

IV. Local Government

2023 Bar Review

based on SC Syllabus

Atty. Alberto C. Agra

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A1. Public Corporations vs. GOCCs

Private Corporations vs. Public Corporations

Differences

- Incorporators
- Purpose
- Functions

Similarities

- Corporate Succession
- Corporate Powers

Public Corporations

- Public Offices
- Administrative Agencies
- Classes
 - GOCCs
 - Municipal Corporation Proper
 - Quasi-Municipal Corporation
- Not Public Corporations
 - National Government Agencies
 - Government Instrumentalities
 - Quasi-Public Corporations

A2(a). Classifications: Quasi-Corporations

- State-created
- Governmental purpose

- Can't be both unless ...
- Subject to COA
- Covered by Ombudsman

GOCCs	GIs
<ol style="list-style-type: none"> 1. Organized as stock or non-stock corporation 2. Created by law or under Corporation Code 3. Public character of its function 4. Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock 5. Corporate powers 6. Created for common good <i>and</i> must be economically viable 	<ol style="list-style-type: none"> 1. Neither stock nor non-stock 2. Not a corporation 3. Created by law only (not under Corporation Code) 4. Agency of the national gov't 5. Not integrated within the department framework 6. Vested with special functions or jurisdiction by law 7. Endowed with some if not all corporate powers 8. Administering special funds 9. Enjoying operational autonomy 10. Need not be economically viable
<ol style="list-style-type: none"> 1. Subject to real property tax 2. Pay legal/ docket fees 	Exempt

A2(b). Classifications: Municipal Corporations

1) *Elements*

- a. Name
- b. Corporate Succession
- c. Legal Creation
- d. Inhabitants
- e. Territory

Creation/ Charter

- Special Law or Ordinance
- Legislative Control
- Curative provision in 1991 LGC for “defective” LGUs

LGUs:

- Territorial and Political Subdivisions
- 5 Levels

A2(b). Classifications: Municipal Corporations

2) Nature and Functions

- Dual Character/ Capacity
- Dual Agency (*Liability not relevant and Delegability*)
- Intramural/ Territorial Powers
- Sources of Powers
- System of Separation of Powers (*Legislative, not Constitutional*)

A2(b). Classifications: Municipal Corporations

3) Requisites for Creation, Conversion, Division, Merger or Dissolution

- Criteria: Population, Land Area and/ or Income (under 1991 LGC or Special Law)
- Creator: Congress or Province/ City for Barangays
- Conversion: = Substantial Alteration; Distinct Corporation
- Boundary Dispute: Prejudicial Question
- Plebiscite: Directly Affected; Plurality and Economic Dislocation; Upgrade or Downgrade

B. Principles of Local Autonomy

- “means a **more responsive** and **accountable** local government structure instituted through a system of **decentralization**”
- Unitary form (*not federal; not empires; not impenetrable*)
- Administrative Autonomy and Political Autonomy (*not self-government; not absolute; not independence*)
- Includes Fiscal Autonomy (*source and use*)
- Decentralization: Delegation, Devolution, Deconcentration and Democratization
- Centralist vs. Liberal Views
- Executive Supervision (*Direct vs. Indirect*)
- Legislative Control
- Conflict Resolution:
 - Follow law
 - National Dimension (*Integration*) vs. Local Dimension (*Subsidiarity*)

B. Principles of Local Autonomy

National Prevailed

- Driver's License (LTO)
- Cable TV Franchise (NTC)
- Lotto Outlets (PCSO)
- Regulation of Profession (PRC)
- Fishpens along Laguna Lake (LLDA)

LGU Prevailed

- Allowances for Judges (DBM)
- Open subdivisions (MMDA)
- Expropriation of Agricultural Land (DAR)
- Photobomber building (NHC)
- Zoning ordinance (DENR)

