

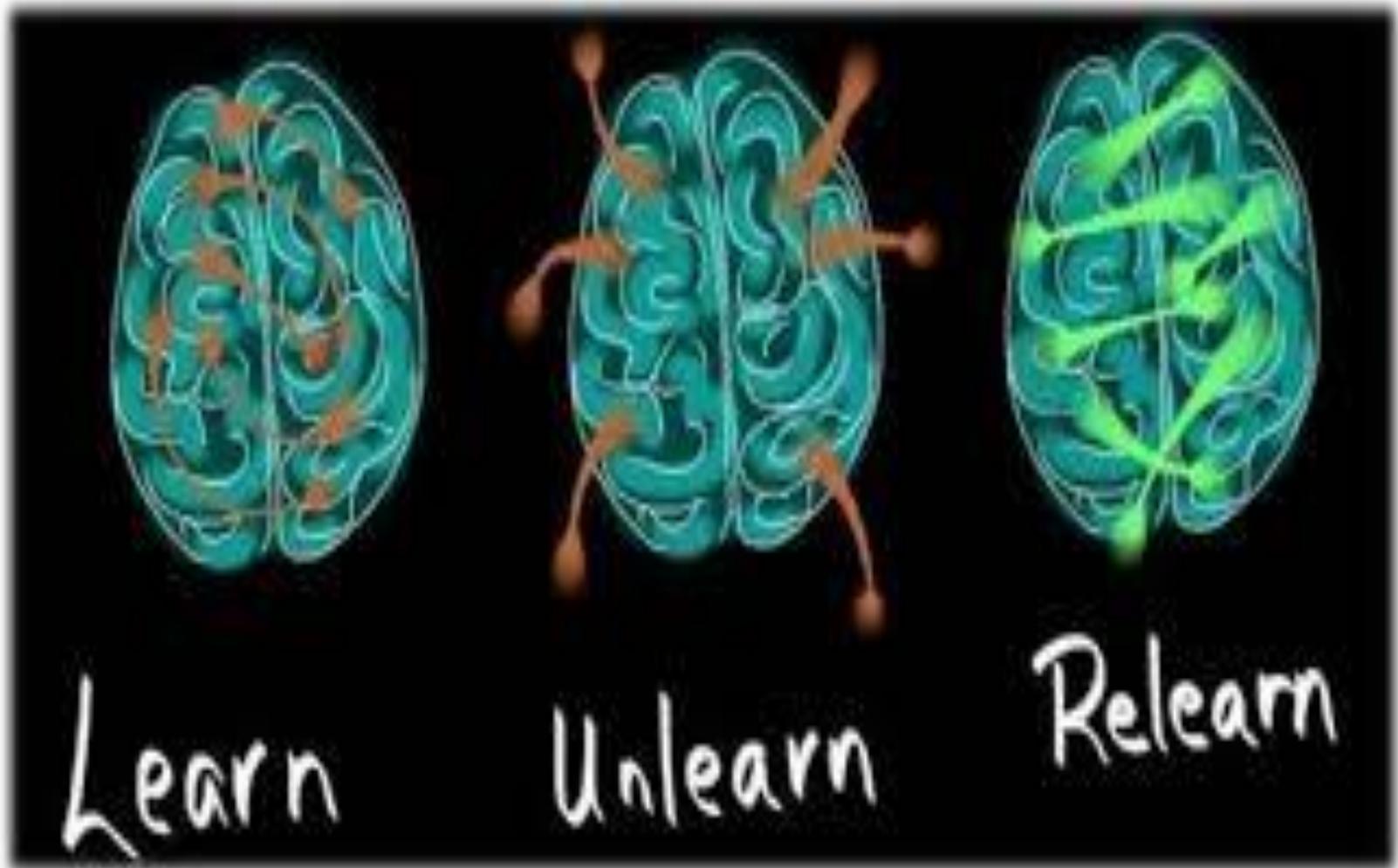


The BIG Role of
Administrative Law
in **EXTRAORDINARY** Times

Atty. Alberto C. Agra

May 12, 2020

Be Change-Ready



7 Topics

1. Context
2. Administrative Law
 - a) Defined
 - b) Relevant Administrative Laws
3. Administrative Agencies (AAs)
 - a) Defined and Classified
 - b) Bayanihan Act-Empowered AAs Listed
 - c) Charter Requirements
4. Relationships and Conflict-Resolution
5. Valid Delegation to AAs
6. Powers of AAs
 - a) Investigate
 - b) Quasi-Legislative
 - i. List of Bayanihan Act-Related Rules
 - c) Quasi-Judicial and Administrative
 - d) Police Power
7. Judicial Review and Defenses

