Drugs were duly proven by the prosecution.[15] It did not give any merit to the argument of the accused that the arresting officers are not members of the Philippine Drug Enforcement Agency (PDEA) and that the former did not coordinate with said agency prior to his arrest.[16] It further ruled that the police officers were able to follow the procedure laid down in Section 21.[17] Verily, it held that the integrity of the evidence is presumed to have been preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with.[18] Lastly, the prosecution failed to overturn the presumption of regularity in the performance of duties.[19]

Hence, the instant appeal.

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[13] *Id.* at 58.

[14] *Id.* at 92.

[15] *Id.* at 87.

[16] *Id.* at 88.

[17] *Id.* at 90-91.

[18] *Id.* at 91.

[19] *Id.*

Issue

Whether Danilo's guilt for violation of Section 11(3) of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The Petition lacks merit.

At the outset, the Court notes that the issues raised in the Petition are factual and evidentiary in nature, which are outside the Court's scope of review in Rule 45 petitions. In this regard, it is settled that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts due to the unique opportunity afforded them to observe the witnesses when placed on the stand.[20] While questions of fact have been entertained by the Court in justifiable circumstances, Danilo failed to establish that the instant case falls within the allowable exceptions. Hence, not being a trier of facts but of law, the Court must necessarily defer to the concurrent findings of fact of the CA and the RTC.[21]

Be that as it may, the Court finds no reversible error committed by the CA in affirming Danilo's guilt for violation of Section 11(3), Article II of RA 9165.

The apprehension of the accused-appellant through a routine checkpoint which led to the seizure of the illegal drugs constitutes a valid warrantless arrest of the accused and seizure of the four (4) plastic sachets of shabu.

As correctly ruled by the CA, all the elements of Illegal Possession of Dangerous Drugs[22] were duly proven by the

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[20] *People v. Gahi*, 727 Phil. 642, 658 (2014).

[21] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-786 (2013).

[22] *People v. Sembrano*, G.R. No. 238829, October 15, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64758>: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.

prosecution.[23] Moreover, there is no question that there was a valid warrantless arrest of Danilo and seizure of the illegal drugs. The CA ruled in this wise:

> In this case, all the foregoing elements were duly proven. First, it is a conceded fact that accused-appellant was committing certain traffic infractions when he was flagged down in a police checkpoint, namely: driving without helmet and shoes; wearing only a *sando*; driving a vehicle without attached license plate; and holding expired registration papers which was not even under his name. When accused-appellant was asked to produce the registration papers, he voluntarily opened the motorcycle's utility and it was at this juncture when PO2 Salanguit saw the two (2) plastic sachets of *shabu* hidden inside. The sight, therefore, of the said illicit drugs in the possession and custody of accused-appellant gave the police officers genuine reason and authority to arrest him and to conduct a body-search incidental to the valid warrantless arrest; which search resulted to the seizure of two (2) more plastic sachets of *shabu* in his right pant pocket. Law and jurisprudence have laid down the principle that a warrantless search is justified as an incident to a lawful arrest; seizure of evidence in plain view; search of a moving vehicle; consented search; customs search; stop and frisk situations; and exigent and emergency circumstances. It is also worth mentioning that motorists — like accused-appellant here — and their vehicles, as well as pedestrians passing through checkpoints may be stopped and searched when there is probable cause to justify a reasonable belief of the men at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense. Secondly, it is evidently clear that accused-appellant has no legal authority to possess the contraband. Third, under the circumstances, accused-appellant's act of concealing the drugs inside the motorcycle's utility box and his pant pocket indicate that his possession and custody thereof is free, conscious and deliberate. Consequently, We find that the elements for a successful prosecution for illegal possession of *shabu* are present.[24]

It is undeniable that the seizure of the prohibited items in this case was valid under the "*plain view*" doctrine. In *People*

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[23] *Rollo*, pp. 86-87.

[24] *Id.* at 87.

v. Lagman,[25] the Court laid down the following parameters for the application of this doctrine:

> Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The 'plain view' doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.[26]

In this case, all the elements of the plain view doctrine were established.

First, the police officers were conducting a routine checkpoint when they flagged down the accused on board his motorcycle. The police officers noticed that the accused, as abovementioned, was committing several traffic infractions, thus the police officers had a prior justification for their act of flagging down the accused and their subsequent intrusion. *Second*, upon asking the accused for his registration papers, the accused opened his utility box, and the two (2) sachets of *shabu* were plainly visible to the police officers. The discovery of the sachets was inadvertent and the illicit items were immediately apparent. *Lastly*, PO2 Hamilton Salanguit (PO2 Salanguit) confiscated the sachets containing white crystalline substance since it appeared that the same could be evidence of a crime, contraband, or otherwise subject to seizure.

At this juncture, it is important to emphasize that the seizure of these pieces of evidence in plain view is what justified the

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[25] 593 Phil. 617 (2008).

[26] *Id*. at 628-629.

subsequent searches and the arrest of Danilo. If not for the said plastic sachets, there would have been no valid reason to search or frisk Danilo as his traffic violations were punishable only by fine. His traffic violations *per se* did not justify a search incidental to a lawful arrest as there was as yet no lawful arrest to speak of. However, with the discovery of the two plastic sachets in the utility box, there arose a valid reason to properly arrest Danilo and conduct a search incidental to such lawful arrest. And true enough, they discovered two (2) more plastic sachets of *shabu* in the right pocket of Danilo's pants.

The police officers sufficiently complied with Section 21 of RA 9165.

With regard to the accused's argument that the chain of custody was not complied with, the Court likewise upholds the CA when it held that the police officers substantially complied with the same.

As a general rule, strict compliance with the requirements of Section 21, RA 9165 is mandatory. It is only in exceptional cases that the Court may allow non-compliance with these requirements, provided the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

To recall, this case started with a checkpoint in Barangay Rizal, Tuy, Batangas where the accused was caught *in flagrante delicto* possessing two (2) sachets of shabu. There was no buy-bust operation conducted by the police officers, but a mere routine check. Thus, there is sufficient justification for their slight deviation from the rules in Section 21. As correctly pointed out by the CA, to wit:

In this instance, PO2 Salanguit testified that he confiscated the four (4) plastic sachets of *shabu* at the *locus criminis* after looking inside the motorcycle's utility box and upon frisking the accused-appellant on the occasion of the arrest. Upon seizure, he marked the

items with "*DGD-1*," ["]*DGD-2*," "*DGD-3*," and "*DGD-4*" in the presence of accused-appellant and the other police officers. On their way to the *barangay* hall, PO2 Salanguit was in possession of the seized items. When the photographs of accused-appellant and the seized items were taken, he was likewise present, along with DOJ representative Benilda Diaz, media representative Napoleon Cabral, and Barangay Chairman Ramil Sanchez. After preparing the Inventory of Property Seized/Confiscated and the Receipt of Property Seized, PO2 Salanguit physically delivered the items to the Batangas Provincial Crime Laboratory Office to P/Insp. Herminia Carandang Llacuna, forensic chemist, at 2:10 o'clock in the morning of 05 May 2011. In turn, P/Insp. Llacuna conducted the laboratory examination on the seized items which yielded positive result for *methamphetamine hydrochloride*, and, thereafter, she issued a corresponding laboratory report.[27]

Verily, the prosecution was able to establish the integrity of the *corpus delicti* and an unbroken chain of custody. The Court has explained in a catena of cases the four (4) links that should be established in the chain of custody of the confiscated *item*: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; *and fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[28] In this case, the prosecution was able to prove all the links that should be established in the chain of custody.

The Court thus agrees with the CA that the police officers were able to strictly comply with the requirements laid down in Section 21. The seized items were immediately marked at the place of arrest by PO2 Salanguit. Since the arrest of the accused and seizure of the dangerous drugs were merely a result

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[27] *Rollo*, p. 91.

[28] *People v. Holgado*, 741 Phil. 78, 94-95 (2014), citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

of the routine checkpoint conducted by the police officers and not because of a pre-planned buy-bust operation, they had a sufficient justification to delay the conduct of the inventory and photography of the seized items at a different venue. In addition, it is worthy to note that despite the fact that said arrest of the accused and seizure of the illegal drugs was not planned, it is apparent that they exerted enough reasonable efforts to ensure that the physical inventory and photography of the seized items were conducted in the presence of the accused, a representative from the media, a representative of the Department of Justice, and a *barangay* official immediately after the arrest and seizure at the *barangay* hall — a requirement that many police officers normally fail to comply with even in a planned buy-bust operation.

Unquestionably, the police officers sufficiently complied with the requirements laid down in Section 21, thus preserving the integrity and evidentiary value of the seized items.

The defense further posits that the arresting officers are not members of the PDEA, nor did they contact or coordinate with the latter in relation to the instant case.

However, as correctly pointed out by the Office of the Solicitor General and settled by the CA, non-participation of the PDEA does not automatically affect the validity of a buy-bust operation. Especially as in the case where there was no buy-bust operation, but an in *flagrante delicto* arrest and seizure by reason of a routine checkpoint operation. Thus, there is no expectation for the police officers to have pre-coordinated with the PDEA.

In the case of *People v. Sta. Maria*,[29] the Court ruled:

> Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence,

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[29] 545 Phil. 520 (2007).

both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest.

The argument is specious.

Section 86 of Republic Act No. 9165 reads:

> SEC. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.
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> The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.
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> Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: ***Provided, however,*** **That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency.** The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision x x x[30] (Emphasis and underscoring supplied)

It is thus clear that the PDEA is merely the lead agency, but is not the sole agency in the investigation and prosecution of drug-related cases. There is nothing in RA 9165 which even remotely indicates the intention of the legislature to make an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible.[31]

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[30] *Id.* at 530-532.

[31] *Id.* at 534.

Thus, the accused's argument that his arrest and the seizure of the illegal drugs is not legal due to the non-participation of the PDEA must necessarily fail.

To recapitulate, the in *flagrante delicto* arrest of Danilo was legal and the subsequent seizure of the illegal drugs was within the bounds of law. The police officers were able to sufficiently comply with the chain of custody rule. Thus, the Court commends the police officers for being vigilant in the performance of their duties and for exerting reasonable efforts, despite time constraints, to comply with the requirements of the law. Let this case be an exemplar to other police and PDEA officers that the requirements laid down in Section 21 are not unreasonable and may be complied with as long as they are willing and are responsible enough to strictly adhere to it.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated October 16, 2015 and Resolution dated April 4, 2016 of the Court of Appeals in CA-G.R. CR No. 36057 and **AFFIRMS** the said Decision finding petitioner **DANILO DE VILLA *y* GUINTO GUILTY** beyond reasonable doubt for violation of Section 11(3), Article II of Republic Act No. 9165.

Carpio (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier*, and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 229046. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL CARDENAS *y* HALILI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) **the identity of the buyer and the seller, the object and the consideration**; and (2) **the delivery of the thing sold and the payment therefor**.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY OF THE CONFISCATED ITEMS; THE PROSECUTION FAILED TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGED SEIZED DRUGS IN CASE AT BAR.— In cases involving dangerous drugs, the State bears not only the burden of proving the aforesaid elements, but also of proving the *corpus delicti* or the body of the crime. **In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.** Therefore, in all drugs cases, **compliance with the chain of custody rule is *crucial* in establishing the accused's guilt beyond reasonable doubt**. The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony on every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe

the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. As applied in illegal drugs cases, chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until destruction. In particular, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. The chain of custody rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. x x x [A]fter a careful review of the evidence on record, the Court finds that **the prosecution failed to establish an unbroken chain of custody of the alleged seized drug specimen.**

3. ID.; ID.; ID.; STRICT COMPLIANCE WITH SECTION 21 OF RA 9165 IS REQUIRED.— [T]he law requires the ***strict observance*** of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused. These special rules are contained in Section 21 of RA 9165, which mandates the following procedure in the seizure, custody, and disposition of dangerous drugs: x x x (1) **the seized items be inventoried and photographed immediately after seizure or confiscation;** and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel**, (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**

4. ID.; ID.; ID.; ID.; REQUISITES FOR PERMISSIBLE NONCOMPLIANCE WITH SECTION 21 OF RA 9165, NOT

COMPLIED WITH; THE PROSECUTION FAILED TO BOTH RECOGNIZE AND SUFFICIENTLY JUSTIFY THE NON-OBSERVANCE OF THE RULE.— [T]here are instances wherein departure from the aforesaid mandatory procedures are permissible. Section 21 of the IRR provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) **recognize any lapses on the part of the police officers** and (2) **be able to justify the same**. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily be compromised. x x x [I]n the instant case, it cannot be denied that *the authorities failed to observe the mandatory requirements under Section 21 of RA 9165. Worse, the prosecution failed to recognize these lapses and offer sufficient justification to warrant the non-observance of these mandatory rules.* The unequivocal testimony of the prosecution's first witness, PO2 Santiago, reveals that, **out of the three required witnesses, only the representative of the media witnessed the buy-bust operation. No justifiable ground was offered to account for this serious breach of the law[.]** x x x **Further, as to the marking of the alleged seized drug specimen, the Court observes that the police officers violated *their own rules*.**

5. ID.; ID.; ID.; THE PROSECUTION ALWAYS HAD THE BURDEN OF PROVING COMPLIANCE WITH THE PROCEDURE IN SECTION 21; THE ACCUSED CAN SIMPLY RELY ON HIS RIGHT TO BE PRESUMED INNOCENT BUT THE PROSECUTION CANNOT RELY ON THE PRESUMPTION OF REGULARITY.— The CA erred in invoking the presumption of regularity in justifying the conviction of accused-appellant Cardenas. Both the RTC and CA overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. And this presumption of innocence is overturned only when the

prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt; by proving each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent. In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*: x x x **The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime**. To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

6. ID.; ID.; ID.; FINDING THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE BEEN COMPROMISED IN VIEW OF THE PROSECUTION'S FAILURE TO PRESERVE AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS, THE COURT ACQUITS APPELLANT.— [T]he Court finds that the integrity and evidentiary value of the *corpus delicti* have been seriously compromised due to the failure of the prosecution to preserve an unbroken chain of custody of the drug specimen and the police officers' unjustified non-observance of Section 21 of RA 9165. In light of this, accused-appellant Cardenas must perforce be acquitted.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

> *"If the arresting officers were unable to comply with the [requirements under Section 21 of Republic Act No. (RA) 9165], they were under obligation to explain why the procedure was not followed and prove that the reason provided a* ***justifiable ground****. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience*."[1]

The Case

Before the Court is an ordinary appeal[2] filed by accused-appellant Noel Cardenas *y* Halili (accused-appellant Cardenas), assailing the Decision[3] dated June 27, 2016 (assailed Decision) of the Court of Appeals[4] (CA) in CA-G.R. CR-HC No. 07032, which affirmed the Decision[5] dated June 5, 2014 rendered by the Regional Trial Court (RTC) of Quezon City, Branch 82 in Criminal Case No. Q-08-154072, entitled *People of the Philippines v. Noel Cardenas y Halili*, finding accused-appellant Cardenas guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[6] otherwise known

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[1] *People v. Ancheta*, 687 Phil. 569, 581 (2012). Emphasis and underscoring supplied.

[2] See Notice of Appeal dated July 11, 2016; *rollo*, pp. 14-16.

[3] *Rollo*, pp. 2-13. Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring.

[4] Second Division.

[5] CA *rollo*, pp. 56-64. Penned by Presiding Judge Lily Ann M. Padaen.

[6] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS

as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:[7]

Accused-appellant [Cardenas] was charged under the following criminal information, which reads:

> "That on or about the 12th day of September, 2008, in Quezon City, Philippines, the above-named accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction zero point sixty two (0.62) grams (*sic*) of dried Marijuana Fruiting tops, a dangerous drug.
>
> CONTRARY TO LAW."
>
> Upon arraignment on November 26, 2008, the accused-appellant pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

x x x x x x x x x

As culled from the records, the prosecution's version is herein quoted:

> "On 12 September 2008, a male confidential informant reported to Police Inspector Romeo Rabuya [(PI Rabuya)] of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of Police Station 11, Galas, Quezon City the illegal drug activities of a certain "Boom Tarat-Tarat" (later identified as [accused-appellant Cardenas]) in the said area. In response, [PI] Rabuya dispatched Police Officer 2 Jorge Santiago [(PO2 Santiago)] and Police Officer 2 Jayson Perez [(PO2 Perez)] to conduct a surveillance and casing at Unang Hakbang St. in front of No. 78 Galas, Quezon City.

THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[7] *Rollo*, pp. 2-6.

Upon arrival at the area, [PO2] Santiago and [PO2] Perez did not see anyone conforming to the description of [accused-appellant] Cardenas as communicated to them by the confidential informant. The two then returned to the SAID-SOTG and reported their finding to [PI] Rabuya.

[PI] Rabuya recommended that a buy-bust operation be conducted against [accused-appellant] Cardenas, designating [PO2] Santiago as the poseur-buyer who would use the marked Php100.00 bill. The other members of the buy-bust operation team assembled by [PI] Rabuya were Police Officer 1 Erwin Bautista [(PO1 Bautista)], Police Officer 1 Franklin Gadia [(PO1 Gadia)], and [PI] Rabuya himself. The buy-bust operation team likewise coordinated with the Philippine Drug Enforcement Agency (PDEA).

After the Pre-Operation Report was prepared, the buy-bust team proceeded to the area near No. 78 Unang Hakbang St., Galas, Quezon City. As agreed, the buy-bust team would standby from a distance of about 100 meters while [PO2] Santiago and the confidential informant transact with [accused-appellant] Cardenas. Once the sale was consummated, [PO2] Santiago would scratch his head as a signal for the rest of the team to apprehend [accused-appellant] Cardenas.

When [PO2] Santiago and the confidential informant saw [accused-appellant] Cardenas at the said area, the two proceeded to meet with [accused-appellant] Cardenas. The confidential informant introduced [PO2] Santiago to [accused-appellant] Cardenas.

[Accused-appellant] Cardenas then asked [PO2] Santiago whether he had money to buy drugs. [PO2] Santiago replied in the affirmative by showing the marked Php100.00 bill. Thereafter, [accused-appellant] Cardenas pulled from the right front pocket of his pants one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops. [PO2] Santiago handed the marked Php100.00 bill to [accused-appellant] Cardenas while the latter handed to him the said one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops. At that juncture, [PO2] Santiago scratched his head, as a signal to the rest of the buy-bust team that was on standby that the sale had already been consummated.

[PO2] Santiago then held the hand of [accused-appellant] Cardenas to prevent him from escaping. Subsequently, the rest of the buy-bust team led by [PO2] Perez arrived and approached [accused-appellant] Cardenas. [PO2] Perez informed [accused-appellant] Cardenas of his constitutional rights.

[PO2] Santiago then marked the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with his initials "JS" (Jorge Santiago) and "NC" (Noel Cardenas). The Inventory Receipt dated 12 September 2008 was readily accomplished at the same place. A representative of the media, Jimmy Mendoza, President of the PDEA Press Corps, witnessed the marking and inventory of the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with the markings "JS" and "NC". [PO2] Santiago then placed the seized item in a plastic bag.

[PO2] Santiago and the rest of the buy-bust team, together with [accused-appellant] Cardenas went to Police Station 11. At the police station, [PO2] Santiago turned over the seized item to investigator Police Officer 3 Jonathan Carranza [(PO3 Carranza)].

[PO3] Carranza then prepared the Request for Laboratory Examination dated 12 September 2008 directed to the Chemistry Division of the Philippine National Police (PNP) Crime Laboratory Office Station 19.

[PO2] Santiago brought the seized item for physical and chemical examination to the aforesaid crime laboratory.

In Chemistry Report No. D-455-2008 dated 12 September 2008, Engr. Leonard M. Jabonillo [(Engr. Jabonillo)], Forensic Chemist of the PNP Crime Laboratory confirmed that the seized item from [accused-appellant] Cardenas consisting of one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops weighing 0.62 gram with the markings "JS" and "NC," was indeed a dangerous drug, marijuana. After examination, [Engr.] Jabonillo turned over the one (1) small heat-sealed transparent plastic sachet containing marijuana leaves with fruiting tops with the markings "JS" and "NC" to the evidence custodian of the PNP Crime Laboratory."

On the other hand, accused-appellant [Cardenas'] version is as follows:

> "On 12 September 2008, at around 3:00 o'clock in the afternoon, [accused-appellant Cardenas] was at home sleeping with (*sic*) his mother, TERESITA CARDENAS [(Teresita)] was with her granddaughter watching the television, when four (4) to five (5) policemen suddenly barged in their house. They told Teresita that they wanted to talk to her son. When she replied that [accused-appellant Cardenas] was sleeping, they suddenly went inside her son's room. Awakened by the presence of the policemen, [accused-appellant Cardenas] was shocked that he was being accused of selling marijuana. He was apprehended and brought to Police Station 11 in Galas, where he was forced to admit his alleged crime but refused to do the same. He was subsequently brought for inquest on 13 September 2008 where he learned that he was being charged for selling marijuana. (TSN, 7 September 2011, pp. 4-7; TSN, 14 August, pp. 2-4)"[8]

The Ruling of the RTC

In its Decision dated June 5, 2014, the RTC found accused-appellant Cardenas guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165.

The dispositive portion of the RTC's Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused **Noel Cardenas y Halili "Guilty"** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.
>
> Accordingly, this Court sentences accused **Noel Cardenas *y* Halili** to suffer the penalty of **life imprisonment** and to pay a **Fine** in the amount of Five [H]undred Thousand Pesos (₱500,000.00).
>
> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.
>
> SO ORDERED.[9]

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[8] CA *rollo*, pp. 89-93.

[9] *Id*. at 63-64; emphasis in the original.

According to the RTC, "[t]he evidence presented by the prosecution unequivocally established that a successful buy-bust operation took place which resulted in the arrest of [accused-appellant Cardenas]."[10]

Insisting on his innocence, accused-appellant Cardenas appealed before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of accused-appellant Cardenas. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED**. The Decision dated June 5, 2014 of the Regional Trial Court (RTC) of Quezon City, Branch 82, in Criminal Case No. Q-08-154072 is hereby **AFFIRMED**.

SO ORDERED.[11]

In sum, the CA found that "[a]ll told, the totality of the evidence presented in the instant case indubitably confirms accused-appellant's guilt of the offense charged beyond reasonable doubt."[12]

Hence, this appeal before the Court of Last Resort.

Issue

Stripped to its core, for the Court's resolution is the issue of whether accused-appellant Cardenas is guilty beyond reasonable doubt for the crime charged.

The Court's Ruling

The foregoing question is answered in the *negative*. Accused-appellant Cardenas' guilt was not proven beyond reasonable doubt. Therefore, accused-appellant Cardenas is *acquitted* of the crime charged.

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[10] *Id.* at 61.

[11] *Rollo*, p. 12.

[12] *Id.*

The Elements of Illegal Sale of Dangerous Drugs

Accused-appellant Cardenas was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) **the identity of the buyer and the seller, the object and the consideration**; and (2) **the delivery of the thing sold and the payment therefor**.[13]

Strict Compliance of the Chain of Custody Rule in Illegal Drugs Cases

In cases involving dangerous drugs, the State bears not only the burden of proving the aforesaid elements, but also of proving the *corpus delicti* or the body of the crime. **In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law**.[14] Therefore, in all drugs cases, **compliance with the chain of custody rule is *crucial* in establishing the accused's guilt beyond reasonable doubt**.

The chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would include testimony on every link in the chain, from the moment the item was picked up to the time it was offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the

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[13] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[14] *People v. Guzon*, 719 Phil. 441, 451 (2013).

item and no opportunity for someone not in the chain to have possession of the same.[15]

As applied in illegal drugs cases, chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court until destruction.[16]

In particular, the following links should be established in the chain of custody of the confiscated item: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[17]

The chain of custody rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[18]

Simply stated, if the chain of custody is broken, the identity, integrity, and evidentiary value of the *corpus delicti* are put in serious doubt. Consequently, the accused will perforce be acquitted.

In the Instant Case, the Chain of Custody is Broken

Applying the foregoing discussion in the instant case, after a careful review of the evidence on record, the Court finds that

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[15] *People v. Punzalan*, 773 Phil. 72, 91 (2015).

[16] *People v. Guzon*, *supra* note 14, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[17] *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

[18] *People v. Guzon*, *supra* note 14, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

the prosecution failed to establish an unbroken chain of custody of the alleged seized drug specimen.

According to the prosecution's version of events, after the buy-bust was conducted, the team proceeded to the police station, wherein PO2 Santiago turned over the seized item to PO3 Carranza. After PO3 Carranza prepared the Request for Laboratory Examination, PO2 Santiago brought the seized item for physical and chemical examination to the crime laboratory and turned over the same to Engr. Jabonillo, the Forensic Chemist of the PNP Crime Laboratory.[19]

However, on the witness stand, PO2 Santiago testified that he turned over the alleged seized drug specimen to one SPO1 Ronaldo Corea (SPO1 Corea). According to PO2 Santiago's testimony, it was SPO1 Corea who turned over the specimen to PO3 Carranza.[20]

As SPO1 Corea was not presented by the prosecution, the evidence on record is silent as to how SPO1 Corea handled the specimen, the condition of the specimen at the time the specimen was handed over to SPO1 Corea, the precautions taken by SPO1 Corea to ensure that there had been no change in the condition of the item, and how SPO1 Corea transferred possession of the specimen to PO3 Carranza. **In short, the chain of custody of the specimen from PO2 Santiago to SPO1 Corea and from SPO1 Corea to PO3 Carranza was not firmly established.**

Further, according to the prosecution's theory, Engr. Jabonilla examined the alleged seized drug specimen and subsequently turned over the same to the evidence custodian of the PNP Crime Laboratory.

However, the evidence on record is silent as to how Engr. Jabonilla exactly managed and handled the specimen. Worse, the evidence custodian was not even identified and presented as a witness. The prosecution was not able to establish with

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[19] CA *rollo*, p. 78.

[20] TSN, October 13, 2009, pp. 13-14.

clarity and certainty how this anonymous evidence custodian stored the specimen and ensured the proper condition of the same. The evidence on record is likewise silent as to how the specimen was transferred back to Engr. Jabonilla, who alleged retrieved the specimen from the custodian in order to bring the same to the RTC during the trial. **Clearly, the chain of custody of the specimen from Engr. Jabonilla to the evidence custodian, and from the evidence custodian back to Engr. Jabonilla, was not satisfactorily established.**

Inevitably, with the prosecution failing to establish an unbroken chain of custody in the instant case, the acquittal of accused-appellant Cardenas is warranted due to the existence of reasonable doubt as to the *corpus delicti* of the crime charged.

Strict Compliance of Section 21 of RA 9165

Aside from the prosecution's failure to satisfactorily establish the chain of custody, the integrity and credibility of the seizure and confiscation of the prosecution's evidence are also put into serious doubt due to the indisputable failure of the authorities to observe the *mandatory* procedural requirements laid down in Section 21 of RA 9165.

The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the *corpus delicti* of the crime, which makes the same easily susceptible to manipulation in the hands of the State. The innocence and liberty of the accused are pitted unevenly against the powerful machinery of the State.

Jurisprudence has held that "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting. provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[21]

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[21] *People v. Santos*, 562 Phil. 458, 472 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

Therefore, the law requires the ***strict observance*** of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused.

These special rules are contained in Section 21 of RA 9165, which mandates the following procedure in the seizure, custody, and disposition of dangerous drugs:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**[.][22] (Emphasis supplied)

Meanwhile, the Implementing Rules and Regulations (IRR) of RA 9165 (IRR) provides additional custody requirements and likewise added a "saving clause" in case of non-compliance with such requirements:

> **SECTION 21.** ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment***. —The PDEA shall

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[22] Section 21 of RA 9165 was amended by RA 10640, entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF RA 9165 WHICH IMPOSED LESS STRINGENT REQUIREMENTS IN THE PROCEDURE." RA 10640, which imposed less stringent requirements in the procedure under Section 21, was approved only on July 15, 2014.

take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that **the physical inventory and photograph shall be conducted** at the place where the search warrant is served; or **at the nearest police station or at the nearest office of the apprehending officer/team**, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.][23]

In sum, in the conduct of buy-bust operations, the law provides that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel**, (b) a**n elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable

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[23] IRR of RA 9165, Sec. 21. Emphasis supplied.

that the IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/team.[24] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the apprehending team considering that the buy-bust operation is most often than not a well-planned activity.

