CHAPTER 4
POWER OF EMINENT DOMAIN

Power of eminent domain in general

Definition and nature of eminent domain of LGUs

BELUSO VS. MUNICIPALITY OF PANAY, G.R. No. 153974 (August 7, 2006) FIRST DIVISION While the power of eminent domain may be validly delegated to local government units (LGUs), other public entities and public utilities, the exercise of such power by the delegated entities is not absolute. The scope of such delegated power is narrower than that of the delegating authority and may be exercised only when authorized by Congress, subject to its control and the restraints imposed through the law conferring the power or in other legislations. Thus, strictly speaking, the power of eminent domain delegated to an LGU is in reality not eminent but "inferior." The national legislature is still the principal of the LGUs, and the latter cannot go against the principal's will or modify the same.

MASIKIP VS. CITY OF PASIG, G.R. No. 136349 (January 23, 2006) SECOND DIVISION; LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC Local government units have no inherent power of eminent domain. Local governments can exercise such power only when expressly authorized by the Legislature. By virtue of the Local Government Code of 1991, Congress conferred upon local government units the power to expropriate. Further, the exercise by local government units of the power of eminent domain is not absolute. The exercise thereof is subject to the statutory requirements.

JESUS IS LORD CHRISTIAN SCHOOL FOUNDATION V. CITY OF PASIG, G.R. No. 152230 (August 9, 2005) SECOND DIVISION When the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained. Corollarily, the condemnor has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the requirements provided by law for the valid exercise of the power of eminent domain.

HEIRS OF SAGUITAN VS. CITY OF MANDALUYONG, G.R. No. 135087 (March 14 2000) THIRD DIVISION Eminent domain is the right or power of the sovereign state to appropriate private property to particular uses to

promote public welfare. Although it is legislative in nature, it may be validly delegated to local government units, other public entities and public utilities, subject to terms stated in the delegating law.

LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC Local government units have no inherent power of eminent domain. Local governments can exercise such power only when expressly authorized by the Legislature. By virtue of the Local Government Code of 1991, Congress conferred upon local government units the power to expropriate. However, the exercise by local government units of the power of eminent domain is not absolute. The exercise thereof is subject to the statutory requirements.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC Ordering a particular type of business to wind up, transfer, relocate or convert to an allowable type of business in effect permanently restricts the use of property and thus goes beyond regulation and must be recognized as a taking of the property without just compensation. It is intrusive and violative of the private property rights of individuals.

Police power distinguished from eminent domain

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION In the exercise of police power, there is a limitation on or restriction of property interests to promote public welfare which involves no compensable taking. Compensation is necessary only when the state's power of eminent domain is exercised. In eminent domain, property is appropriated and applied to some public purpose. Property condemned under the exercise of police power, on the other hand, is noxious or intended for a noxious or forbidden purpose and, consequently, is not compensable. The restriction imposed to protect lives, public health and safety from danger is not a taking. It is merely the prohibition or abatement of a noxious use which interferes with paramount rights of the public. In the regulation of the use of the property, nobody else acquires the use thereof or interest therein, hence there is no compensable taking.

DIDIPIO EARTH-SAVERS' MULTI-PURPOSE ASSOCIATION, INCORPORATED VS. GOZUN, G.R. No. 157882 (March 30, 2006) FIRST DIVISION The power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. Although both

police power and the power of eminent domain have the general welfare for their object, and recent trends show a mingling of the two with the latter being used as an implement of the former, there are still traditional distinctions between the two. Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is compensable taking. In the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein. If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC If the intended exercise of police power amounts to taking or confiscation, there must be payment of just compensation. The ordinance which forbids the running of the enumerated businesses and instructs its owners/operators to wind up business operations or to transfer outside the area or convert said businesses into allowed businesses is unreasonable and oppressive as it substantially divests the respondent of the beneficial use of its property. An ordinance which permanently restricts the use of property that it can not be used for any reasonable purpose goes beyond regulation and must be recognized as a taking of the property without just compensation. It is intrusive and violative of the private property rights of individuals.

PASONG BAYABAS FARMERS ASSOCIATION VS. COURT OF APPEALS G.R. Nos. 142359 and 142980 (May 25, 2004) SECOND DIVISION The authority of a municipality to issue zoning classification is an exercise of its police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribed, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC Unlike the power of eminent domain, police power is exercised without provision for just compensation. Article 436 of the Civil Code provides that when any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he/she can show that such condemnation or seizure is unjustified. However, it may not be done arbitrarily or unreasonably. But the burden of showing that it is unjustified lies on the aggrieved party.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC The demolition of the subdivision to ease traffic decongestion does not amount to deprivation of property without due process of law or expropriation without just compensation. There is no taking of property involved here. Certainly, the duty of a local executive is to take care of the needs of the greater number, in many cases, at the expense of the minority.

QUEZON CITY VS. ERICTA, G.R. No. L-34915 (July 24 1983) FIRST DIVISION The power to regulate does not include the power to prohibit. *A fortiori*, the power to regulate does not include the power to confiscate. Compelling a private cemetery to allocate a portion of its land for indigent families involves the exercise of eminent domain, not police power, since there is taking. Just compensation must be paid. The ordinance cannot also be considered as valid exercise of police power. Police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare.

MIRANDA VS. CITY OF BACOLOD, G.R. No. L-12606 (June 29, 1959) EN BANC A municipal ordinance which requires the putting up of arcades on both sides of the street without the payment of just compensation by a municipal corporation is not illegal, being a measure of protection and safety of the inhabitants against fire under the authority of the general welfare clause granted by law to local governments.

PEOPLE VS. FAJARDO, G.R. No. 121712 (August 29, 1958) EN BANC A Municipal Ordinance is unreasonable and oppressive if it operates to permanently deprive appellants of the right to use their own property; it then oversteps the bounds of police power without just compensation. But

while property may be regulated in the interest of the general welfare and, in its pursuit, the State may prohibit structures offensive to sight, the State may not, under guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. To legally achieve that result, the landowner should be given just compensation and an opportunity to be heard.

UNITED STATES VS. TORIBIO, G.R. No. 5060 (January 26, 1910) FIRST DIVISION Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, constitutes a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners.

AYALA DE ROXAS VS. CITY OF MANILA, G.R. No. L-3144 (November 19, 1907) FIRST DIVISION) The imposition of burden over a private property through easement was considered taking; hence, payment of just compensation is required. The easement intended to be established, whatever may be the object thereof, is not merely a real right that will encumber the property, but is one tending to prevent the exclusive use of one portion of the same, by expropriating it for public use which, be it what it may, can not be accomplished unless the owner of the property condemned or seized be previously and duly indemnified.

LGU property may be taken by State under power of eminent domain.

HEIRS OF ARDONA VS. REYES, G.R. Nos. L-60549 and 60553-60555 (October 26, 1983) EN BANC Expropriation by the Philippine Tourism Authority under Presidential Decree No. 564 of lands owned by local government for promotion of tourism is a valid exercise of state's power of eminent domain. The State power of eminent domain is inseparable from sovereignty being essential to the existence of the State and inherent in government. The constitutional restraints are public use and just compensation. The concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.

MUNICIPALITY OF PAETE VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. No. L-21576 (May 29, 1970) EN BANC While the National Government may expropriate the waterworks system of a municipality, it may validly do so only by providing for and paying the municipality concerned the just compensation due it. Consequently, said municipality continues to be the owner of the water system involved and is entitled to have it in its possession and under its administration and control, until the

lawful and effective expropriation thereof by the State is made.

Limitations on the power

BELUSO VS. MUNICIPALITY OF PANAY, G.R. No. 153974 (August 7, 2006) FIRST DIVISION Several requisites must concur before local government unit (LGU) can exercise the power of eminent domain: (1) An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws; and (4) A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC There are two legal provisions which limit the exercise of this power: (1) no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws; and (2) private property shall not be taken for public use without just compensation. Thus, the exercise by local government units of the power of eminent domain is not absolute. In fact, Section 19 of the Local Government Code of 1991 itself explicitly states that such exercise must comply with the provisions of the Constitution and pertinent laws.

UY VS. GENATO, G.R. No. L-37399 (May 29, 1974) SECOND DIVISION An owner whose property has been expropriated by a city must be accorded his/her constitutional right to be heard as required by procedural due process to enable him/her to prove his/her claim to just compensation as mandated by the 1973 Constitution. An expropriation undertaken pursuant to presidential decrees and letters of instruction under the basic martial law proclamation is not beyond judicial scrutiny.

CITY OF MANILA VS. GAWTEE, G.R. No. L-47306 (December 21, 1940) EN BANC It is no bar to condemnation proceedings by a City to acquire a parcel of land for street widening purposes that there had at one time existed an agreement between the owner's predecessor in title and the city whereby in consideration of the predecessor's being allowed to erect a warehouse on the property, he/she agreed not to claim any damage which might result by virtue of projected expropriation of the property and to sell it to the city at its assessed value for tax purposes, inasmuch as the agreement had no fixed term and none had been judicially fixed for it.

General requirements for the valid exercise of the power of eminent domain

ANTONIO VS. GERONIMO, G.R. No. 124779 (November 29, 2005) SECOND DIVISION Local government units may exercise the power of eminent domain, subject to the limitations embodied under the law. The *Sangguniang Bayan*, being a local legislative body, may exercise the power to expropriate private properties, subject to the following requisites, all of which must concur: (1) an ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property; (2) The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) there is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws; and (4) a valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

ILOILO CITY VS. LEGASPI, G.R. No. 154614 (November 25, 2004) SECOND DIVISION The requisites for authorizing immediate entry in the exercise of a local government's right of eminent domain are as follows: (1) the filing of a complaint for expropriation sufficient in form and substance; and (2) the deposit of the amount equivalent to 15% of the fair market value of the property to be expropriated based on its current tax declaration. Upon compliance with these requirements, the issuance of a writ of possession becomes ministerial. For a writ of possession to issue, only two requirements are required: the sufficiency in form and substance of the complaint and the required provisional deposit. In fact, no hearing is required for the issuance of a writ of possession. The sufficiency in form and substance of the complaint for expropriation can be determined by the mere examination of the allegations of the complaint.

BARDILLON VS. MASILI, G.R. No. 146886 (April 30, 2003) THIRD DIVISION Under Section 19 of the Local Government Code of 1991, the requisites for authorizing the immediate entry of the government in expropriation proceedings are as follows: (1) the filing of a complaint for expropriation, sufficient in form and substance; and (2) the deposit of the amount equivalent to 15% of the fair market value of the property based on its current tax declaration. The Regional Trial Courts have the power to inquire into the legality of the exercise of the power of eminent domain and whether or not there is a genuine necessity for it.

HEIRS OF SAGUITAN VS. CITY OF MANDALUYONG, G.R. No. 135087 (March 14, 2000) THIRD DIVISION The requisites for a valid exercise of the power of eminent domain by local government unit are: (1) An ordinance (not a resolution) enacted by the local legislative council authorizing the local chief executive to exercise the power of eminent domain over a particular private property; (2) The power is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless; (3) There is payment of just compensation; and (4) A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

Invalid use of property or denial of building permits amounts to taking

PEOPLE VS. FAJARDO, G.R. No. 121712 (August 29, 1958) EN BANC While the property may be regulated in the interest of the general welfare and in its pursuit, the State may prohibit structure offensive to sight, the State may not, under the guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve and assure the aesthetic appearance of the community. To legally achieve that result, the landowner should be given just compensation.

HIPOLITO VS. CITY OF MANILA, G.R. No. L-3887 (August 21, 1950) EN BANC The refusal of the City engineer to issue a building permit to private landowners constitutes eminent domain when there is no law or ordinance requiring private landowners to conform to the proposed widening of the street approved by the Urban Commission. Where the City has not expropriated the strip of land affected by the proposed widening of street, and inasmuch as there is no legislative authority to establish a building line, the denial of this permit would amount to the taking of private property for public use under the power of eminent domain without following the procedure prescribed for the exercise of such power.

DE ROXAS VS. CITY OF MANILA, G.R. No. L-3144. (November 19, 1907) EN BANC Section 5 of the Act of Congress of 1902 provides that no person shall be deprived of life, liberty, or property without due process. The act of the city engineer and the municipal board in constantly denying the issuance of a license in order that the owner can construct a terrace over the house and the canal alongside it was tantamount to depriving the owner of the enjoyment, use and exclusive possession of a strip of her property. The municipal board cannot compel the owner to leave vacant the property for the purpose of using the same as a wharf or public way. The refusal to grant a license or the enactment of an

ordinance whereby a person may be deprived of property or rights, or an attempt thereat is made, without previously indemnifying him/her therefor, is not, nor can it be, due process of law.

Public purpose and necessity

Foundation of power is genuine public necessity, public use

MASIKIP VS. CITY OF PASIG, G.R. No. 136349 (January 23, 2006) SECOND DIVISION The right to take private property for public purposes necessarily originates from "the necessity" and the taking must be limited to such necessity. Important as the power of eminent domain may be, the inviolable sanctity which the Constitution attaches to the property of the individual requires not only that the purpose for the taking of private property be specified. The genuine necessity for the taking, which must be of a public character, must also be shown to exist. Thus, there is no genuine necessity when taking of private property is done for the benefit of a small community which seeks to have its own sports and recreational facility, notwithstanding the fact that there is a recreational facility only a short distance away. Such taking cannot be considered to be for public use.

JESUS IS LORD CHRISTIAN SCHOOL FOUNDATION V. CITY OF PASIG, G.R. No. 152230 (August 9, 2005) SECOND DIVISION; LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC The foundation of the right to exercise eminent domain is genuine necessity and that necessity must be of public character. Government may not capriciously or arbitrarily choose which private property should be expropriated.

JESUS IS LORD CHRISTIAN SCHOOL FOUNDATION V. CITY OF PASIG, G.R. No. 152230 (August 9, 2005) SECOND DIVISION A local government may determine the location and route of the land to be taken unless such determination is capricious and wantonly injurious. The condemnor must show the necessity for the constructing the road particularly in the owner's property and not elsewhere. The claim of the local government that the piece of property is the "shortest and most suitable access road" and that the "lot has been surveyed as the best possible ingress and egress" must be proven by a showing of a preponderance of evidence. Further, the conduct of ocular inspection, being part of the trial of the expropriation case, all parties must be notified and must be present.

LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC There was no showing at all why the subject property was singled out for

expropriation by the city ordinance or what necessity impelled the particular choice or selection. The city ordinance stated no reason for the choice of petitioners' property as the site of a socialized housing project. Condemnation of private lands in an irrational or piecemeal fashion or the random expropriation of small lots to accommodate no more than a few tenants or squatters is certainly not the condemnation for public use contemplated by the Constitution. This is depriving a citizen of his/her property for the convenience of a few without perceptible benefit to the public.

MUNICIPALITY OF MEYCAUAYAN VS. INTERMEDIATE APPELLATE COURT, G.R. No. 72126 (January 29, 1988) THIRD DIVISION There is no question here as to the right of the State to take private property for public use upon payment of just compensation. What is questioned is the existence of a genuine necessity therefor. However, the Court has ruled that the government may not capriciously choose what private property should be taken.

HEIRS OF ARDONA VS. REYES, G.R. Nos. L-60549 and 60553-60555 (October 26, 1983) EN BANC Expropriation by the Philippine Tourism Authority under Presidential Decree No. 564 of lands owned by local government for promotion of tourism is a valid exercise of state's power of eminent domain. The concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.

ARCE VS. GENATO, G.R. No. L-40587 (February 27, 1976) SECOND DIVISION The expansion and beautification of a public park comes definitely under the category of public use as required by the 1973 Constitution.

PROVINCE OF RIZAL VS. SAN DIEGO, INC., G.R. No. L-10802 (January 22, 1959) EN BANC To justify expropriation, it must be for a public purpose and public benefit, and that just to enable the tenants of a piece of land to own a portion of it, even if they and their ancestors had cleared the land and cultivated it for their landlord for many years, is no valid reason or justification under the Constitution to deprive the owner or landlord of his/her property by means of expropriation.

CITY OF MANILA VS. ARELLANO LAW COLLEGES, G.R. No. L-2929 (February 28, 1950) EN BANC To authorize the condemnation of any particular land by a grantee of the power of eminent domain, a necessity must exist for the taking thereof for the proposed uses and purposes. The very foundation of the right to exercise eminent domain is a genuine necessity, and that necessity must be of a public character. The ascertainment of

the necessity must precede or accompany, and not follow, the taking of the land. Necessity within the rule that the particular property to be expropriated must be necessary, does not mean an absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and property owner consistent with such benefit.

MANILA RAILROAD CO. VS. MITCHEL, G.R. No. 19280 (March 16, 1923) EN BANC The Jones Law provides that in the exercise of the power of eminent domain, only as much land can be taken as is necessary for the legitimate purpose of the condemnation. The term 'necessary' in this connection does not mean absolutely indispensable but requires only a reasonable necessity of the taking for the purpose in view and the growth and future needs of the enterprise may be considered.

Property already devoted to public use may not be taken for another public use.

CITY OF MANILA VS. CHINESE COMMUNITY OF MANILA, G.R. No. L-14355 (October 31, 1919) EN BANC Since the Chinese cemetery in the City of Manila is a public cemetery already devoted to public use, it may no longer be taken for another public purpose.

Just compensation

Concept of just compensation

YUJUICO VS. ATIENZA, G.R. No. 164282 (October 12, 2005) SECOND DIVISION Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered 'just' for the property owner is made to suffer the consequence of being immediately deprived of his/her land while being made to wait for five years.

MUNICIPALITY OF DAET VS. COURT OF APPEALS, G.R. No. L-35861 (October 18, 1979) FIRST DIVISION The assessed value of a property cannot be made the basis of just compensation. The decree only fixes the provisional value of the property to serve as the basis for the immediate occupancy of the property being expropriated.

CITY OF MANILA VS. CORRALES, G.R. No. 10076 (October 28, 1915) EN BANC In taking private property for public use under the power of

eminent domain, the persons whose property is taken should be paid the reasonable market value of their property but they should not take advantage of the necessity of the public by demanding more than the value of their property. Neither should the Government be allowed to take the property at a lesser price than its market value at the time of the expropriation. The market value is the value purchasers generally would pay for the property.

CITY OF MANILA VS. ESTRADA, G.R. No.7749 (September 9, 1913) EN BANC 'Compensation' under the Spanish Code of Civil Procedure means an equivalent for the value of the land taken. Anything beyond that is more and anything short of that is less than compensation. The word 'just' is used merely to intensify the meaning of the word 'compensation'.

Determination of compensation is a judicial and not a legislative function.

ARIAS VS. SANDIGANBAYAN, G.R. No. 81563 (December 19, 1989) EN BANC A law cannot fix the just compensation in eminent domain cases to the assessed value stated by a landowner in his/her tax declaration or fixed by the municipal assessor, whichever is lower. Other factors must be considered. These factors must be determined by a court of justice and not by municipal employees.

CITY GOVERNMENT OF TOLEDO CITY VS. FERNANDEZ, G.R. No. L-45144 (April 15, 1988) FIRST DIVISION The finding of the court *a quo* as to the reasonable price of the property will not be disturbed on appeal unless a clear error or grave abuse of discretion has been demonstrated.

CITY OF CEBU VS. LEDESMA, G.R. No. 16723 (July 30, 1965) EN BANC Reports submitted by the commissioners in condemnation proceedings are not binding, but merely advisory in character as far as the court is concerned. In condemnation proceedings commenced by the Government or any of its dependencies, the assessed value of the property is deemed no more than a *prima facie* evidence of its market value.

PROVINCIAL GOVERNMENT OF BULACAN VS. ADUANA, G.R. No. 15648 (October 13, 1921) EN BANC In expropriation proceedings, the court may substitute its own estimate of the value as gathered from the record submitted to it, in cases, among others, where the commissioners have disregarded a clear preponderance of evidence. The fact that the Government had, at one time, paid an exorbitant price for one parcel of land, is no reason or justification for requiring it to pay the same price on all subsequent occasions. An isolated transaction cannot serve as the

valuation in subsequent cases, especially if the landowners voluntarily sold to the Government the portions of their lands needed in the construction of a road, at a much lower price.

Time of fixing of value of property is tacked at the time it is actually taken

CITY OF ILOILO VS. HON. CONTRERAS-BESANA, G.R. No. 168967 (February 12, 2010) FIRST DIVISION When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint**.**

CITY OF CEBU VS. DEDAMO, G.R. No. 142971 (May 7, 2002) FIRST DIVISION The applicable law as to the point of reckoning for the determination of just compensation is Section 19 of the Local Government Code of 1991 which expressly provides that just compensation shall be determined as of the time of actual taking.

MUNICIPALITY OF LA CARLOTA VS. BALTAZAR, G.R. No. L-30138 (May 30, 1972) EN BANC When a municipality takes possession before the institution of the condemnation proceedings, the value should be fixed as of the time of the taking of said possession, not of filing of the complaint, and that the latter should be the basis for the determination of the value, when the taking of the property involved coincides with or is subsequent to, the commencement of the proceedings.

PROVINCIAL GOVERNMENT OF RIZAL VS. DE ARAULLO, G.R. No. 36096 (August 16 1933) EN BANC In the exercise of the power of eminent domain, the property is to be considered in its condition and situation at the time it is taken, and not as enhanced by the purpose for which it is taken, as this is the true measure of the damages or just compensation recoverable. The owners of the land have no right to recover damages for unearned increment resulting from the construction of the public improvement for which the land was taken. To permit them to do so would be to allow them to recover more than the value of the land at the time when it was taken.

CITY OF MANILA VS. FERNANDA FELISA CORRALES, G.R. No. 10076 (October 28, 1915) EN BANC The owner is entitled to recover the value of the land at the time it was expropriated and he/she should not be charged with the expense necessary to put the property so taken in the condition in which the public desires to use it.

Payment of just compensation is required, regardless of the passage of time.

ALFONSO VS. PASAY CITY, G.R. No. L-12754 (January 30, 1960) EN BANC Registered lands are not subject to prescription. On grounds of equity, the government should pay for private property which it appropriates for the benefit of the public, regardless of the passage of time. Thus, in 1925 when the Municipality extended a road and passed through the lot of owner where no expropriation proceedings was instituted, entitles the owner to compensation for the use of his/her private property.

Remedies for non-payment of just compensation

CITY OF ILOILO VS. HON. CONTRERAS-BESANA, G.R. No. 168967 (February 12, 2010) FIRST DIVISION A government entity's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages.

YUJUICO VS. ATIENZA, G.R. No. 164282 (October 12, 2005) SECOND DIVISION; MAKATI VS. COURT OF APPEALS, G.R. Nos. 89898-99 October 1, 1990 THIRD DIVISION Where a municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to compel the enactment and approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefore.

Procedures in Expropriation

Expropriation ordinance is required

ORTEGA VS. CITY OF CEBU, G.R. Nos. 181562-63 (October 2, 2009) THIRD DIVISION A trial court cannot, by itself, order a city council to enact an appropriation ordinance in order to satisfy its expropriation judgment. The remedy of the owner of the expropriated property is to file a mandamus case against the city in order to compel its sanggunian to enact another appropriation ordinance replacing a previous one which charged the payment for just compensation to a non-existent bank account.

BELUSO VS. MUNICIPALITY OF PANAY, G.R. No. 153974 (August 7, 2006) FIRST DIVISION A local government unit cannot authorize an expropriation of private property through a mere resolution of its lawmaking body. The Local Government Code expressly requires an ordinance for the purpose,

and a resolution that merely expresses the sentiment of the municipal council will not suffice.

ANTONIO VS. GERONIMO, G.R. No. 124779 (November 29, 2005) SECOND DIVISION In the exercise of the power to expropriate by local governments, the enabling instrument must be an ordinance, not a resolution since the Local Government Code of 1991 is specific and categorical in this regard. A resolution merely expresses at most an intention to expropriate. There was no positive act of instituting the intended expropriation proceedings.

HEIRS OF SAGUITAN VS. CITY OF MANDALUYONG, G.R. No. 135087 (March 14, 2000) THIRD DIVISION; MUNICIPALITY OF PARANAQUE VS. V.M. REALTY CORPORATION, G.R. No. 127820 (July 20, 1998) FIRST DIVISION In the exercise of the power to expropriate by local governments, the enabling instrument must be an ordinance, not a resolution since the Local Government Code of 1991 is specific in this regard.

Review by higher sanggunian of ordinance, limitations

MODAY VS. COURT OF APPEALS, G.R. No. 107916 (February 20, 1997) SECOND DIVISION The authority of the supervising-higher local government in exercising its review authority over ordinances of supervised-lower local government is limited to questions of law/legal questions, *i.e.*, whether or not the ordinances are within the powers of local government to enact; whether or not *ultra vires*; and whether or not procedures were followed. The power to review does not extend to choice of property to be expropriated.

Burden of proof to show valid and definite offer to the owner belongs to LGU.

JESUS IS LORD CHRISTIAN SCHOOL FOUNDATION VS. CITY OF PASIG, G.R. No. 152230 (August 9, 2005) SECOND DIVISION A local government has the burden of proving compliance with the mandatory requirement of a valid and definite offer to the owner of the property before filing its complaint and the rejection thereof by the latter. It is incumbent upon the condemnor to exhaust all reasonable efforts to obtain the land it desires by agreement. Failure to prove compliance with the mandatory requirement will result in the dismissal of the complaint. The offer must be complete, indicating with sufficient clearness the kind of contract intended and definitely stating the essential conditions of the proposed contract. An offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned

contract. There is no valid offer when the letter sent by the local government to the owner is a mere invitation to a conference to discuss the project and the price.