“New Normal” Today

[REPUBLIC ACT No. **11469**]

AN ACT DECLARING THE EXISTENCE OF A NATIONAL EMERGENCY ARISING FROM THE CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION AND A NATIONAL POLICY IN CONNECTION THEREWITH, AND AUTHORIZING THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES FOR A LIMITED PERIOD AND SUBJECT TO RESTRICTIONS, TO EXERCISE POWERS NECESSARY AND PROPER TO CARRY OUT THE DECLARED NATIONAL POLICY AND FOR OTHER PURPOSES



Manila Public Inf...
@ManilaPIO

BREAKING NEWS
MPIO

BREAKING: The entire first district of the City of Manila will be placed under a 48-hour hard lockdown from 5:00 am on Sunday (May 3) until 5:00 am on Tuesday (May 5). #AlertoManileno #COVID19PH



DOH COVID-19

BULLETIN #058

4:00PM, 11 May 2020

TOTAL NUMBER OF CASES

11,086

292 new cases as of 4 pm

NCR - 162 (56%)
Region 7 - 74 (25%)
Others - 56 (19%)

RECOVERIES

1,999

75 new recoveries

DEATHS

726

7 new deaths

Data verified by the DOH data team

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Fundamental Question

Can or should an
Administrative
Agency undertake a
particular activity or
exercise a certain
power? What are
Dos and Don'ts?

Depends on:

- Charter/ Law
- Mandate
- General Welfare
- Jurisdiction
- Compliance or Non-Violation of Laws

(Not 1-size fits all)

Even under Extraordinary Times

Administrative Agencies cannot:

- Violate laws (since they are delegates)
- Enact laws (but can issue rules; LGUs can)
- Resolve disputes (unless allowed)
- Be exempt from judicial reach/ reversal

Administrative Law

- **Definition:** All laws and policies that regulate or control the administrative ***organization and operations*** of the government through ***administrative agencies***
- **Classifications:**
 1. Internal and External Administration
 2. Law that Controls (Charter) and those issued by Administrative Agencies (Rules)
 3. Substantive and Procedural Administrative Law
 4. General and Special Administrative Law
 5. Geographical and Functional Jurisdiction

7 Relevant Administrative Laws

1. 1987 Philippine Constitution
2. Bayanihan to Heal as One Act (RA 11469)
3. 1987 Administrative Code (EO 292)
4. 1991 Local Government Code (RA 7160)
5. Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act (RA 11332)
6. Customs Modernization and Tariff Act (RA 10863)
7. Charters of Administrative Agencies and Rules issued by them

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Administrative Agencies (AAs)

“4th Branch”

Public Offices

Legal Persons

Delegates/
Agents/
Subordinates

Fusion of
Powers

Duty-Holders

Include boards, commissions, departments, bureaus, offices, authorities, government corporations, government instrumentalities and local governments

AA Categories

Creation

- Constitution
- Congress
- Executive
- AA themselves

Geographical

- National: NGAs
- Local: LGUs

Capital Structure

- GOCC
- GI

Functional

- Offers gratuities, grants or privileges
- Performs specific governmental functions
- Undertakes public service
- Regulates businesses affected with public interest
- Exercises police power to regulate private businesses
- Resolves controversies

Bayanihan Act-Empowered AAs

Coordinative

- IATF
- LGUs

Health

- DOH
- Philhealth
- FDA
- Public Health Facilities
- Lung Center
- UP/ PGH
- Rodriguez Memorial

Employees' Welfare

- DOLE
- GSIS
- SSS
- Pag-Ibig

Economy/ Funds

- (DOF)
- (DBM)
- (NEDA)
- BIR
- BOC
- GFIs
- GOCCs/ GlS

NGAs

- DTI
- DA
- DEPED
- DSWD
- (DPWH)
- (DOT)
- (DICT)

Procurement

- (COA)
- (GPPB)

Transport/ Security

- (DOTr)
- (MMDA)
- (AFP)
- (PNP)