To reiterate, the Court stresses that the aforementioned procedural requirements laid down in Section 21 of RA 9165 are ***mandatory*** in nature. In *People v. Tomawis*,[25] the Court explained that these requirements are crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence:

> **The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug**. Using the language of the Court in *People v. Mendoza*,[26] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[27]

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and

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[24] IRR of RA 9165, Art. II, Sec. 21(a).

[25] G.R. No. 228890, April 18, 2018, 862 SCRA 131.

[26] 736 Phil. 749 (2014).

[27] *Id*. at 764.

confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation".[28]

Permissible Non-Compliance of Section 21 of RA 9165

Concededly, there are instances wherein departure from the aforesaid mandatory procedures are permissible.

Section 21 of the IRR provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) **recognize any lapses on the part of the police officers** and (2) **be able to justify the same**.[29]

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[28] *People v. Tomawis*, *supra* note 25 at 149-150.

[29] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily be compromised.[30] As the Court explained in *People v. Reyes*:[31]

> Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism**. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquitta1.[32]

In the Instant Case, the Prosecution failed to both Recognize and Sufficiently Justify the Non-Observance of Section 21 of RA 9165

Applying the foregoing discussion in the instant case, it cannot be denied that *the authorities failed to observe the mandatory requirements under Section 21 of RA 9165. Worse, the prosecution failed to recognize these lapses and offer sufficient justification to warrant the non-observance of these mandatory rules*.

The unequivocal testimony of the prosecution's first witness,

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[30] See *People v. Sumili*, 753 Phil. 342, 352 (2015).

[31] 797 Phil. 671 (2016).

[32] *Id*. at 690.

PO2 Santiago, reveals that, **out of the three required witnesses, only the representative of the media witnessed the buy-bust operation. No justifiable ground was offered to account for this serious breach of the law:**

Q: You did not ask the presence of the Barangay to witness the preparation of the inventory receipt, right, Mr. Witness?

A: No, sir.

COURT: Why?

A: Because we were together with media representative, sir.

ATTY. BARTOLOME: You did not ask the presence of the Department of Justice to witness the preparation of this document, Mr. Witness?

A: No sir, because I thought that one representative was okay.

COURT: Who is the media representative?

A: Jimmy Mendoza, President of the PDEA Press Corps.

x x x x x x x x x

Q: But you were familiar with Section 5, Republic Act. (*sic*) 9165?

A: Yes, sir.

Q: Despite of that you did not comply right, Mr. Witness?

A: Yes, sir.

x x x x x x x x x

Q: What is your basis in saying that was already enough, Mr. Witness?

A: I thought, sir, that was already enough.[33]

In fact, the RTC itself factually found that "**the police officers were not able to strictly comply with Section 21 of R.A. 9165**"[34] as the authorities purposely did not procure any elected

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[33] TSN, October 13, 2009, pp. 22-24.

[34] CA *rollo*, p. 63; emphasis supplied.

Barangay official and representative from the DOJ as witnesses **because of the police officers' mistaken belief that under Section 21 of RA 9165, only one witness suffices**.[35]

Further, as to the marking of the alleged seized drug specimen, the Court observes that the police officers violated *their own rules*.

Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM),[36] the conduct of buy-bust operations requires the following:

Anti-Drug Operational Procedures

Chapter V. Specific Rules

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation— in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed:

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided;

e. Use of necessary and reasonable force only in case of suspect's resistance;

f. If buy-bust money is dusted with ultra violet powder make sure that suspect gel hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the

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[35] *Id.* at 58.

[36] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms' reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

1. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized**;

n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[37] (Emphasis and underscoring supplied)

In the instant case, as factually found by the RTC itself, "[PO2] Santiago marked the marijuana with his initials 'JS' for Jorge Santiago and 'NC' for Noel Cardenas."[38] The date, time, and place of the operation were not indicated on the

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[37] *Id*; emphasis and underscoring supplied.

[38] CA *rollo*, p. 58.

markings, in clear contravention of the PNP's own set of procedures for the conduct of buy-bust operations. Simply stated, the marking of the evidence was irregularly done.

The Prosecution cannot rely on the Presumption of Regularity

In the assailed Decision, the CA posited the view that the version of events offered by the prosecution deserves "full faith and credit because of the presumption that they have performed their duties regularly."[39]

The CA erred in invoking the presumption of regularity in justifying the conviction of accused-appellant Cardenas.

Both the RTC and CA overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[40] And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt;[41] by proving each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[42] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence

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[39] *Rollo*, p. 11.

[40] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[41] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. [RULES OF COURT, Rule 133, Sec. 2.]

[42] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[43]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us**. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime**.[44]

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

Therefore, premises considered, the Court finds that the integrity and evidentiary value of the *corpus delicti* have been seriously compromised due to the failure of the prosecution to

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[43] 745 Phil. 237 (2014).

[44] *Id*. at 250-251; emphasis supplied.

preserve an unbroken chain of custody of the drug specimen and the police officers' unjustified non-observance of Section 21 of RA 9165. In light of this, accused-appellant Cardenas must perforce be acquitted.

Epilogue

While the Court now reverses the wrongful conviction of accused-appellant Cardenas by ordering his immediate release, it cannot be said that justice has truly won the day.

For despite the blatant disregard of the mandatory requirements provided under RA 9165, accused-appellant Cardenas has been made to suffer incarceration for over a decade. There is truth in the time-honored precept that *justice delayed is justice denied.*

Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases.

The Court believes that the menace of illegal drugs must be curtailed with resoluteness and determination. The Constitution declares that the maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.[45]

Nevertheless, by thrashing basic constitutional rights as a means to curtail the proliferation of illegal drugs, instead of protecting the general welfare, oppositely, the general welfare is viciously assaulted. In other words, by disregarding the Constitution, the war on illegal drugs becomes a self-defeating and self-destructive enterprise. **A battle waged against illegal drugs that resorts to short cuts and tramples on the rights of the people is not a war on drugs; *it is a war against the people***.

[45] 1987 CONSTITUTION, Art. II, Sec. 5.

The sacred and indelible right to presumption of innocence enshrined in the Constitution, fortified by statutory safeguards, should not be sacrificed on the altar of expediency. Otherwise, by choosing convenience over the rule of law, the nation loses its very soul. This desecration of the rule of law is impermissible.

It is in this light that the Court restores the liberty of the accused-appellant Cardenas.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 27, 2016 of the Court of Appeals, in CA-G.R. CR-HC No. 07032 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Noel Cardenas *y* Halili is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier,* and *Zalameda, JJ.*, concur.

SECOND DIVISION

[G.R. No. 231305. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALVIN GALISIM *y* GARCIA,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); DRUG CASES; IN ILLEGAL DRUG CASES, THE DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE, AND TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM, THE PROSECUTION MUST ACCOUNT FOR EACH LINK IN ITS CHAIN OF CUSTODY.— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY RULE; THREE-WITNESS RULE; THE PRESENCE OF THE THREE REQUIRED REPRESENTATIVES, TOGETHER WITH THE ACCUSED, IS MANDATED BY LAW, AND FAILURE TO COMPLY THEREWITH SHALL RESULT IN THE ACQUITTAL OF THE ACCUSED.— PO3 Maynigo failed

to mention in his testimony that representatives from the media, DOJ, or an elected *Barangay* Official witnessed the conduct of the post-operation procedures. No explanation was given for their absence x x x. The presence of the three (3) required representatives, together with the accused, is mandated by law. Failure to comply with this requirement shall result in the acquittal of the accused. In the case of ***People v. Mendoza,*** the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence states that prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure. In ***People v. Macud***, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. The prosecution in that case failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug. In ***People v. Adobar*** the Court emphasized that it is at the time of arrest or at the time of the drugs' "*seizure and confiscation*" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence**.

3. ID.; ID.; ID.; ID.; PHOTOGRAPH REQUIREMENT; THE LAW REQUIRES THAT THE DRUGS MUST BE PHOTOGRAPHED AT THE PLACE OF APPREHENSION AND/OR SEIZURE IN THE PRESENCE OF THE THREE REQUIRED WITNESSES, BUT THE PROCEDURE MAY BE CONDUCTED AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER, WHICH IS SUBSTANTIAL COMPLIANCE WITH THE CHAIN OF CUSTODY RULE THAT MAY BE ALLOWED IF ATTENDED WITH GOOD AND SUFFICIENT REASON.— [T]he photograph requirement was not complied with. The buy-bust team took photographs of the seized items at the EPD's office in Pasig City and not at the place of arrest. x x x What the law requires is that the drugs must be photographed at the **place of apprehension and/or seizure** in the presence of the three (3) required witnesses. ***People v. Adobar*** similarly enunciated that

the photographs be taken "*immediately after seizure* and confiscation" which means both the physical inventory and photographing of the drugs must be at the **place of apprehension and/or seizure**. In all of these cases, the photograph and inventory are required to be done in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof. While the procedure may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of RA 9165 may be allowed if attended with good and sufficient reason. Here, the prosecution did not give any valid explanation on why this condition was not accomplished.

4. ID.; ID.; ID.; ID.; TURNOVER OF THE *CORPUS DELICTI* BY THE INVESTIGATING OFFICER TO THE FORENSIC CHEMIST; THE SUFFICIENT LAPSE OF TIME FROM THE ACCUSED'S ARREST AND SEIZURE OF THE ILLEGAL DRUGS, DELIVERY OF THE ITEMS TO THE INVESTIGATING OFFICER, TO THEIR ACTUAL TURNOVER TO THE FORENSIC CHEMIST CREATES DOUBT ON THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI*.— [T]he handling of the *corpus delicti* from the investigating officer to the forensic chemist was not sufficiently established. x x x There was sufficient lapse of time from appellant's arrest and seizure of the illegal drugs, delivery of the items to investigating officer PO3 Cruz, to their actual turnover to forensic chemist PCI Cariño. Appellant was arrested on February 19, 2011 at 11:55 in the evening, the illegal drugs were also confiscated about the same time. Then, the items were transported to EDP Office Pasig City for PO3 Cruz' investigation and preparation of requests. The items were only turned over to forensic chemist PCI Cariño of EPD Crime Laboratory, Marikina City the following day or on February 20, 2011 at 3:00 p.m. x x x The buy-bust team allowed thirteen (13) hours to lapse from the time of arrest before turning over the seized items to PCI Cariño at the EPD Crime Laboratory in Marikina City. The lapse of thirteen (13) hours, thus, created doubt on the identity and integrity of the *corpus delicti*.

5. ID.; ID.; ID.; ID.; TURNOVER AND SUBMISSION OF THE *CORPUS DELICTI* TO THE COURT; CANNOT BE

REASONABLY ESTABLISHED ABSENT ANY TESTIMONY ON THE MANAGEMENT, STORAGE, AND PRESERVATION OF THE ILLEGAL DRUGS SUBJECT OF THE SEIZURE AFTER ITS QUALITATIVE EXAMINATION.— [T]he fourth link was x x x not sufficiently established. Absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody of the illegal drugs could not be reasonably established. In this case, both the prosecution and defense dispensed with forensic chemist PCI Cariño's testimony during the hearing on September 15, 2011. In ***People v. Ubungen y Pulido*** citing ***People v. Pajarin***, the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial. Here, the prosecution and defense dispensed with PCI Cariño's testimony and stipulated that "**he had received and examined the specimens and issued the findings in his report**." Albeit Physical Science Report No. D-54-11E was offered as evidence, nothing therein showed, however, the manner of handling the specimens before PCI Cariño received them, how he examined the items, and how these items left his possession to ensure they will not be substituted or tampered during trial.

6. ID.; ID.; ID.; ID.; ADHERENCE THERETO MUST BE OBSERVED BUT A DEVIATION FROM THE ESTABLISHED PROTOCOL IS ALLOWED WHENEVER JUSTIFIABLE GROUNDS EXIST, SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— Unquestionably, the chain of custody here was broken from the time the illegal drugs were confiscated up to their presentation in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly

restrained appellant's right to liberty. Verily, therefore, a verdict of acquittal is in order. Strict adherence to the chain of custody rule must be observed, the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-à-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule. The Court notes here that appellant is not even among the three suspected drug dealers which the buy bust team intended to arrest. They just chanced upon him during the buy-bust investigation. We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. The prosecution's witnesses, however, offered an unacceptable excuse for the deviation from the strict requisites of the law. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play.

7. ID.; ID.; UNAUTHORIZED SALE OF DANGEROUS DRUGS; SINCE LIFE IMPRISONMENT IS IMPOSED FOR UNAUTHORIZED SALE OF DANGEROUS DRUGS EVEN FOR THE MINUTEST AMOUNT, THE SAFEGUARDS AGAINST THE ABUSES OF POWER IN THE CONDUCT OF BUY-BUST OPERATIONS MUST BE STRICTLY IMPLEMENTED.— For perspective, life imprisonment is imposed for unauthorized sale of dangerous drugs even for the minutest amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the *corpus delicti* under the regime of Republic Act No. 6425 (RA 6425), otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.

8. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE

PERFORMANCE OF OFFICIAL FUNCTIONS; CANNOT SUBSTITUTE FOR COMPLIANCE AND AMEND THE BROKEN LINKS IN THE CHAIN OF CUSTODY.— Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal seeks to reverse the Decision[1] dated August 16, 2016 of the Court of Appeals in CA-G.R. CR HC No. 06705 affirming the conviction of appellant Alvin Galisim *y* Garcia for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165).

The Proceedings Before the Trial Court

The Charge

On February 21, 2011, two (2) separate Informations were filed against appellant, *viz*:

Criminal Case No. 17436-D

"On or about February 19, 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being authorized

[1] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Noel G. Tijam and Francisco P. Acosta, all members of the Fourth Division, *rollo*, pp. 2-11.

by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Julius Maynigo, a member of Philippine National Police, who acted as a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test of methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[2]"

Criminal Case No. 17437-D

"On or about February 19, 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession and under his custody one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of the aforesaid law.

Contrary to law.[3]

The case was raffled to the Regional Trial Court — Branch 164, Pasig City.

On arraignment, appellant pleaded not guilty.

During the trial, PO3 Julius M. Maynigo (PO3 Maynigo) and PO3 Richard D. Coquia (PO3 Coquia), testified for the prosecution. On the other hand, appellant Alvin Galisim *y* Garcia testified as lone witness for the defense.

The Prosecution's Version

PO3 Maynigo and PO3 Coquia's testimonies are synthesized as follows:

On February 19, 2011, around 9:30 in the evening, Police Senior Inspector Renato B. Castillo (P/Insp. Castillo) formed a team to conduct buy-bust operation in Baltazar Street, Villa

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[2] Record, Criminal Case No. 17436-D, pp. 1-2.

[3] *Id*.

Monique, Barangay Pinagbuhatan, Pasig City (Villa Monique). The team included PO3 Maynigo as poseur-buyer, PO3 Coquia as team leader, police officers Gerardo Javier, Roderick Ladera, Jayson Rael, Jonathan Lunzaga and three (3) others as back-up.

During the meeting, P/Insp. Castillo relayed to the team an information from a confidential informant that three (3) individuals namely: *Alias* Macalone, *Alias* Atoy, and *Alias* Igtad were selling dangerous drugs in Villa Monique. He provided PO3 Maynigo two (2) 100 peso bills to be used as buy-bust money.[4]

The team headed to the Philippine Drug Enforcement Agency (PDEA) to secure authority on the buy-bust operation. PO1 Jocelyn Jacinto issued a Coordination and Pre-Operation Report dated February 19, 2011. Thereafter, they and the confidential informant headed to Villa Monique.[5]

Around 11:30 in the evening, PO3 Maynigo and the confidential informant walked through an alley in Villa Monique, looking for *Alias* Macalone, *Alias* Atoy, and *Alias* Igtad. There, the confidential informant met a man, later identified as appellant Alvin Galisim *y* Garcia. Appellant asked if they wanted to "score" (buy illegal drugs). PO3 Maynigo nodded to signal his interest while the confidential informant said "*bibili kami,*" PO3 Maynigo handed the buy-bust money to appellant who slid it in his pocket. In turn, appellant took out two (2) plastic sachets from his right pocket and asked PO3 Maynigo to choose which one to buy, the latter picked one (1) item and after verifying that it contained white crystalline substance, he immediately removed his bullcap: the pre-arranged signal. Before PO3 Coquia could have approached them, PO3 Maynigo was already holding appellant who was resisting arrest. As soon as PO3 Coquia had closed in, they handcuffed appellant and conducted a body search on him. They found in appellant's possession another plastic sachet containing white crystalline substance, the buy-bust money, and a .30 caliber carbine ammunition.[6]

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[4] TSN, June 26, 2012, pp. 2-13.

[5] TSN, July 23, 2013, pp. 2-21.

[6] TSN, June 26, 2012, pp. 2-13; TSN, July 23, 2013, pp. 2-21.

PO3 Maynigo and PO3 Coquia immediately marked all three (3) items. PO3 Maynigo marked the first sachet which he bought from appellant with "**JM-Alvin-1-02-19-2011**" and the second sachet which PO3 Coquia found in appellant's possession during the search, with "**JM-Alvin-2-02-19-2011**." "JM" stands for Julius M. Maynigo, "Alvin," for appellant's name, and "02-19-2011" for the date of seizure. PO3 Coquia further marked the .30 caliber with RDC/Alvin 02-19-2011. "RDC" stands for Richard D. Coquia and "02-19-2011" referred to the date. PO3 Coquia placed the items in a zip lock container. Appellant was thereafter informed of his rights and the offense he supposedly committed. The team left the area together with appellant and proceeded to Eastern Police District (EPD) Annex, Meralco Avenue, Pasig City. There, they informed investigator PO3 Nelson Cruz (PO3 Cruz) about the buy-bust incident and showed him the confiscated items. PO3 Coquia took pictures of the evidence inside the office while PO3 Cruz prepared the Request for Laboratory Examination and Request for Drug Test. PO3 Coquia also prepared an Affidavit of Arrest.[7]

The following day or on February 20, 2011, PO3 Maynigo and PO3 Coquia went to the EPD Crime Laboratory in Marikina City and submitted the requests together with the seized items.[8]

Per Physical Sciences Report No. D-54-11E dated February 20, 2011, Forensic Chemist Police Chief Inspector Isidro Cariño (PCI Cariño) verified that the specimens[9] subject of the buy-bust and confiscated from appellant yielded positive for methamphetamine hydrochloride, a dangerous drug.[10]

The prosecution offered the following in evidence:

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[7] TSN, September 18, 2012, pp. 2-19.

[8] TSN, June 26, 2012, pp. 2-13; TSN, July 23, 2013, pp. 2-21.

[9] Specimens A (JM-Alvin-1-02-19-2011 with signatures) and B (JM-Alvin-2-02-19-2011 with signatures) — Two (2) heated transparent plastic sachets each with 0.02 gram of white crystalline substances; see Physical Sciences Report D-54-11E dated February 20, 2011; Record, p. 80.

[10] Record, p. 80.

1. Request for Laboratory Examination dated February 20, 2011;
2. Shabu;
3. Physical Science Report No. D-54-11E dated February 20, 2011;
4. Buy-bust money;
5. Sinumpaang Salaysay of PO3 Richard Coquia;
6. Sinumpaang Salaysay of PO3 Maynigo;
7. Request for Drug Test Examination dated February 20, 2011;
8. Certificate of Inventory dated February 19, 2011;
9. Coordination Form dated February 19, 2011;
10. Pre-Operation Report dated February 19, 2011; and
11. Pictures of the seized items.[11]

The Defense's Version

Appellant testified that on February 19, 2011 around 10:30 in the evening, he was resting in his house at Villa Monique. His wife woke him up to buy milk for their child. On his way to buy infant's milk two (2) persons, a male and a female, wearing civilian clothes arrested him. When he asked why, they did not respond. He was, thereafter, dragged out of the alley, brought inside a car, and mauled. Inside the car, appellant was asked to just point to a person who sold drugs, so he can be released. The police officers mauled and strangled him when he was unable to give them a name. Thereafter, they transported him to a police precinct and brought him inside a room. There, they interrogated him about a certain "Atoy." But he refused to give any information, thus, causing them to lock him in the detention cell. The arresting officers badly beat him up but he was not brought to the hospital for treatment or medical examination.

On February 20, 2011, around 7 o'clock in the morning, they took him out of the detention cell. Three (3) plastic sachets consisting of one (1) bullet and two (2) white crystalline substance were shown him. They forced him to sign on the tape attached to the plastic sachets. Later in the afternoon, he was brought

[11] Record, pp. 72-91.

to the prosecutor's office. The prosecutor asked him questions but he was unable to speak because he was strangled earlier by several police officers. As a result, he suffered from swollen throat.[12]

The defense did not offer any documentary evidence.[13]

The Trial Court's Ruling

By Joint Judgment dated December 12, 2013,[14] the trial court convicted appellant of violation of Sections 5 and 11, Article II of RA 9165, *viz*:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 17436-D, the Court finds accused Alvin Galisim y Garcia **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165, and hereby imposes upon him the **penalty of life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).**

2. In Criminal Case No. 17437-D, the Court also finds accused Alvin Galisim y Garcia **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby imposes upon him indeterminate penalty of imprisonment from **twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of three hundred thousand pesos (₱300,000.00).**

SO ORDERED.

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty as charged despite the incredulity of the prosecution's evidence and its failure to prove beyond reasonable doubt the *corpus delicti's* identity and integrity,[15] *viz*:

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[12] TSN, November 21, 2013, pp. 2-14.

[13] *Id.* at 14.

[14] CA *rollo*, pp. 8-15.

[15] Accused-Appellant's Brief dated September 30, 2014; CA *rollo*, pp. 30-40.

First, it is beyond human comprehension that appellant would casually sell illegal drugs in a public place to a total stranger.

Second, no representative from the media, Department of Justice (DOJ), and a duly elected official witnessed the marking and inventory of the seized items.

Third, the seized items were photographed at the police station and not at the place of arrest. There were also no representatives from the media and the DOJ, or elected Barangay Officials who witnessed them.

Finally, the prosecution failed to establish that from the time the illegal drugs were confiscated up to the time they were presented in court, the contents were not tampered or substituted. The parties merely stipulated that the forensic chemist received and examined the specimens, and his findings were reflected in the Physical Science Report No. D-54-11E.

On the other hand, the Office of the Solicitor General through Assistant Solicitor General Reynaldo L. Saludares and Associate Solicitor Ron Winston A. Reyes, countered in the main: a) selling regulated or prohibited drugs to complete strangers openly and in public is a common occurrence which the Court has taken judicial notice of; b) failure of the buy-bust team to comply with Section 21 (1) of RA 9165 will not negate the presumption of regularity in the performance of duty. For what is important is the preservation of the integrity and evidentiary value of the seized items.[16]

The Court of Appeals' Ruling

By Decision dated August 16, 2016,[17] the Court of Appeals affirmed. It ruled that the prosecution had adequately and satisfactorily proved the elements of illegal sale of *shabu* and illegal possession of *shabu*. It also declared that lack of designated witnesses as required under Section 21 (1) of RA 9165 was not

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[16] Plaintiff-Appellee's Brief dated January 27, 2015; CA *rollo*, pp. 73-83.

[17] *Rollo*, pp. 2-11.

fatal to the prosecution's case, so long as the integrity and evidentiary value of the illegal drugs were preserved.[18] Its dispositive portion states:

> **WHEREFORE**, the instant **APPEAL** is hereby **DENIED**. Accordingly, the Decision dated December 12, 2013 in Criminal Cases No. 17436-D and 17437-D of the Regional Trial Court, which adjudged accused-appellant ALVIN GALISIM *y* GARCIA guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.
>
> **SO ORDERED.**

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal.

In compliance with Resolution dated July 10, 2017[19] both the OSG and appellant manifested[20] that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.

The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural infirmities relative to the chain of custody over the *corpus delicti*?

Ruling

We acquit.

Appellant was charged with illegal sale and illegal possession of dangerous drugs allegedly committed on February 19, 2011. The governing law is, therefore, RA 9165 before its amendment in 2014.

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[18] *Id*.

[19] *Id*. at 17-18.

[20] Manifestation (In Lieu of Supplemental Brief) dated October 24, 2017 filed by Office of the Solicitor General; *rollo*, pp. 19-21; and Manifestation (In Lieu of a Supplemental Brief) dated November 2, 2017 filed by the Public Attorney's Office; *rollo*, pp. 23-25.

Section 21 of RA 9165 provides the procedure to ensure the integrity of the *corpus delicti, viz*:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so seized, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (emphasis added)

x x x x x x x x x

Its Implementing Rules and Regulations further states:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (emphases added)

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold by the accused is the same substance presented in court.[21]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[22] ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[23]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[24]

Here, prosecution witness and arresting officer PO3 Maynigo testified:

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[21] *People v. Calvelo*, G.R. No. 223526, December 6, 2017, 848 SCRA 225, 243-244.

[22] As defined in Section l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

x x x x x x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

x x x x x x x x x

[23] *People v. Dahil*, 750 Phil. 212, 231 (2015).

[24] *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

Q: After removing the bullcup, what happened?
A: I kept the plastic sachet of shabu that I was able to buy from and then held him.

Q: Where did you keep that transparent plastic sachet of shabu that you bought from the accused?
A: In my pocket.

Q: What pocket?
A: Left pocket.

Q: Were you able to identify the person who sold you that shabu?
A: Yes, ma'am.

Q: What was his name?
A: Alvin Galisim.

x x x x x x x x x

Q: After keeping the shabu in your left pocket and arrested the accused, what happened next?
A: I also confiscated the other plastic sachet of shabu from his hand but at that time he was already resisting arrest and he was shouting and so my backup arrived and assisted me in pacifying him.

Q: What was the name of your back up?
A: PO3 Richard Coquia.

Q: What happened to the second plastic sachet that you confiscated from the accused?
A: I also kept it in my pocket.

Q: What happened next after you got hold of that plastic sachet?
A: I introduced myself as police officer and he resisted arrest and then my back up Coquia arrived and assisted me and we were able to handcuff him.

Q: What happened next after that?
A: When we managed to handcuff the accused and pacified him, Coquia frisked him and he was able to confiscate the two hundred pesos buy bust money from the accused and one caliber [.]30 bullet.

Q: What happened to the two plastic sachets that you kept in your pocket?
A: Our companion produced a document and we prepared the inventory and we indicated the two plastic sachets that we confiscated from the accused.

Q: Who made the inventory?
A: Ako po ma'am.

Q: Where did you make that inventory?
A: At the place of the crime scene, ma'am.

Q: And again [mr.] witness, what are those things that you entered in the inventory form?
A: I marked the first plastic sachet that I got from the accused with my initial JM-the name of the accused Alvin-1 and the numerical date 02-19-2011 and my signature.

Q: When did you put the markings [mr.] witness before the inventory or after the inventory?
A: Before we executed the inventory, I first marked the plastic sachet.

Q: What happened to the other plastic sachet?
A: I placed the same markings, JM-Alvin-2-02-19-2011 with my signature.

Q: Where did you put those markings?
A: I placed it on the masking tape that was placed on the plastic sachet.

Q: Who put the masking tape?
A: Ako po.

Q: Where did you put the markings?
A: At the scene of the crime.

Q: Where was the accused when you put the markings?
A: Katabi ko po.

Q: Mr. witness you said that you put the two plastic sachets on your pocket. How were you able to distinguish the first from the second sachet?
A: Iyong nasa ilalim, iyon ang buy bust na plastic sachet.

Q: And the second one?
A: The first was put deeper into my pocket and the second one was put in a shallow place.

Q: What were the contents of the first plastic sachet. The first plastic sachet that you bought from the accused?
A: Meron po siyang laman na white crystalline substance.

Q: What about the second sachet?
A: The same.

Q: What was that?
A: Shabu po ma'am.

Q: And after you made the markings, what happened next?
A: Akin pong isinulat sa inventory form.

Q: What did you indicate?
A: Pangalan ng suspect Alvin Galisim, saka iyong lugar, saka iyong first plastic sachet na JM-Alvin-1-02-19-2011 at iyong second sachet ganoon din ang isinulat ko.[25]

x x x x x x x x x

Q: While making this marking (sic), where was the accused at that time?
A: Nasa crime scene din po si Alvin. Sa lugar na pinaghulihan naming sa kanya.

