



UNIVERSITY OF THE PHILIPPINES LAW CENTER
TRAINING AND CONVENTION DIVISION

GOVERNMENT AND THE LAW

A WEBINAR ON THE BASICS
OF PHILIPPINE
ADMINISTRATIVE LAW

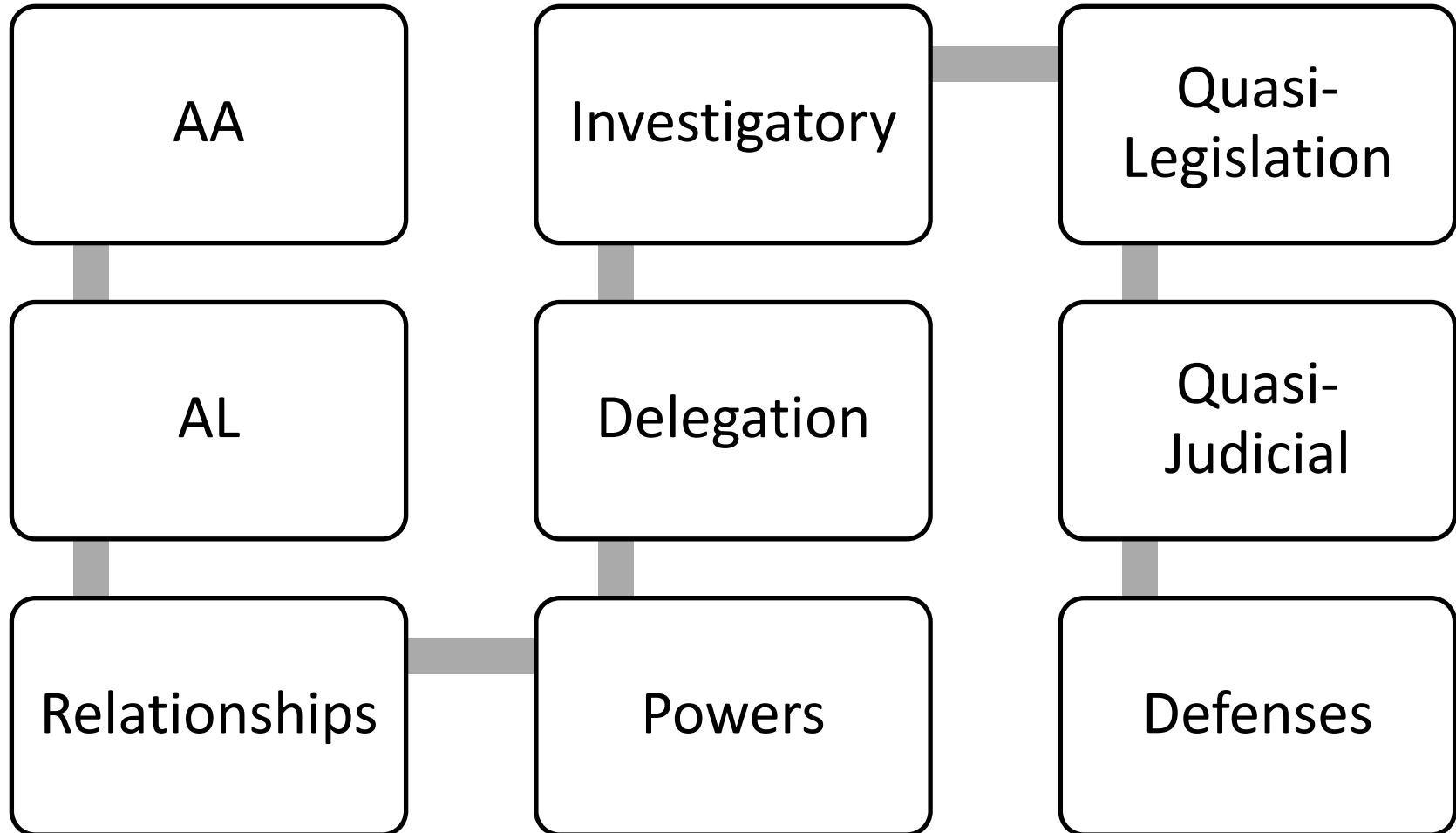
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Q then A

Flow





What is Administrative Law?



Administrative Law

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



Is there a
4th Branch of Government?

Are AAs
Public Offices?



Administrative Agencies (AAs)

“4th Branch”

Public Offices

Legal Persons

Delegates

Agents

Subordinates

Experts

Fusion of
Powers

Duty-Bearers/
Accountable
Institutions



How do we differentiate one AA from another?