Other AAs continue to function

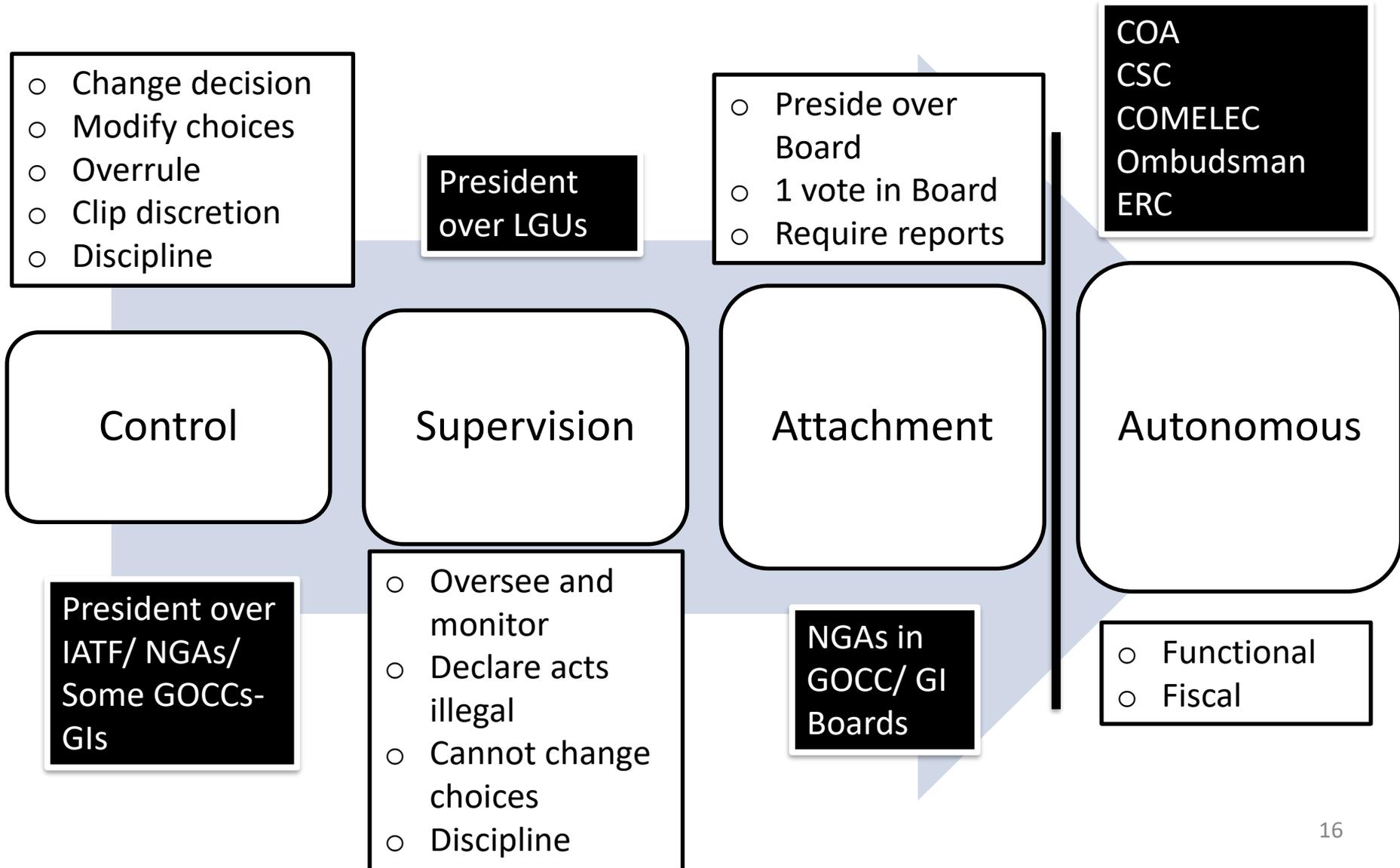
Charter: Enabling Instrument

1. Name
2. Principles/ Mandate/ Results
3. Purpose/ Specialization
4. Powers/ Functions
5. Duties/ Responsibilities
6. Relationship/ Accountability
7. Jurisdiction/ Territory
8. Structure/ Size
9. Budget/ Capitalization
10. Life/ Dissolution

