



Administrative Law

(with Election Law)

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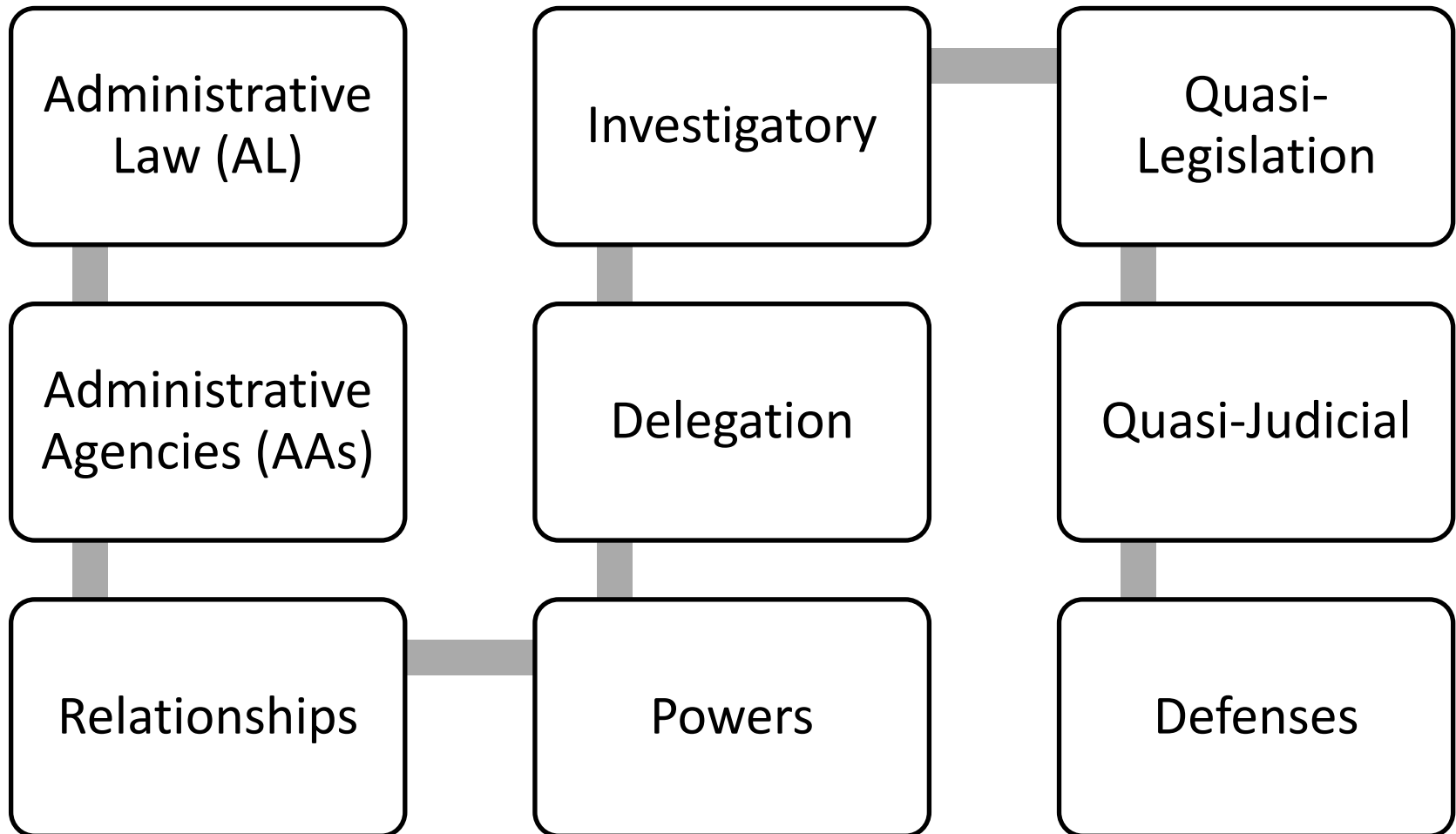
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Flow





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



**Do AAs belong to the
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



Give an **example** of an **AA**.
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



Are LGUs AAs?
Is COMELEC an AA?