CITY OF CEBU VS. COURT OF APPEALS, G.R. No. 109173 (July 5, 1996) THIRD DIVISION A complaint for eminent domain which made no mention of a valid and definite offer and that such offer was not accepted but alleges that repeated negotiations were made but failed is sufficient to show cause of action for the trial to proceed.

Agricultural land, approval of DAR not required

PROVINCE OF CAMARINES SUR VS. COURT OF APPEALS, G.R. No. 103125 (May 17, 1993) FIRST DIVISION In the expropriation of agricultural lands, approval of the Departments of Agrarian Reform (DAR) are not required. Section 9 of Batas Pambansa Blg. 337 does not intimate in the least that local government units must first secure the approval of the DAR for the conversion of lands from agricultural to non-agricultural use, before they can institute the necessary expropriation proceedings. Likewise, there is no provision in the Comprehensive Agrarian Reform Law which expressly subjects the expropriation of agricultural lands by local government units to the control of the Department of Agrarian Reform. It is the legislative branch of the local government unit, not the DAR that shall determine whether the use of the property sought to be expropriated shall be public, the same being an expression of legislative policy.

Notice of intention to expropriate does not bind the land.

PROVINCE OF RIZAL VS. SAN DIEGO, INC., G.R. No. L-10802 (January 22, 1959) EN BANC The mere notice of the intention of the Government to expropriate a parcel of land does not bind either the land or the owner so as to prevent subsequent disposition of the property such as mortgaging or even selling it in whole or by subdivision.

Stages in expropriation proceedings

MUNICIPALITY OF BIÑAN VS. GARCIA, G.R. No. 69260 (December 22, 1989) FIRST DIVISION There are two stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff (municipal corporation) to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. The second phase of the eminent domain action is concerned with the determination by the Court of the just compensation for the property sought to be taken. This is done by the Court with the assistance of not

more than three commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too.

NIETO VS. YSIP, G.R. No. L-7894 (May 17, 1955) EN BANC A municipality in the exercise of its power to expropriate cannot disregard the provisions of the Rules of Court. The Rules require: (1) the presentation by defendants of their objections and defenses to the right of plaintiff to take the property for the use specified, which objections and defenses shall be set forth in a single motion to dismiss; (2) the hearing on the motion and the unfavorable resolution thereon by the court; and (3) the appointment of commissioners to assess the just compensation for the property.

RTC has jurisdiction over expropriation.

MASIKIP VS. CITY OF PASIG, G.R. No. 136349 (January 23, 2006) SECOND DIVISION Judicial review of the exercise of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking.

BARDILLON VS. MASILI, G.R. No. 146886 (April 30, 2003) THIRD DIVISION An expropriation suit is incapable of pecuniary estimation. Accordingly, it falls within the jurisdiction of Regional Trial Courts, regardless of the value of the subject property. An expropriation suit does not involve the recovery of a sum of money but involves the government's authority to expropriate.

Effect on land covered by expropriation proceedings

DE LOS SANTOS VS. LIMBAGA, G.R. No. L-15976 (January 31, 1962) EN BANC *Mandamus* will not lie to compel the City Engineer to approve an application for the construction of buildings where the land on which the buildings are sought to be erected is already the subject matter of expropriation proceedings instituted by the City pursuant to a resolution approved by the City Council.

FERY VS. MUNICIPALITY OF CABANATUAN, G.R. No. 17540 (July 23, 1921) EN BANC When private land is expropriated for a particular public use, the same does not return to its former owner upon an abandonment of the particular use for which the land was expropriated. When land has been acquired for public use in fee simple unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be devoted to a different use, without any impairment of the estate

or title acquired, or any reversion to the former owner.

Requisites to allow entry or possession

KNECHT, INC. VS. MUNICIPALITY OF CAINTA, G.R. No. 145254 (July 20, 2006) SECOND DIVISION For properties under expropriation, Section 19 of the Local Government Code now requires the deposit of an amount equivalent to fifteen percent (15%) of the fair market value of the property based on its current tax declaration.

BARDILLON VS. MASILI, G.R. No. 146886 (April 30, 2003) THIRD DIVISION Under Section 19 of the Local Government Code of 1991, the requisites for authorizing immediate entry, *i.e.*, issuance of a writ of possession are: (1) filing of a complaint for expropriation sufficient in form and substance; and (2) deposit of the amount equivalent to 15% of the fair market value of the property to be expropriated based on its current tax declaration.

ARCE VS. GENATO, G.R. No. L-40587 (February 27, 1976) SECOND DIVISION Under Presidential Decree No. 42, upon filing in the proper court of the complaint in eminent domain proceedings or at anytime thereafter, and after due notice to the defendant, plaintiff shall have the right to take or enter upon the possession of the real property involved if he/she deposits with the Philippine National Bank, in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation to be held by said bank subject to the orders and final disposition of the court.

No need for hearing for writ of possession.

ILOILO CITY VS. LEGASPI, G.R. No. 154614 (November 25, 2004) SECOND DIVISION Hearing is not required for the issuance of a writ of possession. The determination of whether or not the complaint is sufficient in form and substance can be ascertained by the mere examination of the allegations of the complaint.

Dismissal of the complaint, personality to file appeal

BARANGAY MATICTIC VS. ELBINIAS, G.R. No. L-48769 (February 27, 1987) SECOND DIVISION Regarding the annulment and setting aside of the orders of the Court of First Instance dismissing the expropriation proceedings, the proper party to appeal the same or seek a review of such dismissal would be the Municipality of Norzagaray. *Barangay* Matictic, which is a different political entity, although a part of the municipality has no legal personality to question the dismissal. It must be

considered that the Municipality of Norzagaray did not appeal the said Order of dismissal and hence the same became final. The expropriation case ceased to exist and there is consequently no more proceeding wherein *Barangay* Matictic may possibly intervene.

Withdrawal of the complaint

ORTEGA VS. CITY OF CEBU, G.R. Nos. 181562-63 (October 2, 2009) THIRD DIVISION A city cannot ask for the modification of an expropriation judgment, much less withdraw from the expropriation proceedings, where the trial court's order of expropriation and order fixing just compensation have long become final and executory.

CITY OF MANILA VS. RUYMANN, G.R. No. 11519 (January 17, 1918) EN BANC If there is no statutory or charter provision, the general rule is that a municipality may dismiss condemnation proceedings, at any time before title passes, and that if the title does not pass prior to confirmation or judgment, the proceedings may be dismissed even after the return of an award or verdict. The right of a city to dismiss the action with the consent of the court is universally recognized.

If restoration of possession is neither convenient nor feasible, the only relief available is for the city to make due compensation.

EUSEBIO VS. LUIS, G.R. No. 162474 (October 13, 2009) THIRD DIVISION The non-filing of an expropriation case will not necessarily lead to the return of the property to its owner. Recovery of possession can no longer be allowed where the owner was guilty of estoppel and, more importantly, where what was constructed on the property was a public road. What is left to the owner is the right to just compensation.

MUNICIPALITY OF LEGASPI VS. A. L. AMMEN TRANSPORTATION CO., INC., G.R. No. L-22377 (November 29, 1968) EN BANC A registered owner of a land used by a city public road could bring an action to recover possession at any time because possession is one of the attributes of ownership of land. The city could not acquire title through prescription. However, when restoration of possession by the city is neither convenient nor feasible because it is now and has been used for road purposes, the only relief available is for the city to make due compensation.

Eminent Domain and Statutes

R.A. No. 7279, Urban Development and Housing Act

LAGCAO VS. LABRA, G.R. No. 155746 (October 13, 2004) EN BANC There was no showing at all why the subject property was singled out for expropriation by the city ordinance or what necessity impelled the particular choice or selection. The city ordinance stated no reason for the choice of property as the site of a socialized housing project. Under Republic Act No. 7279, the Urban Development and Housing Act of 1992, private lands rank last in the order of priority for purposes of socialized housing. In the same vein, expropriation proceedings may be resorted to only after the other modes of acquisition are exhausted. Compliance with these conditions is mandatory.

ESTATE OF HEIRS OF THE LATE EX-JUSTICE JOSE B. L. REYES VS. CITY OF MANILA, G.R. Nos. 132431 and 137146 (February 13, 2004) THIRD DIVISION Due to the fatal infirmity in the City's exercise of the power of eminent domain, its complaint for expropriation must necessarily fail. In the exercise of this power, a local government must observe the limitations to the exercise of the power of eminent domain, especially with respect to the order of priority in acquiring private lands and in resorting to expropriation proceedings as a means to acquire the property for housing as set forth in Republic Act. No. 7279, the Urban Development and Housing Act of 1992, the law governing the expropriation of property for urban land reform and housing. Private lands rank last in the order of priority for purposes of socialized housing. Expropriation proceedings are to be resorted to only after the other modes of acquisition have been exhausted.

FILSTREAM INTERNATIONAL VS. COURT OF APPEALS, G.R. No. 125218 (January 23, 1998) THIRD DIVISION Local government units are not given an unbridled authority when exercising their power of eminent domain in pursuit of solutions to local problems. The Constitution and pertinent laws must be followed. Even Section 19 of Local Government Code of 1991 is very explicit that it must comply with the provisions of the Constitution and pertinent laws. The power of eminent domain of local governments for socialized housing purposes must be exercised pursuant to existing statutes such as the Urban Development and Housing Act.

R.A. No. 267, Expropriation of Landed Estates

MUNICIPAL GOVERNMENT OF CALOOCAN VS. CHOAN HUAT & CO., G.R. L-6301 (October 30, 1954) EN BANC Republic Act No. 267 only provides for the expropriation of large tracts of land leased to tenants to be bought

then sold at cost to the tenants.

MUNICIPALITY OF CALOOCAN VS. MANOTOK REALTY, G.R. L-6444 (May 14, 1954) EN BANC The power given to a municipality through Republic Act No. 267 limits expropriation to landed estates for purposes of subdivision to the occupants. Land subdivided among nine owners resulting to 4,375 square meters per person cannot be considered as a landed estate for purposes of expropriation by the municipality.

URBAN ESTATES, INC. VS. MONTESA, G.R. No. L-3830 (March 15, 1951) EN BANC A city could not expropriate a tract of land situated within the city limits where the land has been subdivided by its owners who have spent considerable money for its improvements and in the laying out of streets, and offered them for sale. The 1935 Constitution contemplates large-scale purchases or condemnation of lands with a view of instituting agrarian reforms and the alleviation of acute housing shortage.

LEE TAY AND LEE CHAY, INC. VS. CHOCO, G.R. No. L-3297 (December 29, 1950) EN BANC A City cannot expropriate a lot of an area of about 900 square meters to be resold to *bona fide* occupants, pursuant to the provisions of Commonwealth Act No. 538 and Republic Act No. 267 since these statutes only refer to big landed estates and not to small parcels to be resold to a few. The National government may not confer upon its instrumentalities like a City authority which it itself may not exercise.

CHAPTER 5
GENERAL POWERS OF LOCAL GOVERNMENTS

Power to sue and be sued

Test of liability is nature of task being performed.

MUNICIPALITY OF SAN FERNANDO, LA UNION VS. FIRME, G.R. No. L-52179 (April 8, 1991) FIRST DIVISION The test of liability of the municipality depends on whether or not the driver, acting on behalf of the municipality, is performing governmental or proprietary functions. The distinction of powers becomes important for purposes of determining the liability of the municipality for the acts of its agents which result in an injury to third persons. Under Section 13 of the Local Government Code of 1983, "Unless otherwise provided by law, no province, city, municipality or *barangay* shall be liable for injuries or damages to persons or property arising from the act or omission of any of its officers or employees while in the performance of their official functions."

GUILLERGAN VS. GANZON, G.R. No. L-20818 (May 25, 1966) EN BANC If so expressly provided in its charter, a local government may sue and be sued.

VDA. DE SARIA VS. MANGUBAT, CA-G.R. No. 29086-R (October 28, 1963) Political subdivisions are liable to private persons who suffer injuries through the negligence of its officers in the performance of their corporate or proprietary functions. However, it is immune from liability if the injuries occurred in the performance of political duties.

Liability attaches in performance of proprietary functions.

TORIO VS. FONTANILLA, G.R. No. L-29993 (October 23, 1978) FIRST DIVISION The holding of a fiesta was an exercise of a proprietary function. It is an act for the special benefit of the community and not for the general welfare of the public performed in pursuance of a policy of the State. Hence the municipality is liable for damages.

Liability attaches in case of breach of contract in performance of proprietary function.

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION There is no doubt that the North Cemetery is within the class of property which the City of Manila owns in its proprietary or private character. Furthermore, there is no dispute that

the burial lot was leased in favor of the private respondents. Hence, obligations arising from contracts have the force of law between the contracting parties. Thus a lease contract executed by the lessor and lessee remains as the law between them. Therefore, a breach of contractual provision entitles the other party to damages even if no penalty for such breach is prescribed in the contract.

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION Under the doctrine of *respondeat superior*, a City is liable for the tortuous act committed by its agents who failed to verify and check the duration of a contract of lease over a burial lot resulting in the premature exhumation of a person's remains. Well-settled is the rule that with respect to proprietary functions, a municipal corporation can be held liable to third persons *ex contractu*.

MENDOZA VS. DE LEON, G.R. No. L-9596 (February 11, 1916) EN BANC A municipality is not exempt from liability for negligent performance of its corporate, proprietary or business functions. In the administration of its patrimonial property, it can be regarded as a private person or individual in so far as its liability to third persons on contract or tort is involved. In this case, it is very clear that the leasing of a municipal ferry is not a governmental but a corporate function.

Liability under the Civil Code and Local Government Code for drillings and excavations

MUNICIPALITY OF SAN JUAN VS. COURT OF APPEALS, G.R. No. 121920 (August 9, 2005) THIRD DIVISION For liability to arise under Article 2189 of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof. On the other hand, a municipality's liability under Section 149 of the Local Government Code of 1983 for injuries caused by its failure to regulate the drilling and excavation of the ground for the laying of gas, water, sewer, and other pipes, attaches regardless of whether the drilling or excavation is made on a national or municipal road, for as long as the same is within its territorial jurisdiction.

Liability for breach of contract

MUNICIPALITY OF MONCADA VS. CAJUIGAN, G.R. No. L-7048 (January 12, 1912) EN BANC A municipality which enters into a contract with a private person for the lease of fishponds within the municipality may be held liable for forcibly ejecting the said lessee during the existence of the said

lease.

Liability for negligence

JAYME VS. APOSTOL, G.R. No. 163609 (November 27, 2008) THIRD DIVISION The municipality, as lawful employer, is liable for the negligent act of its driver. That the driver was assigned to the mayor at the time of the accident does not make the mayor personally liable.

ASSOCIATED BANK VS. COURT OF APPEALS, G.R. No. 107382 (January 31, 1996) SECOND DIVISION As a rule, a drawee bank cannot debit the current account of a municipal corporation because the bank paid checks issued by the province which bore forged endorsements. Unless the province was negligent to the point of substantially contributing to the loss in which case, the latter shares in the burden of the loss and the bank can charge the account of the province. Thus, where the province permitted a retired hospital cashier from encashing checks issued by it for the operations of the hospital and allowed in some occasions, another person, the new cashier, to collect said checks, the province is negligent.

Liability for defective roads and streets

GUILATCO VS. CITY OF DAGUPAN, G.R. No. 61516 (March 21, 1989) SECOND DIVISION The liability of public corporations for damages arising from injuries suffered by pedestrians from the defective condition of roads is expressed in Article 2189 of the Civil Code: "Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision." It is not necessary for the defective road or street to belong to the province, city or municipality for liability to attach. The article only requires that either control or supervision is exercised over the defective road or street.

CITY OF MANILA VS. TEOTICO, G.R. No. L-23052 (January 29, 1968) EN BANC Insofar as its territorial application is concerned, Republic Act No. 409 (Charter of Manila) is a special law and the Civil Code of the Philippines is a general legislation. With regards the subject matter of the provisions of Section 4, Republic Act No. 409 and Article 2189 of the Civil Code, the former establishes a general rule regulating the liability of the City for damages or injury to persons or property arising from the failure of city officers to enforce the provisions of said Act; while Article 2189 of the Civil Code constitutes a particular prescription making provinces, cities and municipalities liable for damages for the death or injury suffered by

any person by reason of the defective condition of roads, streets and other public works under the control or supervision of said municipal governments. In other words, Section 4 of Republic Act No. 409 refers to liability arising from negligence in general regardless of the object thereof, whereas Article 2189 of the Civil Code governs liability due to defective streets in particular. The Civil Code is controlling because the present action is based on the alleged defective condition of a road.

Liability for interest

BLUE BAR COCONUT CO. VS. CITY OF ZAMBOANGA, G.R. No. 20425 (December 24, 1965) EN BANC A municipal corporation may be required to pay interest on taxes illegally collected from the date the taxes were collected, since it had made use of the taxpayer's money.

Liability for attorney's fees and costs of suit

BLUE BAR COCONUT CO. VS. CITY OF ZAMBOANGA, G.R. No. 20425 (December 24, 1965) EN BANC In an action to recover license taxes improperly exacted, the taxpayer is entitled to recover attorney's fees.

CARLOS PALANCA VS. THE CITY OF MANILA, G.R. No. 15819 (October 27, 1920) EN BANC The rule that costs are imposed upon the unsuccessful party applies to municipal corporations.

Liability to local personnel and employees

CIVIL SERVICE COMMISSION VS. GENTALLAN, G.R. No. 152833 (May 9, 2005) EN BANC An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his/her illegal dismissal up to his/her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left his/her office and should be given the corresponding compensation at the time of his/her reinstatement. When there is no malice or bad faith that attended the illegal dismissal and refusal to reinstate on the part of the municipal officials, they cannot be held personally accountable for the back salaries. The municipal government should disburse funds to answer for the claims resulting from dismissal.

DAGADAG VS. TONGNAWA, G.R. Nos. 161166-67, (February 3, 2005) EN BANC The municipal mayor, being the appointing authority, is the real party in interest to challenge the disapproval by the Civil Service Commission (CSC) of the appointment of his/her appointee. The CSC's

disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval.

MIRANDA VS. CARREON, G.R. No. 143540 (April 11, 2003) EN BANC A proclaimed candidate who was later on disqualified has no legal personality to institute an action seeking to nullify a decision of the Civil Service Commission concerning the dismissal of municipal employees since he/she is not a real party in interest.

JAVIER VS. COURT OF APPEALS, G.R. No. 49065 (June 1, 1994) THIRD DIVISION The special circumstances of this case dictate that in lieu of reinstatement, petitioners are awarded backwages equivalent to five years, without qualification or deduction.

GUILLERGAN VS. GANZON, G.R. No. L-20818 (May 25, 1966) EN BANC If so expressly provided in its charter, a local government may sue and be sued. Municipal corporations may be held liable for back pay or wages of employees or laborers illegally separated from the service, including those involving primarily governmental functions. Market sweepers illegally separated by the abolition of their items may claim backwages.

ENCISO VS. REMO, G.R. No. L-23670 (September 30, 1969) EN BANC Municipal corporations may be held liable for the backpay or wages of employees or laborers illegally separated from the service, including those involving primarily governmental functions such as policemen. The unlawful exclusion of the officer from his/her position as a sergeant in the police force, by the municipal mayor was, to all intents and purposes, essentially equivalent to his/her illegal separation from the service for the period in question. The municipal mayor, as well as the municipality should be solidarily liable for the back salaries.

SUÑGA VS. CITY OF MANILA, G.R. No. 36844 (February 17, 1933) EN BANC When it has not been established that the accident occurred during the employment of a municipal employee, the municipality is not liable to pay indemnity.

Power of LGU to sue on behalf of community it represents

MUNICIPALITY OF MANGALDAN VS. MUNICIPALITY OF MANAOAG, G.R. No. L-11627 (August 10, 1918) EN BANC A municipality prejudiced by the action of another municipality is vested with the character of a juridical entity, is a corporation of public interest endowed with the personality to acquire and hold property, contract obligations, and bring civil and

criminal actions in accordance with the laws governing its organization, and it is entitled to file claims for the purpose of recovering damages, losses, and injuries caused to the community which it represents.

LGU may sue for violations of lease contracts.

ARMY AND NAVY CLUB VS. COURT OF APPEALS, G.R. No. 110223 (April 8, 1997) FIRST DIVISION As a lessor, a local government may file an action for illegal detainer against and demand the eviction of a corporation which has violated the lease contract and for non-payment of lease rentals after several demands.

Power to be sued, liability attaches to LGU not its officials

GUILLERGAN VS. GANZON, G.R. No. L-20818 (May 25, 1966) EN BANC If so expressly provided in its charter, a local government may sue and be sued.

TAN VS. DE LA FUENTE, G.R. No. L-3925 (December 14, 1951) EN BANC Section 2429 of the Revised Penal Code, which was reenacted in Section 3 of Republic Act No. 409, grants the City of Manila the authority to sue and be sued. There is no law that gives anyone the authority to sue the City Mayor and Treasurer. Any judgment that could be rendered against them for refund of license fees unlawfully levied and collected would be unenforceable against the City, and the funds of the latter in the possession or control of said officers could not be paid or disbursed by them to satisfy such judgment.

Local officials, personal liability

CIVIL SERVICE COMMISSION VS. SEBASTIAN, G.R. No. 161733, (October 11, 2005) EN BANC The municipal mayor, not the municipality alone must be impleaded in a petition assailing the dismissal of an employee whom he/she appointed even if the mayor acted in his/her official capacity when he/she dismissed the respondent. If not impleaded, he/she cannot be compelled to abide by and comply with its decision, as the same would not be binding on him/her.

NESSIA VS. FERMIN, G.R. No. 102918 (March 30, 1993) FIRST DIVISION While it is true that the mayor may not be compelled by *mandamus* to approve vouchers since they exceeded budgetary allocations, he/she may nevertheless be held liable for damages under Article 27 of the Civil Code for malicious inaction because he/she did not act on the vouchers.

An action for damages may be filed independently of an administrative or criminal case against the same defendant.

AMARO VS. SUMANGUIT, G.R. No. L-14986 (July 31, 1962) EN BANC The fact that appellants have another recourse (in connection with the crime of illegal discharge of firearm supposedly committed against one of them) by filing their complaint directly with the city attorney or by lodging an administrative charge against defendant, does not preclude an action for damages under Article 27 of the Civil Code and hence does not justify its dismissal.

Absence of malice and bad faith is a defense against personal liability of local officials.

TUZON VS. COURT OF APPEALS, G.R. No. 90107 (August 21, 1992) Liability under Article 27 of the Civil Code presupposes that the refusal or omission of a public official to perform his/her duty is attributable to malice or inexcusable negligence. Moreover, erroneous interpretation of an ordinance does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award for damages.

GORDON VS. VERIDIANO II, G.R. No. L-55230 (November 8, 1988) FIRST DIVISION The mayor is to be commended for his/her zeal in the promotion of the campaign against drug addiction, which has sapped the vigor and blighted the future of many of our people, especially the youth. The legal presumption is that he/she acted in good faith and was motivated only by his/her concern for the residents when he/she directed the closure of a drug store and the suspension of the permit of the other drug store. It appears, though, that he/she may have overreacted and was for this reason properly restrained by the respondent judge.

QUIMPO VS. MENDOZA, G.R. No. L-33052 (August 31, 1981) FIRST DIVISION When the city treasurer's actuations and decisions were not tainted with bad faith, complainant is not entitled to actual, moral or exemplary damages An erroneous interpretation of the meaning of the provisions of an ordinance, by the City Mayor or treasurer does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award of damages.

CABUNGCAL VS. CORDOVA, G.R. No. L-16934 (July 31, 1964) EN BANC It does not appear that the City Mayor in making the award of the lot acted in bad faith. An erroneous interpretation of the meaning of the provisions of an ordinance does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award for damages.

CUÑADO VS. GAMUS, G.R. Nos. L-16782 (May 30, 1963) EN BANC When there is no clear indication that mayor acted with malice in his/her actuations, he/she is not liable for damages. There is no malice when mayor honestly believed that he/she was not authorized to order payment.

QUIMSING VS. LACHICA, G.R. No. L-14683 (May 30, 1961) EN BANC When there is every reason to believe that the police officers were earnestly of the opinion that cockfighting on Thursdays is, despite the ordinances which they were not aware of, illegal under Article 199 of the Revised Penal Code, in relation to Sections 2285 and 2286 of the Revised Administrative Code, the officers had acted in good faith. They were performing their functions under the firm conviction that they were faithfully discharging their duty as law enforcing agents.

Issue of whether or not a local official acted in good or bad faith is not a proper subject of a motion to dismiss.

CARREON VS. PROVINCE OF PAMPANGA, G.R. No. L-8136 (August 30, 1956) EN BANC It would appear, therefore, that the order of dismissal is premised, in effect, upon the theory that the Chairperson and members of the Provincial Board had acted in good faith and within the scope of their authority and that the allegations of the complaint to the contrary are not true. This is clearly a reversible error. A motion to dismiss the complaint generally partakes of the nature of a demurrer, and, as such, it hypothetically admits the truth of the allegations of fact made in the complaint. If the motion to dismiss assails directly or indirectly, the veracity of the allegations, it is improper to grant the motion upon the assumption that the averments therein are true and that those of the complaint are not. The court should, either deny the motion, without prejudice to defendants' right to plead, as a special defense, in his/her answer, the very issue upon which said motion is predicated, or proceed to the reception of evidence on the issue of fact thus raised, before settling the same.

Liability for bad faith and malice is easier to determine when the act complained of is proprietary.