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Administrative Relationship



Conflict-Resolution

1 st Party	2 nd Party	Outcome
President	NGAs, IATF	President (<i>since control</i>)
NGA Heads	Bureaus	NGA Heads (<i>since control</i>)
NGAs	GOCC/GI	<i>if attachment: Majority Vote of Board</i>
OP/ NGAs	GOCC/GI	<i>if control: OP/ NGAs</i>
OP/ NGAs	LGUs*	<i>NGA Defined Area: NGA (“enhanced supervision”)</i>
OP/ NGAs	LGUs*	<i>Undefined Area: LGU (reviewable)</i>
Higher LGU	Lower LGU	Higher LGU can declare illegal
GOCC/ GI	GOCC/ GI	Higher resolves/ what law provides

* = *Under Bayanihan Act*

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Powers

Delegated (no
inherent)

Subordinate

Mandate-
Driven

Liberal
Interpretation

(1)
Completeness

(2)
**Sufficient
Standards**

**Valid
Delegation**

RA 11469

- Authorized powers enumerated
- “reprogram, reallocate and realign from savings”
- “move statutory deadlines”
- “penalties”

RA 11332

- “declare epidemics”
- “regularly update list”
- “prohibited acts”

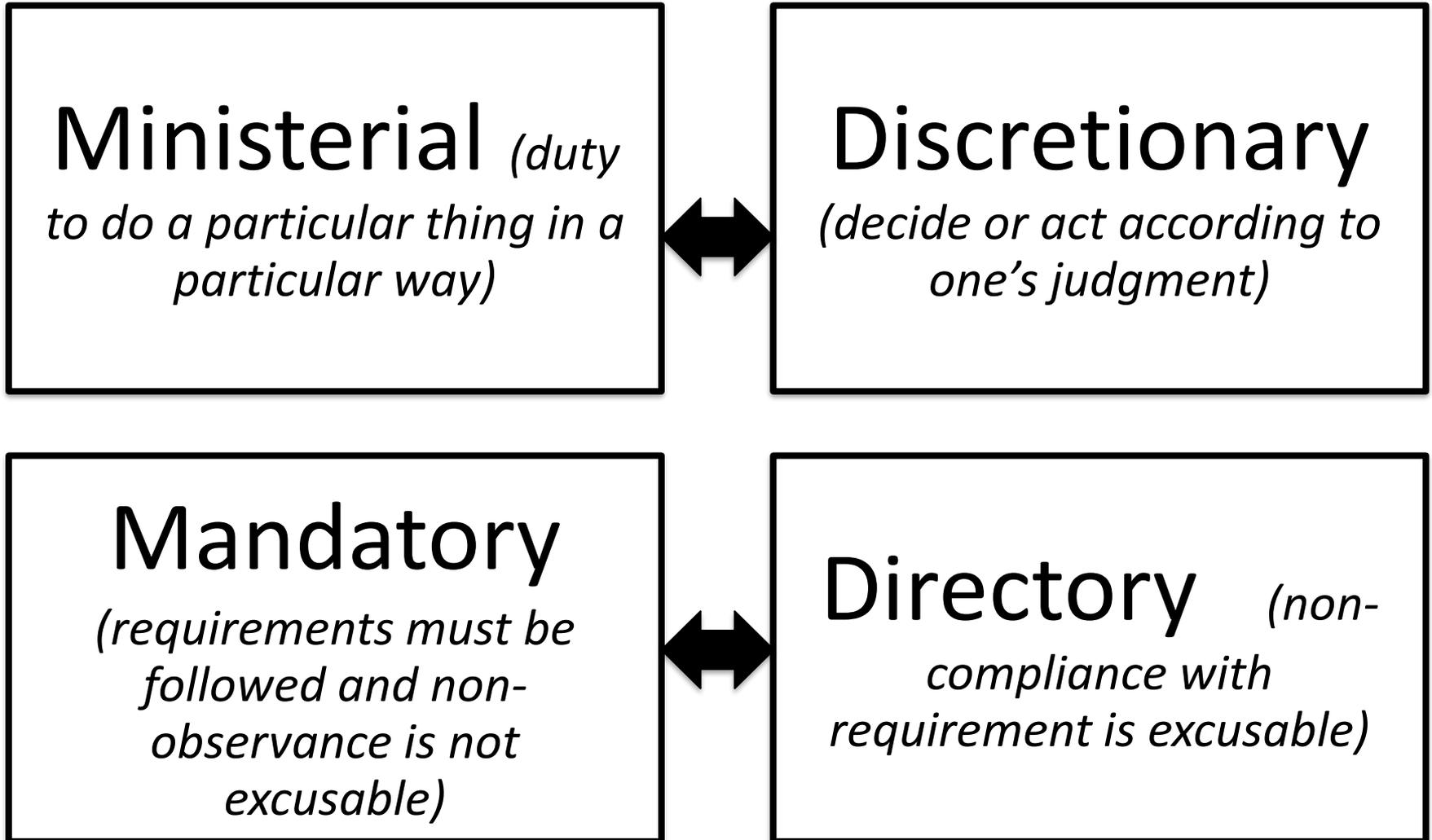
RA 11469

- “public health emergency” xxx “due to COVID 19”
- “loss of lives and disruption to the economy”
- “public interest”
- “Bill of Rights”

RA 11332

- “health of people”
- “efficient and effective disease surveillance”

Exercise of Powers



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Menu of AA Powers

Investigate-
Protect-Compel

Administrative/
Executive

Quasi-
Legislative

Quasi-Judicial

Police Power

Others/
Corporate

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Investigate-Protect-Compel

- Cease and Desist
- Preventive Suspension
- Abatement of Nuisance
- Withdraw Privilege

Informational

Preventive/
Protective

Coercive/
Penal

Express/ Implied in Charter

- Fact-Finding
- Clearance
- Ocular Inspection
- Visitorial
- Investigate anomalies
- File cases

Express in Charter

- Contempt
- Subpoena
- Search & Seizure

Cease and Desist Orders

Depending on Charter/ law:

- Mandate/ purpose of AA defines object of CDO