LGUs and COMELEC are:



Administrative
Agencies

Public Offices

Constitutionally-
Created/
Identified

LGUs: Legislative
Power COMELEC:
Quasi-Legislative

Defined Quasi-
Judicial Power

Subordinate
Legislation

COMELEC cannot:



Rule on Right
of Suffrage

Resolve All
Election
Protests

Resolve All
Quo Warranto
Cases

Legislate



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
- GICP

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
**Government-Owned and
-Controlled Corporation** and a
**Government Instrumentality with
Corporate Powers? What is NFA?**

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
- NFA

GOCC and GI: Boy Scouts of the Philippines



Define **Administrative Relationships.**



What is the **relationship** between the:

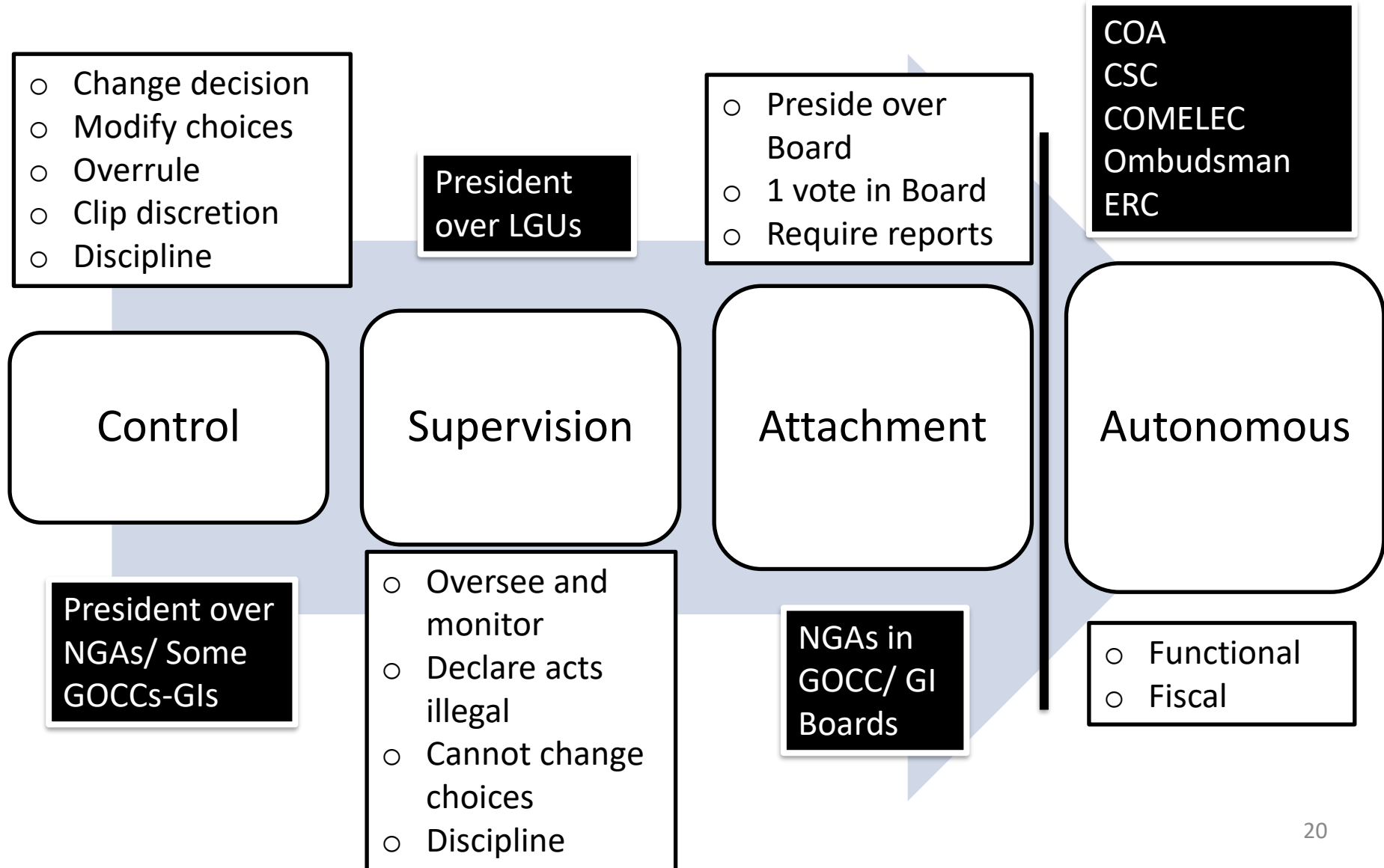
President	Department of Transportation (DOTr)
President	Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF)
President	Commission on Audit (COA)
President	Local Government Units (LGUs)
Secretary of Energy	Philippine National Oil Company (PNOC)
Province of Cavite	Bacoor City



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





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



Can COMELEC:

1. Change the **definition of a candidate?**
2. Provide for a **hybrid electoral system** (manual and automated)?
3. Not follow the **Government Procurement Reform Act?**



Can enact laws:

- Congress
- LGUs
- People

Cannot:

- President
- Courts
- COMELEC
- AAs



Delegation of Powers

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



What is the difference
between a **law** and a **rule**?



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



What are the **powers** of **AAs**?



Menu of AA Powers

Investigate-
Protect-Compel

Administrative/
Executive

Quasi-
Legislative

Quasi-Judicial

Police Power/
Eminent
Domain

Others/
Corporate



Can **AAs** issue
CDOs? HDOs?