Q: If shown to you the certificate of inventory, would you be able to identify the same?
A: Yes ma'am.

Q: I am showing to you the certificate of inventory dated February 19, 2011, can you please go over this certificate of inventory and tell us what is the relation of that document to the one you testified?
A: This is the same.

x x x x x x x x x

Q; What happened next after you accomplished the certificate of inventory?
A: We brought Alvin to our office.

Q: What about the specimen?
A: It was with me.

Q: Why did (sic) keep that specimen. At the scene of the crime, where was the specimen?
A: It was with me.

Q: From the scene of the crime to your office, who was in custody of the seized evidence?
A: I am.[26]

x x x x x x x x x

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[25] TSN, September 18, 2012, pp. 4-8.

[26] *Id.* at 13.

Q: Where was your office again that time?
A: EPD Annex, Meralco Avenue, Pasig City[27]

PO3 Coquia also testified as the team leader of the buy-bust team:

x x x x x x x x x

Q: After arriving at your office, what happened next?
A: When we arrived at our office, we immediately informed our investigator, PO3 Nelson Cruz about the incident, ma'am.

Q: So what happened next?
A: We showed him the evidence confiscated, ma'am.

Q: So after that, what happened next, Mr. Witness?
A: We showed the evidence confiscated to the investigator. I took a picture of the evidences inside our office, ma'am.

Q: What device did you use in taking pictures of the recorded evidence?
A: Digicam, Kodak, ma'am.[28]

The arresting officers' testimonies, on their face, bear how the chain of custody here had been breached in several instances.

First, PO3 Maynigo failed to mention in his testimony that representatives from the media, DOJ, or an elected Barangay Official witnessed the conduct of the post-operation procedures. No explanation was given for their absence, thus:

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Q: What happened to the two plastic sachets that you kept in your pocket?
A: Our companion produced a document and we prepared the inventory and we indicated the two plastic sachets that we confiscated from the accused.

Q: Who made the inventory?
A: Ako po ma'am.

Q: Where did you make that inventory?
A: At the place of the crime scene, ma'am.

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[27] *Id.* at 15.

[28] TSN, July 23, 2012, p. 17.

Q: And again [mr.] witness, what are those things that you entered in the inventory form?
A: I marked the first plastic sachet that I got from the accused with my initial JM-the name of the accused Alvin-1 and the numerical date 02-19-2011 and my signature.

Q: When did you put the markings [mr.] witness before the inventory or after the inventory?
A: Before we executed the inventory, I first marked the plastic sachet.

Q: What happened to the other plastic sachet?
A: I placed the same markings, JM-Alvin-2-02-19-2011 with my signature.

Q: Where did you put those markings?
A: I placed it on the masking tape that was placed on the plastic sachet.

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A: Ako po.

Q: Where did you put the markings?
A: At the scene of the crime.

Q: Where was the accused when you put the marking?
A: Katabi ko po.

Q: Mr. witness you said that you put the two plastic sachets on your pocket. How were you able to distinguish the first from the second sachet?
A: Iyong nasa ilalim, iyon ang buy bust na plastic sachet.

Q: And the second one?
A: The first was put deeper into my pocket and the second one was put in a shallow place.

Q: What were the contents of the first plastic sachet. The first plastic sachet that you bought from the accused?
A: Meron po siyang laman na white crystalline substance.

Q: What about the second sachet?
A: The same.

Q: What was that?
A: Shabu po ma'am.

Q: And after you made the markings, what happened next?
A: Akin pong isinulat sa inventory form.

Q: What did you indicate?
A: Pangalan ng suspect Alvin Galisim, saka iyong lugar, saka iyong first plastic sachet na JM-Alvin-1-02-19-2011 at iyong second sachet ganoon din ang isinulat ko.[29]

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Q: While making this marking, where was the accused at that time?
A: Nasa crime scene din po si Alvin. Sa lugar na pinaghulihan naming sa kanya.

Q: If shown to you the certificate of inventory, would you be able to identify the same?
A: Yes ma'am.

Q: I am showing to you the certificate of inventory dated February 19, 2011, can you please go over this certificate of inventory and tell us what is the relation of that document to the one you testified?
A: This is the same.[30]

x x x x x x x x x

Q: What happened next after you accomplished the certificate of inventory?
A: We brought Alvin to our office.

Q: What about the specimen?
A: It was with me.

Q: Why did (sic) keep that specimen. At the scene of the crime, where was the specimen?
A: It was with me.

Q: From the scene of the crime to your office, who was in custody of the seized evidence?
A: I am.[31]

x x x x x x x x x

Q: Where was your office again that time?
A: EPD Annex, Meralco Avenue, Pasig City.[32]

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[29] TSN, September 18, 2012, pp. 6-8.

[30] *Id*. at 11-12.

[31] *Id*. at 13-14.

[32] *Id*. at 15.

The presence of the three (3) required representatives, together with the accused, is mandated by law. Failure to comply with this requirement shall result in the acquittal of the accused. In the case of ***People v. Mendoza***[33] the Court emphasized that the presence of these personalities is an insulation against the evils of switching, planting, or contamination of evidence. While non-compliance may be allowed under justifiable circumstances, jurisprudence states that prosecution must show that the PDEA operatives exerted earnest efforts to comply with the procedure.[34]

In ***People v. Macud***,[35] the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule. The prosecution in that case failed to satisfactorily explain the absence of the DOJ representative, media representative, and local elective official during the marking, inventory, and photograph of the seized dangerous drug.

In ***People v. Adobar***[36] the Court emphasized that it is at the time of arrest or at the time of the drugs' "*seizure and confiscation*" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence**. (emphasis in the original)

Second, the photograph requirement was not complied with. The buy-bust team took photographs of the seized items at the EPD's office in Pasig City and not at the place of arrest. PO3 Coquia's testimony is indicative of the breach, *viz*:

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Q: After arriving at your office, what happened next?
A: When we arrived at our office, we immediately informed our investigator, PO3 Nelson Cruz about the incident, ma'am.

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[33] 736 Phil. 749, 761 (2014).

[34] Citing *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[35] G.R. No. 219175, December 14, 2017, 849 SCRA 294.

[36] G.R. No. 222559, June 6, 2018.

Q: So what happened next?
A; We showed him the evidence confiscated, ma'am.

Q: So after that, what happened next, Mr. Witness?
A: We showed the evidence confiscated to the investigator. I took a picture of the evidences <u>inside our office</u>, ma'am.

Q: What device did you use in taking pictures of the recorded evidence?
A: Digicam, Kodak, ma'am.[37] (emphasis supplied)

What the law requires is that the drugs must be photographed at the **<u>place of apprehension and/or seizure</u>** in the presence of the three (3) required witnesses.

People v. Adobar[38] similarly enunciated that the photographs be taken "*immediately after seizure and confiscation*" which means both the physical inventory and photographing of the drugs must be at the **<u>place of apprehension and/or seizure</u>**. In all of these cases, the photograph and inventory are required to be done in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof.

While the procedure may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of RA 9165 may be allowed if attended with good and sufficient reason.[39] Here, the prosecution did not give any valid explanation on why this condition was not accomplished.

Third, the handling of the *corpus delicti* from the investigating officer to the forensic chemist was not sufficiently established.

PO3 Maynigo testified that when he delivered the seized items to their office in EPD Pasig City, they showed them to investigating officer PO3 Cruz. The latter prepared drug and laboratory requests dated February 20, 2011. But PO3 Cruz never got hold of the items, yet, he peremptorily issued the requests. It was in fact PO3 Maynigo who actually brought the

[37] TSN, July 23, 2012, p. 17.

[38] *Supra* note 36.

[39] *People v. Tampan*, G.R. No. 222648, February 13, 2019.

items from EPD Pasig City to EPD Crime Laboratory, Marikina City, on the following day.[40]

PO3 Cruz was not presented as a witness after the parties had stipulated that: (1) the witness was the police investigator in this case; (2) as police investigator, he prepared the request for laboratory examination and request for drug test; and (3) he turned over the documents to the arresting officers who brought them to the EPD Crime Laboratory Service in Marikina City.

There was sufficient lapse of time from appellant's arrest and seizure of the illegal drugs, delivery of the items to investigating officer PO3 Cruz, to their actual turnover to forensic chemist PCI Cariño. Appellant was arrested on February 19, 2011 at 11:55 in the evening, the illegal drugs were also confiscated about the same time. Then, the items were transported to EDP Office Pasig City for PO3 Cruz' investigation and preparation of requests. The items were only turned over to forensic chemist PCI Cariño of EPD Crime Laboratory, Marikina City the following day or on February 20, 2011 at 3:00 p.m. PO3 Maynigo testified on:[41]

x x x x x x x x x

On Cross-examination:

ATTY. SONGCO:
Q: By the way, Mr. Witness, what was the time of the arrest?
A: On or about 11:55 p.m., ma'am.

Q: And what was the time the specimen and the request were delivered to the EDP Crime Laboratory?
A: Past 3:00 o'clock in the afternoon of February 20, 2011, ma'am.

Q: And that would be thirteen (13) hours after the arrest. Am I correct?
A: Yes, ma'am.

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[40] TSN, September 18, 2012, pp. 14-16.

[41] TSN, March 12, 2013, p. 4.

Q: After the arrest and you went to your office, did you handle cases other than this one?
A: I cannot recall, ma'am, because I was transferred to explosive ordinance.

Q: Did you go home on February 20, 2011?
A: Yes, ma'am.

x x x x x x x x x

On Re-direct Examination:

PROS. MADAMBA:
Q: You said that you went to the EPD Crime Laboratory in Marikina around 3:00?
A: Past 3:00, ma'am.

Q: That was February 20?
A: Yes, ma'am.

Q: You also said that you went to your house on February 20. What time did you go to your house?
A: In the evening, ma'am.

Q: So, after you went to EPD Crime Laboratory in Marikina, that was the only time that you went to your house?
A: Yes, ma'am.

Q: When you arrested the accused and you brought him to your office and you bought him to EPD Crime Laboratory in Marikina, did you handle any other case aside from this from that duration of time?
A: None, ma'am.[42]

The buy-bust team allowed thirteen (13) hours to lapse from the time of arrest before turning over the seized items to PCI Cariño at the EPD Crime Laboratory in Marikina City. The lapse of thirteen (13) hours, thus, created doubt on the identity and integrity of the *corpus delicti*.

Finally, the fourth link was likewise not sufficiently established. Absent any testimony on the management, storage, and preservation of the illegal drugs subject of seizure after its qualitative examination, the fourth link in the chain of custody

[42] *Id*. at 5.

of the illegal drugs could not be reasonably established.[43] In this case, both the prosecution and defense dispensed with forensic chemist PCI Cariño's testimony during the hearing on September 15, 2011.

In ***People v. Ubungen y Pulido***[44] citing ***People v. Pajarin***, the Court ruled that in case of stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) the forensic chemist received the seized article as marked, properly sealed, and intact; (2) he resealed it after examination of the content; and (3) he placed his own marking on the same to ensure that it could not be tampered pending trial.

Here, the prosecution and defense dispensed with PCI Cariño's testimony and stipulated that "**he had received and examined the specimens and issued the findings in his report**."[45] Albeit Physical Science Report No. D-54-11E was offered as evidence, nothing therein showed, however, the manner of handling the specimens before PCI Cariño received them, how he examined the items, and how these items left his possession to ensure they will not be substituted or tampered during trial.

Unquestionably, the chain of custody here was broken from the time the illegal drugs were confiscated up to their presentation in court. The repeated breach of the chain of custody rule had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained appellant's right to liberty. Verily, therefore, a verdict of acquittal is in order.[46]

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[43] *People v. Ubungen y Pulido*, G.R. No. 225497, July 23, 2018.

[44] *Id.*

[45] RTC Judgment dated December 12, 2013; CA *rollo*, pp. 8-15.

[46] See *Antonio Jocson y Cristobal v. People*, G.R. No. 199644, June 19, 2019.

Strict adherence to the chain of custody rule must be observed,[47] the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule. The Court notes here that appellant is not even among the three suspected drug dealers which the buy bust team intended to arrest. They just chanced upon him during the buy-bust investigation.

We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions.[48] In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[49] The prosecution's witnesses, however, offered an unacceptable excuse for the deviation from the strict requisites of the law.

In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved," too, will not come into play.

For perspective, life imprisonment is imposed for unauthorized sale of dangerous drugs even for the minutest amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the *corpus delicti* under the regime of Republic Act No. 6425 (RA 6425), otherwise known as the "Dangerous Drugs

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[47] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[48] See *People v. Abetong*, 735 Phil. 476, 485 (2014).

[49] See Section 21 (a), Article II, of the IRR of RA 9165.

Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[50]

As heretofore shown, the chain of custody had been breached several times over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, appellant must be unshackled, acquitted, and released from restraint.[51]

Suffice it to state that the presumption of regularity in the performance of official functions[52] cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[53] And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated August 16, 2016 of the Court of Appeals in CA-G.R. CR HC No. 06705 is **REVERSED** and **SET ASIDE**.

Appellant **ALVIN GALISIM *y* GARCIA** is **ACQUITTED** in G.R. No. 231305 (Criminal Case Nos. 17436-D and 17437-D). The Director of the Bureau of Corrections, Muntinlupa City is ordered to: a) immediately release appellant **ALVIN GALISIM *y* GARCIA** from custody unless he is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Zalameda, JJ.,* concur.

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[50] *Largo v. People*, G.R. No. 201293, June 19, 2019, citing *People v. Luna*, G.R. No. 219164, March 21, 2018.

[51] *Supra* note 46.

[52] Section 3 (m), Rule 131, Rules of Court.

[53] *People v. Cabiles*, 810 Phil. 969, 976 (2017).

SECOND DIVISION

[G.R. No. 233556. September 11, 2019]

CITY TREASURER OF MANILA, *petitioner, vs.* **PHILIPPINE BEVERAGE PARTNERS, INC., substituted by COCA-COLA BOTTLERS PHILIPPINES,** *respondent.*

SYLLABUS

1. TAXATION; LOCAL TAXATION; TWO REMEDIES OF A TAXPAYER FACING AN ASSESSMENT ISSUED BY THE LOCAL TREASURER, REITERATED.— The Court has settled in Cosmos that a taxpayer facing an assessment issued by the local treasurer may protest it and alternatively: (1) appeal the assessment in court, or (2) pay the tax, and thereafter, seek a refund. Thus, in Cosmos, the Court declared: *x x x* **a taxpayer who had protested *and* paid an assessment is not precluded from later on instituting an action for refund or credit.** x x x Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable**. x x x (a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment. (b) **Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes**. x x x Equally important is the institution of the judicial action for refund **within**

thirty (30) days from the denial of or inaction on the letter-protest or claim, not any time later, even if within two (2) years from the date of payment[.] **[T]here are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One,* pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two,* bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax**.

2. ID.; ID.; ID.; RESPONDENT WAS JUSTIFIED IN FILING A CLAIM FOR REFUND AFTER TIMELY PROTESTING AND PAYING THE ASSESSMENT.— In this case, after respondent received the assessment on January 17, 2007, it protested such assessment on January 19, 2007. After payment of the assessed taxes and charges, respondent wrote petitioner another letter asking for the refund and reiterating the grounds raised in the protest letter. Then, on February 6, 2007, respondent received the letter denying its protest. Thus, on March 8, 2007, or exactly thirty (30) days from its receipt of the denial, respondent brought the action before the RTC of Manila. Hence, respondent was justified in filing a claim for refund after timely protesting and paying the assessment.

3. ID.; ID.; ID.; ISSUANCE OF NOTICE OF ASSESSMENT IS MANDATORY BEFORE THE LOCAL TREASURER MAY COLLECT DEFICIENCY TAXES FROM THE TAXPAYER; IT IS NOT ONLY A DUE PROCESS REQUIREMENT BUT IT ALSO STANDS AS THE FIRST INSTANCE THAT THE TAXPAYER IS OFFICIALY MADE AWARE OF THE PENDING TAX LIABILITY.— Section 195 of the LGC provides that "When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties." Thus, suffice it to say that the issuance of a notice of assessment is mandatory before the local treasurer may collect deficiency taxes from the taxpayer. The notice of assessment is not only a requirement of due process but it also stands as the first instance

the taxpayer is officially made aware of the pending tax liability. The local treasurer cannot simply collect deficiency taxes for a different taxing period by raising it as a defense in an action for refund of erroneously or illegally collected taxes.

APPEARANCES OF COUNSEL

Office of the City Legal Officer, City of Manila for petitioner.
A.M. Sison, Jr. & Partners Law Office for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this Petition for Review on *Certiorari* are the December 22, 2016 Decision[1] and June 13, 2017 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1342 which affirmed the May 8, 2015 Decision[3] and the July 20, 2015 Resolution[4] of the CTA Second Division in C.T.A. AC No. 122.

The Antecedents

On January 17, 2007, the petitioner City Treasurer of Manila (petitioner) issued a Statement of Account (SOA) under Bill No. 012007-33025 to Philippine Beverage Partners, Inc. (respondent). The SOA showed that respondent is liable to pay petitioner local business taxes and regulatory fees for the first quarter of 2007 in the total amount of ₱2,930,239.82.

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[1] Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla, concurring; *rollo*, pp. 24-39.

[2] *Id*. at 41-46.

[3] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Juanito C. Castañeda, Jr., and Amelia R. Cotangco-Manalastas, concurring; *id*. at 139-153.

[4] *Id*. at 155-158.

Respondent protested the assessment through a letter dated January 19, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. Respondent also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation. Thereafter, respondent made a formal tender of payment to the City of Manila on January 22, 2007, for local business tax and regulatory fees for the first quarter of 2007 in the amount of ₱506,080.89. On February 2, 2007, petitioner issued a letter to respondent denying the latter's protest which respondent received on February 6, 2007.

On February 13, 2007, respondent paid the total amount of ₱2,930,239.82 stated in the SOA. Then, on March 2, 2007, respondent filed a written claim for refund of erroneously/illegally collected tax with petitioner in the amount of ₱2,424,158.93. Further, respondent filed a Complaint for the Revision of SOA (Preliminary Assessment) and for Refund or Credit of LBT Erroneously/Illegally Collected with the Regional Trial Court, Manila, Branch 47 (RTC) on March 8, 2007.

The RTC Ruling

In a Decision[5] dated November 18, 2013, the RTC ordered the refund of the overpayment made by respondent. It held that respondent is already taxed under Section 14 of the RCM, thus, it should no longer be subjected to tax under Section 21 of the same Code. The trial court added that respondent properly filed a claim for refund. It noted that the taxes and fees subject of the claim for refund/tax credit were paid on February 13, 2007 and on March 2, 2007, respondent filed with petitioner a written claim for refund. The RTC opined that respondent had not only exhausted the requisite administrative remedy, *i.e.*, filing of a claim for refund with the City Treasurer, but it also filed the present case on time, on March 8, 2007, which is within two years from the payment of the taxes and fees erroneously/illegally collected which payment was made on February 13, 2007. The *fallo* reads:

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[5] Penned by Presiding Judge Paulino Q. Gallegos; *id*. at 76-86.

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants City of Manila and Liberty M. Toledo to refund to the plaintiff the taxes paid hereunder in the amount of [₱]2,424,158.93 and to pay the cost of suit.

SO ORDERED.[6]

Petitioner moved for reconsideration but the same was denied by the RTC in an Order[7] dated July 4, 2014.

Aggrieved, petitioner filed a Petition for Review with the CTA Second Division.

The CTA Second Division Ruling

In a Decision dated May 8, 2015, the CTA Second Division affirmed the RTC ruling. It ruled that respondent complied with the requirements for filing a refund of any local taxes, fees or charges erroneously or illegally collected. The CTA Second Division denied petitioner's contentions that it was erroneous for the trial court to grant respondent's claim for refund based solely on the latter's computation and that respondent's claim should be negated by its tax deficiency for the years 2006 and 2007 amounting to ₱9,071,298.78. It held that these arguments were not raised by petitioner in its Answer before the trial court. Further, petitioner passed upon the opportunity of raising other factual and legal issues when they agreed to dispense with the pre-trial and to just submit the case for decision upon filing of the parties' respective memoranda. The CTA Second Division disposed the case in this wise:

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated November 18, 2013 and Order dated July 4, 2014 of the Regional Trial Court of Manila, Branch 47, are both ***AFFIRMED***.

SO ORDERED.[8]

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[6] *Id*. at 86.

[7] *Id.* at 107A-109.

[8] *Id*. at 152.

Petitioner moved for reconsideration, but the same was denied by the CTA Second Division in a Resolution dated July 20, 2015. Undaunted, petitioner filed a Petition for Review before the CTA *En Banc*.

The CTA En Banc Ruling

In a Decision dated December 22, 2016, the CTA *En Banc* ruled that respondent was able to comply with the requisites for entitlement to a refund/credit of local taxes considering that it filed a written claim for refund on March 2, 2007, and filed the judicial claim on March 8, 2007, which is within two years from payment of the tax on February 13, 2007. As regards the deficiency tax of respondent for the years 2006 and 2007 which petitioner seeks to offset against the amount respondent is entitled to as tax refund, the CTA *En Banc* ruled that petitioner waived any additional defenses by its failure to raise the same in its Answer before the trial court. The *fallo* reads:

> **WHEREFORE**, the instant Petition for Review is **DENIED** for lack of merit. The Decision promulgated on May 8, 2015 and the Resolution promulgated on July 20, 2015 by the Second Division are hereby **AFFIRMED**.
>
> **SO ORDERED**.[9]

Petitioner moved for reconsideration, but the same was denied by the CTA *En Banc* on June 13, 2017. Hence, this Petition for Review on *Certiorari*.

The Issues

I. WHETHER A TAXPAYER WHO PROTESTED AN ASSESSMENT MAY LATER ON INSTITUTE A JUDICIAL ACTION FOR REFUND; AND

II. WHETHER THE ALLEGED DEFICIENCY TAXES OF RESPONDENT MAY BE USED TO OFFSET ITS CLAIM FOR REFUND.

Petitioner argues that respondent should have appealed the denial of its protest instead of instituting an action for refund;

[9] *Id*. at 38.

and that based on the 2006 Audited Financial Statement of respondent, the latter has underpayments in its business tax payments for 2006 and 2007, thus, the same should be offset against respondent's claim for refund.[10]

The Court's Ruling

The petition is denied.

I.

Petitioner contends that the assessment against respondent became final and executory when the latter effectively abandoned its protest and instead sued in court for the refund of the assessed taxes and charges. The foregoing argument is not novel. In fact, the case of *City of Manila v. Cosmos Bottling Corporation*[11] (Cosmos) finds application. It must be noted that Cosmos and the present case involve the same taxing authority (City of Manila), the same taxing period (first quarter of 2007) and Cosmos, like respondent in the case at bar, was assessed with the tax on manufacturers under Section 14 and the tax on other businesses under Section 21 of the RCM. The Court has settled in Cosmos that a taxpayer facing an assessment issued by the local treasurer may protest it and alternatively: (1) appeal the assessment in court, or (2) pay the tax, and thereafter, seek a refund. Thus, in Cosmos, the Court declared:

> *Second*, **a taxpayer who had protested *and* paid an assessment is not precluded from later on instituting an action for refund or credit.**
>
> The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, to wit:
>
> > Section 195. *Protest of Assessment.* — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties.

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[10] *Id*. at 10-18.

[11] G.R. No. 196681, June 27, 2018.

> Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.
>
> Section 196. *Claim for Refund of Tax Credit*. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer

within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable. (Italics in the original)

On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription. (Emphasis in the original)

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that **the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal. Thus, under such circumstance, the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC.**

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law

on local government taxation, save in the case of real property tax, does not expressly require "*payment under protest*" as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund. Such procedure may find jurisprudential mooring in *San Juan v. Castro* wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment — either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund. The Court, however, did not elucidate on the relation of the second mentioned alternative option, *i.e.*, pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable**. (Emphasis in the original)

> (a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by Section 195. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment

with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment. (Italics in the original)

(b) **Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (Section 195, LGC) and at the same time seeking a refund of the taxes**. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under Section 196 of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment he had administratively protested.** (Emphasis in the original)

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even

> though the suit is seemingly grounded on Section 196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court**. (Emphases in the original)
>
> The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable. Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund at any time within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' within 60 days from receipt of the notice of assessment, and thereafter bring suit in court within 30 days from either decision or inaction by the local treasurer.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.[12] (Emphases supplied and citations omitted)

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[12] *Id*.

In this case, after respondent received the assessment on January 17, 2007, it protested such assessment on January 19, 2007. After payment of the assessed taxes and charges, respondent wrote petitioner another letter asking for the refund and reiterating the grounds raised in the protest letter. Then, on February 6, 2007, respondent received the letter denying its protest. Thus, on March 8, 2007, or exactly thirty (30) days from its receipt of the denial, respondent brought the action before the RTC of Manila. Hence, respondent was justified in filing a claim for refund after timely protesting and paying the assessment.

II.

As regards the second issue, Section 195 of the LGC provides that "When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties." Thus, suffice it to say that the issuance of a notice of assessment is mandatory before the local treasurer may collect deficiency taxes from the taxpayer. The notice of assessment is not only a requirement of due process but it also stands as the first instance the taxpayer is officially made aware of the pending tax liability.[13] The local treasurer cannot simply collect deficiency taxes for a different taxing period by raising it as a defense in an action for refund of erroneously or illegally collected taxes.

To reiterate, respondent, after it had protested and paid the assessed tax, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court.

Consequently, the CTA did not commit a reversible error when it allowed the refund in favor of respondent.

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[13] *Yamane v. BA Lepanto Condominium Corp.*, 510 Phil. 750, 770 (2005).

WHEREFORE, the petition is **DENIED** for lack of merit. The December 22, 2016 Decision and the June 13, 2017 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 1342 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Lazaro-Javier,* and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. No. 234655. September 11, 2019]

JESSICA LIO MARTINEZ, *petitioner, vs.* **HEIRS OF REMBERTO F. LIM, namely: FABIANA TIMBANCAYA LIM, CHINITA LIM PE, MINYANI LIM BAYLOSIS, GENARO T. LIM, EMELINE LIM ANGELES and BELINDA LIM VILLEGAS, represented by their Attorney-in-Fact, JIM GERALD LIM PE,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; *ACCION INTERDICTAL*; SEEKS TO RECOVER PHYSICAL POSSESSION WHERE THE DISPOSSESSION HAS NOT LASTED FOR MORE THAN ONE YEAR, AND THE ACTION IS EITHER FORCIBLE ENTRY OR UNLAWFUL DETAINER WHICH IS TO BE EXCLUSIVELY BROUGHT IN THE PROPER INFERIOR COURT; FORCIBLE ENTRY AND UNLAWFUL DETAINER, DISTINGUISHED.— *Accion interdictal* is a summary action that seeks the recovery of physical possession where the dispossession has not lasted for more than one year, and is to be exclusively brought in the

proper inferior court. The issue involved is material possession or possession *de facto*. The action is either forcible entry (*detentacion*) or unlawful detainer (*deshhucio*). In forcible entry, the plaintiff is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth, but in unlawful detainer, the defendant illegally withholds possession of real property after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which x x x party has prior *de facto* possession, while in unlawful detainer, the possession of the defendant is originally legal but becomes illegal because of the expiration or termination of the right to possess. Both actions must be brought within one year from the date of actual entry on the land by the defendant in case of forcible entry, and within one year from the date of last demand in case of unlawful detainer. The jurisdiction over these two summary actions lies in the proper Municipal Trial Court of the municipality or city within whose territory the property in dispute is located x x x [, pursuant to] Section 33 (2) of B.P. Blg. 129, as amended by Republic Act No. 7691 x x x.

2. ID.; ID.; ID.; *ACCION PUBLICIANA*; A PLENARY ACTION TO RECOVER THE RIGHT OF POSSESSION TO BE FILED WHEN THE DISPOSSESSION LASTED FOR MORE THAN ONE YEAR, AND THE ISSUE IS WHICH PARTY HAS THE BETTER RIGHT OF POSSESSION.— *Accion publiciana* is the second possessory action. It is a plenary action to recover the right of possession, and the issue is which party has the better right of possession (possession *de jure*). It can be filed when the dispossession lasted for more than one year. It is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and the action can no longer be maintained under Rule 70 of the *Rules of Court.* The objective of the plaintiff in *accion publiciana* is to recover possession only, not ownership.