- Power can be express or implied
- Can be an incident of administrative or quasi-judicial proceedings
- Can be done *motu proprio, ex parte* or after notice and hearing (pre- or post-issuance)
- Observe pre-conditions (e.g. show cause order)
- Subject to administrative reversal and/ or judicial review

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Law vs. Rule

Law

- Why of law (purpose/ policy)?
- Who covered (not covered)?
- What are:
 - Scope? Boundaries?
 - Limitations? Exclusions?
 - Acts? Rights?
 - Classes? Categories?
 - Obligations? Requirements?
 - Standards? Conditions?
 - Offenses? Penalties?
- When take effect?

Rule

- How implemented?
- What are details?
- When take effect (if parameter/ condition in law)?

6 Types of Rules

Supplementary/
Implementing

Procedural

Penal

Contingent

Interpretative/
Opinions

Internal

- Which of these can be issued without an express authority?
- Must these be published in order to become effective?

Types of Rules

<i>Type</i>	<i>Grant</i>	<i>Publication</i>
Supplementary/ Implementing	Express (E) or Implied (I)	Required
Interpretative	E or I	Not Required
Contingent	E	Required
Penal	E	Required
Procedural	E or I	Required
Internal	E or I	Not Required

Rule-Type and Examples

Supplementary or Implementing

IATF: Guidelines on Community Quarantine

DOH IRR (RA 11332): Mandatory Reporting of Notifiable Diseases

DOH Administrative Order: Grant of 20% Discount on Purchase of Vitamins and Mineral Supplements by Senior Citizens

DTI-DOLE Interim Guidelines: Workplace Prevention and Control of COVID 19

DOLE Advisory: Non-Inclusion of CQ in 6-Month Probationary Period

DILG-DOH Memorandum Circular: Management of Human Remains

DTI Memorandum Circular: Operation of Malls and Shopping Centers

DTI Circular: Concessions on Residential Rents

Rule-Type and Examples

***Supplementary
or
Implementing***

DOH-NPC Memorandum Circular: Privacy Guidelines on COVID-19 Related Data
DOLE Advisory: Flexible Work Arrangements