CARREON VS. PROVINCE OF PAMPANGA, G.R. No. L-8136 (August 30, 1956) EN BANC Officers or agents of the Government charged with performance of governmental duties which are in their nature legislative,

or quasi judicial, are not liable for the consequences of their official acts, unless it be shown that they act willfully and maliciously, and with the express purpose of inflicting injury upon the plaintiff. The liability becomes even clearer when the act performed involves the exercise of corporate of proprietary functions, rather than of duties which are strictly governmental or political in nature.

Municipal corporations deemed impleaded in actions against their officers.

NUNAL VS. COMMISSION ON AUDIT, G.R. No. 78648 (January 24, 1989) SECOND DIVISION When in an action, government officials had been sued in their official capacity, the municipal corporations which they represent should be deemed impleaded in the case. Therefore, considering that the questioned Compromise Agreement was duly signed by Mayor and as Presiding Officer of the *Sangguniang Bayan*, by the Municipal Treasurer, and by the Provincial Fiscal as their lawyer, the Municipality should be deemed impleaded in the case.

GEMENTIZA VS. COURT OF APPEALS, G.R. No. 41717-33 (April 12, 1982) FIRST DIVISION A suit against a mayor for illegal dismissal with prayer for reinstatement and back salaries is deemed a suit against the mayor in his/her official capacity. Failure to implead the Municipality and other municipal authorities should not deter the courts, in the interest of justice and equity, from including them as respondents.

BENEDICTO VS. LINA, CA-G.R. No. 29486-R (February 28, 1963) Provincial Governors, City and Municipal Mayors are personally responsible and liable for the payment of the salaries of local employees illegally removed in the event they are reinstated and the payment of their salaries ordered by competent authority. However, the local chief executives may turn to the municipal corporation for relief on the principle that when judgment is rendered against an officer of a municipal corporation who is sued in his/her official capacity for the payment of back salaries of an officer illegally removed, the judgment is binding upon the corporation, whether or not the same is included as party to the action.

ARCEL VS. OSMENA, JR., G.R. No. L-14856 (February 27, 1961) EN BANC In a petition for reinstatement and back wages where the City Mayor, Municipal Board, City Treasurer, and City Auditor had been named as respondents, the city need not be included as party-respondent. The naming of the aforementioned officials is substantial compliance with the law.

Power to file criminal actions, denied America- time LGUs

CITY OF MANILA VS. RIZA, G.R. No. 7946 (March 9, 1914) EN BANC Pursuant to General Order No. 58, the City of Manila cannot bring a criminal charge in its own name because the law provides that "all prosecutions for public offenses shall be in the name of the United States against the persons charged with the offenses". Furthermore, there is no express authority granted the City of Manila in its charter to institute criminal actions in its own name, and that in this jurisdiction actions instituted to enforce penalties of fine or imprisonment prescribed for the violation of municipal ordinances are purely criminal actions and are in no sense civil in their nature.

Government funds and properties may not be seized under writ of attachment

MUNICIPALITY OF HAGONOY, BULACAN VS. HON. DUMDUM, JR., G.R. No. 168289 (March 22, 2010) THIRD DIVISION Where a local government gives its consent to be sued by private parties either by general or special law, the power of the courts ends when a judgment is rendered. Government funds and properties may not be seized under a writ of attachment to satisfy such judgment.

Representation before courts

General rule, only the provincial fiscal and the municipality attorney can represent a province or municipality in their lawsuits.

ASEAN PACIFIC PLANNERS VS. CITY OF URDANETA, G.R. No. 162525 (September 23, 2008) SECOND DIVISION Section 481(a) of the Local Government Code (LGC) mandates the appointment of a city legal officer. Under Section 481(b)(3)(i) of the LGC, the city legal officer is supposed to represent the city in all civil actions and special proceedings wherein the city or any of its officials is a party. In case of vacancy in the position, the city prosecutor shall act as counsel. A local government unit cannot be represented by private counsel as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers.

RAMOS VS. COURT OF APPEALS, G.R. No. 99425 (March 3, 1997) THIRD DIVISION Only the provincial fiscal and the municipal attorney can represent a province or municipality in their lawsuits. This provision is mandatory. The municipality's authority to employ a private lawyer is limited to situations where the provincial fiscal is disqualified to represent it

and such disqualification must appear on record. The fiscal's refusal to handle the case is not one of those situations. The appropriate remedy is to request the Secretary of Justice to appoint an acting provincial fiscal.

RAMOS VS. COURT OF APPEALS, G.R. No. 99425 (March 3, 1997) THIRD DIVISION Private lawyers may not, on their own or in collaboration with authorized government lawyers, represent municipalities. The legality of the representation of an unauthorized counsel may be raised at any stage of the proceedings. Although a municipality may not hire a private lawyer to represent it in litigations, in the interest of substantial justice however, we hold that a municipality may adopt the work already performed in good faith by such private lawyer, whose work is beneficial to it (1) provided that no injustice is thereby heaped on the adverse party and (2) provided further that no compensation in any guise is paid therefor by said municipality to the private lawyer. Unless so expressly adopted, the private lawyer's work cannot bind the municipality.

MUNICIPALITY OF PILILLA, RIZAL VS. COURT OF APPEALS, G.R. No. 105909 (June 28, 1994) SECOND DIVISION The fiscal's refusal to represent the municipality is not a legal justification for employing the services of private counsel. Unlike a practicing lawyer who has the right to decline employment, a fiscal cannot refuse to perform his/her functions on grounds not provided for by law without violating his/her oath of office. Instead of engaging the services of a special attorney, the municipal council should request the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who has declined to handle and prosecute its case in court, pursuant to Section 1679 of the Revised Administrative Code.

DUMARPA VS. DIMAPORO, G.R. No. 87014-16 (September 13, 1989) EN BANC The Revised Administrative Code authorizes the Acting Governor to seek advice from the municipal or provincial fiscal. As such, the Acting Governor may not be faulted for consulting the lawyers of the province as to the effects of a judgment on the authority and actuations of municipal or provincial officials, or the fiscals for advising him/her on such matters. The law implicitly authorizes the former to seek such advice and expressly imposes upon the latter the duty to give it on request.

DE GUIA VS. AUDITOR GENERAL, G.R. No. L-298224 (March 29, 1972) EN BANC Under Section 1683 Revised Administrative Code, a municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal is disqualified to serve and represent it. A provincial fiscal is disqualified in cases where the original jurisdiction is vested in the Supreme Court, or in cases where the municipality or

municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province and when the interest of a provincial government and of any political division thereof are opposed.

MARIANO CALLEJA VS. COURT OF APPEALS, G.R. No. L-22501 (July 31, 1967) EN BANC The Revised Administrative Code provides that the Provincial Fiscal is the law officer, legal adviser, and legal counsel of the province and its subdivisions, which necessarily include the municipalities therein. It likewise provides in Section 3 that the municipality may create the office of Municipal Attorney who shall act as the legal counsel of the municipality. It is apparent, therefore, that the two laws have one thing in common, *i.e.*, that they provide for a legal officer or counsel for the municipality. Harmonizing, then, these seemingly conflicting provisions the rational interpretation that must be arrived at is that both officials, *i.e.*, the Provincial Fiscal and the Municipal Attorney, can act as the legal officer and/or counsel of the municipality.

Exception to rule on representation

MANCENIDO VS. COURT OF APPEALS, G.R. No. 118605 (April 12, 2000) SECOND DIVISION; ALINSUG VS. REGIONAL TRIAL COURT (BRANCH 58), G.R. No. 108232 (August 23, 1993) EN BANC In resolving whether a local government official may secure the services of private counsel in an action filed against him/her in his/her official capacity, the nature of the action and the relief sought are to be considered. The representation by private counsel of a provincial governor sued in his/her official capacity is proper where the complaint contained other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity. In view of the damages sought which, if granted, could result in personal liability, the local officials could not be deemed to have been improperly represented by private counsel.

PROVINCE OF CEBU VS. INTERMEDIATE APPELLATE COURT, G.R. No. L-72841 (January 29, 1987) SECOND DIVISION As an exception however, the hiring of a private counsel by the Governor may be justified in a suit filed against the Provincial Board for wrongful donation of provincial property, where the Provincial Fiscal had already been directed by said Board to appear on its behalf. Moreover, the requirement of prior Board authorization before employing a private counsel does not apply if the procurement of such authorization becomes an impossibility as where the members of said Provincial Board are the very same officials being sued by the Governor on behalf of the Province.

QUIMSING VS. LACHICA, G.R. No. L-14683 (May 30, 1961) EN BANC Section 64 of the Charter of the City of Iloilo (Commonwealth Act No. 158) states that the City Fiscal "shall represent the city in all civil cases wherein the city or any officers thereof in his official capacity is a party." Although this section imposes upon the city fiscal the duty to appear in the cases specified, it does not prohibit him/her from representing city officers sued as private individuals on account of acts performed by them in their official capacity, especially when, as in the case at bar, they claim to have acted in good faith and in accordance with a legal provision.

Power to acquire and hold property

LGUs as agents of the state, property held in trust

SALAS VS. JARENCIO, G.R. No. L-29788 (August 30, 1972) EN BANC Properties of municipalities not acquired by its own funds in its private capacity are public property held in trust for the State. Regardless of the source or classification of land in the possession of a municipality, excepting those acquired with its own funds in its private or corporate capacity, such property is held in trust for the State for the benefit of its inhabitants, whether it be for governmental or proprietary purposes. It holds such lands subject to the paramount power of the legislature to dispose of the same, for after all it owes its creation to it as an agent for the performance of a part of its public work, the municipality being but a subdivision or instrumentality thereof for purposes of local administration.

Nature of public property held in trust

ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN VS. MUNICIPALITY OF BURUANGA, **AKLAN G.R. No. 149145 (March 31, 2006) FIRST DIVISION** A lot comprising the public plaza is property of public dominion; hence, not susceptible to private ownership by the church or by the municipality. Property for public use of provinces and towns are governed by the same principles as property of public dominion of the same character. The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of the collective needs, is in the social group, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.

MACASIANO VS. DIOKNO, G.R. No. 97764 (August 10, 1992) EN BANC Article 424 of the Civil Code lays down the basic principles that properties of the public dominion devoted to public use and made available to the public in general are outside the commerce of men and cannot be disposed of or leased by the local government unit to private persons.

VILLANUEVA VS. CASTAÑEDA, JR., G.R. No. L-61311 (September 21, 1987) FIRST DIVISION A public plaza is beyond the commerce of men and so, cannot be the subject of lease or any other contractual undertaking. Thus, the lease by the *talipapa* vendors thereon by virtue of a municipal authorization is null and void.

RABUCO VS. VILLEGAS, G.R. No. L-24661 (February 28, 1974) EN BANC The lots in question are manifestly owned by the city in its public or governmental capacity and not in its private or proprietary capacity of which it could not be deprived without due process and just compensation. The law in question, Republic Act No. 3120 converts the Malate area into disposable and alienable lands of the State for subdivision into smaller lots which will later be resold to *bona fide* occupants thereof. Said law was intended to implement the social justice policy of the Constitution and the government's program of land for the landless. It is a manifestation of the legislature's right and power to deal with State property which includes those held by municipal corporations in their public or governmental capacity.

PROVINCE OF ZAMBOANGA DEL NORTE VS. CITY OF ZAMBOANGA, G.R. No. L-24440 (March 28, 1968) EN BANC Municipal property held and devoted to public service is not in the same category as ordinary private property. Else, the consequences are dire. As ordinary private properties, they can be levied upon and attached, they can be acquired through adverse possession - to the detriment of the local community.

MUNICIPALITY OF SAN CARLOS VS. MORFE, G.R. No. L-17990 (July 24, 1962) EN BANC A municipality has no standing to intervene in a civil case where the issue involved is the ownership of a certain parcel of land which forms part of the public plaza claimed by the National government. The public plaza is situated on public land belonging to and subject to the administration and control of, the Republic of the Philippines. The municipality has no right to claim it as its patrimonial property. Whatever right of administration it may have exercised over the said plaza was not proprietary, but governmental in nature. It did not exclude the national government. The municipality has no property right or any right *in rem* over the lot.

HODGES VS. CITY OF ILOILO, G.R. No. L-17573 (June 30, 1962) EN BANC The properties dedicated to public use such as streets and public plazas are beyond the commerce of persons. Public streets are not part of the patrimonial property of a municipality, but are destined to public use, and as such, may not be validly registered in favor of an individual or a municipality or any other branch of the State.

TUFEXIS VS. OLAGUERA, G.R. No. 9865 (December 24, 1915) EN BANC The special concession of the right of usufruct in a public market cannot be attached like any ordinary right because it might result to the disruption of public service due to the action of a grantee, to the prejudice of the state and the public interests. The privilege or franchise granted to a private person to enjoy the usufruct of a public market cannot lawfully be attached and sold, and a creditor of such person can recover his/her debt only out of the income or revenue obtained by the debtor from the enjoyment or usufruct of the said privilege.

MUNICIPALITY OF CAVITE VS. ROJAS, G.R. No. 9069 (March 31, 1915) EN BANC A municipal council cannot sell or lease communal or public property, such as plazas, streets, common lands, rivers, bridges, *etc.*, because they are outside the commerce of man; and if it has done so by leasing part of a plaza, the lease is null and void under the Old Civil Code. Thus, the lessee must restore possession of the land by vacating it and the municipality must thereupon restore to him/her any sum it may have collected as rent.

HARTY VS. MUNICIPALITY OF VICTORIA, PROVINCE OF TARLAC, G.R. No. 494 (February 19, 1909) EN BANC Under the Old Civil Code, plazas are for public use and not subject to prescription. Plazas are not of private ownership nor do they form part of the patrimony of a town or province.

NICOLAS VS. JOSE, G.R. No. 2791 (November 5, 1906) EN BANC A municipality is not entitled to have a public square within its limits registered in its name. Act No. 1039 does not authorize the registration of public square under the name of municipality as owner.

LGUs cannot appropriate public lands without prior government grant

RURAL BANK OF ANDA, INC. VS. ROMAN CATHOLIC ARCHBISHOP OF LINGAYEN-DAGUPAN, G.R. No. 155051 (May 29, 2007) SECOND DIVISION Pursuant to the Regalian doctrine, any land that has never been acquired through purchase, grant or any other mode of acquisition remains part of the public domain and is owned by the State. Local government units cannot appropriate to themselves public lands without prior grant from

the government. Thus, the municipal resolutions converting a public lot from an institutional to a commercial lot, and authorizing the municipal mayor to lease the same for 25 years are void.

General rule is that roads that are available for ordinary use cannot be closed or leased.

DACANAY VS. ASISTIO, G.R. No. 93654 (May 6, 1992) EN BANC There is no doubt that the disputed areas from which the private respondents' market stalls are sought to be evicted are public streets. A public street is a property for public use hence outside the commerce of persons. Being outside the commerce of man, it may not be the subject of lease or other contract. Such leases or licenses are null and void for being contrary to law. The right of the public to use the city streets may not be bargained away through contract. The interests of a few should not prevail over the good of the greater number in the community whose health, peace, safety, good order and general welfare, the respondent city officials are under legal obligation to protect.

If allowed by its charter, city has the power to sell a portion a city street previously closed or withdrawn from public use.

FIGURACION VS. LIBI, G.R. No. 155688 (November 28, 2007) THIRD DIVISION A city can validly reconvey a portion of its street that has been closed or withdrawn from public use where Congress has specifically delegated to such political subdivision, through its charter, the authority to regulate its streets by allowing property thus withdrawn from public servitude to be used or conveyed for any purpose for which other property belonging to the city may be lawfully used or conveyed.

CEBU OXYGEN AND ACETYLENE CO., INC. VS. BERCILLES, G.R. No. L-40474 (August 29, 1975) SECOND DIVISION A City has the power to sell a portion of its city street that has been previously closed or withdrawn from public use. Said power is derived from the city's charter which states that "property thus withdrawn from public servitude may be used or conveyed for any purpose for which other real property belonging to the City may be lawfully used or conveyed." Moreover, Article 422 of the Civil Code expressly provides that property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

Resolution regarding intended use of land as a school site shows that the land remains part of the public domain.

HERCE VS. MUNICIPALITY OF CABUYAO G.R. No. 166645 (November 11, 2005) FIRST DIVISION Under the Regalian Doctrine, which is enshrined in the 1935, 1973, and 1987 Constitution, all lands of the public domain belong to the State. A private claimant bears the burden of overcoming the presumption that the land sought to be registered forms part of the public domain. A municipal council resolution informing all that the land in question is intended as a school site shows that the land remains part of the public domain.

Congress may transfer property to an LGU for public or patrimonial purposes.

CHAVEZ VS. PUBLIC ESTATES AUTHORITY, G.R. No. 133250 (November 11, 2003) EN BANC A city being a public corporation is not covered by the constitutional ban on acquisition of alienable public lands. Congress may by law transfer public lands to a City, an end user government agency, to be used for municipal purposes, which may be public or patrimonial. Lands thus acquired by the City for a public purpose may not be sold to private parties. However, lands so acquired by a city for a patrimonial purpose may be sold to private parties, including private corporations.

Land intended for church and courthouse of new pueblos were deemed property of the municipality not by the Insular government.

MUNICIPALITY OF TACLOBAN VS. DIRECTOR OF LANDS, G.R. No. 5543. (December 9, 1910) EN BANC; MUNICIPALITY OF CATBALOGAN VS. DIRECTOR OF LANDS, G.R. No. 5631 (October 17, 1910) EN BANC During the organization of new *pueblos*, the land designated for the church and the land intended for the courthouse are deemed to be the property of the municipality and not of the Insular Government. The land belongs to said *pueblo* "on account of the necessity arising from its organization" since no *pueblo* was able to exist administratively without having a church of its own and a courthouse which should be the seat of its local authority and its municipal government." As such, it constitutes the "private property" of the municipality, forming part of its municipal funds and assets. The establishment of pueblos and apportionment of territory was made pursuant to the provisions of the Laws of Indies, royal *cedulas*, and ordinances on good government.

Use of land for public purposes creates a presumption of ownership.

MUNICIPALITY OF HAGONOY VS. ARCHBISHOP OF MANILA, G.R. No. 7997 (January 25, 1915) EN BANC The mere possession of parcels of land, unless shown to have been actually used for public purposes based upon a public necessity recognized as a basis for a grant of land to a municipality, is not a sufficient ground to sustain a presumption of an actual grant from the former government. The mere fact that a municipality continued to collect revenues or rentals from the residents who occupy any parcel of land comprised within its district, is not proof that the said municipality is the proprietor of such realty; at the most, it might be considered to be a usufructuary of the land in question, but without the right to enter it in the property registry.

MUNICIPALITY OF LUZURIAGA VS. DIRECTOR OF LANDS, G.R. No. L-6996 (January 29, 1913) EN BANC The municipality, having used this land for so many years for recognized public purposes, which have for their basis a public necessity, undisturbed and unchallenged, a grant in its favor will be presumed in the absence of evidence to the contrary. The land, however, to be covered by that presumption must have been used for recognized public purposes, based upon a public necessity. The establishments of public markets being one of the purposes for which the government formerly granted land to municipalities, the presumption of grant from the State arises.

MUNICIPALITY OF HINUNANGAN VS. DIRECTOR OF LANDS, G.R. No.L-7054 (January 20, 1913) EN BANC A fortress erected for national defense was part of the property of the State. As a necessary consequence, the land upon which it stands must also have been dedicated to that purpose. The fact that said fortress may not have been used for many years for the purpose for which it was originally built does not of necessarily deprive the state of its ownership therein. The fact that the municipality may have exercised within recent years acts of ownership over the land by permitting it to be occupied and consenting to the construction of private houses thereon does not make such a property of the municipality. Where the municipality has occupied lands distinctly for public purposes, such as for the municipal court house, the public school, the public market, or other necessary municipal building in the absence of proof to the contrary, there is a presumption that there was grant from the State in favor of the municipality. The rule cannot be applied against the State when occupied for any other purpose.

MUNICIPALITY OF TACLOBAN VS. DIRECTOR OF LANDS, G.R. No. L-5542 (January 04, 1911) EN BANC When, on the part of a municipality

petitioning for the inscription of land, it is not shown that the land was granted by the Government to the municipality to form a part of the municipal assets or estate, or that a municipal building was erected thereon for public purposes, a circumstance which would have led to the presumption that, in obtaining permission to erect the building it also obtained a grant of the land, express or implied, from the Government, the municipality cannot be considered as the proprietor of the land with right to inscribe the same in the property registry. Mere occupation of the said property by the municipality during more than ten years does not vest ownership on the municipality or convert the land into *terreno propio* so as to form a part of its estate or municipal assets.

Cession of lands of the public domain to the city government does not divest the Director of Lands of authority.

DIRECTOR OF LANDS VS. GONZALES, G.R. No. L-32522 (January 28, 1983) FIRST DIVISION The Director of Lands is the officer vested with the administration and disposition of all lands of the public domain on behalf of the Republic of the Philippines. He/she remains to be the proper party in interest to seek the cancellation of the free patent and certificate of title notwithstanding the transfer by law of ownership and possession to the newly created City of General Santos, of all lands of the public domain within the city limits.

Compliance with conditional donations required

CITY OF ANGELES VS. COURT OF APPEALS, G.R. No. 97882 (August 28, 1996) THIRD DIVISION A local government unit must comply with the legal conditions imposed on a donation. Thus, a local government unit cannot cause the construction of a Drug Rehabilitation Center on the donated open space for parks, playgrounds and recreational area.

There is implied acceptance of a donation by use and enjoyment of the property.

DOLAR VS. BARANGAY LUBLUB, G.R. No. 152663 (November 18, 2005) THIRD DIVISION The authority of the *Punong Barangay* to accept a donation on behalf of the *barangay* is deemed ratified when through the years, the *sanggunian* did not repudiate the acceptance of the donation and when the *barangay* and the people of the *barangay* have continuously enjoyed the material and public service benefits arising from the infrastructures projects put up on the subject property.

Sangguniang Barangay has power to administer a multi-purpose hall built with government funds on a privately-owned open space

UNITED BF HOMEOWNERS' ASSOCIATION, INC. VS. BARANGAY CHAIRMAN, G.R. No. 140092 (September 8, 2006) SECOND DIVISION The Sangguniang Barangay has the power to administer a multi-purpose hall built with government funds on a privately-owned open space, pursuant to Section 391(a)(7) of the Local Government Code. However, the Sanggunian cannot exercise any act of ownership over the hall or its surrounding areas. Hence, the Sanggunian's act of constructing a fence around the areas adjoining the hall is *ultra vires*.

Municipal Patrimonial Property

Patrimonial property described

MUNICIPALITY OF BATANGAS VS. CANTOS, G.R. No. L-4012 (June 30, 1952) EN BANC The mere attempt to sell the property with the idea of acquiring another one more suitable for school purposes did not have the effect of destroying its nature as to convert it into a patrimonial or private property of the municipality.

MUNICIPALITY OF PAOAY VS. MANAOIS, G.R. No. L-3485 (June 30, 1950) EN BANC Properties for public use held by municipal corporations are not subject to levy and execution. The reason behind this exemption extended to properties for public use, and public municipal revenues is that they are held in trust for the people, intended and used for the accomplishment of the purposes for which municipal corporations are created, and that to subject said properties and public funds to execution would materially impede, even defeat and in some instances destroy said purpose. Property however, which is patrimonial and which is held by a municipality in its proprietary capacity is treated by great weight of authority as the private asset of the town and may be levied upon and sold under an ordinary execution.

Examples of patrimonial property

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION The North Cemetery forms part of the patrimonial property of the City of Manila, created by resolution of its Municipal Board. The administration and government of the cemetery are under the City Health Officer, the order and police of the cemetery, the opening of graves, niches, or tombs, the exhuming of remains, and the

purification of the same are under the charge and responsibility of the superintendent of the cemetery. The City of Manila furthermore prescribes the procedure and guidelines for the use and dispositions of burial lots and plots within the North Cemetery. With these acts of dominion, there is, therefore no doubt that the North Cemetery is within the class of property which the City of Manila owns in its proprietary or private character.

MUNICIPALITY OF OAS VS. ROA, **G.R. No. L-2017 (November 24, 1906) EN BANC** As early as 1852, the disputed land had been used by the municipality, constructing buildings thereon for the storage of property of the State, quarters for the *cuadrilleros*, and others of like character. It therefore had ceased to be property used by the public and had become a part of the *bienes patrimoniales* of the *pueblo* under the Old Civil Code.

Under Civil Code, property of public dominion no longer intended for public use or service becomes patrimonial.

CEBU OXYGEN AND ACETYLENE CO., INC. VS. BERCILLES, G.R. No. L-40474 (August 29, 1975) SECOND DIVISION Article 422 of the Civil Code expressly provides that property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

FAVIS VS. CITY OF BAGUIO, G.R. No. L-29910 (April 25, 1969) EN BANC The city council is the authority competent to determine whether or not a certain property is still necessary for public use. When a public property such as a public street is withdrawn from public use, it necessarily follows that such property becomes patrimonial property. Article 422 of the Civil Code provides that property of public domain, when no longer intended for public use or public service, shall form part of patrimonial property of the State. Authority is not wanting for the proposition that "property for public use of provinces and towns are governed by the same principles as property of public dominion of the same character." The patrimonial property can henceforth be leased to private persons.

When subject matter of lease contract entered by a municipal corporation is patrimonial property, the contract is valid.