C. Autonomous Regions and their Relation to the National Government

- AR List: Constitution identifies 2 (*exclusive*)
- Creation: Organic Act then Plebiscite
- Local Autonomy: Higher degree (*Political; Chart own destiny; self-immolation*)
- Mandate: Constitutionally-listed (*excluded with Congress/ National Government*)
- Relationship: Executive Supervision (*minimal*) and Legislative Control

D1. Local Government Unit (LGU): Powers

a) Police Power

- *Basis - General Welfare Clause: “Delegation in statutory form of the police power of the State to LGUs.”*
- *2 Requisites: (1) Lawful Subject (equal protection; public interest requires interference) and (2) Lawful Method (due process; reasonable means to achieve purpose)*
- *2 Branches: General Legislative (e.g. abate nuisance, business permit) and Police Power Proper (e.g. issue cease and desist orders)*

D1. Local Government Unit (LGU): Powers

Valid Exercise

- Enact zoning ordinance
- Impose curfew (least restrictive means/ constitutional rights)
- Abate a nuisance per se
- Issue cease and desist order
- Impose stricter National Building Code requirements
- Enact anti-obscenity law

Invalid Exercise

- Issue Driver's Licenses
- Direct transfer of a bus station
- Order closure/ transfer/ conversion of establishments
- Summarily abate a nuisance per accidens
- Padlock without due process
- Ban rallies

D1. Local Government Unit (LGU): Powers

b) Eminent Domain

- Statutory Power
- Public Purpose (*continuing*)
- Ordinance (*not resolution*)
- Just Compensation since compensable taking (post-taking benefit)
- Genuine public necessity
- Valid and Definite Offer
- Compliance with other laws (*e.g. UDHA - socialized housing*)
- Ordinance then file Expropriation case

D1. Local Government Unit (LGU): Powers

RTC Decision

- Just Compensation
- Genuine Necessity
- Public Purpose
- Order Transfer of Title/
Ownership
- Compliance with
requirements

Review by Supervising LGU

Can Declare:

- Illegal enabling instrument
- Not comply with laws

Cannot:

- Choose another property
- Increase compensation
- Declare no public purpose
- State no genuine necessity

D1. Local Government Unit (LGU): Powers

c) Taxing Power

- Constitutional Power (*subject to Legislative Control but not violate local autonomy*)
- Taxing Authorities delineated among LGUs
- Residual (*not exclusive*)
- Vs. Fees (*cost of regulation and purpose*)
- Administrative Review on Legal Question (*Exhaustion*)
- Blanket withdrawal for GOCCs (*not GIs*)

D1. Local Government Unit (LGU): Powers

d) Closure and Opening of Roads

Permanent

- LGU (over its roads)
- Ordinance (2/3rds of all members)
- Substitute (when necessary; if freedom park mandatory)
- Public safety
- Can be used or conveyed

Temporary

- LGU (over its roads)
- Ordinance
- Actual emergency, or fiesta celebrations, public rallies, agricultural or industrial fairs, public works or tiangge (if sports, cultural or civic – LGU must be sponsor)
- Stated duration by LCE

D1. Local Government Unit (LGU): Powers

e) Legislative Power

(1) Requisites of Valid Ordinance

Substantive

- All 5 LGU-Types
- Subordinate Legislation
- Rebuttable Presumption
- Ordinance vs. Resolution
- Operative Fact

Tests of Valid Ordinance:

Ordinances must NOT:

- Contravene Constitution
- Be inconsistent with Statutes
- Discriminate
- Be unreasonable
- Be contrary to public policy
- Prohibit trade

D1. Local Government Unit (LGU): Powers

e) Legislative Power

(1) Requisites of Valid Ordinance

Procedural

- Rebuttable Presumption
- Quorum-Session-Vote
- 3-readings in 1 day not prohibited
- Tax ordinance
- Internal Rules
- Veto vs. LGU Review
- NGA Review (DOJ/ DBM)
- Judicial Review (DR)
- Contracts and cases
- No contempt/ subpoena
- Penalties