BLGF-DOF Department Circular: Extension of Deadlines for Local Taxes and Fees

DSWD Memorandum Circular: Assistance to Individuals in Crisis Situations

SEC Memorandum Circular: Filing of GIS; Authentication of AOIBL

BIR/DOF Revenue Regulation: Extension ITR Filing

DPWH Department Order: Construction Safety Guidelines

DEPED Department Order: August 2020 opening of classes

BIR Memorandum Circular: POGO Resumption

Rule-Type and Examples

<p><i>Procedural</i></p>	<p><i>DOH-DTI-DA-DOJ-DILG-BOC Joint Circular: Seizure of COVID-Necessary Goods</i></p> <p><i>SEC: Authentication of Articles of Incorporation</i></p> <p><i>IC Circular: Electronic Filing of Complaints</i></p> <p><i>DAR Circular: Suspension of Agrarian Proceedings</i></p> <p><i>COMELEC Resolution: Interruption of Periods and Conduct of Proceedings</i></p> <p><i>PCC Administrative Order: Interruption of Periods</i></p>
<p><i>Penal</i></p>	<p><i>Customs Modernization and Tariff Act: Violation of Rules</i></p> <p><i>DOF IRR: Violation of Grace Periods</i></p> <p><i>DPWH Department Order: Violation of Construction Safety Guidelines</i></p> <p><i>ERC: Violation of Rules</i></p> <p><i>LLDA: Violation of Rules</i></p>
<p><i>Contingent</i></p>	<p><i>DOH AO: Inclusion of COVID 19 as Notifiable Disease</i></p>

Rule-Type and Examples

Internal

DBM Budget Circular: Adoption of Economy Measures

DICT Circular: Use of Updated Versions of Cryptographic Protocols

DILG/ DBM Memorandum Circular: Guidelines for use of 20% Share in National Tax

DOF/ DBM: Collection of Pooled Resources for Social Amelioration

DENR Memorandum: Lifting of Suspension of the Transportation of All Forest Products and Wildlife

COA/ GPPB Circular: Emergency Procurement

CSC: Deadline of Submission of SALNs

CSC Memorandum Circular: Alternative Work Arrangements

LTO Memorandum: Non-collection of penalties

Rule-Type and Examples

Interpretative or Opinions

DOF: COVID impact worse than expected

NEDA: “Despite these challenges, we are still well positioned to recover strongly because of our country’s solid macroeconomic and fiscal management.”

PSA: Contraction of Philippine Economy by 0.2%

DOF: Deeper contraction in Q2

NEDA: Urges Intensifying Efforts to Boost Trade

DOJ: NTC CDO is immediately executory and reversible by President; Can issue provisional authority on equitable grounds

OSG: NTC only following the law on CDO issuance

DILG: SAP fund distribution may be extended anew

ARTA Advisory: Accreditation of Testing Laboratories

Ordinances/ Local Laws

- Quarantine
- Hard Lockdown
- Curfew
- Closures of Establishments
- Anti-Discrimination
- Anti-Hoarding/ - Profiteering
- Anti-Spitting
- Requiring Face Masks
- Liquor Ban
- Financial Assistance
- Supplemental Budget
- Tax Amnesty
- Waiver of Fees

12 Rules on Rule-Making

1. Executive in nature
2. Force and effect of law and must be followed
3. Subordinate legislation
4. Presumed valid
5. Issued by authority of law
6. Subject within jurisdiction/ authority
7. Notice and hearing not required (*unless law requires and material change*)
8. Pass reasonableness test
9. Operative upon publication
10. Prospective in application
11. Subject to repeal and amendment (*unless vested or contractual rights involved*)
12. Subject to judicial review (*unless business judgment*)

Invalid Exercise

Law

Creates

Strict Requirements

No Requirement

Stated Requirement

Enumeration Exclusive

No Classification

Limited Application

Fixed Period

Continue Practice

Grant Power

Rule

Abolishes

Liberalizes Requirements

Imposes Requirement

Alters/ Deletes Requirement

Adds/ Deletes Requirement

Discriminates/ Classifies

Expands Application

Changes Period

Discontinues Practice

Nullifies Power

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2 Proceedings of AAs

Administrative

- direct implementation of laws to ascertain facts as a consequence of regulation; or
- an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation
- notice and hearing not required unless law requires and if particular and immediate

Quasi-Judicial

- Resolving a controversy or dispute in favor of a party
- Rendering an order or decision supported by the facts proved
- Determining what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties
- Observing due process

Examples

Administrative

- DOH: List of Notifiable Diseases
- DSWD: Emergency Subsidy Program
- DILG: Investigation of Complaints
- DENR-EMB: Issuance of Special Permit to Transport Hazardous Wastes
- FDA: Authorizations and Licenses to Operate
- SSS: Grant of Small Business Wage Subsidy
- BOC: Seizure of COVID 19-Necessary Goods
- PPA: Issuance of Certificate of Entry/ Withdrawal Permit
- PACC: Investigation of Complaints
- NTC: Grant of license/ franchise
- PCC: Clearance for M&As