CHAMBER OF FILIPINO RETAILERS VS. VILLEGAS, G.R. No. L- 29819 (April 14, 1972) EN BANC A permit to do business at a definite location or stall in said market for a definite period of time partakes of the nature of a lease of the area occupied by the market stall, which is patrimonial property of the City of Manila. The renting of the City of its private property is a

patrimonial activity or proprietary function. The City is free to charge such sums as it may deem best.

SANCHEZ VS. MUNICIPALITY OF ASINGAN, PANGASIAN, G.R. No. L-17632, March 30, 1963) EN BANC A municipal property devoted to the public use is outside the commerce of man, and could not under any circumstance be the object of a valid contract of lease. Municipal streets, squares fountains, public waters, promenades and public works for public service in said municipality under Article 424 of the Civil Code are such properties. The rule does not apply to patrimonial properties. Hence, when subject matter of lease contract entered by a municipal corporation is patrimonial property, the contract is valid.

Civil code provisions on classification of public property are without prejudice to special laws.

PROVINCE OF ZAMBOANGA DEL NORTE VS. CITY OF ZAMBOANGA, G.R. No. L-24440 (March 28, 1968) EN BANC Under Article 424 of the Civil Code of the Philippines, property for public use consists of provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades and public works for public service paid for by said municipal corporations. All other properties are patrimonial and are governed by the Code. Under the norm provided for by the Law of Municipal Corporations, all those properties which are devoted to public service are deemed public; the rest remain patrimonial. Under this norm, to be considered public, it is enough that the property be held and devoted for governmental purposes like local administration, public education, public health, *etc*.. The classification of properties other than those for public use in the municipalities as patrimonial under Article 424 of the Civil Code is without prejudice to provisions of special laws. For purposes of this article, the Law of Municipal Corporations is considered as one such special law. Hence, the classification of municipal property devoted for distinctly governmental purposes as public should prevail over the Civil Code classification in this particular case.

Transfer of Municipal Real Property

Sale of government land by LGU must be through public bidding.

CHAVEZ VS. PUBLIC ESTATES AUTHORITY, G.R. No. 133250 (November 11, 2003) EN BANC Any sale of government land must be made only through public bidding. Transfer of ownership to a private corporation cannot be done through negotiated contract.

Failure to secure appraised valuation does nullify contract of donation.

GOVERNMENT SYSTEM INSURANCE SYSTEM V. PROVINCE OF TARLAC, G.R. No. 157860 (December 1, 2003) FIRST DIVISION A transfer of real property by a local government unit to an instrumentality of government like the Government Service Insurance System without first securing an appraised valuation from the local committee on awards does not appear to be one of the void contracts enumerated in the Article 1409 of the Civil Code. Neither does Section 381 of the Local Government Code of 1991 expressly prohibit or declare void such transfers if an appraised valuation from the local committee on awards is not first obtained. There is no express provision in the law which requires that the said valuation is a condition *sine qua non* for the validity of a donation.

Requisites for conveyance of property under the Revised Administrative Code

THE ESTATE OF PEDRO C. GONZALES VS. THE HEIRS OF MARCOS PEREZ, G.R. No. 169681 (November 5, 2009) THIRD DIVISION Under Section 2196 of the Revised Administrative Code, when a municipal government is a party to a deed or an instrument which conveys real property or any interest therein, or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor. Without the governor's approval, the contract is voidable. The contract is, thus, valid and binding before they are set aside or disapproved by the governor.

CITY OF NAGA VS. COURT OF APPEALS, G.R. No. 37289 (April 12, 1989) SECOND DIVISION Section 2068 of the Revised Administrative Code provides that when the government of a province is a party to a deed or instrument conveying the title to real property, such deed or instrument shall be executed on behalf of the said Government by the Provincial Governor, upon resolution of the provincial board, and with the approval of the President. Without the needed Presidential approval, the deed of sale is invalid.

Disposition of public land by LGU requires Congressional authority.

IN RE: BAGUIO CITIZENS ACTION, INC. VS. CITY COUNCIL, G.R. No. L-27247 (April 20, 1983) EN BANC A disposition of public land by a local government unit without prior legislative authority is a patent nullity. It is a fundamental principle that the State possesses plenary power in law to

determine who shall be favored recipients of public domain, as well as under what terms such privilege may be granted not excluding the placing of obstacles in the way of exercising what otherwise would be ordinary acts of ownership.

LGU may enter into compromises regarding property.

MUNICIPALITY OF SAN JOAQUIN VS. ROMAN CATHOLIC BISHOP OF JARO, G.R. No. L-11629 (March 30, 1917) EN BANC As a juridical person, a municipality is authorized to execute a contract of compromise in the manner and with the requisites necessary to alienate its property. Thus, a municipal council can authorize the municipal president to enter into a compromise with the Roman Catholic Bishop and cede a parcel of land, which it previously claimed as its own, in favor of the Church.

LGU officials are proper persons to oppose land registration proceedings over land donated to the LGU.

ROMAN CATHOLIC ARCHBISHOP OF MANILA VS. BARRIOS OF SANTO CRISTO, G.R. No. L-12981 (November 6, 1918) EN BANC The Land Registration Act enumerates the persons and entities in whose names registration can be effected, but there is no disposition of law limiting the right of opposition to particular classes of persons. All that is necessary to enable one to exert the faculty of opposition is that the party should appear to have an interest in the property. Persons invested with the management of property, which has been donated to the inhabitants of a *barrio* are properly admitted to make opposition to a proceeding by an applicant to register the same.

Just compensation required for patrimonial property.

NATIONAL WATERWORKS AND SEWERAGE AUTHORITY VS. PIGUING, G.R. No. L-25573 (October 11, 1968) EN BANC The National Waterworks and Sewerage Authority (NAWASA) cannot take over the possession, operation and control of the waterworks systems of municipal corporations without paying any compensation. The authority of NAWASA under Republic Act No. 1383 which provides for a transfer of dominion – taking of local waterworks systems without providing for an effective payment of just compensation – is unconstitutional.

PROVINCE OF ZAMBOANGA DEL NORTE VS. CITY OF ZAMBOANGA, G.R. No. L-24440 (March 28, 1968) EN BANC Under the Civil Code of the Philippines and Law of Municipal Corporations, Congress has absolute control over properties owned by the municipal corporation or municipality in its public

and governmental capacity. If the property is owned by a municipality in its private or proprietary capacity, then it is patrimonial and Congress has no absolute control over the same. In which case, the municipality cannot be deprived of it without due process and payment of just compensation.

MUNICIPALITY OF COMPOSTELA, CEBU VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. No. L-21763 (December 17, 1966) EN BANC The National Government cannot appropriate patrimonial property of municipal corporations without just compensation and without complying with due process requirements. Thus, the National Government cannot assume the power of administration of patrimonial property (*i.e.,* municipal waterworks system) of municipal corporations unless just compensation is paid. The National Government through the National Waterworks and Sewerage Authority cannot assume administration without appropriating the title to the property.

MUNICIPALITY OF LUCBAN VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. NO. L-15525 (October 11, 1961) EN BANC Waterworks are patrimonial properties of the city or municipality. Thus, Republic Act No. 1383 is unconstitutional in so far as it vests on National Waterworks and Sewerage Authority (NAWASA) ownership of the waterworks system of municipalities, chartered cities and provinces without compensation. The transfer of ownership of the waterworks system to another government agency cannot be justifies as a valid exercise of the police power of the State because while the power to enact laws intended to promote public order, safety, health, morals and general welfare of society is inherent in every sovereign state, such power is not without limitations, notable among which is the constitutional prohibition against the taking of private property for public use without just compensation.

CITY OF BAGUIO VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. No. L-12032 (August 31, 1959) EN BANC A waterworks system is not like any public road, park, street or other public property held in trust by a municipal corporation for the benefit of the public but it is rather a property owned by the city in its proprietary character. Being owned by a municipal corporation in a proprietary character, waterworks cannot be taken away without observing the safeguards set by the 1935 Constitution for the protection of private property.

Church property

Church property does not form part of municipal property.

ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN VS. MUNICIPALITY OF BURUANGA, AKLAN G.R. No. 149145 (March 31, 2006) FIRST DIVISION A lot comprising the public plaza is property of public dominion; hence, not susceptible to private ownership by the church or by the municipality. Property for public use of provinces and towns are governed by the same principles as property of public dominion of the same character. The ownership of such property, which has the special characteristics of a collective ownership for the general use and enjoyment, by virtue of their application to the satisfaction of the collective needs, is in the social group, whether national, provincial, or municipal. Their purpose is not to serve the State as a juridical person, but the citizens; they are intended for the common and public welfare, and so they cannot be the object of appropriation, either by the State or by private persons.

ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN VS. MUNICIPALITY OF BURUANGA, AKLAN G.R. No. 149145 (March 31, 2006) FIRST DIVISION The Laws of the Indies prescribed that the church be built at some distance from the square, separate from other buildings in order that it may be better seen and venerated, and raised from the ground with steps leading to it. The Laws decreed that government administration buildings, including *casas reales*, be built between the main square and the church and at such distance as not to shut the church from view. In cases of coastal towns, the church was to be constructed in such location as to be seen by those coming from the sea and serve for the defense of the port. The other provisions of the Laws of the Indies touch on the establishment of new towns or *pueblos* in the archipelago, including the designation of lands for the church, *casa reales* (municipal buildings) and public squares. Nowhere in the Laws of the Indies was it stated that the parcel of land designated for the church of the town or *pueblo* was, in all cases, to be an entire block or bounded on all its four sides by streets.

ROMAN CATHOLIC BISHOP OF KALIBO, AKLAN VS. MUNICIPALITY OF BURUANGA, AKLAN G.R. No. 149145 (March 31, 2006) FIRST DIVISION The church cannot claim ownership over a piece of property when it has not shown that, at one time after the church was built in 1894 in the middle of a lot, it exercised acts of ownership or possession. Further, the church has not shown that it exercised proprietary acts or acts of dominion over the portion of the lot. Hearsay or uncorroborated evidence is not sufficient to establish ownership or possession.

BISHOP OF CALBAYOG VS. DIRECTOR OF LANDS, G.R. No. L-23481 (June 29, 1972) EN BANC The Court adjudicated in favor of the church a lot (except the portion thereof occupied by a public thoroughfare) including not only the space occupied by the church, belfry, convent, parish school and nuns' residence, but also the empty space which only had concrete benches as improvements thereon. The church was able to establish that it had exercised acts of possession or ownership over the lot including over its empty space.

HACBANG VS. DIRECTOR OF LANDS, G.R. No. G.R. No. 41918 (July 31, 1935) EN BANC The church can claim ownership over a portion of land when it has been conclusively established that it exercised proprietary acts or acts of dominion over the portion of the lot. The proprietary acts exercised by the church over the disputed lots consisted of the construction thereon of the church, belfry, convent and cemetery. Moreover, it conducted thereon the Way of the Cross and other religious celebrations.

ROMAN CATHOLIC BISHOP OF JARO VS. DIRECTOR OF LANDS, G.R. No. 31286 (March 10, 1930) EN BANC; SEMINARY OF SAN CARLOS V. MUNICIPALITY OF CEBU, G.R. No. L-4641 (March 13, 1911) EN BANC The Court categorically made the finding that the lot in question had been in the possession of the church, as owner, for a time sufficiently long for purposes of prescription. The parcel of land that was adjudicated in favor of the church was the "land adjacent and contiguous to said buildings," *i.e.*, church and convent.

ALONSO VS. VILLAMOR, G.R. No. L-2352 (July 26, 1910) EN BANC The church, its appurtenances, and all other personal property therein are property of the Roman Catholic Church, and not of the municipality, even if the building and the aforesaid properties were erected and purchased, respectively, by funds voluntarily contributed by the people of the municipality. Hence, the seizure of the same and occupation of the church and its appurtenances by the municipal board were wrongful and illegal.

ROMAN CATHOLIC CHURCH VS. MUNICIPALITIES OF CALOOCAN, MORONG AND MALABON, PROVINCE OF RIZAL, G.R. No. 3016 (January 29, 1909) EN BANC It is established that the Crown of Spain intended that lands where church edifices were erected should be devoted absolutely for the use of the church. A church edifice of the Roman Catholic Church once accepted and dedicated for religious purposes could never be used for any other purpose under Act No. 1376.

ROMAN CATHOLIC APOSTOLIC CHURCH VS. THE MUNICIPALITY OF PLACER, G.R. No. 3490 (September 23, 1908) EN BANC Under the Spanish Law and the provisions of the Treaty of Paris, the Roman Catholic Apostolic Church is the owner of the church building, convent, and cemetery. The municipality wherein the same are situated has no right of ownership therein by reason of the contributions by them or by the people of the land and of the funds with which the buildings were constructed or repaired. The Court recognized the juridical personality and proprietary rights of the church citing the Treaty of Paris and other pertinent Spanish laws. The church not only was entitled to the possession of the church, convent and cemetery of Placer but was also the lawful owner thereof.

LGUs have neither title to, nor control of State-constructed churches.

BARLIN VS. RAMIREZ, G.R. No. L-2832 (November 24, 1906) EN BANC The legal title to the State-constructed churches in the Philippine Islands is in the United States. The beneficial ownership of these churches is in the people of the Philippine Islands, while the right to the possession and control is in the Roman Catholic Church so long as it continues to use them for the purposes for which they were dedicated. The Government of the Philippine Islands has never undertaken to transfer to the municipalities the ownership or right of possession of the churches therein.

Municipal property used for religious purposes are still owned by municipality.

ROMAN CATHOLIC BISHOP OF LIPA VS. MUNICIPALITY OF TAAL, G.R. No. L-12097 (July 26, 1918) EN BANC Where it appears that a chapel building has been erected and is maintained by the donations and contributions of the congregation, and that a Catholic priest has held services in the building from time to time at the request of the congregation, this fact will not support the contention that the building and lot have become the property of the Roman Catholic Church. The rights of the municipality must prevail.

Administration of church property does not amount to transfer of ownership.

MUNICIPALITY OF NUEVA CACERES VS. DIRECTOR OF LANDS, G.R. No. 7153 (March 26, 1913) EN BANC The fact that the Government intervened in the administration of the school in no way tends to show or prove that the church had ceded the building or the lot in question to either the local or central government of Spain in the Philippines. There is not doubt that until the revolution and separation of church and state, brought about by the

advent of American sovereignty, the church was in possession of the school in question, considering it as its own exclusive property.

Courts have jurisdiction over controversies between the Roman Catholic Church and other parties.

HARTY VS. LUNA, G.R. No. 4943 (February 19, 1909) EN BANC Under Act No. 1376 and the Code of Civil Procedure, the Courts of First Instance have concurrent original jurisdiction with the Supreme Court over controversies between the Roman Catholic Church and other parties.

Reclamation

LGUs may reclaim foreshore land, not submerged land.

CHAVEZ VS. PUBLIC ESTATES AUTHORITY, G.R. No. 133250 (November 11, 2003) EN BANC; REPUBLIC VS. COURT OF APPEALS, G.R. No. 103882 (November 25, 1998) EN BANC Republic Act No. 1899 authorized municipalities and chartered cities to reclaim foreshore lands. Said law applies only to foreshore lands, not to submerged lands. Foreshore refers to that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides.

Reclaimed land may only be leased and not sold to private parties

REPUBLIC OF THE PHILIPPINES VS. ENCISO, G.R. No. 160145 (November 11, 2005) SECOND DIVISION The prevailing rule is that reclaimed disposable lands of the public domain as in land reclaimed by a Municipality may only be leased and not sold to private parties. These lands remained *sui generis*, as the only alienable or disposable lands of the public domain which the government could not sell to private parties except if the legislature passes a law authorizing such sale. Reclaimed lands retain their inherent potential as areas for public use or public service. The ownership of lands reclaimed from foreshore areas is rooted in the Regalian doctrine, which declares that all lands and waters of the public domain belong to the State. On November 7, 1936, the National Assembly approved Commonwealth Act No. 141, also known as the Public Land Act, compiling all the existing laws on lands of the public domain. This remains to this day the existing and applicable general law governing the classification and disposition of lands of the public domain. The State policy prohibiting the sale of government reclaimed, foreshore and marshy alienable lands of the public domain to private individuals continued under the 1935 Constitution.

Power to enter into contracts

Power to enter into contracts in general

RIVERA VS. MUNICIPALITY OF MALOLOS, G.R. No. L-8847 (October 31, 1957) EN BANC Municipalities are endowed with the faculties of municipal corporations to be exercised by and through their respective municipal governments in conformity with law. It shall be competent for them, in their proper corporate name, to contract and be contracted with. The power or authority conferred upon municipal corporations must be exercised in conformity with law.

Valid contracts of LGUs, constitutional protection

CITY OF ZAMBOANGA VS. ALVAREZ, G.R. No. L-20400 (November 28, 1975) SECOND DIVISION Section 2165 of the Revised Administrative Code of 1970 vests upon municipal corporations, as political bodies corporate, the power to contract and be contracted with. What is more, a valid and binding contract of a municipal corporation is protected by the Constitution and the terms of a contract are the law between the parties. Therefore, a municipal corporation may rightfully insist on the other contracting party to abide strictly by the terms of the agreement. Reciprocally, it is equally bound. Should it fail to live up to what was covenanted, its conduct is blameworthy.

Void contracts ofLGUs do not require judicial declaration of nullity.

BUNYE VS. SANDIGANBYAN, G.R. No. 122058 (May 5, 1999) THIRD DIVISION Contracts entered into by a municipality, in violation of existing law, such as that in this case which grants a 25 year lease of the Public Market to complainants when the law at that time, Batas Pambansa Blg. 337, limits such leases to a maximum of five years, are void. Contracts of this nature do not require judicial action declaring their nullity.

Deed still required to perfect contracts

VELARMA VS. COURT OF APPEALS, G.R. No. 113615 (January 25, 1996) THIRD DIVISION Minutes of the meeting of the *Sangguniang Bayan* alone, without any mention of the execution of any deed for the perfection of the contract is not sufficient to transfer ownership to the local government unit.

Courts will not interfere in contracts of LGUs save in instances when act is clearly ultra vires.

ASIATIC INTEGRATED CORP. VS. ALIKPALA, G.R. No. L-37249 (September 15, 1975) EN BANC The determination of the reasonableness and propriety of the terms and conditions embodied in the contract entered into by a City rests primarily with the city authorities and not with the courts. It is only in instances wherein the contract is *ultra vires* or clearly unreasonable that the courts can interfere.

Mandamus is an equitable remedy so that public officials concerned may attend to the request of a contracting party.

DIONISIO VS. PATERNO, G.R. No. L-49654 (July 23, 1980) SECOND DIVISION *Mandamus* is an equitable remedy so that public officials concerned may attend to the request of a contracting party and pay it in accordance with government guidelines, in this case, the presidential directive exempting a party from the coverage of Presidential Decree 454 (as amended by Presidential Decree No. 906), which regulated escalations or adjustments when the rise in the price of gasoline occurs after a job has already been started. It is also the duty of the mayor concerned to see to it that payment is made to the contracting party.

Contracts validly entered into by previous chief executive bind successor-in-office.

GOVERNMENT SERVICE INSURANCE SYSTEM VS. PROVINCE OF TARLAC, G.R. No. 157860 (December 1, 2003) FIRST DIVISION When there is a perfected contract executed by the former Governor, the succeeding Governor cannot revoke or renounce the same without the consent of the other party. The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his/her mind or disavow and go back upon his/her own acts, or to proceed contrary thereto, to the prejudice of the other party.

Prior authorization by municipal council

QUISUMBING VS. GARCIA, G.R. No. 175527 (December 8, 2008) EN BANC Under Section 22(c) of the Local Government Code, the local chief executive cannot enter into a contact in behalf of the local government

unit (LGU) without prior authorization from the sanggunian concerned. Such authorization may be in the form of an appropriation ordinance passed for the year which specifically covers the project, cost or contract to be entered into by the LGU. However, this rule does not apply where the LGU operated on a reenacted budget. In case of a reenacted budget, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted. New contracts entered into by the local chief executive must therefore have prior authorization from the sannggunian.

OCAMPO VS. PEOPLE, G.R. No. 156547-51 & 156382-85 (February 4, 2008) FIRST DIVISION A loan agreement entered into by the provincial governor without prior authorization from the Sangguniang Panlalawigan is unenforceable. The Sanngunian's failure to impugn the contract's validity despite knowledge of its infirmity is an implied ratification that validates the contract.

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION The provisions of the old Local Government Code of 1983, which was then in force, must be differentiated from that of the Local Government Code of 1991, Republic Act No. 7160, which now requires that the mayor's representation of the city in its business transactions must be "upon authority of the *sangguniang panlungsod* or pursuant to law or ordinance." No such prior authority was required under the 1983 Code. This restriction, therefore, cannot be imposed on the city mayor then since the two contracts were entered into before the 1991 Code took effect.

GERONIMO VS. MUNICIPALITY OF CABA, LA UNION, G.R. No. L-16221 (April 29, 1961) EN BANC The fact that the redemption of a property made by the Mayor on behalf of the Municipality was not authorized by any resolution of the municipal council or that there was no appropriation made by the council, does not invalidate said redemption. The mayor, as chief executive, was duty bound to take such step as may be necessary to protect the interest of his/her municipality. It should be noted that the property belongs to the municipality and it was his/her duty to redeem it in order that it may not be lost.

ACUÑA VS. MUNICIPALITY OF ILOILO G.R. No. 1055 (May 13, 1903) EN BANC A contract, for the performance of cleaning and watering services, entered into by a municipal attorney, on behalf of the municipal government cannot be validated if not concurred in by the Municipal

Council and not represented by the Municipal President. The Provincial Governor may order the Municipal Council to rescind such contract. It is very clear from the provisions of General Order No. 40 (repealed by the Philippine Commission Act No. 82) that the municipal attorney had no authority to enter into such a contract, and that the power to make such contract was vested in the municipal council alone.

Specific requirements for validity under the Revised Administrative Code

THE ESTATE OF PEDRO C. GONZALES VS. THE HEIRS OF MARCOS PEREZ, G.R. No. 169681 (November 5, 2009) THIRD DIVISION Under Section 2196 of the Revised Administrative Code, when a municipal government is a party to a deed or an instrument which conveys real property or any interest therein, or which creates a lien upon the same, such deed or instrument shall be executed on behalf of the municipal government by the mayor, upon resolution of the council, with the approval of the governor. Without the governor's approval, the contract is voidable. The contract is, thus, valid and binding before they are set aside or disapproved by the governor.

CITY OF NAGA VS. COURT OF APPEALS, G.R. No. 37289 (April 12, 1989) SECOND DIVISION Section 2068 of the Revised Administrative Code provides that when the government of a province is a party to a deed or instrument conveying the title of real property, such deed or instrument shall be executed on behalf of the said Government by the Provincial Governor, upon resolution of the provincial board, and with the approval of the President. Without the needed Presidential approval, the deed of sale is invalid.

RIVERA VS. MACLANG, G.R. No. L-15948 (January 31, 1963) EN BANC; RIVERA VS. MUNICIPALITY OF MALOLOS, G.R. No. L-8847 (31 October 1957) EN BANC Section 607 of the Revised Administrative Code requires that before a contract involving the expenditure of P2,000 or more may be entered into or authorized, the municipal treasurer must certify to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditures on account thereof. A contract entered without such certification is void.

RIVERA VS. MUNICIPALITY OF MALOLOS, G.R. No. L-8847 (October 31, 1957) EN BANC Before a contract may be entered into validly by a municipality, the law requires that there should be an appropriation of municipal funds to meet the obligation validly passed by the municipal council and approved by the municipal mayor. Furthermore, the law provides that the

provincial auditor or his/her representative must check up the deliveries made by a contractor pursuant to a contract lawfully and validly entered into.

MUNICIPALITY OF CAMILING VS. LOPEZ, G.R. No. L-8945 (May 23, 1956) EN BANC Approval by the provincial governor of contracts entered into and executed by a municipal council, as required in Section 2196 of the Revised Administrative Code, is part of the system of supervision that the provincial government exercises over the municipal government. The absence of the approval does not *per se* make the contracts null and void. It could be ratified after its execution in the ordinary course of administration. It is merely voidable at the option of the party who in law is granted the right to invoke its invalidity.

ALLEN VS. PROVINCE OF TAYABAS, G.R. No. L-12283 (July 25, 1918) EN BANC The Administrative Code of 1917 makes the approval of the Governor-General, in a contract entered into between a province, represented by the Director of Public Works, and a contractor, a prerequisite, only in the purchase and conveyance of real property by a province. The usual government contract, providing for the certificate of approval by the Director of Public Works or his/her representative, is in the nature of a condition precedent, which must be alleged and proved. This certificate is conclusive in the absence of a showing of fraud or bad faith. A public corporation, in the absence of a showing of fraud or concealment, is estopped by the approval of its officer who is authorized to accept the work, from contesting the contractor's right to the contract price. As a condition precedent to action by the courts, fraud or bad faith on the part of the responsible public official, or arbitrary or unreasonable refusal of the certificate or approval must be alleged and proved.

Doctrine of estoppel does not apply against a municipal corporation to validate an invalid contract.

IN RE: PECHUECO SONS COMPANY VS. PROVINCIAL BOARD OF ANTIQUE, G.R. No. L-27038 (January 30, 1970) EN BANC The doctrine of estoppel cannot be applied as against a municipal corporation to validate a contract which it has no power to make, or which it is authorized to make only under prescribed conditions, within prescribed limitations, or in a prescribed mode or manner, although the corporation has accepted the benefits thereof and the other party has fully performed its part of the agreement, or has expended large sums in preparation for performance. A reason frequently assigned for this rule is that to apply the doctrine of estoppel against a municipality in such a case would be to enable it to do indirectly what it cannot do directly.