Charter: Enabling Instrument

- 1. Name
- 2. Principles
- 3. Mandate/ Purpose
- 4. Powers
- 5. Duties and Responsibilities
- 6. Relationships
- 7. Jurisdiction
- 8. Structure
- 9. Budget
- 10. Dissolution

10 Differentiators



True or False:
There are close to 50,000 AAs.



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



**Why do we need
to classify between a
GOCC and a GICP?**

GOCC vs. GICP

Features	GOCC	GI
Created by Special Law	✓	✓
Created under Corp. Code	✓	✗
Governmental Function	✓	✓
Common Good	✓	✓
Economic Viability	✓	✗
Corporate Powers	✓	✓
Stocks divided into Shares	✓	✗
Non-Stock	✓	✗
Subject to Real Property Tax	✓	✗
Docket/ Commissioners' Fees	✓	✗



Examples

GOCCs

- Water Districts
- Corregidor Foundation
- PICC
- PNCC

GICPs

- MIAA
- PFDA
- PEZA
- PRA
- MWSS
- BCDA

GOCC and GI: Boy Scouts of the Philippines



What is the **relationship** between the:

President	Department of Transportation (DOTr)
President	Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF)
President	Commission on Audit (COA)
President	Local Government Units (LGUs)
Secretary of Energy	Philippine National Oil Company (PNOC)
Province of Cavite	Bacoor City

Matching Type (There can be more than 1 answer.)

	<i>Power</i>		<i>Relationship</i>
1	Changing/ overruling decisions	A	Control
2	Declaring a policy illegal	B	Supervision
3	Presiding as Board Chairperson	C	Attachment
4	Disciplining the subordinate officer	D	Autonomous
5	Exercising no authority over		
6	Prescribing the manner on how to act		
7	Requiring submission of reports		
8	Reversing a decision of lower office		
9	Declare acts arbitrary		



Administrative Relationship

- Change decision
- Modify choices
- Overrule
- Clip discretion
- Discipline

President over LGUs

Control

President over IATF/ NGAs/ Some GOCCs- GIs

Supervision

- Oversee and monitor
- Declare acts illegal
- Cannot change choices
- Discipline

- Preside over Board
- 1 vote in Board
- Require reports

Attachment

NGAs in GOCC/ GI Boards

COA
CSC
COMELEC
Ombudsman
ERC

Autonomous

- Functional
- Fiscal



True or False.
**AAs have inherent and
prohibitory powers.**



Powers

- AAs possess Delegated, *not* Inherent, Powers
- Subordinate, *not* Superior to/ above Enabling Instrument/ Charter, Laws (when there is a conflict, law prevails over rules)
- In general, liberal, not strict, interpretation of powers
- AAs (except LGUs) cannot prohibit what law does not prohibit



Powers

Delegated
(not inherent)

Subordinate
Legislation

Mandate-
Driven

Liberal
Interpretation



Delegation of Powers

- *Potestas delegata non potest delegari*
- Exceptions:
 - President – tariff and emergency
 - Local Governments
 - People's Initiative
 - Administrative Agencies
- Tests of Valid Delegation:
 1. Completeness; and
 2. Sufficient Standards



What AA powers must be in the enabling law itself?



Law vs. Rule

Law (Congress/ LGUs)

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

Rule (AAs)

- How implemented?
- What are details?
- When statutory provisions become operative (if parameter/ condition in law)?

Must be Expressed in Enabling Law

General:

1. “What” law is
2. Relationship
3. Prohibitory Powers
4. Jurisdiction

Investigation:

5. Contempt
6. Subpoena
7. Search and Seizure

Quasi-Legislation:

8. Contingent Rule
9. Penal Rule

Quasi-Judicial:

10. Quasi-Judicial
11. Enforcement of Decisions
12. Resolve questions of law



Menu of AA Powers



Investigate-
Protect-Compel

Administrative/
Executive

Quasi-
Legislative

Quasi-Judicial

Police Power/
Eminent
Domain

Others/
Corporate



Can AAs issue CDOs and HDOs?

Investigate- Protect- Compel



Informational

Express/ Implied in Charter

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

Preventive/ Protective

Express/ Implied in Charter

- Cease and Desist
- Withdrawal of Privilege

Delegated by Law

- Preventive Suspension
- Abatement of Nuisance
- Hold Departure Orders

Coercive/ Penal

Delegated by Law

- 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



Can AAs
enact and amend laws?
What are the
2 tests of valid rule-making?