Investigate- Protect- Compel



Express/ Implied in Charter

- Cease and Desist
 - Withdrawal of Privilege
- Delegated by Law
- Preventive Suspension
 - Abatement of Nuisance
 - Hold Departure Orders

Informational

Preventive/
Protective

Coercive/
Penal

Express/ Implied in Charter

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

Delegated by Law

- Contempt
- Subpoena
- Search & Seizure



How many **Rules** on **Rule-Making** can you name?



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
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





Please give us an example
of a **Valid Rule.**
Invalid Rule.



Valid Rules

<i>Law</i>	<i>Rules</i>
20% on sale of goods and services	Exempt from discount membership dues
BIR duty to assess and collect tax due	Obligates registration of book of accounts and pay annual registration fees
DAR to CA	DAR to OP to CA
exclusive authority to investigate	withheld right to examine and cross-examine during investigations



Invalid Rules

<i>Law</i>	<i>Rules</i>
20% on sale of goods and services	Discount not extend to fees for locker rental in golf courses
MMDA on traffic management	LGU ordinances on traffic management
BIR duty of assessment and collection of tax due	Requiring submission of affidavits containing fee structures/ factors
SEC jurisdiction over corporations	SEC jurisdiction over accountants
Limits on media campaign	Limits is aggregate for all stations
New Good Conduct Time Allowance includes any offender	Excluded recidivists
Non-discretionary pass-fail criteria under GPRA	Discretionary pre-qualification regime



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.



COMELEC

<i>Type</i>	<i>Example</i>
<i>Supplementary</i>	Implement Continuing Registration Act
<i>Interpretative</i>	Opinions of COMELEC Law Department
<i>Procedural</i>	Disqualifying candidates
<i>Penal</i>	Violation of Fair Election Act rules
<i>Contingent</i>	Choice of automated election system
<i>Internal</i>	Designation of Comms.-in-Charge



Why do we need to
distinguish among these
6 types?



Why Differentiate?

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



Can COMELEC regulate and impose sanctions on social media/ deep fakes?

COMELEC'S AUTHORITY TO REGULATE SOCIAL MEDIA (AND PROVIDE PENALTIES FOR VIOLATIONS)

COMELEC HAS THE:

BROAD AUTHORITY

1. Mandate to ensure **CHOPFE** (*Credible, Honest, Orderly, Peaceful and Free Elections*).
2. Obligation to **enforce and administer all laws and regulations** relative to the conduct of an **election**.
3. Power to **promulgate rules and regulations** (*including penal rules*) but the rules must not be inconsistent with law (*Subordinate Legislation*). It has no power to enact and amend laws.
4. Autonomy to **adopt measures**, even if there is no express provision of law, in furtherance of its mandate and for as long as no law is violated.

SPECIFIC AUTHORITY

1. Under the Omnibus Election Code (OEC), prescribe the use or adoption of the latest (*including use of internet*) **technological and electronic devices**, taking into account the situation prevailing (*includes future approaches*) in the area.
2. Under the OEC, **stop any illegal election activity**, or confiscate, tear down, and stop any **unlawful, libelous, misleading or false election propaganda**.
3. Under the OEC, authority to **regulate mass media** (*includes social media*).
 - Authority to **disqualify** the candidate for unlawful use of mass media.
4. Under the Fair Election Act (FEA), ensure that bona fide candidates for any public office shall be free from any form of **harassment and discrimination** (*includes deep fakes and misinformation*).
 - Authority to **prosecute** offenders of FEA rules.
5. Capability to require filers of the **Certificates of Candidacy** (CoCs) to allow the **sharing**, posting and publication of the CoCs except signatures (*compliant with the Data Privacy Act*).
6. Assist in the **prosecution of crimes under Special Laws and the Revised Penal Code** (*Libel, Cyber Libel, Unlawful Means of Publication, Using Fictitious Name and Concealing True Name, and Intriguing against Honor*).



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



Why is it important to distinguish between **Quasi-Legislative** and **Quasi-Judicial Powers??**

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
Issuance of Resolution on Reinvestment Fund for Sustainable Capital Expenditures	Declaring improper the reinvestment



Quasi-Legislative vs. -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; affect rights)
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



**Describe the nature of the
proceedings when an AA
grants a franchise?**

- a. Administrative
- b. Quasi-Judicial



QJ Proceedings

- Character: Adversarial, quasi-judicial, civil
- Administrative: Determine facts, grant permissions
- 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



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



Judicial Review of Factual Findings

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

1. Grave abuse of discretion
2. Not based on substantial evidence
3. Fraud, mistake, collusion
4. Palpable errors
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 to Rule
on Exhaustion applicable
during Elections.**



Exceptions

1. Pure question of Law
2. Constitutionality
3. Transcendental issues
4. Urgency
5. Strong public interest



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Thank you.