CITY OF NAGA VS. COURT OF APPEALS, G.R. No. L-5944 (November 26, 1954) EN BANC A city cannot be held liable for damages based on breach of a contract of lease of a portion of a sidewalk between the municipality and a lessee. Sidewalks are outside the commerce of persons. The permits issued by the city treasurer to peddlers to continue selling on the sidewalks being *ultra vires* cannot bind the city.

ALLEN VS. PROVINCE OF TAYABAS, G.R. No. L-12283 (July 25, 1918) EN BANC A public corporation, in the absence of a showing of fraud or concealment, is estopped by the approval of its officer who is authorized to accept the work, from contesting the contractor's right to the contract price. As a condition precedent to action by the courts, fraud or bad faith on the part of the responsible public official, or arbitrary or unreasonable refusal of the certificate or approval must be alleged and proved.

Contracts entered into by local chief executive may be subject to constructive ratification.

OCAMPO VS. PEOPLE, G.R. No. 156547-51 & 156382-85 (February 4, 2008) FIRST DIVISION A loan agreement entered into by the provincial governor without prior authorization from the Sangguniang Panlalawigan is unenforceable. The Sanngunian's failure to impugn the contract's validity despite knowledge of its infirmity is an implied ratification that validates the contract.

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION Records show that upon completion of the infrastructure and other facilities, the City started to dump garbage in the premises. A Notice to Commence Work implementing the contract for the maintenance of the sanitary landfill, was issued by the Mayor as recommended by Project Manager and City Engineer. Disbursement Vouchers of various amounts for the hauling services were issued and were passed upon in audit and duly approved and paid by the City. These are facts and circumstances affirm the conclusion that the City had actually ratified the subject contract. There was constructive ratification.

LGU may enter into compromises regarding property

MUNICIPALITY OF SAN JOAQUIN VS. ROMAN CATHOLIC BISHOP OF JARO, G.R. No. L-11629 (March 30, 1917) EN BANC As a juridical person, a municipality is authorized to execute a contract of compromise in the manner and with the requisites necessary to alienate its property. Thus, a municipal council can authorize the municipal president to enter into a

compromise with the Roman Catholic Bishop and cede a parcel of land, which it previously claimed as its own, in favor of the Church.

Civil Code provisions apply

SMITH, BELL AND CO. INC. VS. GIMENEZ, G.R. L-17617 (June 29, 1963) EN BANC Acceptance of the delivery of a property and use thereof for a certain period constitutes proof that said property was accepted. Thus, the municipality as a buyer became liable for the payment of the price thereof. Under Article 1585 of the Civil Code, the buyer is deemed to have accepted the goods when he/she intimated to the seller that he/she has accepted them or when the goods have been delivered to him/her, and he/she does not act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he/she retains the goods without intimating to the seller that he/she has rejected them.

Suspension of payments of debts

PALACIOS VS. DAZA, G.R. No. L-61 (October 16, 1945) EN BANC Although the debt contracted by the a Provincial Government in the expropriation proceedings was contracted before December 31, 1941, and therefore does not fall under the debt moratorium provision of Executive Order No. 25, it is covered, however, by the terms of Executive Order No. 32 which eliminated the time limit fixed for purposes of reckoning debts and other monetary obligations. The suspension of the payment of debts, therefore, shall continue pending action by the Commonwealth Government.

Power to grant franchises

Contractual nature of franchises

MANILA ELECTRIC RAILROAD AND LIGHT COMPANY VS. BOARD OF PUBLIC UTILITY COMMISSIONERS, G.R. No. 10241 (March 25, 1915) EN BANC The franchise granted by the City of Manila to the Manila Electric Railroad and Light Company is a contract, and the construction placed thereon by the parties, for a long period of time, should be given great weight.

Guarantee of due process

ALGER ELECTRIC, INC. VS. COURT OF APPEALS, G.R. No. L-34298 (February 28, 1985) FIRST DIVISION; NATIONAL POWER CORPORATION VS. JACINTO, G.R. No. L-67143. (January 31, 1985) SECOND DIVISION Municipal

franchises for the operation of a public utility are properties similar to certificates of public conveyance and therefore guaranteed the due process protection of the Constitution.

Legislative franchise is preferred over a municipal franchise

ONG HIN LIAN AND MUNICIPAL GOVERNMENT OF SURIGAO VS. SURIGAO ELECTRIC COMPANY, G.R. No. 37560 (February14, 1933) EN BANC The holder of a legislative franchise has preference over the holder of a municipal franchise, granted more than a year later. The action of a subordinate body must be taken with an end to accomplish the legislative intent, not to frustrate it.

Grant of franchise should comply with requirements

PARDO VS. MUNICIPALITY OF GUINGOBATAN, G.R. No. 34021 (March 3, 1932) EN BANC According to the Administrative Code, a municipality could not lease public markets to anyone except by public auction and with the approval of the provincial board and the Executive Bureau, if the period of the lease is for more than one year, but not to exceed five years. Failure to comply with these requirements renders the municipal ordinance granting the franchise null and void.

Municipalities have no power to grant franchises to cable television operators

ZOOMZAT VS. PEOPLE OF THE PHILIPPINES, G.R. No. 135535 (February 14, 2005) FIRST DIVISION In the absence of constitutional or legislative authorization, municipalities have no power to grant franchises to cable television operators. Only the National Telecommunications Commission has such authority. Consequently, the protection of the constitutional provision as to impairment of the obligation of a contract does not extend to privileges, franchises and grants given by a municipality in excess of its powers, or *ultra vires*. Being a void legislative act, the ordinance granting a franchise did not confer any right nor vest any privilege.

A municipal corporation is not prevented from constructing and operating a competing telephone system.

PHILIPPINE LONG DISTANCE TELEPHONE VS. CITY OF DAVAO, G.R. No. 23080 (September 20, 1965) EN BANC A City has the power and authority to establish and maintain the telephone system in view of the special facts and circumstances existing in said city which brought the same within the scope of the general welfare clause in the city's charter. In adopting

resolutions, the city was responding to a pressing need to establish a telephone system that could fully serve and benefit the people in its territory. A municipal corporation is not prevented from constructing and operating a competing plant, although a franchise had been granted a private company for a similar public utility, provided the franchise is not exclusive.

CHAPTER 6
FISCAL AUTONOMY AND FINANCIAL MATTERS

Fiscal Autonomy

Meaning of fiscal autonomy

PROVINCE OF BATANGAS VS. ROMULO, G.R. No. 152774 (May 27, 2004) EN BANC Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Further, a basic feature of local fiscal autonomy is the constitutionally mandated automatic release of the shares of local governments in the national internal revenue.

PIMENTEL VS. AGUIRRE G.R. No. 132988, (July 19, 2000) EN BANC Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well and that fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn-have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals. Local fiscal autonomy does not however rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of the economic and planning agency of the government, primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs for the entire country. However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units. The President cannot do so unilaterally."

LLANTO VS. ALI DIMAPORO, G.R. No. L-21905 (March 31, 1966) EN BANC The approval of the Secretary of Finance need not be obtained before a *sanggunian panlalawigan* can abolish a position in the local bureaucracy. Section 3(a) of the Local Autonomy Act expressly gives the provincial board the power to appropriate money having in view. This power carries with it the implied power to withdraw unexpended money already appropriated. Autonomy is the underlying rationale of the Local Autonomy Act. The law should be interpreted in such a way that the powers of a *sanggunian* are not restricted. The approval by the Finance Secretary is not a condition precedent to render a resolution effective.

Local autonomy and fiscal autonomy

PROVINCE OF BATANGAS VS. ROMULO, G.R. No. 152774 (May 27, 2004) EN BANC Local autonomy includes both administrative and fiscal autonomy.

"No Report, No Release" policy violates fiscal autonomy

CIVIL SERVICE COMMISSION VS. DEPARTMENT OF BUDGET AND MANAGEMENT, G.R. No. 158791 (July 22, 2005) EN BANC A "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy. Such policy cannot be enforced against offices possessing fiscal autonomy such as Constitutional Commissions and local governments. The automatic release provision found in the Constitution means that these local governments cannot be required to perform any act to receive the "just share" accruing to them from the national coffers.

National government issuances and fiscal autonomy

LEYNES VS. COMMISSION ON AUDIT, G.R. No. 143596 (December 11, 2003) A National Compensation Circular by the Department of Budget and Management cannot nullify the authority of municipalities to grant allowances to judges authorized in the Local Government Code of 1991. The Circular prohibits the payment of representation and transportation allowances from more than one source – from national and local governments.

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 125350 (December 3, 2002) EN BANC Local Budget Circular No. 55 issued by the Department of Budget and Management which provides a limit to the allowance that may be given by local governments to judges is null and void since the Local Government Code of 1991 does not prescribe a limit. By virtue of his/her power of supervision, the President can only interfere in the affairs

and activities of a local government unit if it has acted contrary to law.

Advisory administrative orders do not interfere with local fiscal autonomy.

PIMENTEL VS. AGUIRRE, G.R. No. 132988 (July 19, 2000) EN BANC While the wordings of Section 1 of Administrative Order No. 372 providing for a 25% cost reduction program have a rather commanding tone, and that the requirements of Section 284 of the Local Government Code of 1991 have not been satisfied, the Solicitor General's assurance that the directive for the reduction is merely advisory in character, and does not constitute a mandatory or binding order that interferes with local autonomy. It is understood that no legal sanction may be imposed upon Local governments and their official who do not follow such advice.

Doubts resolved in favor of municipal fiscal powers

SAN PABLO CITY VS. REYES, G.R. No. 127708 (March 25, 1999) THIRD DIVISION The important legal effect of Article X Section 5 of the 1987 Constitution which reads "Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy" is that in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.

WILLIAM LINES INC. VS. CITY OF OZAMIS, G.R. No. L-35048 (April 23, 1974) SECOND DIVISION The 1935 Constitution declares that "each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law." A city can impose a gross sales tax of a certain percentage on the gross freight and fares of the cargo and passengers shipped or transported, since there is no restriction in the Local Tax Code on such a revenue measure of this character. With the enactment of Republic Act No. 2264, the widest latitude to the efforts of municipal corporations to meet the ever-increasing need for revenues with the appropriate taxing ordinances is recognized.

<u>Sources of revenue, Internal Revenue Allotment</u>

Constitution provides for automatic release of IRA, legislative withholding

ALTERNATIVE CENTER FOR ORGANIZATIONAL REFORMS AND DEVELOPMENT, INC. VS. ZAMORA, G.R. No. 144256 (June 8, 2005) EN BANC The General

Appropriation Act of 2000 cannot place a portion of the Internal Revenue Allotment (IRA) amounting to P10B in an Unprogrammed Fund only to be released when a condition is met, *i.e.*, the original revenue targets are realized, since this would violate the automatic release provision under Section 5, Article X of the Constitution. As the Constitution lays upon the executive the duty to automatically release the just share of local governments in the national taxes, so it enjoins the legislature not to pass laws that might prevent the executive from performing this duty. Both the executive and legislative are barred from withholding the release of the IRA. If the framers of the Constitution intended to allow the enactment of statutes making the release of IRA conditional instead of automatic, then Article X, Section 6 of the Constitution would have been worded differently. Congress has control only over the share which must be just, not over the manner by which the share must be released which must be automatic since the phrase "as determined by law" qualified the share, not the release thereof.

National budget cannot amend the 1991 Local Government Code, legislative withholding

PROVINCE OF BATANGAS VS. ROMULO, G.R. No. 152774 (May 27, 2004) EN BANC The General Appropriation Acts of 1999, 2000 and 2001 and the Oversight Committee resolutions cannot amend the Local Government Code of 1991 insofar as they provide for the local governments' share in the Internal Revenue Allotments as well as the time and manner of distribution of the said share. A national budget cannot amend a substantive law, in this case the Code. The provisions in the Code creating the Local Government Special Equalization Fund and authorizing the non-release of the 40% to all local government pursuant to the Code are inappropriate provisions. Further, the restrictions are violative of fiscal autonomy.

Executive withholding of IRA illegal

PIMENTEL VS. AGUIRRE, G.R. No. 132988 (July19, 2000) EN BANC The 10% withholding of the internal revenue allotment of local government imposed by Administrative Order No. 372 is illegal. Such withholding clearly contravenes the Constitution and the law. Although temporary, it is equivalent to a holdback, which means "something held back or withheld, often temporarily." Hence, the 'temporary' nature of the retention by the national government does not matter. Any retention is prohibited. It is an encroachment on the fiscal autonomy of local governments. Concededly, the President was well-intentioned, but the rule of law requires that even the best intentions must be carried out within

the parameters of the Constitution and the law.

Nature of IRA

ALVAREZ VS. GUINGONA, G.R. No. 118303 (January 31, 1996) EN BANC The Internal Revenue Allotment of local government units (1) forms part of the income of local government units; (2) forms part of the gross accretion of the funds of the local government units; (3) regularly and automatically accrues to the local treasury without need of further action on the part of the local government units; (4) is a regular and recurring item of income; (5) accrues to the general fund of the local government units; (6) is used to finance local operations subject to modes provided by the Local Government Code of 1991 and its implementing rules (*e.g.* 20% of the IRA for local development projects); and (7) is included in the computation of the average annual income for purposes of conversion of local government units.

Sources of revenue, power of taxation

Local Taxation is a power conferred by Constitution.

MANILA ELECTRIC COMPANY VS. PROVINCE OF LAGUNA, G.R. No. 131359 (May 5, 1999) THIRD DIVISION Local governments do not have the inherent power to tax except to the extent that such power might be delegated to them either by the basic law or by statute. Presently, under Article X of the 1987 Constitution, a general delegation of that power has been given in favor of local government units. Indicative of the legislative intent to carry out the Constitutional mandate of vesting broad tax powers to local government units, the Local Government Code of 1991 has effectively withdrawn, under Section 193 thereof, tax exemptions or incentives theretofore enjoyed by certain entities.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the 1987 Constitution. The exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

CITY OF BACOLOD VS. ENRIQUEZ, G.R. No. L-27408 (July 25, 1975) SECOND DIVISION Under the 1935 Constitution, in force and in effect when the

ordinance in question was passed, the controlling doctrine is that municipal corporations have no inherent power to tax, thus requiring that a grant thereof be shown. It is no longer the case under the 1973 Constitution. The 1973 Constitution provides that "each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such provisions as may be provided by law." Even under the 1935 Constitution, there was recognition of the principle that broader authority should be conferred on local government units.

NIN BAY MINING COMPANY VS. MUNICIPALITY OF ROXAS, PROVINCE OF PALAWAN, G.R. No. L-20125 (July 20, 1965) EN BANC Republic Act No. 2264 confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes, but also, municipal license taxes, subject to specified exceptions, as well as service fees. A municipality has, under Section 2 of Republic Act No. 2264 and its exceptions, the power to levy by ordinance an inspection and verification fee of P0.10 per ton of silica sand excavated within its territory, although it be in the nature of an export tax. "We are not unmindful of the transcendental effects that municipal export or import licenses or taxes might have upon the national economy, but the language of Republic Act No. 2264 does not, to our mind, leave us another alternative. If remedial measures are desired or needed, let Congress provide the same. Courts have no authority to grant relief against the evils that may result from the operation of unwise or imperfect legislation, unless its flaw partakes of the nature of a constitutional infirmity, and such is not the case before us."

Authority to tax may also be granted through charter.

LUZON SURETY CO., INC. VS. CITY OF BACOLOD, G.R. No. L-23618 (August 31, 1970) EN BANC The authority of the a city to require persons and entities engaged in and conducting any business within its jurisdictional territory to obtain permits and pay the corresponding permit fees, is specifically granted by Commonwealth Act 326, known as the Charter of the City of Bacolod, which empowers the city council to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants.

Local tax code prevails over charters.

BAGATSING VS. RAMIREZ, G.R. No. L-41631 (December 17, 1976) EN BANC In regard, therefore, to ordinances in general, the Revised Charter of the

City of Manila is doubtless dominant, but, that dominant force loses its continuity when it approaches the realm of "ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision. This is especially true where the law containing the particular provision was enacted later than the one containing the general provision. The City Charter of Manila was promulgated on June 18, 1949 while the Local Tax Code which decreed on June 1, 1973.

Rationale for local taxation

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, (G.R. No. L-31156 (February 27, 1976) EN BANC The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of the government without infringing upon the theory of separation of powers. The exception, however, lies in the case of municipal corporations, to which, said theory does not apply. Legislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial practice. By necessary implication, the legislative power to create political corporations for purposes of local self-government carries with it the power to confer on such local governmental agencies the power to tax.

Intent of LGC is to broaden tax base

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC. VS. DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, G.R. No. 143076 (June 10, 2003) EN BANC; **MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. COURT OF APPEALS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION** The restrictive and limited nature of the tax exemption privileges under the Local Government Code of 1991 is consistent with the State policy of local autonomy. The obvious intention of the law is to broaden the tax base of local governments to assure them of substantial sources of revenue.

LGC specifically allows imposition of other taxes

PROVINCE OF BULACAN VS. COURT OF APPEALS, G.R. No. 126232 (November 27, 1998) THIRD DIVISION Section 186 of the Local Government Code of 1991 allows local governments to levy taxes other than those specifically enumerated under the Code, subject to the conditions

specified therein.

There must be a tax ordinance to authorize the levy of a tax.

YAMANE VS. BA LEPANTO CONDOMINIUM, G.R. No. 54993 (October 25, 2005) SECOND DIVISION Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code of 1991 alone. What determines tax liability is the tax ordinance, the Code being the enabling law for the local legislative body.

Delegated power to tax, Congressional control

CITY GOVERNMENT OF QUEZON CITY VS. BAYAN TELECOMMUNICATIONS, G.R. No. 162015 (March 6, 2006) SECOND DIVISION While the power to tax is a constitutional power, it is not an inherent power of local governments. The power to tax is still primarily vested in Congress. Limitations could be imposed by Congress.

MANILA ELECTRIC COMPANY VS. PROVINCE OF LAGUNA, G.R. No. 131359 (May 5, 1999) THIRD DIVISION Local governments do not have the inherent power to tax except to the extent that such power might be delegated to them either by the basic law or by statute. Presently, under Article X of the 1987 Constitution, a general delegation of that power has been given in favor of local government units. Indicative of the legislative intent to carry out the Constitutional mandate of vesting broad tax powers to local government units, the Local Government Code of 1991 has effectively withdrawn, under Section 193 thereof, tax exemptions or incentives theretofore enjoyed by certain entities.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the 1987 Constitution. The exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy.

SOUTHEAST ASIA MFG. VS. MUNICIPAL COUNCIL OF TAGBILARAN, G.R. No. L-23858 (November 21, 1979) FIRST DIVISION The dispute as to whether or not a municipal tax ordinance which imposed storage fees on copra under the Local Autonomy Act is valid has become moot and academic

as the Local Autonomy Act has been superseded by the Local Tax Code nullifying all taxing ordinances of municipalities.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC When it is said that the taxing power may be delegated to municipalities and the like, it is meant that there may be delegated such measure of power to impose and collect taxes as the legislature may deem expedient. Thus, municipalities may be permitted to tax subjects which for reasons of public policy the State has not deemed wise to tax for more general purposes.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC; VILLANUEVA VS. CITY OF ILOILO, G.R. No. L-26521 (December 28, 1968) EN BANC The taxing authority conferred on local governments under Section 2 or Republic Act No. 2264, is broad enough as to extend to almost "everything, excepting those which are mentioned therein." As long as the tax levied under the authority of a city or municipal ordinance is not within the exceptions and limitations in the law, the same comes within the ambit of the general rule, pursuant to the rules of *expresio unius est exclusio alterius* and *exceptio firmat regulum in casibus non excepti*.

SAN MIGUEL CORPORATION VS. MUNICIPAL COUNCIL OF MANDAUE, G.R. No. 30761 (July 11, 1973) EN BANC While the grant of power to tax to chartered cities and municipalities under Section 2 of the Local Autonomy Act is sufficiently plenary, it is, however, subject to the exceptions and limitations. In other words, the municipal corporation should not transcend the limitations imposed by the statute on the basis of which the power to tax is sought to be exercised.

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813(April 28, 1969) EN BANC The taxing power of a City under Section 2 of the Local Autonomy Act is 'broad' and "sufficiently plenary to cover everything, excepting those mentioned therein."

IN THE MATTER OF A PETITION FOR DECLARATORY JUDGMENT REGARDING THE VALIDITY OF MUNICIPAL ORDINANCE No. 14 VS. MUNICIPAL BOARD OF ORMOC CITY, G.R. No. 24322 (July 21, 1967) EN BANC From the time the Local Autonomy Act became effective on June 19, 1959, the sphere of autonomy of a chartered city in the enactment of taxing measures has been considerably enlarged. The grant of the power to tax to chartered cities under Section 2 of Local Autonomy Act is sufficiently plenary to cover everything, excepting those which are mentioned therein, subject only to the limitation that the tax so levied is for public purposes, just and

uniform.

HODGES VS. MUNICIPAL BOARD OF THE CITY OF ILOILO, G.R. No. L-18276 (January 12, 1967) EN BANC The grant of the power to tax to chartered cities under Section 2 of the Local Autonomy Act is sufficiently plenary to cover "everything, excepting those which are mentioned" therein subject only to the limitation that the tax so levied is for public purposes, just and uniform.

EVERETT STEAMSHIP VS. MUNICIPALITY OF MEDINA, G.R. No. L-21191 (April 30, 1966) EN BANC The power to tax or the power to issue a license (berthing fee on vessels mooring or berthing on the municipal wharf) as means of raising revenue are not inherent to a municipal corporation. The power must be expressly conferred in plain terms or must arise by necessary implication from the powers expressly granted. A grant of power of this nature is, as a rule, strictly construed against its exercise and in favor of the public especially where the purpose is to raise revenue. Power is construed *strictissimi juris.*

ABOITIZ SHIPPING CORPORATION V. CITY OF CEBU, G.R. No. 14526 (March 31, 1965) EN BANC The power to tax is an attribute of sovereignty and for it to be exercised by a municipal corporation requires a clear delegation of the power by means of a charter grant or by a general enabling statute. Such power is not inherent in a municipal corporation.

AMERICAN MAIL LINE VS. CITY OF BASILAN, G.R. No. L-12647 (May 31, 1961) EN BANC Under its Charter, the City may only levy and collect taxes for general and specific purposes as provided by law. In other words, it was not granted a blanket power of taxation. The use of the phrase "in accordance with the law" means the same as "as provided by law" which clearly discloses the legislative intent to limit the taxing power of the city. Consequently, it is not authorized to enact ordinances providing for collection of anchorage fees for revenue purposes, the same being in excess of the harbor fee imposed by the National Government.

CITY OF ILOILO VS. VILLANUEVA, G.R. NO. L-12695 (March 23, 1959) EN BANC A municipal corporation is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality.

SALDAÑA VS. CITY OF ILOILO, G.R. No. L-10470 (June 26, 1958) EN BANC A

municipal corporation has no inherent power of taxation. To enact a valid ordinance, the City must find in its charter the power to do so, for said power cannot be presumed. In the absence of a statutory grant, the same is *ultra vires*, and consequently null and void.

SANTOS LUMBER COMPANY VS. CITY OF CEBU, G.R. No. L-10196 (January 22, 1958) EN BANC A municipal corporation unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. While the Charter of the City of Cebu, Commonwealth Act No. 58, grants to the city the power to tax the business of lumber yards, it expressly withheld from the city the power to tax the sale of lumber stocked therein.

WE WA YU VS CITY OF LIPA, G.R. No. L-9167 (September 27, 1956) EN BANC In order that specific tax may be imposed, the grant must be clear. Unlike a sovereign state, a municipal corporation does not possess inherent power of taxation. And the power when granted is to be construed *strictissimi juris*. The tax is considered a specific tax if the amount is imposed per liter of volume capacity.

MEDINA VS. CITY OF BAGUIO, G.R. No. L-4060 (August 29, 1952) EN BANC Unlike a sovereign state, a municipal corporation is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed *strictissimi juris*.

ICARD VS. CITY COUNCIL OF BAGUIO, G.R. No. L-1281 (May 31, 1949) EN BANC As municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show intent to confer that power. The power to tax, when granted, is to be construed in *strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions have no place in the interpretation of the taxing power of a municipal corporation.

HERAS VS. TREASURER OF QUEZON CITY, G.R. No. L-12565 (October 31, 1960) EN BANC It is well-established that subordinate entities like municipal councils can exercise the power of taxation only to the extent specified by law and this power cannot be extended by strained implications. Legislative powers in regard to taxes and license are not inherent in municipal corporations but by implication, and like other delegated powers, they are subject to strict construction.

BATANGAS TRANSPORTATION CO. VS. PROVINCIAL TREASURER OF BATANGAS, G.R. No. 28863 (October 11, 1928) EN BANC Section 2037 of the Administrative Code authorizes municipal councils to impose tax on persons engaged in garage business, where motor vehicles are kept for hire but does not authorize them to impose a tax on persons engaged in the business of common carrier, who own private garages wherein to keep their motor vehicles. Therefore, the enactment of the ordinance, which imposes tax without a distinction on all persons using a garage, was made in excess of the authority of the Municipal Council. Laws authorizing municipalities to impose taxes are to be strictly construed.

Regulation is not taxation.

PROGRESSIVE DEVELOPMENT CORPORATION VS. QUEZON CITY, G.R. No. 36081 (April 24, 1989) THIRD DIVISION The term 'tax' frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although license fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidental revenue is also obtained does not make the imposition a tax. To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well.