3. ID.; ID.; ID.; *ACCION REIVINDICATORIA*; THE ISSUE INVOLVED THEREIN IS THE RECOVERY OF OWNERSHIP OF REAL PROPERTY AND IT CAN BE FILED WHEN THE DISPOSSESSION LASTED FOR

MORE THAN ONE YEAR.— The last possessory action is *accion reivindicatoria* or *accion de reivindicacion*. It is an action whereby the plaintiff alleges ownership of the parcel of land and seeks recovery of its full possession. The issue involved in and determined through *accion reivindicatoria* is the recovery of ownership of real property. This action can be filed when the dispossession lasted for more than one year.

4. ID.; ID.; ID.; *ACCION PUBLICIANA* AND *ACCION REIVINDICATORIA;* FOR PURPOSES OF ASCERTAINING THE COURT THAT HAS EXCLUSIVE ORIGINAL JURISDICTION, THE DETERMINANT IS THE ASSESSED VALUE OF THE PROPERTY SUBJECT OF THE DISPUTE, NOT THE MARKET OR ACTUAL VALUE THEREOF.— For purposes of determining the court that has exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria*, Section 33 (3) of B.P. Blg. 129, as amended, expressly states x x x [that] [t]he determinant is the assessed value of the property subject of the dispute, not the market or actual value thereof. The assessed value of real property is the fair market value of the real property multiplied by the assessment level. It is synonymous to taxable value. In contrast, the fair market value is the price at which property may be sold by a seller, who is not compelled to sell, and may be bought by a buyer, who is not compelled to buy.

5. ID.; ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER; DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT, AND THE BODY OF THE COMPLAINT, NOT ITS TITLE, FIXES THE NATURE OF THE ACTION.— The jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or only some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for, otherwise, the matter of jurisdiction will become almost entirely dependent upon the defendant. If the nature of the action pleaded as appearing from the allegations in the complaint determines the jurisdiction of the court, the averments of the complaint and the character of the relief sought are to be ascertained. Verily, the body of the complaint, not its title, fixes the nature of an action.

6. ID.; ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; A BOUNDARY DISPUTE CANNOT BE SETTLED SUMMARILY THROUGH THE ACTION FOR FORCIBLE ENTRY.— A proper reading of the allegations of the complaint shows that the case revolved around the actual metes and bounds of the parties' respective properties. The complaint was anchored on the theory that the properties registered in three certificates of title issued in the name of the petitioner had erroneously included portions of the property covered by the tax declaration issued in the name of the respondents' predecessor in interest. In contrast, the petitioner hinged her right on the indefeasibility of her Torrens titles, and relied on the technical descriptions of the boundaries of her properties as stated by metes and bounds contained in her TCT No. 065-2010000259, TCT No. 065-2010000260 and TCT No. 065-2010000261. x x x [T]he dispute essentially concerned the actual metes and bounds of their respective properties. Under such circumstances, the issue was really whether or not the petitioner's titles included the disputed portion. The dispute did not primarily concern merely possessory rights, but related to boundaries, and could not be summarily determined. x x x [T]he question focused on whether the property being claimed and occupied by the petitioner had really been part of her registered properties, or of the respondents' property. The proper resolution of such dispute in favor of the respondents could be had only after a hearing in which the trial court was enabled through preponderant proof showing that, indeed, the disputed area was *not within* the metes and bounds appearing and stated in the TCTs of the petitioner. x x x [A] boundary dispute cannot be settled summarily through the action for forcible entry covered by Rule 70 of the *Rules of Court*. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto*. If the petitioner had possession of the disputed areas by virtue of the same being covered by the metes and bounds stated and defined in her Torrens titles, then she might not be validly dispossessed thereof through the action for forcible entry. The dispute should be properly threshed out only through *accion reivindicatoria*. Accordingly, the MCTC acted without jurisdiction in taking cognizance of and resolving the dispute as one for forcible entry.

APPEARANCES OF COUNSEL

Cruz Neria and Carpio Law Offices for petitioner.
Zoilo C. Cruzat for respondents.

D E C I S I O N

BERSAMIN, *C.J.*:

The resolution of a boundary dispute — by reason of the issue therein being whether or not the contested portion pertained to one or the other of the parties — is not within the province of the summary action of forcible entry under Rule 70 of the *Rules of Court*. It can be taken proper cognizance of in the context of *accion reivindicatoria*.

The Case

The petitioner hereby appeals the decision promulgated on March 20, 2017,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on April 29, 2015 by the Regional Trial Court (RTC), Branch 51, in Puerto Princesa City, Palawan ordering her and all other persons acting for and in her behalf to vacate the part of the premises covered by Tax Declaration No. 006-0515-A of the Assessor's Office of Coron, Palawan originally issued in the name of the heirs of Socorro Lim, and to turn over its peaceful possession to the respondents.[2]

Antecedents

The factual and procedural antecedents of the case as summarized by the CA are as follows:

> This case emanated from an action for Forcible Entry with Prayer for Issuance of Writ of Preliminary Injunction filed by herein respondents heirs of Remberto Lim against petitioner Jessica Lio Martinez.

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[1] *Rollo*, pp. 46-55; penned by Associate Justice Manuel M. Barrios, with Associate Justice Ramon M. Bato, Jr. and Associate Justice Renato C. Francisco, concurring.

[2] *Id.* at 266-276; penned by Presiding Judge Ambrosio B. De Luna.

Respondents are the heirs of Remberto Lim who, during his lifetime, owned, possessed, and cultivated a parcel of land located in Sitio Banga, Barangay VI, Coron, Palawan, designated as Assessor's Lot 065 and covered by Tax Declaration No. 006-0515-A.

Adjoining Remberto's land is the land of his brother — Jose Lim — registered under OCT No. E-9487 with an area of Twenty Eight Thousand and Six square meters (28,006 sqm.). It is worthy to note that per the technical description in said title, the property is bounded on both the east and west by the properties of the Heirs of Socorro Lim, which were later on acquired by the late Remberto Lim.

As it happened, Jose sold his land covered by OCT No. E-9487 to a certain Dorothy and Alexander Medalla who, thereafter, subdivided the same into two (2) smaller lots, designated as Lots 1 and 2. Lot 2 was further subdivided into nine (9) smaller lots, this time designated as Lots 2-A to 2-1, inclusive. Lots 2-D, 2-E and 2-F were thereafter sold to herein petitioner Martinez, pursuant to three (3) separate Deeds of Absolute Sale, and by virtue thereof, petitioner Martinez was issued TCT Nos. 065-2010000259, 065-2010000260, and 065-2010000261 in her favor.

On 10 August 2010, petitioner Martinez and her father entered into the property and uprooted some of the acacia mangium trees that were previously planted thereon by the late Remberto Lim and his son, Alan Lim. To further delineate their claimed property, petitioner fenced the same and placed signs thereon that read "NO TRESPASSING" and "NOTICE THIS PROPERTY IS OWNED BY THE MARTINEZ FAMILY."

Now then, claiming that petitioner had unlawfully encroached into a portion of their property, respondents, through counsel, sent a demand letter to petitioner demanding that she immediately remove the fence that she built on respondents' land as well as to turn over peaceful possession of that portion of property that petitioner intruded into. Unfortunately, the demand was ignored by petitioner, and respondents were constrained to file the instant complaint for Forcible Entry with Prayer for Issuance of Writ of Preliminary Injunction against petitioner before the Municipal Circuit Trial Court of Coron-Busuanga (MCTC)."

In its Decision dated 12 August 2014, the MCTC ordered petitioner, among others, to vacate and turn over peaceful possession of the disputed portion of property. In its ruling, the MCTC examined petitioner's title as well as those of her predecessors' and concluded

that when the Medalla spouses subdivided Lot 2 into nine (9) smaller lots, they erroneously included a portion of Socorro Lim's property. Specifically, the MCTC noticed that in Jose Lim's title and the resultant titles issued to the Medalla spouses, their property was bounded on the east by Socorro Lim's property. However, in the titles for Lots 2-A to 2-1, inclusive, the properties became bounded on the east by Mabentangan Road, which was supposedly the eastern boundary of Socorro Lim's property. As such, despite petitioner's titles over the property, the MCTC awarded possession *de facto* to respondents and, consequently, ordered petitioner to immediately vacate and turn over peaceful possession of the disputed portion to the respondents.

On appeal by petitioner, the Regional Trial Court, Branch 51, Palawan and Puerto Princesa City (RTC) affirmed *in toto* the disposition of the MCTC. Petitioner then filed a Motion for Reconsideration thereof, but to no avail.[3]

The petitioner timely filed an appeal.

Decision of the CA

In the now assailed decision,[4] the CA opined that in ejectment cases, the better right of possession was primarily associated with the party who could prove prior physical possession of the property in dispute; that the respondents had the better right of possession over the disputed portion on account of priority in time considering the following documents submitted as evidence by the respondents, namely: (1) tax declarations in the name of Remberto Lim, from whom the respondents had inherited the portion in dispute; (2) a Tree Plantation Record Form; and (3) the memorandum dated June 4, 1999 issued by the City Environment and Natural Resources Office (CENRO) of Coron, Palawan certifying that acacia mangium trees and mahogany species were planted by Remberto's son, Allan Lim, on the land covered by Tax Declaration No. 006-0515-A issued in the name of Remberto Lim; and that it was evident that neither Jose Lim nor the Medallas (Dorothy and Alexander), from whom the petitioner had derived her title, had dominion over the

[3] *Id.* at 47-49.

[4] *Supra* note 1.

disputed portion, thus warranting the logical conclusion that said portion had been erroneously included in the titles issued to the Medallas.

The *fallo* of the decision of the CA reads:

WHEREFORE, foregoing considered, the Petition for Review is **DENIED**. The Decision dated 29 April 2015 of the Regional Trial Court, Branch 51, Palawan and Puerto Princesa City is **SUSTAINED**.

SO ORDERED.[5]

The petitioner moved for reconsideration but her motion to that effect was denied on October 5, 2017.[6]

Hence, this appeal.

Issues

The petitioner poses the following issues,[7] namely:

I.

THE COURT A QUO ERRED IN UPHOLDING THE TRIAL COURT'S PARTICULAR FINDING THAT RESPONDENTS SUPPOSEDLY HAVE A BETTER AND/OR SUPERIOR RIGHT OF POSSESSION OVER THE CONTESTED PROPERTIES, NOTWITHSTANDING THAT THE PETITIONER'S CLAIM OF OWNERSHIP OVER THE SUBJECT PROPERTIES IS SUPPORTED BY A TORRENS TITLE TO HER NAME;

II.

THE COURT A QUO ERRED IN UPHOLDING THE TRIAL COURT'S PARTICULAR FINDING THAT PETITIONER'S CERTIFICATES OF TITLE [SUPPOSEDLY] ENCROACHED ON THE RESPONDENTS' PUTATIVE PROPERTY;

III.

THE COURT A QUO ERRED IN UPHOLDING THE TRIAL COURT'S FINDING THAT RESPONDENTS ARE THE HEIRS OF

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[5] *Id.* at 55.

[6] *Id.* at pp. 56-58.

[7] *Id.* at 14.

THE DECEASED REMBERTO F. LIM, AND THAT THE PROPERTY BEING CLAIMED BY THEM BELONGS TO THE ESTATE OF THE SAID DECEASED;

IV.

THE COURT A QUO ERRED IN UPHOLDING THE VALIDITY OF THE COMPLAINT, NOTWITHSTANDING THE FAILURE OF ALL THE HEREIN RESPONDENTS, AS PLAINTIFFS IN THE FORCIBLE ENTRY CASE, TO SIGN THE REQUISITE CERTIFICATE OF NON-FORUM SHOPPING ATTACHED TO THE COMPLAINT; and

V.

THE COURT A QUO ERRED IN NOT FINDING THE RESPONDENTS GUIILTY OF FORUM-SHOPPING, AND IN FAILING TO ORDER THE DISMISSAL OF THE COMPLAINT ON THIS ADDITIONAL GROUND.

In the resolution promulgated on February 21, 2018,[8] the Court denied the petition for review on *certiorari* for its failure to sufficiently show that the CA had committed any reversible error in promulgating the assailed decision and resolution as to warrant the exercise of the Court's discretionary appellate jurisdiction.

Undaunted, the petitioner filed a motion for reconsideration arguing that the CA had grossly erred in refusing to acknowledge and recognize her Torrens titles as proof of her superior right to the possession of the disputed portion; and that the decision of the CA, like the previous decisions of the lower courts, constituted a quintessential collateral attack on her various certificates of title.

In a resolution promulgated on July 30, 2018,[9] the Court granted the petitioner's motion for reconsideration; reinstated the appeal; and required the respondents to comment on the petition for review on *certiorari*.

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[8] *Id.* at 304.

[9] *Id.* at 317.

The respondents submit in their comment that the land covered by TD No. 006-0515-A had been included in the titles issued to the petitioner who was consequently illegally and unlawfully occupying the same; that they were still the lawful owners of the land illegally and unlawfully included in the titles of the petitioner; that they had the better and superior rights of possession over the land covered by TD No. 006-0515-A; and that they substantially complied with the rules on certification on non-forum shopping.

Ruling of the Court

We find merit in the appeal.

Preliminarily, this Court discusses and distinguishes the three types of possessory actions sanctioned in this jurisdiction, namely; *accion interdictal*, *accion publiciana* and *accion reivindicatoria*.

Accion interdictal is a summary action that seeks the recovery of physical possession where the dispossession has not lasted for more than one year, and is to be exclusively brought in the proper inferior court.[10] The issue involved is material possession or possession *de facto*.[11] The action is either forcible entry (*detentacion*) or unlawful detainer (*deshhucio*). In forcible entry, the plaintiff is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth, but in unlawful detainer, the defendant illegally withholds possession of real property after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which a party has prior *de facto* possession, while in unlawful detainer, the possession of the defendant is originally legal but becomes illegal because of the expiration or termination of the right to possess.[12] Both

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[10] *Corpuz v. Spouses Agustin*, 679 Phil. 352, 360 (2012).

[11] *Ross Rica Sales Center, Inc. v. Spouses Ong*, 504 Phil. 304, 318 (2005).

[12] *Heirs of Yusingco v. Busilak*, G.R. No. 210504, January 24, 2018.

actions must be brought within one year from the date of actual entry on the land by the defendant in case of forcible entry, and within one year from the date of last demand in case of unlawful detainer.[13]

The jurisdiction over these two summary actions lies in the proper Municipal Trial Court of the municipality or city within whose territory the property in dispute is located. Section 33 (2) of B.P. Blg. 129,[14] as amended by Republic Act No. 7691, provides:

> Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
>
> *x x x* *x x x* *x x x*
>
> 2. ***Exclusive original jurisdiction*** over cases of forcible entry and unlawful detainer: *Provided*, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

Accion publiciana is the second possessory action. It is a plenary action to recover the right of possession,[15] and the issue is which party has the better right of possession (possession *de jure*).[16] It can be filed when the dispossession lasted for more than one year.[17] It is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and the action can no

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[13] *Id.*

[14] The Judiciary Reorganization Act of 1980.

[15] *Bongato v. Spouses Malvar*, 436 Phil. 109, 117 (2002).

[16] *Ross Rica Sales Center, Inc. v. Spouses Ong*, 504 Phil. 304, 318 (2005).

[17] *Mendoza v. Municipality of Pulilan*, G.R. No. 200244 (Notice), [September 15, 2014].

longer be maintained under Rule 70 of the *Rules of Court*. The objective of the plaintiff in *accion publiciana* is to recover possession only, not ownership.[18]

The last possessory action is *accion reivindicatoria* or *accion de reivindicacion*. It is an action whereby the plaintiff alleges ownership of the parcel of land and seeks recovery of its full possession.[19] The issue involved in and determined through *accion reivindicatoria* is the recovery of ownership of real property.[20] This action can be filed when the dispossession lasted for more than one year.[21]

For purposes of determining the court that has exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria*, Section 33 (3) of B.P. Blg. 129,[22] as amended, expressly states:

> Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
>
> *x x x* *x x x* *x x x*
>
> (3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

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[18] *Spouses Padilla v. Velasco*, 596 Phil. 237, 247 (2009).

[19] *Javier v. Veridiano II*, 307 Phil. 583.

[20] *Ross Rica Sales Center, Inc. v. Spouses Ong*, 504 Phil. 304, 318 (2005).

[21] *Bongato v. Spouses Malvar*, 436 Phil. 109, 122-123 (2002).

[22] The Judiciary Reorganization Act of 1980, *Batas Pambansa Blg*. 129, August 14, 1981 as amended by R.A. 7691.

The determinant is the assessed value of the property subject of the dispute, not the market or actual value thereof. The assessed value of real property is the fair market value of the real property multiplied by the assessment level. It is synonymous to taxable value. In contrast, the fair market value is the price at which property may be sold by a seller, who is not compelled to sell, and may be bought by a buyer, who is not compelled to buy.[23]

The jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or only some of the claims asserted therein. As a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for, otherwise, the matter of jurisdiction will become almost entirely dependent upon the defendant. If the nature of the action pleaded as appearing from the allegations in the complaint determines the jurisdiction of the court, the averments of the complaint and the character of the relief sought are to be ascertained.[24] Verily, the body of the complaint, not its title, fixes the nature of an action.[25]

The complaint for forcible entry filed by the respondents contained the following pertinent allegations, to wit:

> 3. That during the lifetime of the deceased Remberto Lim he was the owner, claimant, actual, open, adverse and public possessor, occupant and cultivator, in the concept of an owner and against the whole world, of a parcel of land containing an area of Eight Thousand Two Hundred Twenty Seven (8,227) sq. meters more or less situated at Sitio Banga, Brgy. VI Coron, Palawan known and designated as Assessors Lot 065 covered by Tax Declaration No. 006-0515-A and more particularly described as follows, to wit;
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> *"A parcel of land situated at Sitio Banga, Barangay VI, Coron, Palawan, known and designated as Assessors Lot No. 065 and*

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[23] *Hilario v. Salvador*, 497 Phil. 327, 336 (2005).

[24] *Cadimas v. Carrion, et al.*, 588 Phil. 408, 420 (2008).

[25] *Reyes v. Hon. RTC of Makati, Br. 142, et al.*, 583 Phil. 591, 606-607 (2008).

containing and area of 8,227 sq. meters more or less. Bounded on the North by Ass. Lot 037; on the East by Ass. Lot No. 002, Sec. 07; on the South, by Ass. Lot No. 066 and on the West; by Ass. Lot No. 064"

and declared for taxation purposes in the name of Remberto F. Lim as shown by a copy of Tax Declaration No. 006-0515-A hereto attache as Annex "B". As shown in the tax declaration, the land has an assessed value of ₱160,530.00;

4. That the above described parcel of land is a portion of that bigger parcel of land covered by Tax Declaration No. 006-0329-A copy is hereto attached as Annex "C" while the land covered by Tax Declaration No. 006-0329 is a portion of that bigger parcel of land covered by Tax Declaration No. 006-0100-A copy is hereto attached as Annex "D". All the abovementioned Tax Declarations are declared in the name of Remberto F. Lm.

5. *That the land covered by Tax Declaration No. 006-0100-A, where the land covered by Tax Dclaration No. 006-0515-A and Tax Declaration No. 006-0329-A originated, was previously owned, actually possessed, occupied and cultivated by [Socorro] Lim, deceased mother of deceased Remberto F. Lm.*

6. That as indicated on Tax Declaration No. 006-0100-A, a portion of the land described thereon is declared in the name of Jose Lim, brother of Remberto Lim, under TD 004-0104.

7. **That Jose Lim was [a]ble to secure a title in his name over a portion of he land covered by Tax Declaration No. 006-0100-A under OCT No. E-9487 copy of the title is hereto attached as Annex "E". As indicated in the Title[,] the area covered by the said Titles is 28,006 sq. meters and is designated as Lot F (045309)-2-D. Said area covered by the title in the name of Jose Lim is covered by TD No. 006-496-C copy is hereto attached as Annex "F". That cleared from OCT No. 9487 and TD No. 006-496-C, the land described thereon is bounded on the East and on the West by the properties claimed by the Heirs of Socorro Lim.**

8. That during the lifetime of Remberto F. Lim and one of his sons, Alan Lim, also deceased, they planted several seedlings of acacia manguim trees inside a portion of the land covered by TD No. 006-0100-A which acacia manguim trees were specifically planted on the land covered by TD No. 006-329-A which was cancelled by TD No. 006-0515-A as shown by a copy of the Tree Plantation Record Form

(Annex "G"), and the Memorandum dated January 4, 1999 (Annex "H") and the Certificate of Registration (Annex "I") hereto attached.

9. That after the death of Alan Lim, who predeceased Remberto Lim, and the death of Remberto Lim, the herein Plaintiffs, as the only surviving legitimate wife and children respectively of Remberto Lim acquired, thru intestate succession, all rights, claims, ownership, participation, and interest that Remberto Lim has over the property covered by TD No. 006-0100-A which was cancelled by TD No. 006-329-A and which which was further cancelled by TD No. 006-0515-A as indicated on the said Tax Declaration.

10. That upon the death of Remberto Lim, his surviving heirs continued the actual possession, occupation, and cultivation of the subject parcel of land in the concept of an owner, open, public, adverse and against the whole world;

11. That for the meantime, Jose Lim sold the land covered by OCT No. E-9487 in favor of Dorothy Medalla and Alexander Medala and TCT No. 12496 was issued in their names copy of the same is hereto attached as Annex "J",

12. **That the new owners, Dorothy Medalla and Alexander Medalla caused the subdivision of the land they purchased from Jose Lim into two (2) lots and denominated as Lot 1 Psd-04-1346453 containing an area of 16, 415 sq. meteres and Lot 2 Psd-04-136453 containing an area of 11, 591 sq meters as shown by a copy of the approved subdivision plan hereto attached as Annex "K",**

13. **That clear from hereto attached subdivision plan Lot 1 Psd-04-136453 is bounded on the West by the land claimed by the heirs of Socorro Lim while Lot 2 Psd-04-134653 is bounded on the East by the land also claimed and owned by the heirs of Socorro Lim.**

14. That Dorothy Medalla and Alexander Medalla were issued titles for Lot 1 and Lot 2 both Psd-04-136453 as shown by a copy of TCT No. T-19582 and TCT No. 19583 respectively copies are hereto attached and marked as Annex "L" and "M" respectively;

15. That in order to show the relative position of Lot F (045309)-2-D, then titled in the name of Jose Lim under OCT No. E-9487, which was cancelled by TCT No. T-12496 in the names of Dorothy Medalla and Alexander Medalla, which was further cancelled by TCT No. 19582 and TCT No. 19583 both registered in the names of Dorothy

Medalla and Aleander Medalla, and the land owned/possessed and cultivated by Socorro Lim which was acquired, possessed, occupied, cultivated and owned by Remberto Lim, the heirs of Remberto Lim, the herein Plaintiffs, have commissioned Engr. Lopez, a licensed Geodetic Engineer, in order to make a Sketch/Special Plan and said Geodetic Engineer prepared a Sketch/Special Plan hereto attached as Annex "N";

16. **That clear from the herein attached Sketch/Special Plan is that Lot F (045309)-2-D, is bounded on the West by the land of Socorro Lim (which was then acquired by Remberto Lim and lately, upon his death by his surviving heirs, the Plaintiffs herein) and then next to the land owned by the plaintiffs is the existing road, the Mabentangan Road;**

17. That Dorothy Medalla and Alexander Medalla caused the subdivision of Lot 2 Psd-04-136453 into several smaller lots namely lots 2-A up to lot 2-1, inclusive, under Psd-04-186350 as shown by a copy of the plan hereto attached as Annex "O". Plaintiffs came to know the existence of said Plan only this year of 2010 when Defendant and her father, Stanley Martinez alias Stanley Lim Yu, with the help of other people, forcibly, unlawfully and by means of threat and intimidation entered into the land covered by TD No. 066-0515-A and once in illegal possession and occupation of the same unlawfully and illegally cut and fell down the acacia manguim trees planted by Allan Lim and Remberto Lim and were then growing thereon.

18. **That scrutiny of the hereto attached subdivision plan Psd-04-186350 of Lot 2 Psd-04-136453 covered by TCT No. T-19583 would clearly show that the said lot deviates from the actual position of the land as reflected and described in OCT No. E-6487 as cancelled by TCT No. 19583 because Lot 2 Psd-04-136453 under said plan Lot 2 Psd-04-136453 is bounded on the East by, the existing road and not by the land claimed by the Heirs of Socorro Lim;**

19. That Dorothy Medalla and Alexander Medalla sold to the herein Defendant Lot 2-D; Lot 2-E and Lot 2-F all under Psd-04-186350 and was issued titles on those lots under TCT No 065-2010000260, TCT No. 065-2010000259 and TCT No. 065-2010000261 as shown by copies of the titles hereto attached as Annexes "P" "Q" and "R" respectively;

20. That sometime on August 10, 2010, Defendant, thru her father, Stanley Martinez a.k.a. Stanley Lim Yu, and with the help and assistance

of other people, by means of force, threat, intimidation and other cunning means entered into, occupied, possessed and encroached upon the property owned by the Plaintiffs covered by TD No. 006-0515-A which they acquired from deceased Remberto Lim and once in unlawful occupation and possession of the same knocked down, uprooted, cut and fell all the acacia mangium trees planted by Alan Lim and Remberto Lim to the great damage and prejudice of the plaintiffs;

21. That Defendant caused the fencing of the area with barbed wires as shown by copies of the pictures hereto attached Annexes "S", "S-1", "S-2", and "S-3" and placed thereon signs "NOTICE THIS [PROPERTY] IS OWNED BY THE MARTINEZ FAMILY" and "NO TRESSPASSING PRIVATE PROPERTY" copy of the pictures hereto attached as Annexes "T" and "U" respectively. Lately fence of stronger materials [were] placed thereon;

22. That although Defendant requested the Office of the CENRO, Coron, Palawan permission and authority to knock down, uproot and cut the acacia manuim trees growing on the land covered by TD No. 006-0515-A, however, her request was not acted upon favorably by that office and no permit was issued to her to cut, knock down and uproot the acacia manguim trees growing thereon nor permit her to transport was issued to her as shown by a copy of the Certification hereto attached as Annex "V",

23. That Plaintiffs, thru the undersigned counsel, sent a letter dated October 24, 2010 addressed to the Defendant demanding from her to remove the fence placed on the land of the Plaintiffs and to turn over its peaceful possession and occupation to them as shown by a copy of the letter hereto attached as Annex "W"; however Defendant failed and refused to remove the fence put thereon and to vacate the place.[26] (Bold emphasis supplied)

Based on the aforequoted allegations of the complaint, the decisive issue is whether or not the forcible entry case under Rule 70 was the proper remedy to resolve this controversy.

We rule that it is not.

A proper reading of the allegations of the complaint shows that the case revolved around the actual metes and bounds of

[26] *Rollo*, pp. 76-79.

the parties' respective properties. The complaint was anchored on the theory that the properties registered in three certificates of title issued in the name of the petitioner had erroneously included portions of the property covered by the tax declaration issued in the name of the respondents' predecessor in interest.[27]

In contrast, the petitioner hinged her right on the indefeasibility of her Torrens titles, and relied on the technical descriptions of the boundaries of her properties as stated by metes and bounds contained in her TCT No. 065-2010000259, TCT No. 065-2010000260 and TCT No. 065-2010000261.[28] Thus, her answer to the complaint relevantly represented:

> 13. It cannot be sufficiently underscored that, as specifically alleged in the complaint no less, the real properties subject matter of the instant complaint for forcible entry are actually registered in the name of the defendant, as borne out by TCTs Nos. 065-2010000259, 065-2010000260 and 065-2010000261, respectively, of the Registry of Deeds for the Province of Palawan.
>
> > 13.1 Parenthetically, the complaint admits in no uncertain terms that plaintiffs' putative ownership of the subject real properties is supported only by a mere Tax Declaration, which is not even in their names, but is supposedly in the name of plaintiffs' predecessor-in-interest, *viz*: Remberto F. Lim.[29]

It can be gleaned therefrom that the dispute essentially concerned the actual metes and bounds of their respective properties. Under such circumstances, the issue was really whether or not the petitioner's titles included the disputed portion.