Quasi-Judicial

- DTI: Violation of Consumer Act
- COMELEC: Election Protests
- IC: Statement of Claims
- ERC: Capital Expenditure
- Ombudsman: Disciplinary Actions
- LLDA: Pollution-related

12 Rules on Quasi-Judicial

1. Power expressly given
2. Jurisdiction defined by Charter (*not by AA or parties*)
3. Questions of fact and/ or law
4. Non-delegable (*reception of evidence can be sub-delegated*)
5. Follow procedural rules
6. Due process – Notice and Hearing required (*absence curable*)
7. Impartial Tribunal
8. Substantial Evidence (*not bound by technical rules; must have some proof of authenticity*)
9. Decision needed (*need not be full blown like in courts*)
10. Counsel dispensable
11. Subject to Judicial Review
12. Courts accord great respect

Quasi-Legislative - Quasi-Judicial

<i>Subject</i>	<i>Quasi-Judicial</i>	<i>Quasi-Legislative</i>
Grant	E	E or I
Parties	Particular	All/ Sectors
Adversarial	Yes	No
Controversy	Exists	None
Notice and Hearing	Required	Not Required, as rule
Primary/ Exhaustion	Applicable	Not Applicable
Time	Past/ Present	Future
Publication	Not Required	Depends on type
Res Judicata	Applicable	Not Applicable

Due Process: Notice and Hearing

Required

- Quasi-Judicial (except motu proprio/ ex parte orders)
- Rule-making if:
 - Law provides
 - Affects a particular party like vested and contractual rights
 - Material change
- Administrative/ Executive Actions if:
 - Notice/ hearing required by law
 - Cannot be issued motu proprio/ ex parte
- MR filed by a particular party

Not Required

- Rule-making unless:
 - Law requires
 - Material change
- Changes in rules and practices affecting general public, not a particular party with vested and contractual rights
- Motu Proprio/ Ex Parte Administrative and Executive Action

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Police Power

**Why/
Purpose**

Lawful Subject

- General Welfare
- Quality of life
- Health, safety and morals

**How/
Means**

Lawful Means

- Regulate
- Prohibit
- Restrict
- Taking not compensable

Local Governance under Bayanihan Act

National Government- Defined

- LGUs are directed:
- to act within the letter and spirit of all the rules, regulations and directives by the National Government; and
 - to implement standards of Community Quarantine consistent with what the National Government has laid down for the subject area.

Undefined by National Government

- LGUs shall exercise local autonomy, provided, that they:
- act within the parameters National Government has set, and
 - fully cooperate towards a unified, cohesive and orderly implementation of the national policy to address COVID-19.

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Redress and Judicial Review

Act

1. Certiorari
2. Prohibition
3. Injunction
4. Mandamus
5. Declaratory Relief
6. Appeal

Actor

1. Criminal
2. Civil
3. Administrative
4. Recall (for LGUs)

AA or Courts

AA

Higher/
Level 2

Lower/
Level 1

Courts

1. No actual injury, filed case in AA or Court
2. Instead of filing case before AA, filed directly with Court
3. While case pending before AA Level 2, filed case in Court
4. After AA Level 1 decides case, filed case before Court

Defenses: Judicial Review Premature

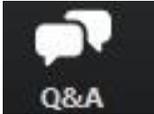
Doctrine of:

1. Ripeness for Review
2. Primary Jurisdiction
3. Finality of Administrative Action
4. Non-Exhaustion of Administrative Remedies

With exceptions

END OF LECTURE PROPER

QUESTION & ANSWER SEGMENT

(CLICK ON THE  ICON BELOW YOUR SCREEN
TO TYPE IN YOUR QUESTIONS)



LGUs in Action: Power & Limits in **EXTRAORDINARY** Times

FREE Webinar @ 3pm, Thursday, May 28, 2020



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**PROPOSALS, BIDDING, NEGOTIATION,
AND MODEL CONTRACTS**

**BEST PRACTICES GUIDE TO
PPP LEASE CONTRACTS**

WITH GOVERNMENT AGENCIES, GOCCs & LGUs

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THANK YOU.

“FALL 7 – RISE 8.”