SANTOS VS. MUNICIPAL GOVERNMENT OF CALOOCAN, RIZAL, G.R. No. L-15807 (March 22, 1963) EN BANC License fees for revenue are imposed in the exercise of local taxing power as distinguished from the police power. The power of the municipality to exact such fees must be expressly granted by charter or statute and is not to be implied from the conferred power to license and regulate merely. A license is issued under the police power; but the exaction of a license fee with a view to revenue would be an exercise of the power of taxation; and the charter must plainly show an intent to confer the power, or the municipal corporation cannot assume it. A right to license does not imply the right to charge a license fee therefore with a view to revenue, unless such seems to the manifest

purpose of the grant.

SANTOS VS. MUNICIPAL GOVERNMENT OF CALOOCAN, RIZAL, G.R. No. L-015807 (March 22, 1963) EN BANC Section 2(h) of Republic Act No. 2264 which prohibits a chartered city from imposing a tax on the registration of motor vehicles and the issuance of all kinds of licenses or permits for the driving thereof is one of the exceptions constituting a restriction on the taxation power granted under the said Act to a city, municipality or municipal district. However, the requirement in an ordinance that payment of a tax before registration and transfer of ownership of a vehicle cannot be considered a tax for the same is merely a coercive measure to make the enforcement of the contemplated sales tax more effective.

ARONG VS. RAFFINAN, G.R. No. L-8673 (February 18, 1956) FIRST DIVISION Where the only power granted to the municipal board was to "regulate and fix the amount of the license fees" for "theaters, theatrical performances, cinematographs" and there was no grant of power to impose and collect, in addition to a general license fee, a specific amount on each admission ticket, graduated according to price of the ticket, any such tax is *ultra vires*.

MANILA ELECTRIC CO. VS CITY OF MANILA, G.R. No. L-8694 (April 28, 1956) EN BANC The power of a City to tax steam boilers is not affected by the Department of Labor's power to regulate or inspect them; one is taxation, the other regulation. Besides, the power of inspection of the Secretary of Labor has particular relation to the safety of laborers and employees of industrial enterprises, whereas that of the City is related to the safety and welfare of all the inhabitants of the City.

HERCULES LUMBER VS. MUNICIPALITY OF ZAMBOANGA, G.R. No. 33749 (February 18, 1931) EN BANC Subordinate entities like municipal councils can exercise the power of taxation only to the extent specified by law. This power cannot be extended by strained implications. The power to regulate should not be construed as including the power to impose license taxes for revenue purposes

Grant of power to tax depends on type of LGU

MUNICIPALITY OF SAN FERNANDO, LA UNION VS. STA. ROMANA, G.R. No. L-30159 (March 31, 1987) SECOND DIVISION The authority to impose taxes and fees for extraction of sand and gravel belongs to the Province, not to the municipality where they are found. A Municipality cannot extract sand and gravel from another Municipality without paying the

corresponding taxes or fees that may be imposed by the Province.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC Section 2 of Republic Act No. 2264, known as the Local Autonomy Act of 1959, provides a prohibition against municipalities and municipal districts to impose "any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code." For purposes of this particular limitation, a municipal ordinance which prescribes a set ratio between the amount of the tax and the volume of sales of the taxpayer imposes a sales tax and is null and void for being outside the power of the municipality to enact.

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813 (April 28, 1969) EN BANC The *proviso* in Section 2 of Republic Act No. 2264 known as the Local Autonomy Act prohibiting the imposition of any percentage tax on sales or other taxes in any form based thereon is directed exclusively to municipalities and municipal districts, and does not apply to cities.

HODGES VS. MUNICIPAL BOARD OF THE CITY OF ILOILO, G.R. No. L-18129 (January 31, 1963) EN BANC A sales tax of a certain percentage of the selling price of a second-hand motor vehicle comes within the category of a tax within the provision of Section 2 of Republic Act No. 2264. The prohibition of imposing a percentage tax only applies to municipalities and municipal districts and does not comprehend chartered cities.

CITY OF BACOLOD VS. GRUET, G.R. No. L-18290 (January 31, 1963) EN BANC Under the Section 2 of Republic Act No. 2264, all charted cities, municipalities, and municipal districts are empowered to impose, not only municipal license taxes upon persons engaged in any business but also to levy for public purposes, just and uniform taxes, except that, pursuant to the express language of the *proviso*, municipalities and municipal districts (not chartered cities) shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon, or impose taxes on articles subject to specific tax except gasoline, under the provisions of the National Internal Revenue Code. The tax on every case of bottled softdrink imposed by the City, is therefore within its express powers, unlimited by the *proviso* applicable only to municipalities and municipal districts.

Limitations and requirements on the power to tax

Due process and uniformity in taxation

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC An increase in the tax alone would not support the claim that the tax is oppressive, unjust and confiscatory. Municipal corporations are allowed much discretion in determining the rates of imposable taxes. This is in line with the constitutional policy of according the widest possible autonomy to local governments in matters of local taxation. Unless the amount is so excessive as to be prohibitive, courts will go slow in writing off an ordinance as unreasonable.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC Due process is usually violated where the tax imposed is for a private as distinguished from a public purpose or when a tax is imposed on property outside the State, *i.e.*, extra-territorial taxation and when arbitrary or oppressive methods are used in assessing and collecting taxes.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC A tax does not violate the due process clause, as applied to a particular taxpayer, although the purpose of the tax will result in an injury rather than a benefit to such taxpayer. Due process does not require that the property subject to the tax or the amount of tax to be raised should be determined by judicial inquiry, and a notice and hearing as to the amount of the tax and the manner in which it shall be apportioned are generally not necessary to due process of law.

HODGES VS. MUNICIPAL BOARD OF THE CITY OF ILOILO, G.R. No. L-18276 (January 12, 1967) EN BANC The grant of the power to tax to chartered cities under Section 2 of the Local Autonomy Act is sufficiently plenary to cover "everything, excepting those which are mentioned" therein subject only to the limitation that the tax so levied is for public purposes, just and uniform.

UY MATIAO & CO., INC. VS. THE CITY OF CEBU, G.R. No. L-4887 (May 30, 1953) EN BANC The Ordinances Nos. 38 and 46 of the City of Cebu are valid. They are not unfair, unjust, and arbitrary and they do not violate the principle on uniformity of taxation or deprive the owner of copra without due process. The tax or license fee provided in the ordinances is uniform since it is imposed on every person, firm or corporation in the business of buying and selling copra in the City. The levy is based on the weight of the

copra regardless of the value. A tax of P0.05 for 100 kilos is reasonable. The owner of the copra is not deprived of his/her property because a reasonable tax is imposed. If he/she does not want to pay the tax, he/she can still sell, operate his/her warehouse and continue with his/her business elsewhere.

ASSOCIATION OF CUSTOMS BROKERS, INC. VS. MUNICIPAL BOARD, CITY OF MANILA, G.R. No. L-4376 (May 22, 1953) EN BANC An ordinance which levies a property tax on all motor vehicles operating within the City is null and void because it infringes the rule of uniformity of taxation ordained by the 1935 Constitution. It levies the said tax upon all motor vehicles operating within the City without recognizing the difference between a motor vehicle registered in the City and one registered in another place but occasionally comes to the former and uses its streets and public highways. The distinction is important because, as implied in the ordinance, the burden should be imposed only on vehicles registered in the City. It is unfair for vehicles, which traverse the City for temporary stay or short errands to share equal burden with those vehicles that use the streets and public highways everyday. The deterioration they cause is of smaller degree and extent thus they should not pay the same amount of tax.

MANILA RACE HORSE TRAINERS ASSOCIATION, INC. VS. DE LA FUENTE, G.R. No. L-2947 (January 11, 1951) EN BANC There is no arbitrary classification when an ordinance taxes boarding stables for race horses excluding stables of non-race horses. The owners of boarding stables for race horses and, for that matter, the race horse owners themselves, who in the scheme of shifting may carry the taxation burden, are a class by themselves and appropriately taxed where owners of other kinds of horses are taxed less or not at all, considering that equity in taxation is generally conceived in terms of ability to pay in relation to the benefits received by the taxpayer and by the public from the business or property taxed. Race horses are devoted to gambling where their owners derive fat income and the public derives hardly any profit from horse racing. The business likewise demands relatively heavy police supervision. Taking everything into account, the differentiation conforms to the practical dictates of justice and equity and is not discriminatory within the meaning of the 1935 Constitution.

YAP TAK WING & CO. INC., ET AL. VS. MUNICIPAL BOARD, CITY OF MANILA, G.R. No. 46602 (September 22, 1939) EN BANC Where a municipal corporation is vested under its charter with the power to tax, it may change, alter, reduce, or increase rates already in existence, provided it does not contravene any provision of its charter, the Constitution or the

general law. An ordinance can reclassify *panciterias* into classes based on the volume of business and the number of persons who may be accommodated in the establishment. While it is true that one group is required to pay a rate of tax different from what is exacted from those belonging to other groups, it is clear that the ordinance is not aimed against any particular group but applies as well to all persons or group of persons included in one group, irrespective of the nationality of such persons or group of persons.

UNITED STATES VS. SUMULONG, G.R. No. L-9972 (March 25, 1915) EN BANC Authorities are conclusive upon the point that an arrangement of a business into classes providing a graduated scale of license fees for each class, does not violate the constitutional provisions relating to uniformity of taxation. Under a general power to impose and collect license fees and occupation taxes, a municipality in this jurisdiction has the right to classify and graduate such fees according to the estimated value of the privilege conferred, provided such classification is reasonable and does not contravene the provisions of the municipal charter.

Limitations, territorial jurisdiction

ILOILO BOTTLERS, INC. VS. CITY OF ILOILO, G.R. No. L-52019 (August 19, 1988) THIRD DIVISION A tax on the privilege of distributing, manufacturing or bottling softdrinks is an excise tax. Being an excise tax, it can be levied by the taxing authority only when the acts, privileges or businesses are done or performed within the jurisdiction of the said authority. The *situs* of the act of distributing, bottling or manufacturing softdrinks must be within city limits.

Requirements for valid tax ordinance

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC The requirements for a valid tax ordinance are: (1) the tax is for a public purpose; (2) the rule on uniformity of taxation is observed; (3) either the person or property taxed is within the jurisdiction of the government levying the tax; and (4) in the assessment and collection of certain kinds of taxes notice and opportunity for hearing are provided.

Public purpose of tax is not impaired by intervention of private corporation.

BAGATSING VS. RAMIREZ, G.R. No. L-41631 (December 17, 1976) EN BANC The right to tax depends upon the ultimate use, purpose and object for

which the fund is raised. It is not dependent on the nature or character of the person or corporation whose intermediate agency is to be used in applying it. The people may be taxed for a public purpose, although it be under the direction of an individual or private corporation.

Double taxation

THE CITY OF MANILA VS. COCA-COLA BOTTLERS PHILIPPINES, INC., G.R. No. 181845 (August 4, 2009) THIRD DIVISION When a municipality or city has already imposed a business tax on manufacturers of liquors, distilled spirits, wines, and any other article of commerce, pursuant to Section 143(a) of the Local Government Code (LGC), said municipality or city may no longer subject the same manufacturers to a business tax under Section 143(h) of the same Code. In the same way, businesses already subject to a local business tax under Section 14 of Tax Ordinance No. 7794 (which is based on Section 143(a) of the LGC), can no longer be made liable for local business tax under Section 21 of the same Tax Ordinance (which is based on Section 143(h) of the LGC). Otherwise, there will be double taxation since these two taxes are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – the City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) with the same kind or character – a local business tax imposed on gross sales or receipts of the business.

PEPSI-COLA BOTTLING CO. VS. MUNICIPALITY OF TANAUAN, G.R. No. L-31156 (February 27, 1976) EN BANC Double taxation becomes obnoxious only where the taxpayer is taxed twice for the benefit of the same governmental entity or by the same jurisdiction for the same purpose, but not in a case where one tax is imposed by the State and the other by the city or municipality.

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813 (April 28, 1969) EN BANC A city ordinance imposing a tax on the sale of lumber cannot be declared null and void on the ground that the said ordinance imposes in effect double taxation because the business of lumber yard is already regulated under the Charter of a City and the sale of lumber is a mere incident of the business of lumber yard. Suffice it to say that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not, apart from the fact that double taxation is not prohibited in the Philippines.

VILLANUEVA VS. CITY OF ILOILO, G.R. No. L-26521. (December 28, 1968) EN BANC While it is true that the plaintiffs are taxable under the provisions of the National Internal Revenue Code as real estate dealers, and still taxable under a municipal ordinance, the argument against double taxation may not be invoked. The same tax may be imposed by the national government as well as by the local government. There is nothing inherently obnoxious in the exaction of license fees or taxes with respect to the same occupation, calling or activity by both the State and a political subdivision thereof.

VICTORIAS MILLING, CO., INC. VS. MUNICIPALITY OF VICTORIAS, PROVINCE OF NEGROS OCCIDENTAL, G.R. No. L-21183 (September 27, 1968) EN BANC The authority to impose a tax on occupation or business is supported by the express grant of power under Section 1 of Commonwealth Act 72. Section 4(1) of said Act clearly and specifically allows municipal councils to tax persons engaged in "the same business or occupation" on which "fixed internal revenue privilege taxes" are "regularly imposed by the National Government," with certain exceptions specified in Section 3 of the same statute. The instant case does not fall within the exceptions. Clearly, Congress has not reserved to the national government the right to impose the disputed taxes.

BUTUAN SAWMILL VS. CITY OF BUTUAN, G.R. No. L-21516 (April 29, 1966) EN BANC A city cannot levy a percentage tax on business of electricity since this tax is one of the exemptions on the taxing powers of local governments under the Local Autonomy Act. This power is beyond the broad power of taxation of the city under its charter. Said ordinance amounted to double taxation.

PUNSALAN VS. MUNICIPAL BOARD OF THE CITY OF MANILA, G.R. No. L-4817 (May 26, 1954) EN BANC The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city, it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.

Example of national tax retained versus local taxation

PHILIPPINE BASKETBALL ASSOCIATION VS. COURT OF APPEALS, G.R. No. 119122 (August 8, 2000) THIRD DIVISION it is clear that the proprietor, lessee or operator of professional basketball games is required to pay an amusement tax equivalent to fifteen per centum (15%) of their gross receipts to the Bureau of Internal Revenue, which payment is a national

tax. The said payment of amusement tax is in lieu of all other percentage taxes of whatever nature and description. While Section 13 of the Local Tax Code mentions "other places of amusement", professional basketball games are definitely not within its scope. Under the principle of *ejusdem generis*, where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned. Thus, in determining the meaning of the phrase "other places of amusement", one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with artistic expression as their common characteristic. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.

Tax exemptions and condonation

Exemption of certain enterprises

GOVERNMENT SERVICE INSURANCE SYSTEM VS. CITY TREASURER OF MANILA, G.R. No. 186242 (December 23, 2009) THIRD DIVISION The Government Service Insurance System (GSIS) enjoys full tax exemption under its present charter. Moreover, as an instrumentality of the national government, it is itself not liable to pay real estate taxes assessed by the City of Manila against two of its properties. Following the "beneficial use" rule, however, accrued real property taxes are due from the property being leased to a taxable entity. But the corresponding liability for the payment thereof devolves on the taxable beneficial user. At any event, such leased property cannot be subject of a public auction sale, notwithstanding its realty tax delinquency. This means that the City of Manila has to satisfy its tax claim by serving the accrued realty tax assessment on the taxable beneficial user and, in case of nonpayment, through means other than the sale at public auction of the leased property.

BATANGAS POWER CORPORATION VS. BATANGAS CITY AND NATIONAL POWER CORPORATION, G.R. No. 152675 (April 28, 2004) SECOND DIVISION Section 133(g) of the Local Government Code of 1991 providing for the 6-year exemption of Board of Investments-registered pioneer enterprises from date of registration applies to exemption from taxes imposed by the local government, like the business tax. On the other hand, the 6-year exemption of pioneer enterprises reckoned from the date of commercial

operation applies to income taxes imposed by the national government.

Tax exemptions granted to GOCCs, withdrawn upon the effectivity of the LGC of 1991

PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC. VS. DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, G.R. No. 143076 (June 10, 2003) EN BANC Sections 193 (Withdrawal of tax Exemption Privileges) and 234 (Exemptions from Real Property Tax) of the Local Government Code of 1991 are constitutional. There is no violation of the equal protection clause when the Code only exempted cooperatives registered under Republic Act No. 6938 and not electric cooperatives registered under Presidential Decree No. 269 since there is reasonable classification between these two types of cooperatives. The withdrawal of exemptions is indicative of the legislative intent to vest broad taxing powers upon local governments and to limit exemptions from local taxation to entities specifically provided therein.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION Tax exemptions granted to government-owned and controlled corporations are withdrawn upon the effectivity of the Local Government Code of 1991 except those granted to local water districts, cooperatives, duly registered under Republic Act No. 6938, non-stock and non-profit and educational institutions. Thus, the tax exemption of the Mactan Cebu International Airport Authority granted by its Charter has been withdrawn.

JOHN HAY PEOPLES ALTERNATIVE COALITION V. LIM, G.R. No. 119775 (October 24, 2003) EN BANC Under Section 12 of Republic Act No. 7227 it is only the Subic Special Economic Zone (SEZ) which was granted by Congress with tax exemption, investment incentives and the like. There is no express extension of the aforesaid benefits to other Special Economic Zones still to be created at the time via presidential proclamation. The incentives under R.A. No. 7227 are exclusive only to the Subic SEZ, hence, the extension of the same to the John Hay SEZ in Baguio City finds no support therein. The nature of most of the assailed privileges is one of tax exemption. It is the legislature, unless limited by a provision of the state constitution, that has full power to exempt any person or corporation or class of property from taxation, its power to exempt being as broad as its power to tax. Other than Congress, the Constitution may itself provide for specific tax exemptions, or local governments may pass ordinances on exemption only from local taxes.

PHILIPPINE LONG DISTANCE TELEPHONE CO. INC VS. DAVAO CITY, G.R.

143867 (March 25, 2003) EN BANC The Philippine Long Distance Telecommunications Company can be required by a local government unit to pay local franchise tax notwithstanding its "in lieu of all taxes" provisos in its national franchise. Republic Act No. 7925, the Public Telecommunications Policy of the Philippines does not provide for tax exemption but exemption from certain regulations and requirements imposed by the National Telecommunications Commission. "In lieu of all taxes" provisos are interpreted strictly against the taxpayer and in favor of the taxing authority. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.

Prospectivity in condonation

DE MESA VS. COLLECTOR OF INTERNAL REVENUE, G.R. No. 31024 (August 22, 1929) EN BANC Under Section 2309 of the Municipal Law, a municipal license tax already in existence is subject to change only by ordinance enacted prior to December 15 of any year for the next succeeding year. This means license taxes must be prospective only. No authority is given to condone taxes previously accrued. In the absence of express authority granted by the Legislature, a municipal council has no authority, by ordinance, to condone or release a tax which has once accrued against a particular taxpayer.

Procedural requirements

Review of tax ordinances

DRILON VS. LIM, G.R. No. 112497 (August 4, 1994) EN BANC Section 187 of the Local Government Code of 1991 authorizes the Secretary of Justice to review only the constitutionality or legality of the tax ordinance and, if warranted, to revoke it on either or both of these grounds. When he/she alters or modifies or sets aside a tax ordinance, he/she is not also permitted to substitute his/her own judgment for the judgment of the local government that enacted the measure.

DRILON VS. LIM, G.R. No. 112497 (August 4, 1994) EN BANC The Secretary of Justice in setting aside the Revenue Code did not replace it with his/her own version of what the Code should be, nor did he/she make a pronouncement that the Code was unwise or unreasonable, nor did he/she say that the Code was bad law, the Secretary acted within his/her power to supervise. The act did not amount to control. All he/she did in reviewing the said measure was to determine if the officials were

performing their functions in accordance with law, that is, with the prescribed procedure for the enactment of tax ordinances and the grant of powers to the city government under the Local Government Code of 1991.

TATEL VS. MUNICIPALITY OF VIRAC, G.R. No. L-29159 (November 24, 1972) EN BANC The provision of Commonwealth Act No. 472 requiring the prior approval of the Secretary of Finance, when an ordinance increases by more than 50% municipal taxes prescribed in previous ordinances, has been impliedly repealed by Republic Act No. 2264, which vests in municipality, city and municipal district councils ample discretion to impose taxes and even municipal license taxes, and, instead of demanding of prior approval of the Secretary of Finance to ordinances increasing taxes by more than 50% of the previous rates, vests in said official no more than the authority to suspend the effectivity of any ordinance, within 120 days after its passage, when, in his/her opinion, the taxes imposed are unjust, excessive, oppressive or confiscatory.

A.L. AMMEN TRANSPORTATION CO., INC. VS. SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, CA-G.R. 28254-R (November 08, 1963) Pursuant to the Revised Administrative Code, the recommendation of the Secretary of Public Works and Communications and the authorization of the President of the Philippines are necessary for declaring a toll road. In other words, a provincial government may not collect road tolls under the guise of bridge tolls where the President has not authorized the establishment of a toll road.

MUNICIPALITY OF COTABATO VS. SANTOS, G.R. No. L-12757 (May 29, 1959) EN BANC Section 4 of Act No. 4003 requires that ordinances, rules and regulations pertaining to fishing or fisheries promulgated by municipal councils must be approved by the Secretary of Agriculture and Natural Resources. However, an ordinance imposing an annual tax on the operation of fishpond is not covered under said Section since the same is not intended to regulate fishing or the operation of fishpond but to impose taxes for purposes of revenue. The municipality has the power to enact said ordinance under Section 1 of Commonwealth Act No. 472 which provides that a municipal council is given authority to impose taxes upon any person engaged in any occupation or business, or exercising privileges in the municipality for purposes of revenue. The privilege of operating a fishpond is not one of those cases excepted in the law which are placed beyond the power of a municipal council to tax or levy.

MUNICIPAL GOVERNMENT OF PAGSANJAN VS. REYES, G.R. No. L-8195 (March 23, 1956) SECOND DIVISION The requirement under Section 4 of

Commonwealth Act No. 472 that business license taxes imposed by municipalities in excess of 50 pesos *per annum*, and increases in such taxes of more than 50%, be approved by the Secretary of Finance is mandatory. Such a tax rate or increase cannot take effect until it is so approved. Both under Commonwealth Act No. 472 and under Act No. 3422, the specific approval of the Secretary of Finance is required. The provision is not merely one which permits or assumes the validity of an ordinance until disapproved by the Secretary of Finance. The evident purpose of the law is to forestall the imposition of unreasonable and oppressive license taxes on business.

LI SENG GIAP VS. MUNICIPALITY OF DAET, G.R. No. 32254 (March 21, 1930) EN BANC Act No. 3422 requires that the approval of the Secretary of the Interior and of the Secretary of Finance be obtained whenever the fixed amounts of the municipal taxes established through an ordinance a certain amount. Thus, a Municipal Council cannot levy a higher amount without the Secretary's approval. The approval of the Secretary of the Interior and of the Secretary of Finance was not obtained before the ordinance was enforced. The ordinance is null and void, since such approval is a condition *sine qua non* for the validity of said ordinance.

The Judiciary and local taxation

ANGELES CITY VS. ANGELES ELECTRIC CORPORATION, G.R. No. 166134 (June 29, 2010) FIRST DIVISION There is no express provision in the Local Government Code prohibiting courts from issuing an injunction to restrain local governments from collecting taxes. The prohibition against the issuance of an injunction to restrain the collection of taxes applies only to national taxes, not to local taxes.

SAN MIGUEL CORPORATION VS. AVELINO, G.R. No. L-39699 (March 14, 1979) SECOND DIVISION A judge of the Court of First Instance has the authority to pass upon the validity of a city tax ordinance even after its validity has been decided by the Secretary of Justice. The appeal to the Secretary does not deprive the courts of their jurisdiction to pass upon the validity of the ordinance.

VICTORIAS MILLING, CO., INC. VS. MUNICIPALITY OF VICTORIAS, PROVINCE OF NEGROS OCCIDENTAL, G.R. No. L-21183 (September 27, 1968) The discretion to determine the amount of revenue required for the needs of a municipality is lodged with the municipal authorities. Thus, an ordinance enacted in pursuance of the taxing power carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. However, courts will go slow in writing off an ordinance as

unreasonable unless the amount is so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory. A rule which has gained acceptance is that factors relevant to such an inquiry are the municipal conditions as a whole and the nature of the business made subject to imposition.

Requirements as to effectivity under Administrative Code

CITY OF NAGA VS. AGNA, G.R. No. L-36049 (May 31, 1976) FIRST DIVISION Section 2309 of the Revised Administrative Code contemplates two types of municipal ordinances, namely: (1) a municipal ordinance which changes a municipal license tax already in existence and (2) an ordinance which creates an entirely new tax. Under the first type, a municipal license tax already in existence shall be subject to change only by an ordinance enacted prior to the 15th day of December of any year after the next succeeding year. This means that the ordinance enacted prior to the 15th day of December changing or repealing a municipal license tax already in existence will have to take effect in next succeeding year. The evident purpose of the provision is to enable the taxpayers to adjust themselves to the new charge or burden brought about by the new ordinance. This is different from the second type of a municipal ordinance where an entirely new tax may be created by any ordinance enacted during the quarter year to be effective at the beginning of any subsequent quarter.