The dispute did not primarily concern merely possessory rights, but related to boundaries, and could not be summarily determined. Nonetheless, the MCTC rendered its ruling based on its deduction that "a part of the property being claimed by

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[27] *Id.* at 224-225.

[28] *Id.* at 229.

[29] *Id.* at 89.

the Heirs of Socorro Lim had been included in the lots that were titled in the name of the defendant." It held:

x x x x x x x x x

The first issue raised in the case at bar is whether or not the subject properties covered by TCTs Nos. 065-2010000259, 065-2010000260, and 065-2010000261 all in the name of the defendant have encroached upon, or have included property belonging to the plaintiffs covered under TD No. 006-0515.

x x x x x x x x x

Logically, from these set of evidences, it can be deduced that a part of the property being claimed by the Heirs of Socorro Lim had been included in the lots that were titled in the name of the defendant. This is because when the technical description over the titles of the defendant were issued, the boundary on the Eastern side that should have been in the name of the heirs of Socorro Lim no longer exists but is now bounded immediately by the road. Hence, plaintiffs have sufficiently established that as predecessors-in-interest, they have the right to claim and possess such part of the property of the defendant which should still be in the name of the heirs of Socorro Lim as originally reflected in the previous titles of the Medallas. As successor-in-interest of the Medallas, defendant could only acquire the property of the former (Medallas) which originally did not include that part of the property of the heirs of Socorro Lim and is now the subject of this dispute. Notedly, plaintiffs in this case are not claiming the whole property of the defendant but only that portion which should still belong to their predecessor-in-interest and is now covered by the titles in the name of the defendant.[30] (Emphasis supplied)

The foregoing ruling was plain error. What the MCTC should have quickly seen was that the dispute did not concern mere possession of the area *in litis* but the supposed encroachment by the petitioner on the portion of the respondents. In other words, the question focused on whether the property being claimed and occupied by the petitioner had really been part of her registered properties, or of the respondents' property.[31] The

[30] *Id.* at 227-224.

[31] *Manalang, et al. v. Bacani, et al.*, 750 Phil. 25, 35 (2015).

proper resolution of such dispute in favor of the respondents could be had only after a hearing in which the trial court was enabled through preponderant proof showing that, indeed, the disputed area was *not within* the metes and bounds appearing and stated in the TCTs of the petitioner.

We reiterate that a boundary dispute cannot be settled summarily through the action for forcible entry covered by Rule 70 of the *Rules of Court*. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto*.[32] If the petitioner had possession of the disputed areas by virtue of the same being covered by the metes and bounds stated and defined in her Torrens titles, then she might not be validly dispossessed thereof through the action for forcible entry. The dispute should be properly threshed out only through *accion reivindicatoria*. Accordingly, the MCTC acted without jurisdiction in taking cognizance of and resolving the dispute as one for forcible entry.

Given the foregoing, the CA committed reversible error in affirming the judgments of the lower courts, and in ordering the summary ejectment of the petitioner from the disputed area.

Considering that the remedy availed of by the respondents as the plaintiffs was improper, the Court need not discuss and settle the other issues raised by the petitioner.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on March 20, 2017 by the Court of Appeals; **DISMISSES** the complaint for forcible entry without prejudice to the filing of the proper action; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

Perlas-Bernabe, Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[32] *Id.*

SECOND DIVISION

[G.R. No. 239866. September 11, 2019]

PAULO JACKSON POLANGCOS *y* FRANCISCO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH INCIDENTAL TO A LAWFUL ARREST; THE ARREST OF THE ACCUSED FOR VIOLATIONS THAT DO NOT ENTAIL A PENALTY OF IMPRISONMENT IS INVALID, AND THE SEARCH THEREAFTER CONDUCTED CANNOT BE CONSIDERED AS A SEARCH INCIDENTAL TO A LAWFUL ARREST, RENDERING THE EVIDENCE AGAINST HIM INADMISSIBLE.— Polangcos' main violation or the violation for which he was apprehended, which was the lack of a plate number in his motorcycle, was punishable only by a city ordinance that prescribes as penalty the fine of ₱500.00. x x x Polangcos' second violation — having expired OR and CR for the motorcycle — is likewise punishable only by fine. x x x In view of the foregoing, SPO2 Juntanilla thus conducted an illegal search when he frisked Polangcos for the foregoing violations which were punishable only by fine. He had no reason to "arrest" Polangcos because the latter's violation did not entail a penalty of imprisonment. It was thus not, as it could not have been, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of. x x x Ultimately, Polangcos must be x x x acquitted, as the *corpus delicti* of the crime, *i.e*. the seized drug, is excluded evidence, inadmissible in any proceeding, including this one, against him.

2. ID.; ID.; ARREST; THE PRINCIPLE ALLOWING ANY OBJECTION, DEFECT OR IRREGULARITY ATTENDING AN ARREST TO BE MADE BEFORE THE ACCUSED ENTERS HIS PLEA ON ARRAIGNMENT DOES NOT APPLY TO THE ACCUSED WHEN THE EVIDENCE USED TO CONVICT HIM IS

INADMISSIBLE.— Parenthetically, it must be pointed out that the CA erred in equating the validity of the arrest of Polangcos with the admissibility of the evidence used against him. While the CA was correct in ruling that "any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment," the said principle, however, would not apply to Polangcos' contention that the evidence used to convict him was inadmissible. Polangcos' argument was not only that he was illegally arrested, but that he was also wrongfully convicted because the evidence used against him was inadmissible. The Court thus stresses that any evidence seized as a result of searches and seizures conducted in violation of Section 2, Article III of the 1987 Constitution is **inadmissible** "for any purpose in any proceeding" in accordance with the exclusionary rule in Section 3(2), Article III of the 1987 Constitution.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; CONSENTED SEARCH; FOR A LEGITIMATE WAIVER OF THE CONSTITUTIONAL RIGHT AGAINST ILLEGAL SEARCHES TO EXIST, THERE MUST BE PROOF OF AN ACTUAL INTENTION TO RELINQUISH SAID RIGHT.— [T]here is no legitimate waiver of the constitutional right against illegal searches because there is no proof of an actual intention to relinquish the said right. x x x SPO2 Juntanilla admitted that he "immediately frisked the accused before the issuance of the ticket and mentioned that he conducted the frisking due to his initial traffic violation." It was a unilateral decision on the part of SPO2 Juntanilla to frisk Polangcos **even if he had no reason to** because x x x the penalty for the latter's violations was only by fine. It was not intimated, much less was it proved, that Polangcos knowingly consented to any search conducted on him by SPO2 Juntanilla. Thus, there could be no valid consented search in this case. It is also worth pointing out that the circumstances under which the seized item was discovered appears to be dubious. SPO2 Juntanilla claims that the plastic sachet fell from Polangcos' cap when the latter removed it as SPO2 Juntanilla was conducting a search on him. It bears emphasis, however, that "[e]vidence to be believed must not only proceed from the mouth of a credible witness **but it must be credible in itself,**

such as the common experience and observation of mankind can approve as probable under the circumstances." In contrast to this, the testimony of SPO2 Juntanilla as to the circumstances surrounding the discovery of the seized item does not inspire belief. For one, common sense dictates that if a person indeed carries contraband in his possession, then he would try, as much as possible, to hide the said item. x x x Moreover, there is serious doubt as to whether Polangcos was really even wearing a cap during his apprehension. x x x The foregoing makes the circumstances surrounding the supposed discovery of the seized item, as well as the ensuing arrest of Polangcos, highly doubtful. The Court cannot, therefore, rely on the same to establish that Polangcos consented to the search conducted on him.

4. ID.; ID.; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; THE PRESUMPTION IN FAVOR OF THE ACCUSED REMAINS UNTIL THE JUDGMENT OF CONVICTION BECOMES FINAL AND EXECUTORY.— Article III, Section 14(2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt. It is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense." This presumption in favor of the accused remains until the judgment of conviction becomes final and executory. Borrowing the words of the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "[u]ntil a promulgation of final conviction is made, this constitutional mandate prevails." Hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt. Thus, in *People v. Mingming*, the Court outlined what the prosecution must do to hurdle the presumption and secure a conviction x x x. To the mind of the Court, Polangcos' case is a prime example of how the foregoing constitutional right works. To recall, the defense was not able to present any evidence, not even the testimony of the accused. Despite this, the Court still acquits Polangcos for failure of the prosecution to offer proof beyond reasonable doubt. ***This is the essence of the presumption of innocence; the accused need***

> ***not even do anything to establish his innocence as it is already presumed***. The burden to overcome this presumption rests **solely** on the prosecution, which, in this particular case, clearly failed to discharge said burden as it essentially had no evidence against the accused with the ruling on the inadmissibility of the *corpus delicti* of the crime. That Polangcos was found guilty by both the RTC and the CA is likewise irrelevant, for while the Court is generally bound by the findings of the lower courts, it is equally true that x x x the accused is presumed to be innocent until the judgment of conviction has become final. **To be sure, the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent**. Thus, each accused, even those whose cases are already on appeal, can hide behind this constitutionally protected veil of innocence which only proof establishing guilt beyond reasonable doubt can pierce.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] filed by the petitioner Paulo Jackson F. Polangcos (Polangcos) assailing the Decision[2] dated March 28, 2018 and Resolution[3] dated June 7, 2018 of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 11-34.

[2] *Id*. at 36-47. Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a Member of this Court), concurring.

[3] *Id*. at 49-50. Penned by Associate Justice Renato C. Francisco, with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda (now a member of this Court), concurring.

CR No. 39705, which affirmed the Decision[4] dated November 2, 2016 of the Regional Trial Court of Marikina City, Branch 263 (RTC) in Criminal Case No. 2015-4818-D-MK, finding Polangcos guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[5] as amended.

The Facts

An Information was filed against Polangcos for violating Section 11 of RA 9165, the accusatory portion of which reads:

> That on or about the 16th day of AUGUST 2015, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control of one (1) plastic sachet containing 0.05 grams of white crystalline substance suspected as shabu and subsequently marked as "PJP-1 08-16-15" which gave a positive result to the test of methamphetamine hydrochloride, a dangerous drug, in violation of the above-cited law.
>
> CONTRARY TO LAW.[6]

When arraigned, Polangcos pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.[7]

The prosecution's version, as summarized by the CA, is as follows:

SPO2 Juntanilla testified that on 16 August 2015 at around 6:40 p.m., he was on board a mobile patrol car with his team along J.P. Rizal St., Marikina City, when they spotted a motorcycle without a

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[4] *Id*. at 71-75. Penned by Presiding Judge Armando C. Velasco.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (2002).

[6] *Rollo*, p. 37; citation omitted.

[7] *Id*.

plate number. They then pursued the motorcycle. The succeeding events were narrated by SPO2 Juntanilla in his *Pinagsamang Sinumpaang Salaysay* which he identified in court, thus:

> "xxx Na, ito ay aming naabutan, at ako (SPO2 Juntanilla) ay akin siyang tinikitan sa kadahilanang walang plaka ang isang RACAL motorcycle na kulay green at expired na ang driver's license ng nagmamanihong aming nakilala bilang si Paulo Jackson Polang[c]os y Francisco (appellant) xxx. Na, sa aking pagsisiyasat (Body Frisk) ay nalaglag mula sa suot na sombrero ng suspetsado ang isang pirasong plastic sachet na naglalaman ng pinaghihinalaang shabu.
>
> Na, sa puntong yaon ay agad namin siyang inaresto at aming ipinaalam sa kanya ang kanyang nailabag na batas at ang kanyang mga karapatan bilang akusado sa ilalim ng ating binagong saligang batas xxx
>
> Na, ako (SPO2 Juntanilla) ay aking minarkahan ang aking nakumpiska na isang pirasong heat sealed transparent plastic sachet na naglalaman ng pinaghihinalaang shabu at ito ay minarkahan ko ng "PJP-1 8/16/15". Na, ang pag-iimbertaryo ng mga ebidensya ay sinaksihan ni Brgy. Kagawad Rogel Santiago ng Brgy. Malanday, Marikina City, xxx"

On cross-examination, SPO2 Juntanilla clarified that he apprehended appellant at about 11:40 p.m. He stated that appellant was arrested for violation of a city ordinance. SPO2 Juntanilla narrated that he frisked appellant first before issuing the Ordinance Violation Receipt. He also recalled that he marked the plastic sachet seized from appellant along J.P. Rizal. Afterwards, SPO2 Juntanilla turned over the seized item to PO2 Diola who was not named in the Chain of Custody Form.

On re-direct examination, SPO2 Juntanilla mentioned that PO2 Diola handed the seized item to Forensic Chemist Police Chief Inspector Margarita Libres (PCI Libres). SPO2 Juntanilla stated that the item he marked was the very same item he submitted to the crime laboratory and which he identified in open court.

Based on Physical Science Report No. MCSO-D-148-15 by PCI Libres, qualitative examination conducted on the heat-sealed transparent plastic sachet with marking "PJP-1 08-16-15" containing 0.05 gram of white crystalline substance gave positive result for the presence of methamphetamine hydrochloride.[8]

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[8] *Id*. at 37-39; italics in the original, citations omitted.

On the other hand, the defense was unable to present any evidence. Polangcos was not able to take the witness stand as he was absent during the scheduled presentation of defense evidence.[9] The case was thus submitted for decision.

Ruling of the RTC

In its Decision[10] dated November 2, 2016, the RTC convicted Polangcos of the crime charged. The dispositive portion of the said Decision reads:

> WHEREFORE, above premises considered, the court finds accused PAULO JACKSON POLANGCOS *y* FRANCISCO **GUILTY** beyond reasonable doubt of violation of Section 11 of Article II of [RA 9165] or the Comprehensive Dangerous Drugs Act of 2002.
>
> The accused is hereby sentenced to suffer the penalty of imprisonment of **TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS.**
>
> He is also ordered to pay the fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).
>
> SO ORDERED.[11]

In finding Polangcos guilty, the RTC relied on the presumption of regularity in the performance of official duty to hold that the prosecution was able to demonstrate that the integrity and evidentiary value of the seized item were preserved.[12] It further held that the non-compliance with the procedure outlined in Section 21, RA 9165 did not render Polangcos' arrest illegal. Finally, the RTC ruled that while perfect compliance with the chain of custody rule is the ideal, it was its view that it was impossible to always obtain an unbroken chain of custody. It thus considered as not fatal the perceived break in the chain of custody pointed out by the defense, *i.e.* the absence of the name

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[9] *Id*. at 74.

[10] *Supra* note 4.

[11] *Rollo*, p. 75; emphasis in the original.

[12] *Id*. at 74.

of the officer to whom the seized item was turned over in the Chain of Custody Form.[13] It ultimately declared Polangcos guilty of the crime charged.

Aggrieved, Polangcos appealed to the CA.

Ruling of the CA

In the CA, Polangcos questioned the admissibility of the evidence against him. He contended that (1) the seized item was obtained by virtue of an invalid warrantless arrest, and (2) that the integrity and evidentiary value of the seized drug were not preserved.[14]

In the questioned Decision[15] dated March 28, 2018, the CA affirmed the RTC's conviction of Polangcos. It ruled that the prosecution was able to establish all the elements of the crime,[16] namely: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[17]

Moreover, the CA held that despite the fact that the police officers failed to strictly comply with the chain-of-custody requirement, it was not fatal for the prosecution's cause as "[w]hat is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[18]

The CA further declared that Polangcos could no longer assail the validity of his arrest because "any objection, defect or

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[13] *Id*. at 75.

[14] *Id*. at 40.

[15] *Supra* note 2.

[16] *Rollo*, p. 41.

[17] *Id*., citing *People v. Unisa*, 674 Phil. 89, 109-110 (2011); citation omitted.

[18] *Id*. at 43.

irregularity attending an arrest must be made before the accused enters his plea on arraignment."[19] It thus ruled that any irregularity was already cured upon Polangcos' voluntary submission to the court's jurisdiction. The CA therefore affirmed Polangcos' conviction.

Polangcos filed a motion for reconsideration, but the CA denied the same in a Resolution[20] dated June 7, 2018.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Polangcos.

The Court's Ruling

The petition is meritorious.

The CA manifestly overlooked the undisputed fact that the seized item was confiscated from Polangcos as he was being issued a traffic violation ticket. His violations consisted of (1) not having a plate number, and (2) expired official receipt (OR) and certificate of registration (CR) of the motorcycle he was riding.[21]

Polangcos' main violation or the violation for which he was apprehended, which was the lack of a plate number in his motorcycle, was punishable only by a city ordinance that prescribes as penalty the fine of ₱500.00. Even SPO2 Rey J. Juntanilla (SPO2 Juntanilla), the apprehending officer, recognized that he arrested Polangcos even though the penalty for his violation was merely a fine. The RTC, in its Decision, noted that:

On cross-examination, **the witness [SPO2 Juntanilla] admitted that he arrested the accused for violation of the city ordinance**

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[19] *Id.* at 45, citing *People v. Vasquez*, 724 Phil. 713 (2014).

[20] *Supra* note 3.

[21] *Rollo*, p. 73.

of driving a motorcycle without a plate number, however, he issued a receipt for such violation and further admitted that the penalty for such offense is the payment of ₱500.00 fine. He likewise admitted that after they caught up with the accused when the latter alighted from his motorcycle[,] [h]e immediately frisked the accused before the issuance of the ticket and mentioned that he conducted the frisking due to his initial traffic violation.[22]

Meanwhile, Polangcos' second violation — having expired OR and CR for the motorcycle — is likewise punishable only by fine. Land Transportation Office (LTO) Department Order No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides that the offense of "[o]perating/allowing the operation of MV with a suspended/revoked Certificate/Official Receipt of registration" is punishable only with a fine of ₱1,000.00.

In view of the foregoing, SPO2 Juntanilla thus conducted an illegal search when he frisked Polangcos for the foregoing violations which were punishable only by fine. He had no reason to "arrest" Polangcos because the latter's violation did not entail a penalty of imprisonment. It was thus not, as it could not have been, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of.

In the very recent case of *People v. Cristobal*,[23] (*Cristobal*) the driver of the motorcycle was flagged because he was not wearing a helmet, and he did not have in his possession the OR and CR of the motorcycle. The accused therein was then frisked to search for a deadly weapon, but the police officers did not find any. The apprehending officer thereafter noticed that there was a bulge in the pocket of his pants, so the officer asked the accused to remove the thing in his pocket. When the accused obliged, it was then revealed that the thing in his pocket was a small plastic bag containing seven sachets of *shabu*. The accused was then charged with Illegal Possession of Dangerous Drugs, similar to Polangcos in this case.

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[22] *Id*.; emphasis and underscoring supplied.

[23] G.R. No. 234207, June 10, 2019.

When the case reached the Court, the accused was acquitted as the Court found that the seized items were borne of an illegal search. The Court similarly held that the search was unlawful because it was not preceded by a valid arrest. As the violations of the accused therein were only punishable by fine, the Court ruled that there was no reason to arrest the accused, and, as a consequence, no valid arrest preceded the search thereafter conducted. Accordingly, the Court held that the accused therein must be acquitted as the evidence against him was rendered inadmissible by the exclusionary rule provided under the Constitution. The Court elucidated:

> Thus, any item seized through an illegal search, as in this case, cannot be used in **any** prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.[24]

The case of *Cristobal* squarely applies to this case. There was likewise no valid arrest to speak of in this case — as Polangcos' violations were also punishable by fine only — and there could thus be no valid "search incidental to lawful arrest." Ultimately, Polangcos must be similarly acquitted, as the *corpus delicti* of the crime, *i.e.* the seized drug, is excluded evidence, inadmissible in any proceeding, including this one, against him.

Parenthetically, it must be pointed out that the CA erred in equating the validity of the arrest of Polangcos with the admissibility of the evidence used against him. While the CA was correct in ruling that "any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment,"[25] the said principle, however, would not apply to Polangcos' contention that the evidence used to convict him was inadmissible. Polangcos' argument was not only that he was illegally arrested, but that he was also wrongfully convicted because the evidence used against him was

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[24] *Id.*; emphasis and underscoring in the original.

[25] *Rollo*, p. 45, citing *People v. Vazquez*, 724 Phil. 713 (2014).

inadmissible. The Court thus stresses that any evidence seized as a result of searches and seizures conducted in violation of Section 2, Article III of the 1987 Constitution is **inadmissible** "for any purpose in any proceeding" in accordance with the exclusionary rule in Section 3(2), Article III of the 1987 Constitution.

There was also no valid consented search

The Court required the People, through the Office of the Solicitor General (OSG), to submit its comment on the petition filed by Polangcos. In its Comment[26] dated January 10, 2019, the OSG opined that the search conducted on Polangcos was valid as it was a consented search. They argue:

> 17. In this case, it is quite clear that when the police officers were able to caught (*sic*) up with petitioner, the latter alighted from his motorcycle and allowed SPO2 Juntanilla to do a search on his person. This led to the discovery of the dangerous drug when it fell from his cap.[27]

The above contention of the OSG is untenable.

In *People v. Chua Ho San*,[28] the Court held that "to constitute a waiver [of the constitutional guarantee against obtrusive searches], it must first appear that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and lastly, that said person had an actual intention to relinquish the right."[29]

Following the foregoing standard, there is no legitimate waiver of the constitutional right against illegal searches because there is no proof of an actual intention to relinquish the said right.

To recall, SPO2 Juntanilla admitted that he "immediately frisked the accused before the issuance of the ticket and

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[26] *Id*. at 135-152.

[27] *Id.* at 142; citation omitted.

[28] 367 Phil. 703 (1999).

[29] *Id*. at 721; citation omitted.

mentioned that he conducted the frisking due to his initial traffic violation."[30] It was a unilateral decision on the part of SPO2 Juntanilla to frisk Polangcos **even if he had no reason to** because, as discussed, the penalty for the latter's violations was only by fine. It was not intimated, much less was it proved, that Polangcos knowingly consented to any search conducted on him by SPO2 Juntanilla. Thus, there could be no valid consented search in this case.

It is also worth pointing out that the circumstances under which the seized item was discovered appears to be dubious. SPO2 Juntanilla claims that the plastic sachet fell from Polangcos' cap when the latter removed it as SPO2 Juntanilla was conducting a search on him.

It bears emphasis, however, that "[e]vidence to be believed must not only proceed from the mouth of a credible witness **but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances**."[31] In contrast to this, the testimony of SPO2 Juntanilla as to the circumstances surrounding the discovery of the seized item does not inspire belief.

For one, common sense dictates that if a person indeed carries contraband in his possession, then he would try, as much as possible, to hide the said item. Here, SPO2 Juntanilla claimed that Polangcos **voluntarily and without instigation** took off his cap which allegedly contained the plastic sachet. It does not make sense, however, for Polangcos to do the said act if it was true that he was hiding illegal drug in the said cap. Why would Polangcos incriminate himself and remove the cap if he knew that the cap was containing contraband?

Moreover, there is serious doubt as to whether Polangcos was really even wearing a cap during his apprehension. This is because SPO2 Juntanilla himself testified that Polangcos'

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[30] *Rollo*, p. 73.

[31] *People v. Capuno*, 655 Phil. 226, 244 (2011); emphasis and underscoring supplied, citation omitted.

violations were only, to repeat: (1) not having a plate number, and (2) expired OR and CR of the motorcycle he was riding.

SPO2 Juntanilla never suggested or asserted that Polangcos was not wearing a helmet. It must be pointed out that RA 10054, or the Motorcycle Helmet Act of 2009, requires that "[a]ll motorcycle riders, including drivers and back riders, shall at all times wear standard protective motorcycle helmets while driving, whether long or short drives, in any type of road and highway."[32] If Polangcos was not violating RA 10054 — and was therefore wearing a helmet — at the time of his apprehension, then how could he have worn a cap and a helmet at the same time?

The foregoing makes the circumstances surrounding the supposed discovery of the seized item, as well as the ensuing arrest of Polangcos, highly doubtful. The Court cannot, therefore, rely on the same to establish that Polangcos consented to the search conducted on him.

On the presumption of innocence

The Court also takes this opportunity to elaborate on the presumption of innocence granted by the Bill of Rights.

Article III, Section 14(2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt.[33] It is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense."[34]

This presumption in favor of the accused remains until the judgment of conviction becomes final and executory. Borrowing

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[32] RA 10054, Sec. 3.

[33] *People v. Maraorao*, 688 Phil. 458, 465 (2012).

[34] *Id*. at 466-467; citation omitted.

the words of the Court in *Mangubat, et al. v. Sandiganbayan, et al.*,[35] "[u]ntil a promulgation of final conviction is made, this constitutional mandate prevails."[36] Hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt. Thus, in *People v. Mingming*,[37] the Court outlined what the prosecution must do to hurdle the presumption and secure a conviction:

> *First*, the accused enjoys the constitutional presumption of innocence until final conviction; conviction requires no less than evidence sufficient to arrive at a moral certainty of guilt, not only with respect to the existence of a crime, but, more importantly, of the identity of the accused as the author of the crime.
>
> *Second*, the prosecution's case must rise and fall on its own merits and cannot draw its strength from the weakness of the defense.[38]

To the mind of the Court, Polangcos' case is a prime example of how the foregoing constitutional right works.

To recall, the defense was not able to present any evidence, not even the testimony of the accused. Despite this, the Court still acquits Polangcos for failure of the prosecution to offer proof beyond reasonable doubt. ***This is the essence of the presumption of innocence; the accused need not even do anything to establish his innocence as it is already presumed***. The burden to overcome this presumption rests **solely** on the prosecution, which, in this particular case, clearly failed to discharge said burden as it essentially had no evidence against the accused with the ruling on the inadmissibility of the *corpus delicti* of the crime.

That Polangcos was found guilty by both the RTC and the CA is likewise irrelevant, for while the Court is generally bound

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[35] 220 Phil. 392 (1985).

[36] *Id.* at 395.

[37] 594 Phil. 170 (2008).

[38] *Id.* at 185; italics in the original.

by the findings of the lower courts, it is equally true that, as earlier discussed, the accused is presumed to be innocent until the judgment of conviction has become final. **To be sure, the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent**. Thus, each accused, even those whose cases are already on appeal, can hide behind this constitutionally protected veil of innocence which only proof establishing guilt beyond reasonable doubt can pierce.

All told, the Court acquits Polangcos of the crime charged as the prosecution failed to overcome this presumption of innocence, more specifically because the evidence it offered to try to overturn that presumption is inadmissible for violating the constitutional right against unreasonable searches and seizures.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 28, 2018 and Resolution dated June 7, 2018 of the Court of Appeals in CA-G.R. CR No. 39705 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Paulo Jackson Polangcos *y* Francisco is **ACQUITTED** of the crime charged, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio (*Chairperson*), *Reyes, J. Jr.*, *Lazaro-Javier*, and *Inting,*[*] *JJ.*, concur.

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[*] Designated as Additional Member per Raffle dated August 22, 2019.

FIRST DIVISION

[G.R. No. 239903. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO SALENGA *y* GONZALES *a.k.a.* "BAROK",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.

3. ID.; ID.; DRUG CASES; CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME, IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— [In illegal sale and illegal possession of dangerous drugs,] it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the

dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PHYSICAL INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; MUST BE DONE IMMEDIATELY AFTER SEIZURE AND CONFISCATION IN THE PRESENCE OF THE THREE NECESSARY WITNESSES AT THE PLACE OF APPREHENSION, OR IF NOT PRACTICABLE, AT THE NEAREST POLICE STATION OR OFFICE.— The rule on chain of custody was specifically enacted in order to preserve the integrity and evidentiary value of the seized drugs. The rule is embodied in Section 21, Article II of RA 9165 x x x. Its IRR further outline the procedure for the inventory and photograph of the seized drugs x x x. Section 21, Article II of RA 9165, the applicable law at the commission of the crime, and its implementing rules, clearly require the inventory and photograph of the seized items "immediately after seizure and confiscation" in the presence of the three necessary witnesses—the representatives from the DOJ and the media, and any local public official—at the place of apprehension, or if not practicable, at the nearest police station or office. In both instances, these witnesses must already be present at the time of the apprehension and seizure, a requirement that can easily be complied with by the buy-bust team considering that the operation, by its very nature, is a planned activity. The importance of the presence of the necessary witnesses during the physical inventory and photograph of the seized items cannot be overemphasized x x x. [C]ompliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.

5. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; COMPLIANCE THEREWITH ENSURES THE INTEGRITY OF CONFISCATED DRUGS AND RELATED PARAPHERNALIA.— Compliance with the chain of custody requirement ensures the integrity of confiscated drugs and related paraphernalia in four respects: *first*, the nature of the substances or items seized; *second*, the quantity *(e.g.*, weight) of the substances or items seized; *third*, the relation of the substances

or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.

6. ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; NON-COMPLIANCE WITH THE PROCEDURE IS ALLOWED IN EXCEPTIONAL CASES WHEN JUSTIFIABLE GROUNDS EXIST TO ALLOW DEPARTURE FROM THE RULE ON STRICT COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM, AND IN THESE EXCEPTIONAL CASES, THE SEIZURES AND CUSTODY OVER THE CONFISCATED ITEMS SHALL NOT BE RENDERED VOID AND INVALID.— The law, however, also allows non-compliance in exceptional cases where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid. We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. We also held that the absence of the necessary witnesses does not *per se* render the seized items inadmissible. However, in all these exceptions, a justifiable reason for such absence or a showing of any genuine and sufficient effort to secure the witnesses' presence must be adduced. These exceptional circumstances must be alleged and proved.

7. ID.; ID.; ID.; ID.; ID.; THE RULES REQUIRE THAT THE APPREHENDING OFFICERS DO NOT SIMPLY MENTION A JUSTIFIABLE GROUND, BUT ALSO CLEARLY STATE THIS GROUND IN THEIR SWORN AFFIDAVIT AND COUPLED WITH A STATEMENT ON THE STEPS THEY TOOK TO PRESERVE THE INTEGRITY OF THE SEIZED ITEM.— It is undisputed

that the physical inventory and photograph of the seized items were conducted at the police station and not at the place of arrest, and in the presence of only appellant, PO2 Lagos, and a media representative by the name of Manny Alcala. x x x These circumstances are clear manifestations of the apprehending team's failure to comply with the rule on chain of custody. The reason given by PO2 Lagos that "the crowd is getting bigger" is but a hollow excuse insufficient to justify non-compliance with the rules. Likewise, no explanation, much less a justifiable reason, was offered to explain the absence of the necessary witnesses nor was there a showing of any genuine and sufficient effort to secure their presence during the arrest and inventory. The buy-bust team had almost the whole day, which is sufficient time and opportunity, to ensure the presence of the necessary witnesses in this case. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit and coupled with a statement on the steps they took to preserve the integrity of the seized item. Clearly, compliance is absent in this case.

8. ID.; ID.; ID.; ID.; WITNESS REQUIREMENT; THE ATTENDANCE OF ALL THREE NECESSARY WITNESSES DURING THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEM IS MANDATORY AS IT IS THEIR PRESENCE THAT WOULD INSULATE AGAINST POLICE PRACTICES OF PLANTING EVIDENCE.— Contrary to the finding of the trial court, the presence of the media representative cannot validate the inventory. Pursuant to RA 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*. The rationale is simple, it is the presence of these witnesses that would insulate against police practices of planting evidence. x x x [A] thorough review of the records yielded nothing to justify the absence of the DOJ representative and elected public official, nor is there any showing that earnest efforts were exerted to secure their presence x x x.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

JARDELEZA, *J.*:

The rule on chain of custody was designed to safeguard the integrity of the confiscated dangerous drugs in buy-bust operations. The failure to comply with this rule without justifiable reasons warrants acquittal.

This is an appeal from the Decision[1] dated November 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08871 which affirmed the Judgment[2] dated October 18, 2016 of the Regional Trial Court of Pasig City (Taguig City Station), Branch 267 (RTC) in Criminal Case Nos. 17664-65-D-TG.

The Factual Antecedents

Two informations were filed against Ronaldo Salenga *y* Gonzales *a.k.a.* "Barok" (appellant) charging him of selling 0.04 gram (g) and possessing 0.08 g of methamphetamine hydrochloride, also known as *shabu*, in violation of Sections 5 and II of Article II of Republic Act No. (RA) 9165.[3] The informations read:

Criminal Case No. 17664-D-TG

That, on or about the 29th day of August, 2011 in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized or licensed by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully, and knowingly sell, deliver, distribute and give away zero point zero four (0.04) gram of Methamphetamine Hydrochloride also known as *shabu*, a dangerous drug, in violation of [Republic Act No. 9165 (R.A. No. 9165)].[4]

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Stephen C. Cruz with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Nina C. Antonio-Valenzuela, concurring.

[2] CA *rollo*, pp. 49-59; rendered by Judge Antonio M. Olivete.

[3] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[4] Records, p. 2.

Criminal Case No. 17665-D-TG

That, on or about the 29th day of August 2011 in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, to possess any dangerous drug, did, then and there willfully, unlawfully, and knowingly have in his possession custody and control of two (2) heat- sealed transparent plastic sachets containing a total of zero point zero eight (0.08) gram of Methamphetamine Hydrochloride, commonly known as "SHABU," a dangerous drug, in violation of [R.A. No. 9165].[5]

Appellant entered the plea of not guilty to both charges. Trial ensued.[6]

According to the prosecution, in the early morning of August 29, 2011, a confidential informant arrived at the Office of the District Anti-Illegal Drugs in Taguig City to report the drug dealing activities of a certain Michelle. The police were able to arrange a deal with Michelle for the sale of *shabu* for ₱1,000.00 at a Petron gas station along C-5 Road, Brgy. Ususan, Taguig City. In preparation for the buy-bust operation, the police prepared a Pre-Operation Report and Coordination with the Philippine Drug Enforcement Agency, and a marked one-thousand-peso bill to be used as buy-bust money. PO2 Gerald R. Lagos (PO2 Lagos)[7] was designated as poseur buyer, while SPO1 Felix S. Mayuga (SPO1 Mayuga) was assigned as immediate back-up.[8]

The team, together with the confidential informant, arrived at the Petron gas station at around 5:00PM of the same day. PO2 Lagos and the confidential informant went inside the Jollibee outlet in the gas station to wait for Michelle. The confidential informant called Michelle to confirm the transaction but was informed by the latter that she would not be able to meet them

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[5] *Id.* at 21.

[6] *Rollo,* p. 3.

[7] PO3 Lagos in some parts of the *rollo* and records.

[8] *Rollo,* p. 4.

and instead would be sending a certain Barok, who turned out to be appellant. Michelle also told the confidential informant that she would give the latter's number to Barok. PO2 Lagos immediately received a call from appellant who asked about their location. After a while, appellant approached PO2 Lagos and the informant. He told them that he was sent by Michelle to deliver the *shabu*. Appellant asked PO2 Lagos for the payment which he immediately handed to appellant. In return, appellant discreetly handed to PO2 Lagos one heat-sealed transparent plastic sachet of *shabu*. Right after he received the *shabu*, PO2 Lagos took off his bull cap, the pre-arranged signal that the transaction was already consummated. SPO1 Mayuga immediately approached PO2 Lagos and appellant. PO2 Lagos then introduced himself as a narcotic operative, arrested appellant, and apprised him of his constitutional rights. PO2 Lagos recovered from appellant the buy-bust money and two heat-sealed transparent plastic sachets upon being searched after the arrest.[9]

PO2 Lagos marked the plastic sachet he bought from accused-appellant with the code "GLO82911-1" and the other two sachets with "GLO82911-2" and "GLO82911-3." They proceeded to the police station where appe1lant, together with the illegal drugs, were turned over to SPO1 Dionisio Gastanes, Jr. (SPO1 Gastanes, Jr.), the police investigator. The turn over was evidenced by the Turn Over of Arrested Suspect/s, Turn Over of Confiscated Evidence, and the Booking and Information Sheet. Thereafter, PO2 Lagos photographed the seized items and conducted an inventory in the presence of appellant, the investigator, the police team leader, and a representative from the media. After the inventory, SPO1 Gastanes, Jr. prepared the Spot Report, Request for Laboratory Examination of the Seized Item, Request for Drug Test, Affidavit of Arrest, and Chain of Custody Form. These, along with appellant and the seized items, were turned over to the Southern Police District Crime Laboratory (SPDCL). At the SPDCL, the seized items were turned over to NUP Bernardo Bucayan and examined by

[9] *Id.*

P/CINSP Richard Mangalip, who executed a Physical Science Report showing that the qualitative examination conducted on the specimen gave a positive result to the test for methamphetamine hydrochloride.[10]

For his defense, appellant claimed that he was framed by the police officers. He alleged that around 4:00 PM of August 29, 2011, he went to Jollibee at the Petron gas station to buy food. Upon entering the store, he saw two acquaintances, Michelle and Tess, who called and invited him to sit at their table. After taking his seat, appellant was suddenly approached by four armed men. One of the men told him *"wag kang kikilos, buy bust ito."* They were handcuffed and frisked. The searched yielded nothing but his mobile phone and ₱400.00. They boarded a white van and headed towards the Southern Police District Headquarters. On their way, the armed men informed them that they were going to be charged of selling and possessing illegal drugs. Throughout this ordeal, appellant remained silent due to fright. Once in the police station, the police officers took their statements and asked them if they could afford to settle the case in the amount of ₱50,000.00. Appellant answered that he could not afford it since he was only a tricycle driver. The police investigator, through appellant's mobile phone that was earlier confiscated, contacted the latter's sister who later came to the police station. After talking to his sister, appellant informed the police officers that he could not produce the amount. He was then informed that the charge against him would push through. He also claimed that Tess and Michelle were not charged because they were able to pay the police officers.[11]

In a Judgment[12] dated October 18, 2016, the RTC found appellant guilty of the crimes charged. The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing dissertation, the court finds accused Ronald Salenga *y* Gonzales *alias* "Barok" GUILTY beyond

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[10] *Rollo,* pp. 4-5.

[11] *Id.* at 5-6.

[12] CA *rollo,* pp. 49-59.

reasonable doubt for violation of Section 5, Article II of R.A. 9165 under Criminal Case No. 17664-D-TG and judgment is hereby rendered that he should suffer the penalty of life imprisonment and to pay Fine in the amount of Five Hundred Thousand Pesos x x x. With regard to the violation of Section 11, Article II of R.A. 9165 under Criminal Case No. 17665-D-TG, judgment is hereby rendered that accused x x x should suffer the penalty of imprisonment from twelve (12) years and one (1) day to fifteen (15) years and to pay Fine in the amount of Three Hundred Thousand Pesos x x x.[13]

The trial court ruled that the prosecution was able to prove all the elements of the crimes since it was able to establish that PO2 Lagos bought *shabu* from appellant in consideration of ₱1,000.00, and that his possession of the other two sachets of *shabu* was illegal as he did not have authority to keep them. It was also established that the drugs seized from appellant were the same drugs that were presented before the court.[14] The trial court gave no credence to appellant's contention that the police officers did not comply with the requirements of the law when no media, barangay, and Department of Justice (DOJ) representatives were present during the arrest. According to the trial court, the presence of the stated representatives is required during the inventory and not during the actual operation; thus, the presence of the media representative alone was enough to validate the inventory[15] Contrary to the posture of the defense, the conduct of the inventory at the police station was in accord with the law and its implementing rules. It further ruled that appellant's bare denials cannot prevail over the positive identification made by the police because he failed to adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[16]

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[13] *Id.* at 59.

[14] *Id.* at 55-56.

[15] *Id.* at 57-58; citing *People v. Gum-Oyen,* G.R. No. 182231, April 16, 2009, 585 SCRA 668.

[16] *Id.* at 58-59; citing *People v. Torres,* G.R. No. 191730, June 5, 2013, 697 SCRA 452.

The CA, in a Decision[17] dated November 17, 2017, affirmed the RTC Judgment, thus:

> WHEREFORE, in view of the foregoing premises, the appeal is DENIED. The October 18, 2016 Decision of the Regional Trial Court, Branch 267, Pasig City, is hereby AFFIRMED.[18]

The CA agreed with the trial court that all elements of the crimes were duly proven by the prosecution. It found appellant's contention that he is entitled to an acquittal due to the failure of the operatives to comply with the procedure laid down in Section 21, Article II of RA 9165, particularly on the marking of the confiscated narcotics at the place of seizure in his presence, to be without merit. According to the CA, the authenticity and identity of the seized narcotics were not compromised considering that the prosecution was able to establish the continuous and unbroken possession, and subsequent transfers of the said seized narcotics through the stipulations of facts entered by the parties during trial and the documentary evidence presented to support the same. In this case, there were no conflicting testimonies nor glaring inconsistencies that would cast doubt on the integrity and identity of the seized drugs as the evidence presented and scrutinized in the trial court. It emphasized that the arrest of an accused will not be invalidated and the items seized from him rendered inadmissible on the sole ground of non-compliance with Section 21, Article II of RA 9165 since what is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[19]

The Issue Before the Court

In this appeal, appellant contends that the trial court erred in finding him guilty beyond reasonable doubt of the crimes

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[17] *Rollo,* pp. 2-12.

[18] *Id.* at 11.

[19] *Id.* at 10-11; citing *People v. Cardenas,* G.R. No. 190342, March 21, 2012, 668 SCRA 827 and *People v. Ara,* G.R. No. 185011, December 23, 2009, 609 SCRA 304.

charged despite the arresting officers' failure to comply with Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR).[20] On the other hand, the People, through the Office of the Solicitor General, maintains that the prosecution has sufficiently established the chain of custody of the seized items and there being no evidence showing bad faith, ill will or proof that the evidence has been tampered with, the presumption that the arresting officers performed their duties regularly stands.[21]

The Court's Ruling

The appeal has merit.

In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his conviction: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.[22]

In both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the crime.[23]

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[20] CA *rollo,* pp. 38-39.

[21] *Id.* at 71-75. Both parties manifested their adoption of the briefs they filed before the Court of Appeals. See *rollo,* pp. 21-23, 27-29.

[22] *People v. Cordova,* G.R. No. 231130, July 9, 2018.

[23] *Id.*

The rule on chain of custody was specifically enacted in order to preserve the integrity and evidentiary value of the seized drugs. The rule is embodied in Section 21, Article II of RA 9165 which provides:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.]
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> x x x x x x x x x (Emphasis supplied.)

Its IRR further outline the procedure for the inventory and photograph of the seized drugs:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity

and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.][24] (Emphasis supplied.)

Compliance with the chain of custody requirement ensures the integrity of confiscated drugs and related paraphernalia in four respects: *first*, the nature of the substances or items seized; *second*, the quantity *(e.g.*, weight) of the substances or items seized; *third*, the relation of the substances or items seized to the incident allegedly causing their seizure; and *fourth*, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.[25]

As shown, Section 21, Article II of RA 9165, the applicable law at the commission of the crime, and its implementing rules, clearly require the inventory and photograph of the seized items "immediately after seizure and confiscation" in the presence of the three necessary witnesses—the representatives from the DOJ and the media, and any local public official—at the place of apprehension, or if not practicable, at the nearest police station or office. In both instances, these witnesses must already be present at the time of the apprehension and seizure, a requirement that can easily be complied with by the buy-bust team considering that the operation, by its very nature, is a planned activity.[26]

The importance of the presence of the necessary witnesses during the physical inventory and photograph of the seized items cannot be overemphasized:

The presence of the witnesses at the place and time of arrest and seizure is required because "[w]hile buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that x x x by the very nature of anti-

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[24] Sec. 21, Article II, Implementing Rules and Regulations of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002."

[25] *People v. Adobar*, G.R. No. 222559, June 6, 2018, citing *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486.

[26] *People v. Adobar*, G.R. No. 222559, June 6, 2018.

narcotics operations, the need for entrapment procedures x x x the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

In this connection, it is well to point out that recent jurisprudence is clear that the **procedure enshrined in Section 21 of R.A. 9165 is a matter of substantive law,** and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[27] (Citations omitted; emphasis supplied)

The law, however, also allows non-compliance in exceptional cases where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In these exceptional cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.[28] We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.[29] We also held that the absence of the necessary witnesses does not *per se* render the seized items inadmissible.[30]

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[27] *People v. Lim,* G.R. No. 231989, September 4, 2018. See also *People v. Pascua,* G.R. No. 227707, October 8, 2018 and *People v. Ocampo,* G.R. No. 232300, August 1, 2018.

[28] *People v. Adobar*, *supra* note 25.

[29] *People v. Lim,* G.R. No. 231989, September 4, 2018, citing *People v. Mola,* G.R. No. 226481, April 18, 2018.

[30] *Id.,* citing *People v. Ramos,* G.R. No. 233744, February 28, 2018.

However, in all these exceptions, a justifiable reason for such absence or a showing of any genuine and sufficient effort to secure the witnesses' presence must be adduced.[31] These exceptional circumstances must be alleged and proved.[32]

Against this legal backdrop, We find here that the integrity of the *corpus delicti* to be marred by the omission to faithfully comply with the rule on chain of custody. The prosecution had not shown any justifiable reason for non-compliance with the witness requirement in Sections 21 of RA 9165 and its IRR.

It is undisputed that the physical inventory and photograph of the seized items were conducted at the police station and not at the place of arrest, and in the presence of only appellant, PO2 Lagos, and a media representative by the name of Manny Alcala.[33] When asked of the reason why the inventory was conducted at the police station and not at the place of arrest, PO2 Lagos answered:

> A: It is because that time, **the crowd is getting bigger**, that's why our team leader decided to go to our headquarters and when we arrived at the headquarters, it was the time that the media representative was in our headquarters, sir.[34] (Emphasis supplied.)

When further probed if at the time of, and immediately after, the arrest, there was a threat to the security of the officers and the accused, PO2 Lagos admitted that there was none.[35]

Also noteworthy are the facts that the police officers received the confidential information in the early morning of August 29, 2011 and the illegal transaction was set to take place at

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[31] *Id.*

[32] *People v. Pascua*, G.R. No. 227707, October 8, 2018.

[33] *Rollo*, p. 5. See also records, p. 16.

[34] TSN, June 6, 2012, p. 18. See also the Joint Affidavit of Arrest executed by SPO1 Mayuga and PO2 Lagos (records, pp. 6-7).

[35] TSN, June 6, 2012, p. 21.

5:00 PM of the same day.[36] Further, only a representative from the media was present during the inventory at the police station:

ATTY. JOYA:	By the way, Mr. Witness, at the time of the arrest, is there any representative from the media, the barangay, or the DOJ that were present:
A:	During that time of the arrest, sir, none, sir.
ATTY. JOYA:	But you know very well Mr. Witness that when you conduct an inventory you should be prepared that a representative from the media, the barangay and the DOJ should be present at that time?'
A:	Yes, sir but at that time the media is not around, the availability of the media representative was only after the operation when we proceed to the headquarters, sir.
	x x x x x x x x x
ATTY. JOYA:	But you know very well Mr. Witness that when you conduct the inventory, it should be...well a representative from those offices should be present at that time?
A:	Yes, sir.[37]

These circumstances are clear manifestations of the apprehending team's failure to comply with the rule on chain of custody. The reason given by PO2 Lagos that "the crowd is getting bigger" is but a hollow excuse insufficient to justify non-compliance with the rules.[38] Likewise, no explanation, much less a justifiable reason, was offered to explain the absence of the necessary witnesses nor was there a showing of any genuine and sufficient effort to secure their presence during the arrest and inventory. The buy-bust team had almost the whole day, which is sufficient time and opportunity, to ensure the presence

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[36] CA *rollo,* pp. 51-52.

[37] TSN, June 6, 2012, pp. 16-17.

[38] *People v. Mola,* G.R. No. 226481, April 18, 2018.

of the necessary witnesses in this case.[39] The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit and coupled with a statement on the steps they took to preserve the integrity of the seized item.[40] Clearly, compliance is absent in this case.

In *Limbo v. People*,[41] the Court reversed the accused's conviction due to unjustified deviations from the rule on chain of custody which resulted in the conclusion that the integrity and the evidentiary value of the seized items have been compromised. The Court ruled that "[t]he mere fact that the witnesses contacted by the police officers failed to appear at their office within a brief period of two hours is not reasonable enough to justify non-compliance with the requirements of the law. Indeed, the police officers did not even bother to follow up on the persons they contacted, thus, it cannot be said that genuine and sufficient efforts were exerted to comply with the witness requirement." The Court reiterated that the prosecution must "show that earnest efforts were employed in contacting the representatives enumerated under the law for '[a] sheer statement that representatives were unavailable—without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances—is to be regarded as a flimsy excuse.' Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time—beginning from the moment they have received the information about the activities of the accused until the time of his arrest—to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure

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[39] TSN, June 6, 2012, p. 4. See also records, p. 6.

[40] *People v. Mola, supra* note 37.

[41] G.R. No. 238299, July 1, 2019.

prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable."[42]

In *People v. Mola*,[43] the Court likewise reversed the conviction due to the prosecution's failure to justify the impracticality of conducting the inventory at the place of arrest and absence of all the necessary witnesses, thereby placing doubt on the integrity of the seized drugs at the very first link of the chain of custody. Similarly in *People v. Pascua (Pascua)*,[44] where only one necessary witness, a media representative, was present during the inventory of the seized items, the Court reversed the conviction and held that no valid reason was offered by the prosecution to explain the absence of the DOJ representative and an elected public official. The failure of the prosecution to provide a justifiable reason for the non-compliance with the rule on chain of custody created doubt as to the integrity and evidentiary value of the seized drugs.

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[42] The Court further reiterated in *People v. Limbo* that:

x x x [T]he Court in *People v. Lim*, explained that the absence of the required witnesses must be justified based on acceptable reasons such as: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ [and] media representative[s] and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape." (*Id.*)

[43] *Supra* note 37.

[44] *Supra* note 31.

At the risk of repetition, We reiterate that compliance with the requirements forecloses opportunities for planting, contaminating, or tampering of evidence in any manner. Non-compliance, on the other hand, is tantamount to failure in establishing the identity of *corpus delicti*, an essential element of the offense of illegal sale of dangerous drugs, thus, engendering the acquittal of an accused.[45]

Considering that in this case, at the point of seizure, *i.e.*, the first link in the chain of custody, irregularities were already attendant, it becomes futile to prove the rest of the links in the chain. Simply put, since "planting" of the drugs was already made possible at the point of seizure because of the absence of all three necessary witnesses, proving the chain after such point merely proves the chain of custody of planted drugs.[46]

Contrary to the finding of the trial court,[47] the presence of the media representative cannot validate the inventory. Pursuant to RA 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*. The rationale is simple, it is the presence of these witnesses that would insulate against police practices of planting evidence.[48] As discussed, a thorough review of the records yielded nothing to justify the absence of the DOJ representative and elected public official, nor is there any showing that earnest efforts were exerted to secure their presence, as in *Pascua*.[49]

In view of the foregoing considerations, We reverse the conviction of appellant due to the apprehending officers' failure to comply with the rule on chain of custody and to justify the non-compliance, thus creating doubts as to the integrity and evidentiary value of the seized illegal drugs.

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[45] *People v. Adobar, supra* note 25.

[46] *Id.*

[47] CA *rollo*, p. 58.

[48] *People v. Adobar, supra* note 25.

[49] *People v. Pascua, supra* note 31.

WHEREFORE, the appeal is **GRANTED**. The November 17, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 08871, which affirmed the Judgment of the Regional Trial Court of Pasig (Taguig City Station), Branch 267 in Criminal Case Nos. 174664-65-D-TG finding appellant Ronaldo Salenga *y* Gonzales guilty beyond reasonable doubt of the charges against him, is **REVERSED** and **SET ASIDE**. Ronaldo Salenga *y* Gonzales is **ACQUITTED** on reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe (*Working Chairperson*), *Gesmundo,* and *Lazaro-Javier,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 241324. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIVIC COHAYCO *y* REVIL @ "KAKANG",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); DRUG CASES; IN CASES FOR ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS, THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL

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[*] Designated as Additional Member in lieu of Associate Justice Rosmari D. Carandang per Raffle dated August 13, 2019.

PART OF THE *CORPUS DELICTI* OF THE CRIME, AND IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF SEIZED ITEMS; FAILURE TO IMMEDIATELY MARK THE CONFISCATED ITEMS AT THE PLACE OF ARREST NEITHER RENDERS THEM INADMISSIBLE IN EVIDENCE NOR IMPAIRS THE INTEGRITY OF THE SEIZED DRUGS, AS THE CONDUCT OF MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM IS SUFFICIENT COMPLIANCE WITH THE RULES ON CHAIN OF CUSTODY.— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

3. ID.; ID.; ID.; ID.; WITNESS REQUIREMENT; THE LAW REQUIRES THE PRESENCE OF THE REQUIRED WITNESSES PRIMARILY TO ENSURE THE

ESTABLISHMENT OF THE CHAIN OF CUSTODY AND REMOVE ANY SUSPICION OF SWITCHING, PLANTING OR CONTAMINATION OF EVIDENCE.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official"; or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *or* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

4. ID.; ID.; ID.; CHAIN OF CUSTODY PROCEDURE; COMPLIANCE THEREWITH IS STRICTLY ENJOINED AS THE SAME HAS BEEN REGARDED NOT MERELY AS A PROCEDURAL TECHNICALITY BUT AS A MATTER OF SUBSTANTIVE LAW BUT FAILURE TO STRICTLY COMPLY WITH THE CHAIN OF CUSTODY PROCEDURE WOULD NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE CONFISCATED ITEMS AS VOID AND INVALID; CONDITIONS.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules

and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

5. ID.; ID.; ID.; MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPHY OF SEIZED ITEMS; WITNESS REQUIREMENT; NON-COMPLIANCE THEREWITH MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.— Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated April 24, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01579-MIN, which affirmed the Decision[3] dated July 27, 2016 of the Regional Trial Court of Oroquieta City, Branch 12 (RTC) in Criminal Case No. 2132, finding accused-appellant Marivic Cohayco *y* Revil @ "Kakang" (Cohayco) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC charging Cohayco of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that in the evening of March 19, 2014, operatives from the Philippine Drug Enforcement Agency Region X (PDEA) successfully implemented a buy-bust operation against Cohayco, during which one (1) big sachet containing ten (10) small sachets of white crystalline substance with an aggregate of 0.2075 gram was recovered from her. As the place of arrest is a known *shabu* hotbed, the PDEA took her and the seized items to the PDEA Satellite Office where the seized items were marked, inventoried, and photographed in her presence, as well as barangay officials and media representatives. Thereafter, the seized items were brought to

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[1] See Notice of Appeal dated May 15, 2018; *rollo*, pp. 16-17.

[2] *Id*. at 5-15. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Oscar V. Badelles, concurring.

[3] CA *rollo*, pp. 41-57. Penned by Presiding Judge Alma V. Azanza.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Records, p. 2.

the crime laboratory where, after examination,[6] the contents thereof yielded positive for methamphetamine hydrochloride, or *shabu,* a dangerous drug.[7]

In defense, Cohayco denied the charges against her, claiming instead that she was just looking for her five (5)-year old son when two (2) men riding on a motorcycle stopped in front of her, restrained her, then took her to the police station. Thereat, she was searched but nothing was found in her body. A few moments later, a barangay official arrived and signed a document that she knew nothing about. Thereafter, she was brought to the crime laboratory.[8]

In a Decision[9] dated July 27, 2016, the RTC found Cohayco guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[10] It found that the prosecution, through the testimonies of the PDEA operatives, had established beyond reasonable doubt that Cohayco indeed sold plastic sachets containing *shabu* to the poseur-buyer during a legitimate buy-bust operation.[11] In this regard, the RTC opined that the chain of custody of the seized items was properly established, thereby preserving the integrity and evidentiary value of the same.[12] Aggrieved, Cohayco appealed[13] to the CA.

In a Decision[14] dated April 24, 2018, the CA affirmed Cohayco's conviction.[15] It held that the prosecution had

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[6] See Chemistry Report No. D-66-2014MO dated March 20, 2014; *id.* at 21.

[7] *Rollo,* p. 8.

[8] See *id.* at 8-9.

[9] CA *rollo,* pp. 41-57.

[10] *Id.* at 57.

[11] See *id.* at 53-55.

[12] *Id.* at 55.

[13] See Notice of Appeal dated October 28, 2016; records p. 132.

[14] *Rollo,* pp. 5-15.

[15] *Id.* at 14.

established all the elements of the crime charged, and that there was compliance with the chain of custody rule.[16]

Hence, this appeal seeking that Cohayco's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[17] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[18] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[19]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized

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[16] See *id*. at 10-14.