Rule-Making

- Definition: Power to Issue Rules/ Fill in details/ ‘How’ (not ‘What’) a Law will be implemented; means to provide direct and efficacious solutions to problems
- Nature: Laws are controlling and cannot be amended by a rule (Subordinate Legislation)
- Tests of valid exercise of subordinate legislation
 1. Germane to objects and purposes of law
 2. Regulation not contradict and must conform with law
- Rationale: regulation highly complex, future situations cannot be fully anticipated, practicability, expediency and expertise



Name 20 Rules on Rule-Making.



20 Rules on Rule-Making

1. Executive in nature
2. Rules partake of the nature of a statute
3. Force and effect of law (but are not laws)
4. Germane to the objects of the law
5. By authority of law
6. Issued by proper issuer
7. Subordinate legislation
8. Interpretations persuasive
9. Presumed legal, valid and constitutional
10. Notice and hearing not required

20 Rules on Rule-Making

11. Depending on type of rule, requires express grant of authority and publication to be effective
12. Mandatory to issue rules if “shall” used in enabling law
13. Pass reasonable test
14. Not arbitrary
15. Operative effect
16. Must be followed by other AAs
17. Rules of an AA may be used as basis for rules of another AA
18. Subject to judicial review unless business judgment
19. Subject to repeal and amendment unless vested or contractual rights involved
20. Prospective application



Rule-Making: Invalid Exercise



Law

- Creates
- Strict Requirements
- No Requirement
- Stated Requirement
- Enumeration Exclusive
- List with “others”
- No Classification
- Limited Application
- Broad Application
- Fixed Period
- Continue Practice
- Grant Power

Rule

- Abolishes
- Liberalizes Requirements
- Imposes Requirement
- Alters/ Deletes Requirement
- Adds/ Deletes Requirement
- Others not germane to list
- Discriminates/ Classifies
- Expands Application
- Abridging Application
- Changes Period
- Discontinues Practice
- Nullifies Power



Rule-Making: Valid Rules

<i>Law</i>	<i>Rules</i>
AA decision final after 15 days procedure allowed but silent on period	appeal to OP within 30 days provide for 60 days
control and supervision	require reports
DAR to CA	DAR to OP to CA
exclusive authority to investigate	withheld right to examine and cross-examine during investigations
provide for termination of OFW employment	determine causes and factors
No legislative authority (MMDA)	adopt rules on number bus coding scheme
Law excludes heinous crimes from benefit	Inclusion of heinous crime in exception



Rule-Making: Invalid Rules

<i>Law</i>	<i>Rules</i>
provident and/or employee-housing	both provident/ retirement and housing benefits superior to those ...
vacation leave and sick leave shall be cumulative	not cumulative
2 years from payment	10 years from payment
appeal 15 days	10 days
illegitimate children “may” use name of father	“shall” use
provide additional allowances	from only 1 source
enumerate fixed list of benefits	added benefits
lists requirements for creation of provinces	provides exception
qualifications fixed for elective officials	added drug test
classify and mark tobacco	exclusive sources



How many types of Rules are there?



6 Types of Rules

<i>Supplementary</i>	Supplies the details, implements and supplements the law, and governs the public.
<i>Procedural</i>	Outlines the procedures and remedies.
<i>Contingent</i>	Determines the existence of a fact which is specified and defined in the law, and operationalizes said statutory provision.
<i>Penal</i>	Provides for the conditions and penalties for the violation of rules as expressly allowed under the law.
<i>Interpretative</i>	States the official position or opinion of the AA.
<i>Internal</i>	Governs the administration and operations of a particular AA or other AAs.



Why do we need to
distinguish among these
6 types?



Why Differentiate?

<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



**Does the power to
investigate carry with it the
power to adjudicate?**



Quasi-Judicial Power

- Definition: Deciding controversies, resolving conflicting claims and positions
- Grant of Power:
 - Express
 - Includes those necessary powers
 - Clearly defined jurisdiction
 - Typically, questions of fact
 - Subject to judicial review



12 Rules on Quasi-Judicial

1. Power expressly given
2. Jurisdiction defined by Charter
3. Questions of fact and/or law
4. Non-delegable
5. Follow procedural rules
6. Due process required
7. Impartial Tribunal
8. Substantial Evidence
9. Decision needed
10. Counsel dispensable
11. Subject to Judicial Review
12. Courts accord great respect



Quasi-Legislative or -Judicial

Quasi-Legislative	Quasi-Judicial
Increasing rates for all public utility buses	Application for rate increase by a particular public utility operator
Prescribing the procedure to disqualify nuisance candidates	Disqualifying a nuisance candidate
Adopting the procedures for applying for a franchise	Revoking a specific franchise
Issuance of Resolution on Reinvestment Fund for Sustainable Capital Expenditures	Declaring improper the reinvestment

Quasi-Legislative vs. 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 (unless law requires; radical change)
Primary/ Exhaustion	Applicable	Not Applicable; judicial review at first instance
Time	Past/ Present	Future
Publication	Not Required	Depends on type
Res Judicata	Applicable	Not Applicable





When an AA allows an activity, what type of proceedings must be conducted?