Public hearing, not mandatory under Local Autonomy Act

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813 (April 28, 1969) EN BANC The Local Autonomy Act provides in relation to tax ordinances where practicable, public hearings be held wherein the views of the public may be heard. This requirement of public hearing is, however, a mere suggestion, compliance with which is not obligatory, so that failure to act in accordance therewith can not and does not affect the validity of the tax ordinance. Indeed, since local governments are subject, not to the control, but merely to the general supervision of the President, it is, to say the least, doubtful that the latter could have made compliance with said circular obligatory.

Local taxes and national government agencies

Instrumentalities or agencies of the government may be subject to local taxes

NATIONAL POWER CORPORATION VS. CABANATUAN CITY, G.R. No. 149110 (April 9, 2003) THIRD DIVISION; MACTAN CEBU INTERNATIONAL AIRPORT VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION The ruling under the *Basco v. PAGCOR (197 SCRA 52 [1991])*, which prohibits local governments from taxing instrumentalities of the National Government has been overturned. The *Basco* case was decided prior to the effectivity of the Local Government Code of 1991. Nothing prevents Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax. In enacting the Code, Congress exercised its prerogative to tax instrumentalities and agencies of the government as it sees fit.

NATIONAL POWER CORPORATION VS. CABANATUAN CITY, G.R. No. 149110 (April 9, 2003) THIRD DIVISION With the added burden of devolution, it is even more imperative for government entities to share in the requirements of development, fiscal or otherwise, by paying taxes or other charges due for them. Thus, the National Power Corporation, a government-owned and controlled corporation performing proprietary functions, is not exempt from paying local franchise tax since such exemption has been removed by the Local Government Code of 1991 and said tax is imposed based not on the ownership but on the exercise by the corporation of a privilege to do business.

LIGHT RAIL TRANSIT AUTHORITY VS. CENTRAL BOARD OF ASSESSMENT APPEALS, G.R. No. 127316 (October 12, 2000) Though the creation of the Light Rail Transit Authority (LRTA) was impelled by public service – to provide mass transportation to alleviate the traffic – its operation undeniably partakes of ordinary business. LRTA is clothed with corporate status and corporate powers in the furtherance of its proprietary objectives. Given that it is engaged in a service-oriented commercial endeavor, its carriageways and terminal stations are patrimonial property subject to tax, notwithstanding its claim of being a government-owned or controlled corporation. Unlike public roads which are open for use by everyone, the Light Rail Transit is accessible only to those who pay the required fare. Thus, LRTA does not exist solely for public service, and that the Light Rail Transit carriageways and terminal stations are not exclusively for public use.

In taxing GOCCs, State suffers no loss.

PHILIPPINE PORTS AUTHORITY VS. ILOILO CITY, G.R. No. 109791 (July 14, 2003) FIRST DIVISION In taxing government-owned and controlled corporations, the State ultimately suffers no loss. To all intents and purposes, real property taxes are funds taken by the State with one hand

and given to the other. In no measure can the government be said to have lost anything.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION The rule that the taxing powers of the local government units cannot be imposed on the National Government, its agencies and instrumentalities, and local government units does not apply in the case of Mactan Cebu International Airport. Said Airport Authority does not fall within the exemption (*i.e*., Republic of the Philippines)

FRANCISCO VS. CITY OF DAVAO, G.R. No. L-20654 (December 24, 1964) EN BANC Municipal corporations cannot impose taxes upon the national government.

Real property taxes

Real property taxes and franchise holders

RADIO COMMUNICATIONS OF THE PHILIPPINES VS. PROVINCIAL ASSESSOR OF SOUTH COTABATO, G.R. No. 144486 (April 13, 2005) FIRST DIVISION Radio Communications of the Philippines' (RCPI) radio relay station tower, radio station building, and machinery shed are real properties and are thus subject to the real property tax. The legislative franchise given RCPI defines the liability of RCPI. The "in lieu of all taxes" clause cannot exempt RCPI from the real estate tax because the same Section 14 expressly states that RCPI shall pay the same taxes on real estate, buildings. Further, the Local Government Code of 1991 withdrew all exemptions existing as of the time of the passage of the Code. It is an elementary rule in taxation that exemptions are strictly construed against the taxpayer and liberally in favor of the taxing authority.

MANILA ELECTRIC COMPANY VS. CENTRAL BOARD OF ASSESSMENT APPEALS, G.R. No. L-46245 (May 31, 1982) FIRST DIVISION Under Article 102 of the Petroleum Act, Meralco Securities, as a concessionaire, is exempt from payment of local taxes or levies but not of such taxes as are of general application such as real property taxes. Realty taxes have always been imposed by the National Legislature and later by the President of the Philippines in the exercise of his/her lawmaking powers, as shown in Sections 342 of the Revised Administrative Code, Act No. 3995, Commonwealth Act No. 470 and Presidential Decree No. 464. The realty tax is enforced throughout the Philippines and not merely in a particular municipality or city but the proceeds of the tax accrue to the province,

city, municipality and barrio where the realty taxed is situated. In contrast, a local tax is imposed by the municipal or city council by virtue of the Local Tax Code, Presidential Decree No. 231, which took effect on July 1, 1973.

Real property tax and charitable institutions

LUNG CENTER OF THE PHILIPPINES VS. QUEZON CITY, G.R. No. 144104 (June 29, 2004) EN BANC Portions of land of the Lung Center of the Philippines, a charitable institution, leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from real property taxes since these are not actually, directly and exclusively used for charitable purposes. On the other hand, portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.

Real property tax and GOCCs

NATIONAL POWER CORPORATION VS. PROVINCE OF QUEZON, G.R. No. 171586 (July 15, 2009) SECOND DIVISION The National Power Corporation (NPC) has no personality to protest the real property tax assessed on the power plant owned and operated by the Mirant Pagbilao Corporation. This notwithstanding a provision in their contract vesting ownership over the power plant to NPC at the end of 25 years, and granting to NPC the right to control and supervise the construction and operation of the power plant. Under Sections 226 and 250 of the Local Government Code, only the owner and the person with legal interest in the property may contest a real property assessment. Legal interest should be actual and material, direct and immediate, not simply contingent or expectant.

PHILIPPINE PORTS AUTHORITY VS. CITY OF ILOILO, G.R. No. 143214 (November 11, 2004) SECOND DIVISION The Philippine Ports Authority (PPA) is liable to pay real property tax on its properties. Section 25 of Presidential Decree No. 857 (Charter of the PPA) granting tax exemption to PPA and Section 40 of Presidential Decree No. 464 were repealed by the Local Government Code of 1991. PPA's exemption from the real property tax was withdrawn upon the effectivity of the Code. It was the intention of Congress to withdraw the tax exemptions granted to or presently enjoyed by all persons, including government-owned or controlled corporations, upon the effectivity of the Code as shown by Section 193.

PHILIPPINE PORTS AUTHORITY VS. CITY OF ILOILO, G.R. No. 109791 (July 14, 2003) FIRST DIVISION The Philippine Ports Authority (PPA) is not exempt

from paying real property tax on warehouses constructed on its ports. While ports constructed by the State are properties of public dominion, the warehouse, which, although located within the port, is distinct from the port itself. Government-owned or controlled corporations referred in Presidential Decree No. 1931 covers all types. The law makes no distinction and to classify runs counter to the clear intent of the law to withdraw from all units of the government, including government-owned or controlled corporations, their exemptions from taxes. Ports being properties of the public dominion are exempt. The fact that tax exemptions of government-owned or controlled corporations have been expressly withdrawn by the Local Government Code of 1991 clearly attests against PPA's claim of absolute exemption of government instrumentalities from local taxation.

NATIONAL POWER CORPORATION VS. LANAO DEL SUR, G.R. No. 96700 (November 19, 1996) EN BANC Real properties of the National Power Corporation are not subject to real property tax from 1948 to 1989 since the Real Property Tax Code, Presidential Decree No. 464 treats such property as exempted from the coverage of real property taxation.

MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY VS. MARCOS, G.R. No. 120082 (September 11, 1996) THIRD DIVISION The taxing powers of local government units cannot extend to the levy of "taxes, fees and charges of any kind on the National Government, its agencies and instrumentalities, and local government units"; however, provinces, cities and municipalities within the Metropolitan Manila Area may impose real property tax except on "real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person."

Exemption from Real Property Taxation

NATIONAL POWER CORPORATION VS. PROVINCE OF QUEZON, G.R. No. 171586 (July 15, 2009) SECOND DIVISION The National Power Corporation (NPC) cannot claim exemption from payment of real property tax on the power plant owned and operated by the Mirant Pagbilao Corporation. To successfully claim exemption under Section 234(c) of the Local Government Code, NPC must prove that it is the one actually, directly, and exclusively using the real property, and the use must be devoted to the generation and transmission of electric power. Although the power plant is devoted to the generation of electric power, it is Mirant, a private corporation, which actually uses and operates it.

THE PROVINCIAL ASSESSOR OF MARINDUQUE VS. COURT OF APPEALS, G.R. No.

170532 (April 30, 2009) THIRD DIVISION The exemption under Section 234(e) of the Local Government Code (LGC) to "machinery and equipment used for pollution control and environmental protection" is based on usage. The term usage means direct, immediate and *actual* application of the property to the exempting purpose. Section 199 of the LGC defines actual use as "the purpose for which the property is principally or predominantly utilized by the person in possession thereof." It contemplates concrete, as distinguished from mere potential, use. Thus, a claim for exemption under Section 234(e) should be supported by evidence that the property sought to be exempt is actually, directly and exclusively used for pollution control and environmental protection.

MANILA INTERNATIONAL AIRPORT AUTHORITY VS. CITY OF PASAY, G.R. No. 163072 (April 2, 2009) EN BANC As a government instrumentality, the Manila International Airport Authority (MIAA) is exempt from any kind of local government tax, including real property tax. Moreover, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. Thus, only those portions of the NAIA Pasay properties which are leased to taxable persons are subject to real property tax by the City of Pasay.

SOCIAL SECURITY SYSTEM VS. CITY OF BACOLOD, G.R. No. L-35726 (July 21, 1982) SECOND DIVISION Presidential Decree No. 24, which amended the Social Security Act of 1954 removed all doubts as to the exemption of the Social Security System (SSS) from taxation. Under Section 29 of the Charter of the City of Bacolod, SSS is exempt from real property taxes. The Charter does not contain any qualification whatsoever in providing for the exemption from real estate taxes of "lands and buildings owned by the Commonwealth or Republic of the Philippines." Hence, when the legislature exempted lands and buildings owned by the government from payment of said taxes, what it intended was a broad and comprehensive application of such mandate, regardless of whether such property is devoted to governmental or proprietary purpose.

Basis of Assessment of Real Property

ALLIED BANKING CORPORATION VS. QUEZON CITY, G.R. No. 154126 (October 11, 2005) EN BANC A *proviso* in an ordinance directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing Bureau of Internal Revenue zonal value is invalid not only because it mandates an exclusive rule in determining the fair market value but more so because it departs from the established

procedures stated in the Local Assessment Regulations No. 1-92 -- (1) the sales analysis or market data approach; (2) the income capitalization approach; and (3) the replacement or reproduction cost approach, and unduly interferes with the duties statutorily placed upon the local assessor by completely dispensing with his/her analysis and discretion which the Code and the regulations require to be exercised. Further, the charter does not give the local government that authority. An ordinance that contravenes any statute is *ultra vires* and void. Using the consideration appearing in the deed of conveyance to assess or appraise real properties is not only illegal since the appraisal, assessment, levy and collection of real property tax shall not be let to any private person, but it will completely destroy the fundamental principle in real property taxation – that real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it. Necessarily, allowing the parties to a private sale to dictate the fair market value of the property will dispense with the distinctions of actual use stated in the Code and in the regulations.

MATHAY, JR. VS. MACALINCAG, G.R. No. 97618 (December 16, 1993) EN BANC Executive Order No. 392 which abolished the Metropolitan Manila Commission has neither repealed Presidential Decree No. 921, nor the assessment districts and committee created therein, nor its provision regarding the preparation of schedule of market values for real properties within the Metropolitan Manila Area. Consequently, Presidential Decree No. 921 which requires that the schedule of values of real properties in Metropolitan Manila shall be prepared jointly by the city assessors in the districts created therein still subsists. Hence, a schedule of market values prepared solely by the local assessors is illegal and void.

Ministry of Finance cannot repeal provisions of the Real Property Tax Code.

SECRETARY OF FINANCE VS. ILARDE, G.R. No. 121782 (May 9, 2000) EN BANC The then Ministry of Finance could not legally promulgate Regulations prescribing a rate of penalty on delinquent taxes other than that provided for under Presidential Decree No. 464 also known as the Real Property Tax Code which pegged the maximum penalty for delinquency in the payment of real estate taxes at 24% of the delinquent tax. It is only the Local Government Code of 1991 that repealed the Real Property Tax Code.

Taxpayer estopped from claiming erroneous description of property.

YANGCO VS. CITY OF MANILA, G.R. No. 5770 (October 10, 1910) EN BANC In making a declaration for real estate tax assessment, the owner of a property, better than any other person, is presumed to know its area. If it was upon his/her own sworn declaration that the taxes were assessed and paid for a period of six years, without any objection on his/her part, he/she cannot, after such long silence and continued negligence, claim that his/her own declaration is erroneous, and compel the city to refund the excess taxes. Well settled is the rule that a taxpayer is bound by a description submitted.

Franchise Taxes

"Most-favored-treatment" does not exempt a franchisee from the payment of franchise tax imposed by a city

SMART COMMUNICATIONS, INC. VS. THE CITY OF DAVAO, G.R. No. 155491 (July 21, 2009) THIRD DIVISION Aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. The "in lieu of all taxes" clause in a legislative franchise should categorically state that the exemption applies to both local and national taxes; otherwise, the exemption claimed should be strictly construed against the taxpayer and liberally in favor of the taxing authority. Moreover, Republic Act No. 7716, otherwise known as the "Expanded VAT Law," did not remove or abolish the payment of local franchise tax. It merely replaced the national franchise tax that was previously paid by telecommunications franchise holders and in its stead imposed a 10% VAT in accordance with Section 108 of the Tax Code. VAT replaced the national franchise tax, but it did not prohibit nor abolish the imposition of local franchise tax by cities or municipalities. The power to tax by local government units emanates from Section 5, Article X of the 1987 Constitution which empowers them to create their own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide. The imposition of local franchise tax is not inconsistent with the advent of the VAT, which renders *functus officio* the franchise tax paid to the national government. VAT inures to the benefit of the national government, while a local franchise tax inures to the local government unit.

THE CITY OF ILOILO VS. SMART COMMUNICATIONS, INC., G.R. No. 167260 (February 27, 2009) SECOND DIVISION Under Sections 193 and 137 of the Local Government Code (LGC), all tax exemption privileges then enjoyed

by all persons, save those expressly mentioned, have been withdrawn effective January 1, 1992 – the date of effectivity of the LGC. However, the withdrawal of exemptions, whether under Section 193 or 137, pertains only to those already existing when the LGC was enacted. The intention of the legislature was to remove all tax exemptions or incentives granted *prior* to the LGC. Thus, a utility company with a franchise made effective after the effectivity of the LGC cannot claim tax exemption privileges under Section 193.

SMART COMMUNICATIONS, Inc. VS. CITY OF DAVAO, G.R. No. 155491 (September 16, 2008) THIRD DIVISION The uncertainty in the "in lieu of all taxes" clause in a legislative franchise must be construed strictly against the public utility which claims the exemption. The public utility has the burden of proving that, aside from the imposed 3% franchise tax, Congress intended it to be exempt from all kinds of franchise taxes - whether local or national.

PHILIPPINE LONG DISTANCE TELEPHONE VS. PROVINCE OF LAGUNA, G.R. No. 151899 (August 16, 2005) THIRD DIVISION; PHILIPPINE LONG DISTANCE TELEPHONE VS. CITY OF BACOLOD, G.R. 149179 (July 15, 2005) THIRD DIVISION; PHILIPPINE LONG DISTANCE TELEPHONE VS. DAVAO CITY, G.R. No. 143867 (March 25, 2003) EN BANC Section 23 of Republic Act No. 7925, also called the "most-favored-treatment" clause does not operate to exempt Philippine Long Distance Telephone Co. (PLDT) from the payment of franchise tax imposed by a city. PLDT can be required by a local government unit to pay local franchise tax notwithstanding its "in lieu of all taxes" provisos in its national franchise. R.A. No. 7925 (Public Telecommunications Policy of the Philippines) does not provide for tax exemption but exemption from certain regulations and requirements imposed by the National Telecommunications Commission. "In lieu of all taxes" *provisos* are interpreted strictly against the taxpayer and in favor of the taxing authority. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.

MANILA ELECTRIC COMPANY VS. PROVINCE OF LAGUNA, G.R. No. 131359 (May 5, 1999) THIRD DIVISION Indicative of the legislative intent to carry out the Constitutional mandate of vesting broad tax powers to local government units, the Local Government Code of 1991 has effectively withdrawn, under Section 193 thereof, tax exemptions or incentives theretofore enjoyed by certain entities. Tax exemptions may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. A franchise partakes of the nature of a grant

which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress.

SAN PABLO CITY VS. REYES, G.R. No. 127708 (March 25, 1999) THIRD DIVISION Under Sections 137 and 193 of the Local Government Code OF 1991, a city may now impose a local franchise tax on Manila Electric Company on its gross annual receipts for the preceding calendar year based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used in the law categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would not be only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the Code provided instead for an express, albeit general, withdrawal of such exemptions or privileges.

COTABATO LIGHT & POWER CO., INC. VS. CITY OF COTABATO, G.R. No. L-24942 (March 30, 1970) EN BANC The repeal or amendment of the tax exemption granted by a legislative franchise must conform to the reservations made in the grant and the intent to amend must be evident, if not specific.

Taxes under local revenue code

Sand and Gravel Tax

LEPANTO CONSOLIDATED MINING COMPANY VS. HON. AMBANLOC, G.R. No. 180639 (June 29, 2010) SECOND DIVISION A mining company was liable for payment of sand and gravel tax where a province's local revenue code requires such payment for the issuance of a permit to extract sand and gravel. Such permit is required notwithstanding a mining lease contract with the national government and an exemption from permits under Mines Administrative Order MRD-27. An exemption from the provincial government's requirements should have a clear basis in law, ordinance or contract.

Enforcement and Remedies

In case of doubt, local tax ordinances are subject to the general rule of construction in favor of the taxpayer and against the government.

QUIMPO VS. MENDOZA, G.R. No. L-33052 (August 31, 1981) FIRST DIVISION The general rule in the interpretation of tax statutes is that such statutes are construed most strongly against the government and in favor of the taxpayer. Moreover, simple logic fairness and reason cannot countenance an exaction or a penalty for an act faithfully done in compliance with the law. When a taxpayer is allowed by law to pay his/her real estate tax in four equal installments due and payable on four specified dates and having paid the first three installments faithfully and religiously, it is manifest injustice, sheer arbitrariness and abuse of power to penalize him/her for doing so when he/she fails to pay the fourth and last installment.

Notices mandatory

HU CHUAN HAI VS. UNICO, G.R. NO. 146534 (September 18, 2009) FIRST DIVISION For purposes of real property taxation, the registered owner of the property is deemed the taxpayer. In identifying the real delinquent taxpayer, a local treasurer cannot rely solely on the tax declaration but must verify with the Register of Deeds who the registered owner of the particular property is. Thus, where the transfer of real property was never registered, the local treasurer correctly sent notice of the tax sale and advertisement to the registered owners, and the tax sale conducted in connection therewith was valid.

SPOUSES MONTAÑO VS. FRANCISCO, G.R. No. 160380 (July 30, 2009) THIRD DIVISION For purposes of collecting real property taxes, the registered owner of the property is considered the taxpayer. Hence, only the registered owner is entitled to a notice of tax delinquency and other proceedings relative to the tax sale.

MANILA ELECTRIC COMPANY VS. BARLIS, G.R. No. 114231 (June 29, 2004) EN BANC An assessment fixes and determines the tax liability of a taxpayer. It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. Under Presidential Decree No. 464, the assessor is mandated under the law to give written notice to the person in whose name the property is declared. The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the assistance of the barrio captain. The issuance of a

notice of assessment by the local assessor shall be his/her last action on a particular assessment. For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to the taxpayer. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded.

TAN VS. BANTEGUI, G.R. NO. 154027 (October 24, 2005) THIRD DIVISION The auction sale of land to satisfy alleged delinquencies in the payment of real estate taxes derogates or impinges on property rights and due process. Thus, the steps prescribed by law for the sale, particularly the notices of delinquency and of sale, must be followed strictly. Failure to observe those steps invalidates the sale. The auction sale of real property for the collection of delinquent taxes is *in personam*, not *in rem*. Although sufficient in proceedings *in rem* like land registration, mere notice by publication will not satisfy the requirements of proceedings *in personam*. "[P]ublication of the notice of delinquency [will] not suffice, considering that the procedure in tax sales is *in personam*." It is still incumbent upon the city treasurer to send the notice directly to the taxpayer – the registered owner of the property – in order to protect the latter's interests. Although preceded by proper advertisement and publication, an auction sale is void absent an actual notice to a delinquent taxpayer. The sale of land "for tax delinquency is in derogation of property rights and due process and the prescribed steps must be followed strictly." In the present case, notices either of delinquency or of sale were not given to the delinquent taxpayer. Those notices are mandatory, and failure to issue them invalidates a sale.

Only person with legal interest on real property may appeal a tax assessment

NATIONAL POWER CORPORATION VS. PROVINCE OF QUEZON, G.R. No. 171586 (January 25, 2010) SPECIAL SECOND DIVISION The National Power Corporation (NPC) has no personality to appeal the real property tax assessment on the power plant owned and operated by the Mirant Pagbilao Corporation, as NPC has no legal title over the said property. That NPC contractually assumed liability for the taxes that may be imposed on the said property does not clothe it with legal title over the same. The phrase "person having legal interest in the property" in Section 226 of the Local Government Code does not include an entity that assumes another person's tax liability by contract.

Procedure for tax remedies

NATIONAL POWER CORPORATION VS. PROVINCE OF QUEZON, G.R. No. 171586 (January 25, 2010) SPECIAL SECOND DIVISION The National Power Corporation (NPC) improperly filed a direct appeal with the Local Board of Assessment Appeals (LBAA) under Section 226 of the Local Government Code (LGC) without first paying the tax as required under Section 252 of the LGC. Sections 252 and 226 provide *successive* administrative remedies to a taxpayer who questions the correctness of an assessment. Section 226 of the LGC, in declaring that "any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city, or municipal assessor in the assessment of his property may… appeal to the Board of Assessment Appeals", should be read in conjunction with Section 252(d) of the LGC, which states that "in the event that the protest is denied… the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the LGC. The "action" referred to in Section 226 of the LGC (in relation to a protest of real property tax assessment) thus refers to the local assessor's act of denying the protest filed pursuant to Section 252 of the LGC. Without the local assessor's action, the appellate authority of the LBAA cannot be invoked.

SPOUSES WONG VS. CITY OF ILOILO, G.R. No. 161748 (July 3, 2009) FIRST DIVISION Section 267 of the Local Government Code provides that the Regional Trial Court shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest of 2% per month from the date of sale until the institution of the complaint. This deposit is a jurisdictional requirement, the non-payment of which warrants the dismissal of the action.

CITY GOVERNMENT OF QUEZON CITY VS. BAYAN TELECOMMUNICATIONS, G.R. No. 162015 (March 6, 2006) SECOND DIVISION Bayantel can withdraw its appeal before the Local Board of Assessment Appeals (LBAA) and instead file a petition for prohibition before the regional trial court since the appeal before the LBAA is not a speedy and adequate remedy since its real property were set to be auctioned of and the issue involves a pure question of law.

OLIVARES VS. MARQUEZ, G.R. No. 155591 (September 22, 2004) SECOND DIVISION The Local Government Code of 1991 clearly sets forth the administrative remedies available to a taxpayer or real property owner who is not satisfied with the assessment or reasonableness of the real property tax sought to be collected. Should a taxpayer/real property owner question the excessiveness or reasonableness of the assessment, the Code directs that the taxpayer should first pay the tax due before

his/her protest can be entertained. It is only after the taxpayer has paid the tax due that he/she may file a protest in writing within 30 days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid. If the local treasurer denies the protest or fails to act upon it within the 60-day period, the taxpayer/real property owner may then appeal or directly file a verified petition with the Local Board of Assessment Appeals (LBAA) within 60 days from denial of the protest or receipt of the notice of assessment. If the taxpayer is not satisfied with the decision of the LBAA, he/she may elevate the same to the Central Board of Assessment Appeals (CBAA), which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the LBAAs involving contested assessments of real properties, claims for tax refund and/ or tax credits or overpayments of taxes. From the CBAA, the dispute may then be taken to the Court of Appeals by filing a verified petition for review under Rule 43 of the Rules of Court. Under the doctrine of primacy of administrative remedies, an error in the assessment must be administratively pursued to the exclusion of ordinary courts whose decisions would be void for lack of jurisdiction. An appeal shall not suspend the collection of the tax assessed without prejudice to a later adjustment pending the outcome of the appeal.

SYSTEMS PLUS COMPUTER COLLEGE OF CALOOCAN CITY VS. LOCAL GOVERNMENT OF CALOOCAN CITY, G.R. No. 146382 (August 7, 2003) THIRD DIVISION The authority to receive evidence, as basis for classification of properties for taxation, is legally vested on the City Assessor whose action is appealable to the Local Board of Assessment Appeals and the Central Board of Assessment Appeals, if necessary. An aggrieved party cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein. Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.