[17] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section II, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Magsano,* G.R. No. 231050, February 28, 2018; *People v. Manansala,* G.R. No. 229092, February 21, 2018; *People v. Miranda,* G.R. No. 229671, January 31, 2018, 854 SCRA 42, 52; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018, 853 SCRA 303, 313.)

[18] See *People v. Crispo, id.*; *People v. Sanchez, id.*; *People v. Magsano, id.*; *People v. Manansala, id.*; *People v. Miranda, id.* at 53; and *People v. Mamangon, id.* See also *People v. Viterbo,* 739 Phil. 593, 601 (2014).

[19] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018, citing *People v. Umipang,* 686 Phil. 1024, 1039-1040 (2012).

up to their presentation in court as evidence of the crime.[20] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[21] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[22] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[23]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official";[24] or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service

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[20] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 17; *People v. Sanchez, supra* note 17; *People v. Magsano, supra* note 17; *People v. Manansala, supra* note 17; *People v. Miranda, supra* note 17, at 53; and *People v. Mamangon, supra* note 17. See also *People v. Viterbo, supra* note 18.

[21] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 356-357 (2015).

[22] *People v. Mamalumpon,* 767 Phil. 845, 855 (2015), citing *Imson v. People,* 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia,* 718 Phil. 330, 348 (2013), citing *People v. Resurreccion,* 618 Phil. 520, 532 (2009).

[23] See *People v. Tumulak, supra* note 21; and *People v. Rollo, supra* note 21.

[24] Section 21 (1), Article II of RA 9165 and its Implementing Rules and Regulations.

or the media."[25] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing

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[25] Section 21, Article II of RA 9165, as amended by RA 10640.

[26] See *People v. Miranda, supra* note 17, at 57.

[27] See *People v. Miranda, id*. at 60-61. See also *People v. Macapundag,* 807 Phil. 234, 244 (2017), citing *People v. Umipang, supra* note 19, at 1038.

[28] See *People v. Segundo,* G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang, id*.

[29] See *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[30] See *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[31] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: **"*Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items[.]"**

Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[34]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[37]

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[32] Section 1 of RA 10640 pertinently states: ***"Provided, finally,*** **That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."**

[33] *People v. Almorfe, supra* note 30.

[34] *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[35] See *People v. Manansala, supra* note 17.

[36] See *People v. Gamboa, supra* note 19, citing *People v. Umipang, supra* note 19, at 1053.

[37] See *People v. Crispo, supra* note 17.

Notably, the Court, in *People v. Miranda*,[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo;* otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, the Court finds that the police officers were justified in conducting the markings, inventory, and photography of the seized items at the PDEA Satellite Office instead of the place of arrest, considering that the same is a known hotbed of *shabu*, and that Cohayco's arrest and seizure of the plastic sachets might be compromised. Nonetheless, it appears that the inventory and photography of the seized items were not conducted in the presence of a DOJ representative, as evinced by the Inventory of Seized Items/Confiscated Non-Drugs,[40] which only showed signatures from barangay officials and media representatives, contrary to the mandatory procedure laid down in RA 9165. This fact is confirmed by the testimony of PDEA Operative Intelligence Officer 2 Elvis M. Taghoy, Jr. (IO2 Taghoy), who is a member of the buy-bust team which arrested Cohayco, pertinent portions of which are as follows:

[Prosecutor Farmacion]: We have here another document marked as Exhibit C for the prosecution Inventory of Seized Items/Confiscated Non-drugs, can you please examine this document?
[IO2 Taghoy]: This is the inventory sheet which was prepared by agent Patino, sir.

Q: Where were you when agent Patino prepared this Inventory of Seized Items/Confiscated Non-drugs?
A: I was just beside her, sir.

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[38] *Supra* note 17.

[39] See *id*.

[40] Records, p. 17.

Q: There are signatures on this document, do you know whose signatures are these?
A: In the document, the signatures of Laudener A. Catane, the Barangay Chairman sir, Leonid O. Montejo, Barangay Kagawad, Mike Samba-an, Media Representative, IO2 Remedios P. Patino, sir, my co-arresting officer, and my signature sir, IO2 Elvis M. Taghoy, Jr., sir.[41]

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As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, IO2 Taghoy acknowledged that only barangay officials and media representatives were present during the marking, inventory, and photography of the seized items. At this point, the prosecution should have noted the absence of the DOJ representative and further interrogated its witnesses on the matter in order to determine if, at the very least, earnest efforts were exerted in ensuring the presence of this DOJ representative during the conduct of inventory and photography. Absent any determination of earnest efforts, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Cohayco were compromised. Perforce, her acquittal is warranted under these circumstances.

WHEREFORE, the appeal is **GRANTED.** The Decision dated April 24, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 01579-MIN is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Marivic Cohayco *y* Revil @ "Kakang" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

Bersamin, C.J. (Chairperson), Jardeleza, Gesmundo, and *Carandang, JJ.,* concur.

[41] TSN, January 19, 2016, pp. 18-19.

FIRST DIVISION

[G.R. No. 242165. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABUBACAR ABDULWAHAB *y* MAMA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OF ILLEGAL DRUGS; ELEMENTS; THE PROSECUTION MUST ESTABLISH THE INTEGRITY OF THE DANGEROUS DRUG BECAUSE THE DANGEROUS DRUG IS THE *CORPUS DELICTI* OF THE CASE.— The following elements must be proved beyond reasonable doubt for a conviction in a prosecution for the sale of illegal drugs: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. Proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti* is essential. Therefore, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; COMPLIANCE THEREWITH IS A MATTER OF SUBSTANTIVE LAW WHICH CANNOT BE BRUSHED ASIDE AS MERE TECHNICALITY BUT THE LAW, IN EXCEPTIONAL CASES, ALLOWS NON-COMPLIANCE WITH THE PROCEDURE AND THE SEIZURES AND CUSTODY OVER THE CONFISCATED ITEMS SHALL NOT BE RENDERED VOID AND INVALID, PROVIDED THAT JUSTIFIABLE GROUNDS EXIST TO ALLOW DEPARTURE FROM THE RULE ON STRICT COMPLIANCE AND THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE

PROPERLY PRESERVED BY THE APPREHENDING TEAM.— Section 21, Article II of RA 9165, the applicable law at the time of the commission of the crime, provides that the apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official* who shall be required to sign the copies of the inventory and be given a copy thereof. The presence of these witnesses is required "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." Compliance with the procedure set forth in Section 21 of RA 9165 is a matter of substantive law which cannot be brushed aside as mere technicality or ignored as an impediment to the conviction of illegal drug suspects. The law, in exceptional circumstances, also allows non-compliance with the procedure where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. In these cases, the seizures and custody over the confiscated items shall not be rendered void and invalid. Thus, for the absence of the necessary witnesses not to render the seized items inadmissible, a justifiable reason for such absence or a showing of any genuine and sufficient effort to secure their presence must be adduced and proved.

3. ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; WITNESS RULE; THE ATTENDANCE OF ALL THREE NECESSARY WITNESSES DURING THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ITEMS IS MANDATORY.— After careful review of the case, We find the deviations from the rule [on the] chain of custody unjustified. The prosecution failed to offer, much less prove, justifiable reasons for the absence of two of the necessary witnesses, and to show that it undertook genuine and sufficient efforts to secure their presence. x x x The record is bereft of any explanation to account for the absence of a representative from the DOJ and

an elected public official. Both the CA and the trial court glossed over this material lapse on the part of the prosecution. Curiously though, during PO2 Leonor's cross-examination, the trial court acknowledged the absence of the necessary witnesses, but proceeded to convict appellant on the ground that the latter's defense of denial and frame up must fail in light of the positive identification and declarations of the prosecution witnesses. We emphasize that pursuant to RA 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*. In the absence of the representative from the DOJ and elected public official during the physical inventory and the photographing of the seized drugs, the evils of switching, "planting" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of appellant cannot be upheld.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

JARDELEZA, *J.*:

The rule on chain of custody was designed to safeguard the integrity of the confiscated dangerous drugs in buy-bust operations. The failure to comply with this rule without justifiable reasons warrants the accused's acquittal.

This is an appeal from the Decision [1] dated February 2, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08474 which affirmed the Decision[2] dated July 22, 2016 of Branch 127, Regional Trial Court of Caloocan City (RTC) in Criminal Case No. 92353.

[1] *Rollo*, pp. 2-14; penned by Associate Justice Rosmari D. Carandang (now a Member of this Court) with Associate Justices Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles, concurring.

[2] CA *rollo*, pp. 57-72; rendered by Judge Victoriano B. Cabanos.

The Factual Antecedents

An information[3] was filed against Abubacar Abdulwahab *y* Mama (appellant) for violation of Section 5, Article II of Republic Act No. (RA) 9165.[4] The accusatory portion of the information reads:

> That on or about the 9th day of July 2014 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 WILFRED LEONOR, who posed as buyer, One (1) heat-sealed transparent plastic sachet later marked "WNL-1-7-9-14" containing METAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.62 gram, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.
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> CONTRARY TO LAW.[5]

A plea of not guilty was entered by appellant during arraignment. Thereafter, trial ensued.

According to the prosecution, a regular confidential informant (RCI) arrived at the office of PO2 Wilfredo N. Leonor (PO2 Leonor) of the District Anti-Illegal Drugs-Special Operation Task Group (DAID-SOTG), Northern Police District, at about 9:00 in the morning of July 8, 2014 to relay intelligence on the illegal drug activities in Quiapo of one *alias* Muslim. The RCI told PO2 Leonor that Muslim was looking for a buyer of *shabu.* After getting the important details, PO2 Leonor instructed the informant to tell Muslim that the informant already found a buyer. PO2 Leonor reported the information to his superior, who instructed P/Insp. Edsel Ibasco to head the anti-illegal drug operation team against Muslim. The operation was coordinated

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[3] Records, pp. 1-2.

[4] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.

[5] Records, p. 1.

with the Philippine Drug Enforcement Agency, but was aborted due to another assignment.[6]

The following day, July 9, 2014, the RCI called PO2 Leonor over the cellphone, and through the RCI, PO2 Leonor and Muslim were able to talk. PO2 Leonor told Muslim that he will buy ¼ *bulto* of *shabu* worth ₱4,000.00 and agreed to meet at the LRT 5th Avenue Station, Caloocan City at about 11:00 am to 12:00 pm. PO2 Leonor was designated as the poseur buyer and arresting officer, while PO3 Reymel Villanueva (PO3 Villanueva) was designated as his immediate back up. PO2 Leonor was provided with four pieces of ₱1,000.00 bills to be used as buy-bust money, which he marked with the letters "BBM."[7]

At around 10:30 in the morning, the buy-bust team composed of eight members arrived at the LRT 5th Avenue Station. PO2 Leonor positioned himself out front. After a while, the informant arrived together with a man with white complexion in yellow t-shirt. The RCI introduced PO2 Leonor to the man who was identified as Muslim. After a short talk, Muslim asked for the money. Upon seeing the money, Muslim brought out a brown paper containing a transparent plastic sachet with white crystalline substance and showed it to PO2 Leonor. PO2 Leonor then handed the buy-bust money to Muslim and in return, the latter handed him the brown envelope containing the said plastic sachet. After taking the plastic sachet, PO2 Leonor introduced himself as a policeman and arrested Muslim, who was later identified as appellant. Thereafter, PO3 Villanueva arrived and handcuffed appellant. PO2 Leonor informed appellant of his rights and his violations, then brought him to their vehicle where PO2 Leonor marked the evidence with "WNL-1-7-9-14." He also took photographs of the accused holding the plastic sachet and also marked the brown envelope with "WNL-2-7-9-14." They went back to their office, keeping in his possession the specimen which he bought from the appellant. After conducting

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[6] *Rollo*, pp. 4-5.

[7] *Id*. at 5.

the inventory, he turned over appellant and the evidence to the investigator. The specimen was referred to the crime laboratory for examination which found the same to be positive for *shabu*. PO2 Leonor identified appellant and the specimen in the course of the proceedings.[8]

The prosecution also presented PO3 Villanueva who corroborated PO2 Leonor's testimony on the events of July 9, 2019.[9]

On the other hand, according to the defense, no buy-bust operation took place against appellant on July 9, 2014. Appellant claimed that he was illegally arrested at Carriedo, Sta. Cruz, Manila near the LRT Station. He narrated that on July 8, 2014 at about 11:30 in the morning, he was at Carriedo near the LRT station to buy housing for his cellphone. After bargaining with the store owner, a man suddenly held his hands. Another man subsequently approached him and poked a gun on the right side of his body. He was then dragged into a vehicle. When he asked them, he was ordered to remain silent and was told "*[p]utang ina mo, palpak ang lakad namin.*" He did not know the place where he was brought and detained. He was also frisked and his possessions were taken from him. At about 5:00 in the afternoon of the same day, he was told to tell his mother to give money in the amount of ₱1,000,000.00. He then told his mother the same thing through his cellphone which was lent to him. He came to know after a few days that the men were SPO1 Fidel Cabinta (SPO1 Cabinta) and a certain Dela Cruz who kept on cursing and hitting him on his head. SPO1 Cabinta talked to the appellant's mother who said that they will sell their cow.[10]

On July 10, 2014, he was brought outside his detention cell to the vehicle he boarded earlier, and made to stand beside it. SPO1 Cabinta drew out a plastic containing something like *tawas* from his pocket and told him "*[e]to, hawakan mo para ma-piktyuran ka.*" He was then brought back inside the detention

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[8] *Id*. at 5-6.

[9] *Id*. at 6-7.

[10] *Id*. at 8-9.

cell where he sat in front of a table with the ₱4,000.00 on top of it. A man on the left side of the table signed something and also made him sign a paper which states that appellant was arrested in Caloocan City. Subsequently, on July 11, 2014, SPO1 Cabinta offered him a bottle of water which the appellant observed was already opened and appeared to be sticky and mixed with *tawas*. He accepted it but replaced it with the mineral water brought in by visitors. SPO1 Cabinta brought him to Valenzuela City for laboratory examination but his urine tested negative for the presence of *shabu*. SPO1 Cabinta was furious upon learning that appellant did not drink the water from the already opened bottle. Consequently, appellant was brought to the DAID in Larangay, Caloocan City on July 14, 2014 where he was subjected to inquest proceedings.[11]

In the Decision dated July 22, 2016, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. The RTC gave credence to the straightforward testimony of the prosecution witnesses and found them to have properly observed the chain of custody rule during the buy-bust operation. It found appellant's unsubstantiated defense of denial and frame-up to be unworthy of belief. Alparo Bangcoga's (Bangcoga) and Teresita Mallari's (Mallari) testimonies were likewise given no merit for being unsupported by evidence.[12] The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered finding Accused ABUBACAR ABDULWAHAB y MAMA alias "Muslim" guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, of R.A. 9165, and he is hereby sentenced to suffer the penalty of life imprisonment and to pay the fine of Five hundred thousand pesos (Php500,000.00).[13]

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[11] *Id.* at 9-10. The defense also presented Bangcoga and Mallari to corroborate appellant's claim that he was arrested at Carriedo, Santa Cruz, Manila near the LRT station. Bangcoga also testified that he searched for appellant in different police stations within the vicinity and in other parts of the City of Manila to no avail (*Id.* at 10).

[12] CA *rollo*, pp. 67-72.

[13] *Id.* at 72.

The CA, in the Decision dated February 2, 2018, affirmed the ruling of the RTC. It ruled that credence should be given to the arresting officers because they are presumed to have regularly performed their duty in the absence of proof to the contrary. It found Bangcoga's and Mallari's testimonies unsupported by proof and inconsistent, respectively, thus unreliable. It also found no basis on the defense's claim of violation of the chain of custody rule since there was convincing evidence to account for the crucial links in the chain of custody of the seized sachet of *shabu*, starting from confiscation from appellant up to presentation as evidence in court.[14] The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED** for lack of merit.

SO ORDERED.[15]

The Issue Before the Court

In this appeal, appellant contends that the apprehending officers' failure to comply with the procedure provided in Section 21 of RA 9165 placed reasonable doubt on the integrity and evidentiary value of the allegedly seized drugs.[16] On the other hand, the people posits that the prosecution was able to establish the elements of the crime charged since the apprehending officers substantially complied with the requirements in Section 21.[17]

The Court's Ruling

The appeal is meritorious.

The following elements must be proved beyond reasonable doubt for a conviction in a prosecution for the sale of illegal drugs: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.[18] Proof that the transaction actually occurred,

[14] *Rollo*, pp. 11-14.

[15] *Id.* at 14.

[16] CA *rollo*, pp. 46-47.

[17] *Id.* at 104-106.

[18] *People v. Cordova*, G.R. No. 231130, July 9, 2018.

coupled with the presentation before the court of the *corpus delicti* is essential. Therefore, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case.[19] To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[20]

Section 21, Article II of RA 9165, the applicable law at the time of the commission of the crime, provides that the apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official* who shall be required to sign the copies of the inventory and be given a copy thereof. The presence of these witnesses is required "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[21]

Compliance with the procedure set forth in Section 21 of RA 9165 is a matter of substantive law which cannot be brushed aside as mere technicality or ignored as an impediment to the conviction of illegal drug suspects.[22]

The law, in exceptional circumstances, also allows non-compliance with the procedure where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity

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[19] *People v. Cadiente*, G.R. No. 228255, June 10, 2019.

[20] *Limbo v. People*, G.R. No. 238299, July 1, 2019.

[21] *Aranas v. People*, G.R. No. 242315, July 3, 2019, citing *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[22] *People v. Lim*, G.R. No. 231989, September 4, 2018. See also *People v. Pascua*, G.R. No. 227707, October 8, 2018 and *People v. Ocampo*, G.R. No. 232300, August 1, 2018.

and the evidentiary value of the seized items are properly preserved by the apprehending team. In these cases, the seizures and custody over the confiscated items shall not be rendered void and invalid.[23] Thus, for the absence of the necessary witnesses not to render the seized items inadmissible, a justifiable reason for such absence or a showing of any genuine and sufficient effort to secure their presence must be adduced and proved.[24]

People v. Ramos[25] elucidated that actual serious attempts to contact the required necessary witnesses must be adduced to qualify as a justifiable ground for non-compliance with the rules:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time—beginning from the moment they have received the information about the activities of the accused until the time of his arrest—to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also

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[23] *People v. Adobar*, G.R. No. 222559, June 6, 2018.

[24] *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ramos*, G.R. No. 233744, February 28, 2018. See also *People v. Pascua*, G.R. No. 227707, October 8, 2018.

[25] G.R. No. 233744, February 28, 2018.

convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

After careful review of the case, We find the deviations from the rule on chain of custody unjustified. The prosecution failed to offer, much less prove, justifiable reasons for the absence of two of the necessary witnesses, and to show that it undertook genuine and sufficient efforts to secure their presence.

During cross-examination, PO3 Villanueva testified that among the three necessary witnesses, only a media representative was present:

ATTY. YU:

Q Now, Mr. Witness, in this inventory, you know that you have to have a witness from the Prosecutor, from the barangay official and from the mass media, am I correct?

A Yes, your Honor.

Q In this case, you did not follow that procedure, is it not?

A But we conducted inventory in front of a media representative, your Honor.

Q Only before a mass media not before the barangay official not before the Fiscal?

A Yes, sir.

Q Despite the fact that you know that Fiscal Cañete is leaving [*sic*] near C3 and there are several barangay hall before you reach your office, am I correct?

A Yes, sir.[26]

The record is bereft of any explanation to account for the absence of a representative from the DOJ and an elected public official. Both the CA and the trial court glossed over this material lapse on the part of the prosecution. Curiously though, during PO2 Leonor's cross-examination, the trial court acknowledged

[26] TSN, January 27, 2015, p. 43.

the absence of the necessary witnesses,[27] but proceeded to convict appellant on the ground that the latter's defense of denial and frame up must fail in light of the positive identification and declarations of the prosecution witnesses.[28]

We emphasize that pursuant to RA 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*. In the absence of the representative from the DOJ and elected public official during the physical inventory and the photographing of the seized drugs, the evils of switching, "planting" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of appellant cannot be upheld.[29]

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 2, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08474, which affirmed the Decision of Branch 127, Regional Trial Court of Caloocan City in Criminal Case No. 92353 finding appellant Abubacar Abdulwahab *y* Mama guilty beyond reasonable doubt of the charge against him, is **REVERSED** and **SET ASIDE**. Abubacar Abdulwahab *y* Mama is **ACQUITTED** on reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

SO ORDERED.

Bersamin, C.J. (Chairperson), Perlas-Bernabe (*Working Chairperson*), *Gesmundo*, and *Reyes, A. Jr.,*[*] *JJ.,* concur.

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[27] During the hearing on September 29, 2014, the trial court directed the defense counsel to go direct to the point:

COURT-BUTT-IN: Can you go direct to the point there were no persons present during the inventory in the area?

See TSN, September 29, 2014. p. 36.

[28] CA *rollo*, pp. 71-72.

[29] *People v. Cadiente, supra* note 19.

[*] Designated as Additional Member in lieu of Associate Justice Rosmari D. Carandang per Raffle dated June 17, 2019.

SECOND DIVISION

[G.R. No. 245391. September 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NIÑA CARAY *y* EMMANUEL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUG ACT OF 2020); ILLEGAL DRUG CASES; THE DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE AND THE PROSECUTION MUST ESTABLISH THAT THE SUBSTANCE ILLEGALLY POSSESSED BY THE ACCUSED IS THE SAME SUBSTANCE PRESENTED IN COURT.— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PHYSICAL INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; WITNESS RULE; THE SAVING CLAUSE ALLOWING LENIENCY WHENEVER THERE ARE JUSTIFIABLE GROUNDS TO DEVIATE FROM ESTABLISHED PROTOCOL SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BECOMES OPERATIONAL ONLY WHEN THE PROSECUTION HAS SHOWN THAT EARNEST EFFORTS WERE EMPLOYED IN CONTACTING THE NECESSARY WITNESSES.— Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases x x x. It is a matter of record that only appellant and media representative Maeng Santos were present to witness the inventory of the seized items. Both the trial court and the Court of Appeals even noted the absence of any elected official and representative from the DOJ during inventory. No explanation was offered for this omission. x x x Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other

confiscated items. Non-compliance with the requirement is, therefore, fatal to the prosecution's case. x x x Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved, the prosecution offered no such explanation here. It merely stated that no elected official and representative from the DOJ were available at that time. But as the Court held in ***People v. Umipang***, the prosecution must still have shown that earnest efforts were employed in contacting the representatives enumerated under the law; a sheer statement that said representatives were unavailable without so much as an explanation on whether serious attempts were made to look for other representatives, given the circumstances is to be regarded as a flimsy excuse. In fine, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play. Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated January 12, 2018[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 07846 affirming appellant's conviction for violation of Section 5, Republic Act (RA) 9165.[2]

[1] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Ricardo R. Rosario and Maria Elisa Sempio Diy; *Rollo*, pp. 3-14.

[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

The Charge

Under Information dated January 10, 2012[3], appellant Niña Caray *y* Emmanuel was charged with violation of Section 5, RA 9165, thus:

> That on or about the 7th day of January, 2012 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell and deliver to PO3 ALEXANDER ARGUELLES, who posed as buyer, Two (2) heat-sealed transparent plastic sachets each containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.65 gram & 0.73 gram, which when subjected for laboraotry (sic) examination gave POSITIVE result top (sic) the tests for Methylamphetamine Hydrochloride, a dangerous drug, knowing the same to be such.
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> Contrary to Law.[4]

The case was raffled to the Regional Trial Court (RTC) — Branch 120, Caloocan City.

On arraignment, appellant pleaded *not guilty*. Trial proper ensued.

PO3 Alexander R. Arguelles, PO2 Carlo T. Pineda, SPO1 Fidel B. Cabinta and PCI Stella S. Garciano testified for the prosecution. The defense presented appellant as its lone witness.

The Prosecution's Version

PO3 Alexander R. Arguelles testified that on January 7, 2012, around 5 o'clock in the afternoon, two (2) confidential informants arrived at the office of the District Anti-illegal Drugs-Special Operations Task Group (DAID-SOTG) and reported to him the illegal drug-selling activity of "Niña", herein appellant Niña Caray *y* Emmanuel. He asked one of the informants to inform appellant that they found a buyer of *shabu* worth Php13,000.00. The informant concerned did as instructed and

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[3] CA *rollo*, p. 14.

[4] CA *rollo*, p. 14.

agreed to meet with appellant on the same day around 10 o'clock in the evening at a convenience store in Maypajo, Caloocan City.[5]

To entrap appellant, DAID-SOTG Chief PCI Romeo C. Ricalde organized a buy-bust team and designated him (PO3 Arguelles) as poseur-buyer. PCI Ricalde gave him thirteen (13) pieces of marked one hundred peso bills and paper cutouts to be used as boodle money. The team then coordinated with the Philippine Drug Enforcement Agency for the entrapment.[6] One of the informants accompanied the team to the place of operation.

Around 7 o'clock in the evening, while he and the informant were standing next to the convenience store, appellant approached them. The informant then pointed to him and told appellant "*Niña, siya ang bibili ng kalahati*." When appellant asked him to confirm, he showed her part of the buy-bust money. He then asked her if she brought the *shabu* he was supposedly buying.

Appellant then retrieved from her waist two (2) transparent plastic sachets wrapped in a packing tape. Upon seeing this, PO3 Arguelles handed the buy-bust money to appellant who in turn handed him the plastic sachets. After the exchange, PO3 Arguelles lit a cigarette to signal the team that the sale had been consummated. When he saw PO2 Pineda rushing in, he immediately held on to appellant and introduced himself as a police officer. He and PO2 Pineda arrested appellant.

He showed PO2 Pineda the items he purchased from appellant and marked the two (2) plastic sachets with his initials and the date: "ARA-1-1-7-12" and "ARA-2-1-7-12". They did a search on appellant and recovered the buy-bust money from her. The team then returned to the DAID-SOTG.

He took custody of the items and immediately turned them over, along with the accused, to duty investigator SPO1 Cabinta. An inventory was thereafter done in the presence of appellant and Ka Maeng, a media representative, as well as the arresting officers. Pictures of the inventory were taken. SPO1 Cabinta subsequently brought the items to PCI Garciano of the NPD-CLO

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[5] *Id*. at 17.

[6] *Id*.

for laboratory examination. The items tested positive for *shabu*.

The prosecution and the defense later on stipulated on the proposed testimonies of PO2 Pineda, SPO1 Cabinta, and PCI Garciano.

The Defense's Version

Appellant claimed that on January 6, 2012, around 9 o'clock in the morning, she went to OWWA, Intramuros. Around 1 to 2 o'clock in the afternoon, she walked inside a convenience store across the street to have a snack. All of a sudden, about ten (10) men approached and asked her to empty her bag. Although nothing illegal was found in her possession, they made her board a vehicle and brought her to the Langaray Police Station. There, she was made to contact a relative. She called and asked help from her father. When the latter arrived, the men who arrested her asked her father for ₱500,000.00 in exchange for her release. But since her father was not able to produce the amount, she was charged with illegal sale of dangerous drugs.

The Trial Court's Ruling

As borne by its Decision dated August 19, 2015,[7] the trial court rendered a verdict of conviction, *viz*:

> Premises considered, this Court finds and so holds that accused Niña Caray *y* Emmanuel is GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon her the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00).
>
> The drugs subject matter of this case are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.
>
> SO ORDERED.[8]

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[7] Penned by Presiding Judge Aurelio R. Ralar, Jr.; CA *rollo*, pp. 54-60.

[8] CA *rollo*, p. 64.

It ruled that the prosecution successfully established all the elements of illegal sale of dangerous drugs to a moral certainty. PO3 Arguelles proved that on the occasion of the buy-bust operation, appellant was caught *in flagrante delicto* selling two (2) heat-sealed transparent plastic sachets containing *shabu* in exchange for Php13,000.00.[9] Despite the absence of an elected official and a representative from the Department of Justice (DOJ) during inventory, the integrity of the seized items had been duly preserved.[10]

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for rendering a verdict of conviction despite the procedural lapses committed by the arresting officers, and the attendant gaps in the chain of custody: ***first***, PO3 Arguelles did not mark the seized item at the place of arrest; ***second***, PO3 Arguelles failed to indicate the time and place of seizure as prescribed under the Philippine National Police Operations Manual; ***third***, no representative from the media, the Department of Justice (DOJ) or any elective official was present when the inventory was done; ***finally***, the prosecution failed to show how the seized items were preserved from the time they were turned over to the investigator, forensic chemist, and the court.[11]

The Office of the Solicitor General (OSG), through Senior State Solicitor Maria Lourdes C. Gutierrez defended the verdict of conviction.[12] It argued that the links necessary to establish the chain of custody had been proved by the prosecution through the testimonies of PO3 Arguelles and SPO1 Cabinta, as well as the stipulations of the parties pertaining to the testimony of the forensic chemist. Appellant's denial and frame-up, therefore, failed against the evidence of the prosecution.[13]

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[9] *Id*. at 61.