- a. Administrative**
- b. Quasi-Judicial**



2 Proceedings before AAs

Administrative Proceedings	Quasi-Judicial Proceedings
<ol style="list-style-type: none">1. direct implementation of laws to certain given facts as a consequence of regulation; or2. an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation <p>(Not involve the settling of disputes involving conflicting rights and obligations (not make binding pronouncements as to a party's rights and/or obligations as a result of a conflict or controversy whether legal or factual))</p>	<ol style="list-style-type: none">1. hearing and determining questions of fact to which the legislative policy is to apply2. deciding in accordance with the standards laid down by the law itself in enforcing and administering the same law.3. taking and evaluating evidence4. determining facts based upon the evidence presented5. rendering an order or decision supported by the facts proved6. 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.
Example: grant of authorization or permission to undertake a regulated activity (NTC)	complaint proceedings involving the assessment and settling of the contending parties' respective rights and obligations (NTC)



QJ Proceedings

- Character: Adversarial, quasi-judicial, civil
- Jurisdiction: Defined by Law/ Charter
- Writ of Certiorari: there must be a specific statutory grant to issue (not by self-conferment of authority and not implied from quasi-judicial/ legislative power)
- Nature: *not* delegable (but power to hear/ receive evidence can be sub-delegated)
- Due Process (DINA): Decision, Impartial Tribunal, Notice and Appear/ Defend



QJ Proceedings

- Procedure: reasonable, due process, meet ends, published
- Notice and Hearing
 - Required (actual or constructive)
 - Subject to waiver and estoppel
 - Curable (i.e., subsequently heard, filing of motion of reconsideration, oral arguments)
 - Position papers allowed (unless a party invokes or does not waive hearing)
 - Not required when privilege, abatement, conditional right, legislative or administrative
- Right to counsel not imperative
- Full Hearing: All Claims, Rebuttal, Evidence and Cross-Examination (dispensable)
- AAs not bound by the technical rules of procedure (but must have some proof of authenticity or reliability as condition for the admission of documents)



**What are instances when
notice and hearing
could be dispensed with?**



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



QJ Proceedings

- Evidence
 - Substantial (need not be overwhelming or preponderant)
 - Ocular allowed (when relevant)
 - Adoption of reports allowed
- Decision: Bases, Form (need not be full-blown like court decisions), Parties, All Issues and Evidence)
- Enforcement: by AA if authorized by law (if not, courts)



**If you are a Judge reviewing
AA factual findings, what
are the grounds by which
you can reverse them?**



Judicial Review of Factual Findings

Administrative Findings given weight (since AAs in better position to pass judgment thereon), *not* disturbed unless:

1. Not based on substantial evidence
2. Fraud, mistake, collusion
3. Palpable errors
4. Grave abuse of discretion
5. Mis-appreciation or erroneous estimation of evidence
6. Conflict in factual findings
7. Rates fixed are unreasonable



If brought to Court, what defenses can an AA raise?



Scenarios

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 L 2, filed case in Court
4. After AA Level 1 decides case, filed case before Court

Defenses: Judicial Review Premature



1. **Doctrine of Ripeness for Review:**
Controversy must be real, present or imminent (not future/ imaginary/ remote)
2. **Doctrine of Primary Jurisdiction:** AA concurrent with courts; needs AA administrative discretion and expertise

Defenses: Judicial Review Premature



3. **Doctrine of Finality of Administrative Action:** Decision of AA must be final before Judicial Review, unless interlocutory orders, protect rights, violate Constitution or excessive use of power

4. **Doctrine of Exhaustion of Administrative Remedies:** exhaust all administrative remedies before recourse to courts, unless prove:



Name 5 Exceptions for Exhaustion.



20 Exceptions: Exhaustion

- Pure question of Law
- Constitutionality
- Transcendental issues
- Urgency/ Continued and unreasonable delay
- Alter ego bears approval of President
- Questions essentially Judicial
- Utter disregard for due process
- No plain speedy and adequate remedy
- Strong public interest
- Estoppel
- Administrative remedy is permissive



20 Exceptions: Exhaustion

- Irreparable Damage by party
- No administrative Review is provided
- Insistence on exhaustion will lead to Nullification of claim
- Resort to administrative remedy is an Idle ceremony
- Civil action for damages
- Land not part of public domain
- Special Reasons demanding immediate judicial relief
- No Decision rendered
- Small amount that exhaustion will be costly



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Thank you.