D1. Local Government Unit (LGU): Powers

e) Legislative Power

(2) Local Initiative and Referendum

- Part of Democratization
- Initiative (*propose, enact and amend*) and referendum (*approve, amend and reject*)
- Covers ordinances & resolutions
- As many proposals in 1 plebiscite per year
- LCE cannot veto
- Sanggunian cannot repeal (6 months); 3/4ths vote amend (6 months to 3 years); simple majority amend (*after 3 years*)
- No need to create a sectoral council (COMELEC task)
- COMELEC cannot dismiss petition on account of lack of funds

D1. Local Government Unit (LGU): Powers

f) Corporate Powers

- Continuous succession in its corporate name
- Sue and be sued (*waiver from immunity from suit*)
- Have and use a corporate seal
- Acquire and convey real or personal property
- Enter into contracts
- Exercise such other powers as are granted to corporations
- Full autonomy in the exercise of their proprietary functions

D1. Local Government Unit (LGU): Powers

g) Ultra Vires Acts (beyond the power)

- Local Chief Executive – veto an ordinance
- Higher/ Reviewing Sanggunian – declare illegal an ordinance (*not factual/ wisdom; not substitute*)
- Administrative Review by DOJ (*tax*) and DBM (*budget*) – declare illegal (*not factual/ wisdom; not substitute*)
- Courts – question ordinance via declaratory relief
- Operative Fact vs. Void ab initio

D2. Local Government Unit (LGU): Liabilities

Personal

- Elective and Appointive
- Malfeasance, Misfeasance, Nonfeasance; Quasi-delict
- Section 60; Crimes
- Depends on degree of participation/ presence of elements

Corporate (LGU)

- Monetary: damages, claims, obligations
- Death, injury to persons and property
- Acts: Ordinances/ resolutions; Contracts
- Official corporate act
- Council participation/ ratification
- Higher council approval
- Mandate under law

D3. Local Government Unit (LGU): Settlement of Boundary Disputes

- 2 or more barangays in same city/ municipality – Sanggunian of that city/ municipality
- 2 or more municipalities in same province – Sanggunian Panlalawigan
- Municipalities or component cities of different provinces – Sanggunians of provinces
- Component city/ municipality and HUC – Sanggunians affected
- HUCs – Sanggunians of cities
- Others - courts

D3. Local Government Unit (LGU): Settlement of Boundary Disputes

- Decisions of Sanggunians appealable to RTC
- Boundary Dispute poses a prejudicial question to plebiscite
- Judicial notice of contemporaneous acts even without the introduction of evidence
- Critical date acquires much significance in that acts performed by the parties after the critical date to bolster their respective claims are accorded little to no probative value, unless they are a normal continuation of prior acts and not undertaken merely to improve their legal position

D4. Local Government Unit (LGU): Vacancies and Succession of Local Officials

Permanent

- Grounds: Death, Resignation, Conviction, Appointment, Permanent Disability, Failure to Qualify, Removal
- Succession by operation of law (*effect on term*)
- Vacancy in Council (*appointment by supervisor*)

Temporary

- Grounds: Leave of absence, Travel, Suspension, Preventive Suspension, Temporary Disability
- Next-in-Line or OIC
- Powers of Acting Official

D5. Local Government Unit (LGU): Recall

- Part of Democratization
- How Initiated: Popular Petition filed with COMELEC
(*no more Preparatory Recall Assembly per RA 9244*)
- Ground: Loss of Confidence (*political question*)
- When: Recall election only during 2nd year of 3-year term (*1-Year Ban refers to Recall Election*)
- Candidates: Official subject of recall a candidate
- Term: If official removed, not considered a term

D6. Local Government Unit (LGU): Term Limits

- 3 years x 3 consecutive terms (except Barangay)
- Applies to Elective Positions
- Term: Full service + Elected to Position
- Full Term even if: Vacation, LGU conversion, Suspension, Under preventive suspension, Resigned
- No Full Term if: Succession, Won in recall election, Won in an election protest, Won in petition for correction of manifest errors

Good luck. Thank you.