[10] *Id*. at 63.

[11] *Id.* at 43-51.

[12] *Id*. at 88-104.

[13] *Id*. at 95-104.

The Court of Appeals' Ruling

By Decision dated January 12, 2018, the Court of Appeals affirmed.[14] It found that: ***first***, the seized items were marked at the place of arrest, contrary to appellant's claim; ***second***, PO3 Arguelles marked the items with his initials and the date of seizure, in compliance with legal requirements; ***third***, despite the absence of the required witnesses during the inventory of the items, the integrity of the *corpus delicti* was duly preserved; ***finally***, the totality of the prosecution evidence and the parties' stipulations led to an unbroken chain of custody over the items in question.

The Present Appeal

Appellant now seeks for a verdict of acquittal from the Court.

In compliance with Resolution dated June 3, 2019, the OSG manifested that in lieu of supplemental briefs, it was adopting its brief before the Court of Appeals.[15] On the other hand, appellant failed to file her supplemental brief within thirty (30) days from notice.

The Threshold Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the inventory of the seized items?

Ruling

We rule in the affirmative.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[16]

Here, appellant is charged with unauthorized sale of dangerous drug allegedly committed on January 7, 2012. The governing law, therefore, is RA 9165 before its amendment in 2014.

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[14] *Rollo*, pp. 3-14.

[15] *Id.* at 23.

[16] *People vs. Barte*, 806 Phil. 533, 542 (2017).

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;** (emphasis added)
>
> x x x x x x x x x

The Implementing Rules and Regulations of RA 9165 further commands:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ)**, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (emphasis added)

It is a matter of record that only appellant and media representative Maeng Santos were present to witness the inventory of the seized items. Both the trial court and the Court of Appeals even noted the absence of any elected official and representative from the DOJ during inventory. No explanation was offered for this omission.

In ***People v. Abelarde***[17] the accused was acquitted of violation of Section 5, RA 9165 because there was no evidence that the inventory of the seized dangerous drugs was done in the presence of an elected official, a media representative and a representative from the DOJ.

Similarly, in ***People v. Macud***,[18] the buy-bust team similarly failed to secure the presence of the required witnesses to the conduct of inventory of the seized drug items. For this, the Court, too, rendered a verdict of acquittal.

Indeed, the presence of the insulating witnesses during inventory is vital. In the absence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.[19] Non-compliance with the requirement is, therefore, fatal to the prosecution's case.

The OSG insists, nonetheless, as the courts below had held, that the integrity of the *corpus delicti* was duly preserved despite non-compliance with the witness requirement in the conduct of inventory. Hence, appellant may still be held guilty for violation of Section 5, RA 9165.

We disagree.

Although the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever there are justifiable grounds to deviate from established protocol so long as the integrity and evidentiary value of the seized items

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[17] G.R. No. 215713, January 22, 2018.

[18] G.R. No. 219175, December 14, 2017, 849 SCRA 294, 321.

[19] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

are properly preserved, the prosecution offered no such explanation here. It merely stated that no elected official and representative from the DOJ were available at that time. But as the Court held in ***People v. Umipang***,[20] the prosecution must still have shown that earnest efforts were employed in contacting the representatives enumerated under the law; a sheer statement that said representatives were unavailable without so much as an explanation on whether serious attempts were made to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.

In fine, the condition *sine qua non* for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play.[21] Absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule, the *corpus delicti* cannot be deemed preserved.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated January 12, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 07846 is **REVERSED** and **SET ASIDE**.

Appellant **NIÑA CARAY *y* EMMANUEL** is **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellant Niña Caray *y* Emmanuel from custody unless she is being held for some other lawful cause; and b) submit his report on the action taken within five (5) days from notice. Let entry of final judgment be issued immediately.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Zalameda, JJ.,* concur.

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[20] 686 Phil. 1024, 1052-1053 (2012).

[21] *Jocson v. People*, G.R. No. 199644, June 19, 2019.

INDEX

INDEX

of merit," while the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; thus, higher education is not to be generally available, but accessible only on the basis of capacity. (*Id*.)

—— The rule is that institutions of higher learning enjoy ample discretion to decide for itself who may teach; what may be taught, how it shall be taught and who to admit, being part of their academic freedom; the State, in the exercise of its reasonable supervision and regulation over education, can only impose minimum regulations. (*Id*.)

—— While there is a right to quality higher education, such right is principally subject to the broad academic freedom of higher educational institutions to impose fair, reasonable, and equitable admission and academic requirements; plainly stated, the right to receive education is not and should not be taken to mean as a right to be admitted to educational institutions. (*Id*.)

ACCION INTERDICTAL

Action for —— Accion interdictal is a summary action that seeks the recovery of physical possession where the dispossession has not lasted for more than one year, and is to be exclusively brought in the proper inferior court; the issue involved is material possession or possession *de facto*. (Martinez *vs*. Heirs of Remberto F. Lim, G.R. No. 234655, Sept. 11, 2019) p. 745

—— The action is either forcible entry (*detentacion*) or unlawful detainer (*deshhucio*); in forcible entry, the plaintiff is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth, but in unlawful detainer, the defendant illegally withholds possession of real property after the expiration or termination of his right to hold possession under any contract, express or implied; the two are distinguished from each other in that in forcible entry, the possession

the accused not to be punished for crime except upon his guilt being established beyond reasonable doubt but the latter is not concerned with the proof beyond reasonable doubt. (People *vs*. Carpio *y* Tarroza, G.R. No. 233200, Sept. 9, 2019) p. 34

Petition for review on certiorari to the Supreme Court under Rule 45 — Decisions of the NLRC are reviewable by the CA through Rule 65 of the Rules of Court; the CA is tasked in the proceeding to ascertain if the NLRC decision merits a reversal exclusively on the basis of the presence of grave abuse of discretion amounting to lack or excess of jurisdiction; hence, when a CA decision is brought before the Court through a petition for review on *certiorari* under Rule 45, the question of law that must be tackled is whether the CA correctly found that the NLRC acted or did not act with grave abuse of discretion in rendering its challenged decision; the Court does not re-examine conflicting evidence, re-evaluate the credibility of witnesses, nor substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible; however, if the factual findings of the LA and the NLRC are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings. (Yushi Kondo *vs*. Toyota Boshoku (Phils.) Corp., G.R. No. 201396, Sept. 11, 2019) p. 593

— The Court notes that the issues raised in the Petition are factual and evidentiary in nature, which are outside the Court's scope of review in Rule 45 petitions; in this regard, it is settled that the assessment of the credibility of witnesses is a task most properly within the domain of trial courts due to the unique opportunity afforded them to observe the witnesses when placed on the stand. (De Villa *y* Guinto *vs*. People, G.R. No. 224039, Sept. 11, 2019) p. 661

— To emphasize, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the

lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation. (*Id*.)

CERTIORARI

Petition for — The rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari;* such requirement is imposed to grant the court or tribunal the opportunity to correct any actual or perceived error attributed to it through the re-examination of the legal and factual circumstances of the case. The rule is not rigid and set in stone, but admits of exceptions, like the following: (1) where the order is a patent nullity, such as when the court *a quo* had no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where a motion for reconsideration would be useless; (5) where the petitioner was deprived of due process, and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent, and the granting of such relief by the trial court is improbable; (6) where the proceedings in the lower court are a nullity for lack of due process; (7) where the proceeding was *ex parte*, or the petitioner had no opportunity to object; and (8) where the issue raised is one purely of law, or where public interest is involved. (Estalilla *vs*. Commission on Audit, G.R. No. 217448, Sept. 10, 2019) p. 77

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Application of — As stated in the case of *People v. Lim*, the grounds which may justify the failure of the buy-bust team to secure the presence of the three required witnesses are: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the

— Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. Cohayco *y* Revil, G.R. No. 241324, Sept. 11, 2019) p. 800

(People *vs*. Gabunada *y* Talisic, G.R. No. 242827, Sept. 9, 2019) p. 48

— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law''; this is because "the law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." (People *vs*. Cohayco *y* Revil, G.R. No. 241324, Sept. 11, 2019) p. 800

(People *vs*. Gabunada *y* Talisic, G.R. No. 242827, Sept. 9, 2019) p. 48

— As a general rule, strict compliance with the requirements of Section 21, R.A. No. 9165 is mandatory; it is only in exceptional cases that the Court may allow non-compliance with these requirements, provided the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (De Villa *y* Guinto *vs*. People, G.R. No. 224039, Sept. 11, 2019) p. 661

— As a general rule, the foregoing procedure must be strictly complied with; In *People v. Lim*, citing *People v. Sipin*, the Court En Banc held that the prosecution has the positive duty to demonstrate observance with the chain of custody rule under Section 21 "in such a way that during the trial proceedings, it must initiate in

planting evidence. (People *vs*. Galisim *y* Garcia, G.R. No. 231305, Sept. 11, 2019) p. 704

—— It is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. (People *vs*. Salenga *y* Gonzales, G.R. No. 239903, Sept. 11, 2019) p. 781

—— Pursuant to R.A. No. 9165, the attendance of all three necessary witnesses during the physical inventory and photograph of the seized items is *mandatory*; in the absence of the representative from the DOJ and elected public official during the physical inventory and the photographing of the seized drugs, the evils of switching, "planting" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. (People *vs*. Abdulwahab *y* Mama, G.R. No. 242165, Sept. 11, 2019) p. 812

(People *vs*. Salenga *y* Gonzales, G.R. No. 239903, Sept. 11, 2019) p. 781

—— Section 21, Article II of R.A. No. 9165, the applicable law at the time of the commission of the crime, provides that the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (People *vs*. Abdulwahab *y* Mama, G.R. No. 242165, Sept. 11, 2019) p. 812

—— Section 21 of R.A. No. 9165, the applicable law at the time of the alleged commission of the crime, lays down

official and a representative of the National Prosecution Service (NPS) OR the media; The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. (People *vs*. Cohayco *y* Revil, G.R. No. 241324, Sept. 11, 2019) p. 800

(People *vs*. Gabunada *y* Talisic, G.R. No. 242827, Sept. 9, 2019) p. 48

— The law, however, also allows non-compliance in exceptional cases where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (People *vs*. Salenga *y* Gonzales, G.R. No. 239903, Sept. 11, 2019) p. 781

— The law requires the strict observance of certain special rules that provide for procedural safeguards which ensure moral certainty in the conviction of the accused. (People *vs*. Cardenas *y* Halili, G.R. No. 229046, Sept. 11, 2019) p. 678

— The photographs be taken "*immediately after seizure* and confiscation" which means both the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure; in all of these cases, the photograph and inventory are required to be done in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof; while the procedure may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason. (People *vs*. Galisim *y* Garcia, G.R. No. 231305, Sept. 11, 2019) p. 704

gaps in the chain of custody *vis-a-vis* the drugs as to raise doubts about their integrity as evidence of guilt. (People *vs*. Carpio *y* Tarroza, G.R. No. 233200, Sept. 9, 2019) p. 34

–– The strict compliance with the procedural safeguards provided by Section 21 is required of the arresting officers; yet, the law recognizes that a departure from the safeguards may become necessary, and has incorporated a saving clause (*"Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items"*). (*Id*.)

–– The treatment of the law as to dangerous drugs cases is special and unique, owing to the peculiar nature of the *corpus delicti* of the crime, which makes the same easily susceptible to manipulation in the hands of the State; jurisprudence has held that "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." (People *vs*. Ordiz, G.R. No. 206767, Sept. 11, 2019) p. 615

–– The witness requirement mandates the presence of the required witnesses *during* the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented; hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk. (People *vs*. Gabunada *y* Talisic, G.R. No. 242827, Sept. 9, 2019) p. 48

photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension; it is only when the same is not practicable that the IRR allows the inventory and photographing to be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending officer/ team. (People *vs*. Ordiz, G.R. No. 206767, Sept. 11, 2019) p. 615

— To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: *first*, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. (People *vs*. Galisim *y* Garcia, G.R. No. 231305, Sept. 11, 2019) p. 704

— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (People *vs*. Cohayco *y* Revil, G.R. No. 241324, Sept. 11, 2019) p. 800

— Without credible proof of the *corpus delicti*, there can be no crime of illegal sale of dangerous drugs; there is no nexus between whatever items are presented in court and the transaction or activity attributed to an accused; ultimately, then, the accused cannot be said to have been the author of the alleged illegal act. Section 21's mandated chain of custody consists of four (4) links. (People *vs*. Sumilip *y* Tillo, G.R. No. 223712, Sept. 11, 2019) p. 641

Illegal sale of dangerous drugs — In instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following

dismissal is based on an authorized cause under Article 298 but the employer failed to comply with the notice requirement, the sanction is stiffer compared to termination based on Article 297 because the dismissal was initiated by the employer's exercise of its management prerogative. (Mejila *vs*. Wrigley Phils., Inc., G.R. No. 199469, Sept. 11, 2019) p. 576

—— In implementing a redundancy program, Article 298 requires employers to serve a written notice to both the affected employees and the DOLE at least one month prior to the intended date of termination; under Book V, Rule XXIII, Section 2 of the Implementing Rules and Regulations of the Labor Code, this procedural requirement is "deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination." (*Id*.)

EMPLOYMENT, TERMINATION OF

Abandonment —— For abandonment to exist, two requisites must concur: a) the employee failed to report for work or was absent without valid or justifiable reason; and b) there was a clear intention to sever the employer-employee relationship manifested by some overt acts. (Yushi Kondo *vs*. Toyota Boshoku (Phils.) Corp., G.R. No. 201396, Sept. 11, 2019) p. 593

Constructive dismissal —— Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay; it also exists when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign; what is essential is that there is a lack of "voluntariness in the employee's separation from employment." (Yushi Kondo *vs*. Toyota Boshoku (Phils.) Corp., G.R. No. 201396, Sept. 11, 2019) p. 593

for a valid or authorized cause rests on the employer; substantial evidence must be presented to prove that the termination of employment was validly made; failure to discharge this duty would lead to the conclusion that the dismissal is illegal. (Feati Univ. *vs*. Pangan, G.R. No. 202851, Sept. 9, 2019) p. 1

Management prerogative — Management cannot be denied the faculty of promoting efficiency and attaining economy by a study of what units are essential for its operation; it has the ultimate determination of whether services should be performed by its personnel or contracted to outside agencies; contracting out of services is an exercise of business judgment or management prerogative. (Mejila *vs*. Wrigley Phils., Inc., G.R. No. 199469, Sept. 11, 2019) p. 576

Redundancy — A company cannot simply declare redundancy without basis; it is not enough for a company to merely declare that it has become overmanned; it must produce adequate proof that such is the actual situation to justify the dismissal of the affected employees for redundancy; we have considered evidence such as the new staffing pattern, feasibility studies, proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring, among others, as adequate to substantiate a claim for redundancy. (Mejila *vs*. Wrigley Phils., Inc., G.R. No. 199469, Sept. 11, 2019) p. 576

— Redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise; the determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable is an exercise of business judgment of the employer; the wisdom or soundness of this judgment is not subject to discretionary review of the labor tribunals and the courts, provided there is no violation of law and no showing that it was prompted by an arbitrary or malicious act. (*Id*.)

— As constitutionally defined under Section 1, Article VIII of the 1987 Constitution, judicial power is no longer limited to the Court's duty to' settle actual controversies involving rights which are legally demandable and enforceable, or the power of adjudication, but also includes, the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (*Id*.)

— Fundamental in the exercise of judicial power, whether under the traditional or expanded setting, is the presence of an actual case or controversy; an actual case or controversy is one which involves a conflict of legal rights and an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic, or based on extra-legal or other similar considerations not cognizable by a court of justice; to be justiciable, the controversy must be definite and concrete, touching on the legal relations of parties having adverse legal interests. (*Id*.)

— Ripeness for adjudication has a two-fold aspect: *first*, the fitness of the issues for judicial decision; and *second*, the hardship to the parties entailed by withholding court consideration; the first aspect requires that the issue must be purely legal and that the regulation subject of the case is a "final agency action"; the second aspect requires that the effects of the regulation must have been felt by the challenging parties in a concrete way. (*Id*.)

— The power of judicial review is tritely defined as the power to review the constitutionality of the actions of the other branches of the government; for a proper exercise of its power of review in constitutional litigation, certain requisites must be satisfied: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the

issue of constitutionality must be the very *lis mota* of the case; these requisites are effective limitations on the Court's exercise of its power of review because judicial review in constitutional cases is quintessentially deferential, owing to the great respect that each co-equal branch of the Government affords to the other. (*Id*.)

JURISDICTION

Jurisdiction over the subject matter –– For purposes of determining the court that has exclusive original jurisdiction over *accion publiciana* and *accion reivindicatoria*, Section 33 (3) of B.P. Blg. 129, as amended, expressly states that the determinant is the assessed value of the property subject of the dispute, not the market or actual value thereof; the assessed value of real property is the fair market value of the real property multiplied by the assessment level; it is synonymous to taxable value; in contrast, the fair market value is the price at which property may be sold by a seller, who is not compelled to sell, and may be bought by a buyer, who is not compelled to buy. (Martinez *vs*. Heirs of Remberto F. Lim, G.R. No. 234655, Sept. 11, 2019) p. 745

–– The jurisdiction of the court over the subject matter is determined by the allegations of the complaint irrespective of whether or not the plaintiff is entitled to recover upon all or only some of the claims asserted therein; as a necessary consequence, the jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for, otherwise, the matter of jurisdiction will become almost entirely dependent upon the defendant; if the nature of the action pleaded as appearing from the allegations in the complaint determines the jurisdiction of the court, the averments of the complaint and the character of the relief sought are to be ascertained; verily, the body of the complaint, not its title, fixes the nature of an action. (*Id*.)

LEGAL EDUCATION REFORM ACT OF 1993 (R.A. NO. 7662)

construing the LEB's power to prescribe the standards for law admission together with the LEB's other powers to administer, supervise, and accredit law schools, leads to the logical interpretation that the law circumscribes the LEB's power to prescribe admission requirements only to those seeking enrollment to a school or college of law and not to the practice of law. (*Id*.)

–– The questioned power of the LEB to adopt a system of continuing legal education appears in Section 2, par. 2 and Section 7(h) of R.A. No. 7662: By its plain language, the clause "continuing legal education" under Section 2, par. 2, and Section 7(h) of R.A. No. 7662 unduly give the LEB the power to supervise the legal education of those who are already members of the bar. (*Id*.)

–– Towards the end of uplifting the standards of legal education, Section 2, par. 2 of R.A. No. 7662 mandates the State to (1) undertake appropriate reforms in the legal education system; (2) require proper selection of law students; (3) maintain quality among law schools; and (4) require legal apprenticeship and continuing legal education; pursuant to this policy, Section 7(g) of R.A. No. 7662 grants LEB the power to establish a law practice internship as a requirement for taking the bar examinations: It is clear from the plain text of Section 7(g) that another requirement, *i.e.*, completion of a law internship program, is imposed by law for taking the bar examinations. (*Id*.)

Legal Education Board –– Mandating law schools to reject applicants who failed to reach the prescribed PhiLSAT passing score or those with expired PhiLSAT eligibility transfers complete control over admission policies from the law schools to the LEB; with the conclusion that the PhiLSAT, when administered as an aptitude test, passes the test of reasonableness, there is no reason to strike down the PhiLSAT in its entirety; instead, the Court takes a calibrated approach and partially nullifies LEBMO No. 7-2016 insofar as it absolutely prescribes the passing of the PhiLSAT and the taking thereof within two years

gross incompetence on the part of the dean and the corps of professors or instructors under Section 41.2(d) of LEBMO No. 1-2011, in this regard, the LEB is actually assessing the teaching performance of faculty members and when such is determined by the LEB as constituting gross incompetence, the LEB may mete out penalties, thus, usurping the law school's right to determine for itself the competence of its faculty members. (*Id*.)

–– The LEB is also empowered under Section 7(c) to set the standards of accreditation taking into account, among others, the "qualifications of the members of the faculty" and under Section 7(e) of R.A. No. 7662 to prescribe "minimum qualifications and compensation of faculty members"; relative to the power to prescribe the minimum qualifications of faculty members, LEB prescribes under LEBMO No. 1-2011 that a law faculty member must have an Ll.B or J.D. degree and must, within a period of five years from the promulgation of LEBMO No. 1-2011, or from June 14, 2011 to June 14, 2016, commence studies in graduate school of law. (*Id*.)

–– The mandatory character of the master of laws degree requirement, under pain of downgrading, phase-out and closure of the law school, is in sharp contrast with the previous requirement under DECS Order No. 27-1989 which merely *prefer* faculty members who are holders of a graduate law degree, or its equivalent; the LEB's authority to review the strength or weakness of the faculty on the basis of experience or length of time devoted to teaching violates an institution's right to set its own faculty standards. (*Id*.)

–– The mandatory character of the requirement of a master's degree is underscored by the LEB in its *Resolution No. 2014-02*, a "sequel rule" to Section 50 of LEBMO No. 1-2011, and reiterated in *LEBMO No. 17, Series of 2018* (Supplemental Regulations on the Minimum Academic Requirement of Master of Laws Degree for Deans and Law Professors/Lecturers/Instructors in Law Schools). (*Id*.)

—— The PhiLSAT, insofar as it functions as an aptitude exam that measures the academic potential of the examinee to pursue the study of law to the end that the quality of legal education is improved is not *per se* unconstitutional; however, there are certain provisions in the PhilSat that are unconstitutional for being manifestly violative of the law schools' exercise of academic freedom, specifically the autonomy to determine for itself who it shall allow to be admitted to its law program. (*Id*.)

—— The requirement that an applicant obtain a specific number of units in English, Mathematics, and Social Science subjects affects a law school's admission policies leaving the latter totally without discretion to admit applicants who are deficient in these subjects or to allow such applicant to complete these requirements at a later time; this requirement also effectively extends the jurisdiction of the LEB to the courses and units to be taken by the applicant in his or her pre-law course; moreover, such requirement is not to be found under Section 6, Rule 138 of the Rules of Court. (*Id*.)

—— The subject of the PhiLSAT is to improve the quality of legal education; it is indubitable that the State has an interest in prescribing regulations promoting education and thereby protecting the common good; improvement of the quality of legal education, thus, falls squarely within the scope of police power; the PhiLSAT, as an aptitude test, was the means to protect this interest; by case law, the Court already upheld the validity of administering an aptitude test as a reasonable police power measure in the context of admission standards into institutions of higher learning. (*Id*.)

—— The token regard for institutional academic freedom comes into play, if at all, only after the applicants had been "pre-selected" without the school's participation; the right of the institutions then are constricted only in providing "additional" admission requirements, admitting of the interpretation that the preference of the school itself is merely secondary or supplemental to that of the

State which is antithetical to the very principle of reasonable supervision and regulation; the law schools are left with absolutely no discretion to choose its students at the first instance and in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants, under pain of administrative sanctions and/or payment of fines. (*Id*.)

— Under its supervisory and regulatory power, the LEB can prescribe the minimum qualifications of faculty members; as worded, the assailed clauses of Section 7(c) and 7(e) insofar as they give LEB the power to prescribe the minimum qualifications of faculty members are in tune with the reasonable supervision and regulation clause and do not infringe upon the academic freedom of law schools; moreover, this minimum qualification can be a master of laws degree; thus, the masteral degree required of law faculty members and dean, and the doctoral degree required of a dean of a graduate school of law are, in fact, minimum reasonable requirements; however, it is the manner by which the LEB had exercised this power through its various issuances that prove to be unreasonable. (*Id*.)

— While the clause "legal apprenticeship" under Section 2, par. 2 and Section 7(g) on legal internship, as plainly worded, cannot immediately be interpreted as encroaching upon institutional academic freedom, the manner by which LEB exercised this power through several of its issuances undoubtedly show that the LEB controls and dictates upon law schools how such apprenticeship and internship programs should be undertaken. (*Id*.)

LEGISLATIVE DEPARTMENT

Election for congress — Elections for Congress should be held on the 2nd Monday of May unless otherwise provided by law; the term "unless otherwise provided by law" contemplates two situations (1) when the law specifically states when the elections should be held on a date other than the second Monday of May; and (2) when the law

— Interruption, to be considered as interruption of the term, "contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit." (*Id*.)

— The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur; this has to be the case if the thrust of Section 8, Article X and its strint intent are to be faithfully served, i.e., to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption; thus, based on this standard, loss of office by operation of law, being involuntary, is an effective interruption of service within a term, as we held in *Montebon*; on the other hand, temporary inability or disqualification to exercise the functions of an elective post, even if involuntary, should not be considered an effective interruption of a term because it does not involve the loss of title to office or at least an effective break from holding office; the office holder, while retaining title, is simply barred from exercising the function of his office for a reason provided by law. (*Id*.)

— Under Section 44 of the LGC, a permanent vacancy arises whenever an elective local official fills a higher vacant office, or refuses to assume office, or fails to qualify, or dies, or is removed from office, or voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office; in contrast, Section 46 of the LGC enumerates as resulting in a temporary vacancy in the office of the local chief executive leave of absence, travel abroad, and suspension from office; although Section 46 of the LGC specifically states that the causes of a temporary vacancy are not limited to such circumstances, what is evident is that the enumeration therein share something in common, which is that there is a definite term to be re-assumed. (*Id*.)

standards; it cannot cure irregularities and manifest deviations from what is legally required: a presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. (People *vs*. Sumilip *y* Tillo, G.R. No. 223712, Sept. 11, 2019) p. 641

Presumption of innocence of the accused — Article III, Section 14(2) of the 1987 Constitution provides that every accused is presumed innocent unless his guilt is proven beyond reasonable doubt; it is "a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. (Polangcos *y* Francisco *vs*. People, G.R. No. 239866, Sept. 11, 2019) p. 765

— Conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense"; this presumption in favor of the accused remains until the judgment of conviction becomes final and executory; borrowing the words of the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "until a promulgation of final conviction is made, this constitutional mandate prevails"; hence, even if a judgment of conviction exists, as long as the same remains pending appeal, the accused is still presumed to be innocent until his guilt is proved beyond reasonable doubt. (*Id*.)

— This presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt, by proving each and every element of the crime charged in the information, to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that this burden of proof never shifts; indeed, the accused need not present a single

SEARCH AND SEIZURE

Exclusionary rule — Any evidence seized as a result of searches and seizures conducted in violation of Section 2, Article III of the 1987 Constitution is inadmissible "for any purpose in any proceeding" in accordance with the exclusionary rule in Section 3(2), Article III of the 1987 Constitution. (Polangcos *y* Francisco *vs*. People, G.R. No. 239866, Sept. 11, 2019) p. 765

Plain view doctrine — All the elements of the plain view doctrine were established; *first*, the police officers were conducting a routine checkpoint when they flagged down the accused on board his motorcycle; the police officers noticed that the accused was committing several traffic infractions, thus the police officers had a prior justification for their act of flagging down the accused and their subsequent intrusion; *second*, upon asking the accused for his registration papers, the accused opened his utility box, and the two (2) sachets of *shabu* were plainly visible to the police officers. (De Villa *y* Guinto *vs*. People, G.R. No. 224039, Sept. 11, 2019) p. 661

STATUTES

Curative statutes — Curative statutes are intended to correct defects, abridge superfluities in existing laws and curb certain evils; they are intended to enable persons to carry into effect that which they have designed and intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action; they make valid that which, before the enactment of the statute, was invalid. (Phil. Health Insurance Corp. *vs*. Commission on Audit, G.R. No. 222710, Sept. 10, 2019) p. 96

— Curative statutes have long been considered valid in this jurisdiction; their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with; they are, however, subject to exceptions; for one, they must not be against the Constitution and for another, they cannot

from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive; additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; otherwise, the assessment becomes conclusive and unappealable. (*Id.*)

CITATIONS

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

Page

B. BOOKS