Time periods for remedies, strict application

JARDINE DAVIES INSURANCE BROKERS, INC. VS. ALIPOSA, G.R. No. 118900 (February 27, 2003) SECOND DIVISION; REYES VS. COURT OF APPEALS, G.R. No. 118233 (December 10, 1999) EN BANC Failure to appeal to the Secretary of Justice within 30 days from the effectivity date of the tax ordinance as mandated by Section 187 of the Local Government Code of 1991 is fatal. The law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his/her appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court.

HAGONOY MARKET VENDOR ASSOCIATION VS. MUNICIPALITY OF HAGONOY, BULACAN, G.R. No. 137621 (February 6, 2002) FIRST DIVISION Appeal of a tax ordinance or revenue measure should be made to the Secretary of Justice within 30 days from effectivity of the ordinance and even during its pendency, the effectivity of the assailed ordinance shall not be suspended. In the case at bar, Municipal Ordinance No. 28 took effect in October 1996. Petitioner filed its appeal only in December 1997, more than a year after the effectivity of the ordinance in 1996. Clearly, the Secretary of Justice correctly dismissed it for being time-barred. At this point, it is *apropos* to state that the timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a "mere technicality" that can be easily brushed aside. The periods stated in Section 187 of the Local Government Code of 1991 are mandatory. Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and collect public market stall rentals. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that the validity of revenue measures is not left uncertain for a considerable length of time. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.

REYES VS. COURT OF APPEALS, G.R. No. 118233 (December 10, 1999) EN BANC The law requires that a dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file its appeal to the Secretary of Justice within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse

of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. These provisions of the Local Government Code of 1991 are mandatory. Any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames.

When protest required, not required

TY VS. TRAMPE, G.R. No. 117577 (December 1, 1995) EN BANC A protest under the Local Government Code of 1991 may be made if there is a question as regards a tax assessment. If a taxpayer disputes the reasonableness of an increase in the real estate tax assessment, payment under protest is required before the local treasurer can act on the dissent. However, this is not required if the dispute is with regard to the validity of the increase and the authority of the assessor.

SANTOS LUMBER CO. VS. CITY OF CEBU, G.R. No. L-114618 (May 30, 1961) EN BANC For the recovery of taxes later on held by the courts to have been illegally imposed by a municipal corporation, a protest is a condition precedent if so required under its charter.

Court of Tax Appeals has jurisdiction over decisions of Regional Trial Courts on denials of protests

YAMANE VS. BA LEPANTO CONDOMINIUM, G.R. NO. 154993 (October 25, 2005) SECOND DIVISION The jurisdiction exercised by the Regional Trial Court in reviewing denied protests by local treasurers is original, not appellate in character. The review is the initial judicial cognizance of the matter. Labeling the said review as an exercise of appellate jurisdiction is inappropriate, since the denial of the protest is not the judgment or order of a lower court, but of a local government official. Republic Act No. 9282 definitively proves in its Section 7(a)(3) that the Court of Tax Appeals exercises exclusive appellate jurisdiction to review on appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases original decided or resolved by them in the exercise of their originally or appellate jurisdiction.

Strict enforcement of tax law does not make tax ordinance unjust and discriminatory.

NORTHERN PHILIPPINE TOBACCO CORPORATION VS. MUNICIPALITY OF AGOO, LA UNION, G.R. No. L-26447 (January 30, 1970) EN BANC Inequality in the enforcement of a tax ordinance such as giving lenient treatment to competitors of the taxpayer, would not work against the validity of the measures. Taxpayer's recourse, if at all, lies in another action; certainly not in an attack on the legality of the duly enacted municipal legislation. An increase in the rate of tax alone would not support the claim that the tax is oppressive, unjust and confiscatory. Municipal corporations are allowed much discretion in determining the rates of imposable license fees, even in cases of purely police measure-powers. There must be proof of the existing municipal conditions and the nature of the business being taxed, as well as other factors that would be relevant to the issue of the arbitrariness or unreasonableness of the questioned rates.

Invalid enforcement measures

RURAL BANK OF MAKATI VS. MUNICIPALITY OF MAKATI, G.R. No. 150763 (July 2, 2004) SECOND DIVISION The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code are distraint of personal property and legal action. Ordering the outright closure of a bank not engaged in any illegal or immoral activities is not warranted. Closure is not one of the remedies. The violation of a municipal ordinance does not empower a municipal mayor to avail of extrajudicial remedies. The municipality should have observed due process before ordering the bank's closure.

DE ROXAS VS. CITY OF MANILA, G.R. No. 7670 (March 28, 1914) EN BANC Pursuant to Article 46 of the Charter of the City of Manila (Act No. 183), the City may assess separately the real estate taxes and the improvements in a single lot. However, "where the City of Manila, without legal right, has demanded of a taxpayer the payment of an alleged tax, and threatens to enforce the payment of the alleged tax by the seizure and sale of the property upon which the tax is alleged to have been assessed, the taxpayer may pay the tax under protest and sue for the recovery thereof." It is only when the taxpayer fails to pay the assessed taxes can the city government seize and sell said lands pursuant also to the provisions of the tax code.

Taxpayer's suit defined

MAMBA VS. LARA, G.R. No. 165109 (December 14, 2009) SECOND DIVISION For a taxpayer's suit to prosper, two requisites must concur: (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and, in doing so, a law is violated or some irregularity is committed; and (2) the petitioner is directly affected by the alleged act. Thus, local officials were allowed file a taxpayer's suit questioning a contract entered into by the governor for the construction of a town center where a government support in the amount of ₱187 million would be spent for paying the interest of bonds to be used to finance the construction.

MIRANDA VS. CARREON, G.R. No. 143540 (April 11, 2003) EN BANC Not every action filed by a taxpayer (in this case, a mayor who was later disqualified and ousted from office) can qualify to challenge the legality of official acts done by the government. It bears stressing that "a taxpayer's suit refers to a case where the act complained of directly involves the illegal disbursement of public funds from taxation." When the issue involves illegal termination of local government employees, the same does not involve the illegal disbursement of public funds.

Role of city assessor

NEW MASONIC TEMPLE ASSOCIATION, INC. VS. ALFONSO, G.R. No. L-41583 (October 18, 1935) EN BANC The assessor of the City may call the attention of the Chief of the Executive Bureau to any decision of the board of tax appeals which he/she believes to be erroneous, rendered in the exercise either of appellate jurisdiction or *motu propio* under its revisory jurisdiction with the approval of the Chief of the Executive Bureau.

Valid and invalid local taxes, examples

Validity upheld

PHILIPPINE PORTS AUTHORITY VS. ILOILO CITY, G.R. No. 109791 (July 14, 2003) FIRST DIVISION The Philippine Ports Authority (PPA) is liable to pay business tax on properties it leased to private corporations. Its charter classifies such act of leasing out port facilities as one of its corporate powers. Any income or profit generated by an entity, even of a corporation organized without any intention of realizing profit in the conduct of its activities, is subject to tax. What matters is the established fact that it leased out its building which it regularly earned substantial income. Thus, in the absence of any proof of exemption therefrom, PPA is liable for the assessed business taxes.

PROVINCE OF BULACAN VS. COURT OF APPEALS, G.R. No. 126232 (November 27, 1998) THIRD DIVISION The *Sangguniang Panlalawigan* of Bulacan passed an ordinance which imposed a tax of 10% of the fair market value of ordinary stones, sand, gravel, earth and other quarry resources extracted from private lands. Republic Cement Corporation refused to pay and formally lodged a protest contesting the same. The province can impose a tax on stones, gravel, earth and other quarry resources extracted from public lands because it is expressly empowered to do so under the Local Government Code of 1991. Private lands, however, are not included.

PHILIPPINE PETROLEUM CORPORATION VS. MUNICIPALITY OF PILLILA, RIZAL, G.R. No. 90776 (JUNE 3, 1991) SECOND DIVISION While Section 2 of Presidential Decree No. 436 prohibits the imposition of local taxes on petroleum products, said decree did not amend Sections 19 and 19(a) of Presidential Decree No. 231 as amended by P.D. 426, wherein the municipality is granted the right to levy taxes on business of manufacturers, importers, producers of any article of commerce of whatever kind or nature. A tax on business is distinct from a tax on the article itself. Thus, if the imposition of tax on business of manufacturers, *etc.* in petroleum products contravenes a declared national policy, it should have been expressly stated in P.D. No. 436.

ARABAY, INC. VS. COURT OF FIRST INSTANCE, ZAMBOANGA DEL NORTE, BRANCH II, G.R. No. L-37684 (September 10, 1975) FIRST DIVISION Section 2 of Republic Act No. 2264, known as the Local Autonomy Act of 1959 shows that Congress intended to empower municipalities to impose whatever form or type of taxes on gasoline, including sales tax or one in that form.

LAOAG PRODUCER'S COOPERATIVE MARKETING ASSOCIATION INC. VS. MUNICIPALITY OF LAOAG, G.R. No. L-27498 (February 24, 1971) EN BANC A municipality has the power to enact ordinances that would require wholesalers of tobacco, onion and garlic to obtain a municipal permit and imposed a tax on every kilo sold pursuant to Republic Act No. 2264 which confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes but also municipal license taxes.

NORTHERN PHILIPPINE TOBACCO CORPORATION VS. MUNICIPALITY OF AGOO, LA UNION, G.R. No. L-26447 (January 30, 1970) EN BANC A municipal ordinance imposing a tax on "all tobacco redrying plants" established and operated in the municipality is not passed merely in the

exercise of municipality's power to regulate businesses or occupations within its jurisdiction but to raise revenue. What is being taxed is not rendering by taxpayer of redrying services to its customers or clients, but the enjoyment of the privilege to operate and maintain the tobacco redrying business in the municipality. It is not an exaction on sales or income. It is not a tax on the operator's making of sales or its receipt of income from the business.

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813 (April 28, 1969) EN BANC A city ordinance imposing a tax on the sale of lumber does not violate the provisions of Republic Act No. 2264 as amended, which provides that "no city, municipality or municipal district may levy or impose taxes on forest products or forest concessions." Although lumber is a forest product, the tax being imposed, is not upon lumber, but upon its sale. Said tax is not levied upon the lumber and does not become due until after the lumber has been sold.

YU KING VS. CITY OF ZAMBOANGA, G.R. No. L-20406 (December 29, 1966) EN BANC Under Section 14(a) of Commonwealth Act No. 39, as amended, a City has the power "to tax, fix the license fee for . . . regulate the business and fix the location of match factory or factories . . . the storage and sale of gunpowder, coal, oil, gasoline, benzene, petroleum, or any of the products thereof and of all other highly combustible or explosive materials." A city tax imposing specific or license tax on gasoline, kerosene and oil sold is constitutional.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS VS. CITY OF MANILA, G.R. No. L-16619 (June 29, 1963) EN BANC A municipal ordinance can impose a tax on the sales of general merchandise, wholesale or retail pursuant to Section 18(o) of Republic Act No. 409, as amended. 'Merchandise"' may include liquor. The word 'merchandise' refers to all subjects of commerce and traffic; goods or wares bought and sold for gain; commodities or goods to trade; and commercial commodities in general.

CITY OF MANILA VS. INTERISLAND GAS SERVICE, G.R. No. L-8799 (August 31, 1956) EN BANC An ordinance imposing a gross sales tax on dealers in 'new merchandise' not otherwise subject to municipal tax, according to a schedule of graduated amounts, was broad enough to cover sales of liquefied flammable gas in containers, the same being a new type of merchandise.

MANILA LIGHTER TRANSPORTATION CO. VS MUNICIPAL BOARD OF CAVITE, G.R. No. L-6848 (April 27, 1956) EN BANC The power of a City under its

charter to tax 'shipyards' is to tax the 'business'. This includes shipyards operated for building or repairing ships for others.

SHELL COMPANY OF THE PHILIPPINE ISLANDS LTD. VS. VAÑO, G.R. L-6093 (February 24, 1954) EN BANC The permit and fee collected by the municipality pursuant to Commonwealth Act. 472 otherwise known as the Municipal Autonomy Act giving the municipal council the power to impose municipal license tax upon persons engaged in any occupation or business are valid impositions. Taxes imposed on the factories producing tin cans are valid being neither a percentage tax nor an article falling in the prohibition provided for by the National Internal Revenue Code.

EASTERN THEATRICAL CO., INC. VS. VICTOR ALFONSO, G.R. No. L-1104 (May 31, 1949) EN BANC Section 260 of Commonwealth Act No. 466, otherwise known as the Internal Revenue Code, empowers cities the right and power to impose amusement taxes. Thus, the ordinance which imposed fees on the price of every admission ticket sold by cinematographs theaters, vaudeville companies, theatrical shows and boxing exhibitions is valid.

CITY OF MANILA VS. MANILA BLUE PRINTING CO., INC., G.R. No. 48466 (August 30, 1943) EN BANC Retailers are those who sell goods directly to a consumer. When the enabling Act empowered the Municipal Board to tax and fix the license fee on retail dealers, and when the Municipal Board, by virtue thereof, fixed the license fee on retail dealers according to the amount of their gross sales, both legislative bodies had in mind all the sales of such retail dealers even if the buyer is the Government itself. Sales to the Government in large quantities are not exempt from the operation of the ordinance.

CITY OF MANILA VS. LYRIC MUSIC HOUSE, INC., G.R. No. 42236 (September 24, 1935) EN BANC An ordinance imposing percentage taxes on businesses on the sale of certain merchandises is valid since the ordinance also provides that selling articles not enumerated will be considered general merchandise and the municipal license fee will be based on the gross sales or receipts from all the articles sold or disposed.

LI SENG GIAP VS. MUNICIPALITY OF DAET, G.R. 32254 (March 21, 1930) EN BANC Act No. 3422 prohibits the imposition of income taxes by municipal corporations. A Municipal Council can pass an ordinance imposing a municipal license tax, payable quarterly, upon all merchants established in the municipality, prescribing graduated rates based upon the amount of the sales of each merchant. A fixed graduated license tax based upon

the periodic sales of merchants is not a tax upon their income but on the privilege to engage in business.

UNITED STATES VS. SUMULONG, G.R. No. 9972 (March 25, 1915) EN BANC A municipality has the right to classify and graduate license fees according to the estimated value of the privilege conferred, provided such classification is reasonable and does not contravene the provisions of its municipal charter. "Section 5 of the Philippine Bill which provides 'That the rule of taxation in said Islands shall be uniform' is not contravened by a municipal ordinance classifying and graduating license fees for fishing privileges by reference to the different classes of apparatus in common use by those exercising such privileges."

Held invalid

YAMANE VS. BA LEPANTO CONDOMINIUM, G.R. No. 154993 (October 25, 2005) SECOND DIVISION Even though a condominium corporation is empowered to levy assessments or dues from the unit owners, these amounts collected are not intended for the incurrence of profit, but to shoulder the multitude of necessary expenses that arise from the maintenance of the condominium project. There is no contemplation of business, no orientation towards profit in this case. Thus, a condominium corporation is not subject to business tax.

PALMA DEVELOPMENT CORPORATION VS. MALANGAS, G.R. No. 152492 (October 16, 2003) THIRD DIVISION By express language of Sections 153 and 155 of the Local Government Code of 1991, local government units, through their respective *sanggunian*, may prescribe the terms and conditions for the imposition of toll fees or charges for the use of any public road, pier or wharf funded and constructed by them. A service fee imposed on vehicles using municipal roads leading to the wharf is thus valid. However, Section 133(e) of RA No. 7160 prohibits the imposition, in the guise of wharfage, of fees — as well as all other taxes or charges in any form whatsoever — on goods or merchandise. It is therefore irrelevant if the fees imposed are actually for police surveillance on the goods, because any other form of imposition on goods passing through the territorial jurisdiction of the municipality is clearly prohibited by Section 133(e). Further, under Section 131(y) of the Code, wharfage is defined as "a fee assessed against the cargo of a vessel engaged in foreign or domestic trade based on quantity, weight, or measure received and/or discharged by vessel." It is apparent that a wharfage does not lose its basic character by being labeled as a service fee "for police surveillance on all goods."

PROCTER & GAMBLE TRADING CO. VS. MUNICIPALITY OF MEDINA, MISAMIS ORIENTAL, G.R. No.L-29125 (January 31, 1972) EN BANC Under Commonwealth Act No. 472, a municipality may tax a business or profession conducted within its territorial jurisdiction. However a municipality cannot impose an export tax under Republic Act No. 2264.

PEPSI-COLA BOTTLING CO. OF THE PHILIPPINES, INC. VS. CITY OF BUTUAN, G.R. No. L-22814 (August 28, 1968) EN BANC A city cannot impose a tax of P0.10 per case of 24 bottles of soft drinks or carbonated drinks on "any agent and/or consignee of any person, association, partnership, company or corporation engaged in selling ... soft drinks or carbonated drinks." The tax partakes of the nature of an import duty which is beyond the city's authority to impose by express provision of law. Even if the tax could be regarded as a tax on the sale of the beverages, it would still be invalid for being discriminatory and hence, violative of the uniformity required by the 1935 Constitution and the law.

ORMOC SUGAR COMPANY, INC. VS. ORMOC CITY, G.R. No. L-23794 (February 17, 1968) EN BANC Section 2 of Republic Act No. 2264 gave chartered cities, municipalities and municipal districts authority to levy, for public purposes, just and uniform taxes, licenses or fees. This provision of law has repealed Section 2287 of the Revised Administrative Code which withheld from municipalities the power to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage.

TAN VS. MUNICIPALITY OF PAGBILAO, G.R. No. L-14264 (April 30, 1963) EN BANC Section 2257 of the Revised Administrative Code prohibits the imposition of tax on any goods or merchandise carried into or out of the municipality. Thus, an ordinance which levies a specific tax is *ultra vires*. A tax which imposes a specific sum by the head or number, or some standard weight or measurement, and which requires no assessment beyond a listing and classification of the objects to be taxes is specific tax.

EAST ASIATIC CO. VS. CITY OF DAVAO, G.R. No. L-16253 (August 21, 1962) EN BANC A City Ordinance was passed charging export taxes. An ordinance levying export taxes is void for being *ultra vires*, illegal and unauthorized, because the Charter of the City does not authorize or empower it to impose such tax. Further, Section 2287 of the Revised Administrative Code provides that it shall not be within the power of the municipal council to impose taxes in any form whatever upon the goods and merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge or wharfage, use of bridges or otherwise shall be void.

ZAMBOANGA COPRA PROCUREMENT CORPORATION VS. CITY OF ZAMBOANGA, G.R. No. L-14806 (July 30, 1960) EN BANC An ordinance which imposes upon copra dealers a tax on copra exported abroad is invalid for the reason that it was expressly prohibited by Section 2287 of the Revised Administrative Code, which provides that it shall not be the power of the Municipal Council to impose a tax in any form whatever upon goods and merchandise carried into the municipality, or out of the same. Any attempt to impose an import or export tax upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void.

PHILIPPINE TRANSIT ASSOCIATION VS. CITY TREASURER, G.R No. L-1274 (May 27, 1949) EN BANC The challenged ordinance calls the tax in question a property tax. But the name given to a tax by law, is of course not controlling where we have to determine what kind of a tax it really is. The character of a tax as a property tax or a license or occupation tax must be determined by its incidents and from the natural legal effect of the language employed in the act or ordinance and not by the name by which it is described or by the mode adopted in fixing its amount. The tax is actually a license tax is and is hence beyond the power of the City to enact.

Other revenue sources

Market stalls, management and operation

ONGSUCO VS. MALONES, G.R. No. 182065 (October 27, 2009) THIRD DIVISION A municipal ordinance imposing rentals and goodwill fees for the occupancy of public market stalls is void where no public hearing was conducted prior to its enactment. Being void, the ordinance could not confer upon the municipal mayor the authority to order public market stalls vacant for failure of their owners to pay the rentals and fees imposed by the ordinance.

BAGATSING VS. RAMIREZ, G.R. No. L-41631 (December 17, 1976) EN BANC A City Ordinance conferring the management and operation of the public markets to a private corporation is not invalid despite the fact that the collection of market stall fees had been let by the City to the said corporation. The fees collected do not go direct to the private coffers of the corporation. The Ordinance was not enacted for the corporation but for the purpose of raising revenues for the city. Entrusting the collection of the fees does not destroy the public purpose of the ordinance. So long as

the purpose is public, it does not matter whether the agency through which the money is dispensed is public or private.

Tolls

PALMA DEVELOPMENT CORPORATION VS. MALANGAS, G.R. No. 152492 (October 16, 2003) THIRD DIVISION By express language of Sections 153 and 155 of the Local Government Code of 1991, local government units, through their respective *sanggunians*, may prescribe the terms and conditions for the imposition of toll fees or charges for the use of any public road, pier or wharf funded and constructed by them. A service fee imposed on vehicles using municipal roads leading to the wharf is thus valid.

A.L. AMMEN TRANSPORTATION CO., INC. VS. SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, CA-G.R. 28254-R (November 8, 1963) Road tolls are those to be used for the construction and maintenance of roads, while bridge tolls are those for the construction and maintenance of these bridges. Inasmuch as a Resolution which was originally intended for the collection of bridge tolls had the approval of the Secretary of the Public Works and Communications, the same was perfectly valid under the aforesaid Section 2131 of the Revised Administrative Code. And, as the Office of the President, subsequently, authorized upon the recommendation of the Secretary of Public Works and Communications, the collection of toll fees for the maintenance of the provincial roads connected with the bridge as per schedule or rates fixed in the Resolution in question, the said Resolution was also perfectly valid in that respect.

Appropriations

LGUs are given a large degree of freedom to determine the propriety and necessity of expenses

PROVINCE OF BATANGAS VS. ROMULO, G.R. No. 152774 (May 27, 2004) EN BANC Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof.

PIMENTEL VS. AGUIRRE, G.R. No. 132988 (July 19, 2000) EN BANC Under existing law, local government units, in addition to having administrative

autonomy in the exercise of their functions, enjoy fiscal autonomy as well and that fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn- have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not.

RODRIGUEZ VS. MONTINOLA, G.R. No. L-5689 (May 14, 1954) EN BANC Local governments are given a large degree of freedom to determine the propriety and necessity of expenses. The Secretary of Finance has only the power to revise the budgets proposed by the local governments. The determination of the need for certain positions in the government is not a financial matter subject to the approval of the Secretary of Finance. Thus the position of Special Counsel created by a Province cannot be abolished by the Secretary of Finance in the guise of supervision. The abolition of the said position constitutes control since the alter ego in effect directs the form and manner by which local officials perform their duties. The president only exercises general supervision over local government units.

Freedom to use allocated funds of the national government

CITY OF MANILA VS. CHIANG, G.R. No. L-3444 (February 26, 1907) FIRST DIVISION While a tax that has been illegally collected from Chinese Nationals must be returned to the said taxpayers but was not possible since the taxpayers could no longer be located, the funds collected shall revert to the National Government which it could use for any purpose to which the Government might devote it. Thus the act of the National Government in allocating the said funds to the City of Manila to assist the latter in the construction of the city due to the lack of resources by the city was a proper exercise of its authority. Pursuant to Act No. 183 (Charter of the City of Manila) , the City of Manila was free to use the funds allocated to it by the national government in whatever way it deems fit which in this case was to put up the tribunal where the *gobernadorcillo* transacted business relating to the Chinese.

Sanggunian cannot refuse to appropriate public funds for services vital to the cleanliness of the city and the good health of its inhabitants.

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION Under *Batas Pambansa Blg*. 337, while the city mayor has no power to appropriate funds to support the contracts, neither does said law prohibit him/her from entering into contracts unless and until funds are appropriated therefor. In fact, it is his/her bounden duty to so represent the city in all its business transactions. On the other hand, the city council must provide for the "depositing, leaving or throwing of garbage" and to appropriate funds for such expenses. It cannot refuse to provide and appropriate public funds for such services which are very vital to the maintenance of cleanliness of the city and the good health of its inhabitants.

When appropriation ordinance is not required

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION Public funds may be disbursed not only pursuant to an appropriation law, but also in pursuance of other specific statutory authority such as Presidential Decree No. 1445. Thus, when a contract is entered into by a city mayor pursuant to specific statutory authority under Presidential Decree No. 1445 which allows the disbursement of funds from any public treasury or depository therefore, an appropriation law is not needed.

Power to provide for additional allowances for judges prevails over restrictions provided by DBM, general rule and exception

VILLAREÑA VS. COMMISSION ON AUDIT, G.R. No. 145383-84 (August, 6, 2003) EN BANC Under the Local Government Code of 1991, local legislative bodies may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, is not without limitation, as it does not include the grant of benefits that runs in conflict with other statutes, such as Republic Act No. 6758. The exception stated in these laws must be read together with the 1991 Code, so as to make both the Code and these laws equally effective and mutually complementary.

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 125350 (December 3, 2002) EN BANC The power of a *sanggunian* to provide for additional allowances for judges prevails over restrictions provided for by national government agencies such as the Department of Budget and Management (DBM). A DBM Local Budget Circular which provides a maximum limit to allowance that may be given by local governments to judges is null and void since the Local Government Code of 1991 does not prescribe a limit. By virtue of his/her power of supervision, the President can only interfere in the

affairs and activities of a local government unit if it has acted contrary to law.

Mandamus appropriate to execute final money judgment

YUJUICO VS. ATIENZA, G.R. 164282 (October 12, 2005) SECOND DIVISION; **MAKATI VS. COURT OF APPEALS, G.R. Nos. 89898-99 (October 1, 1990) THIRD DIVISION** Where a municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to compel the enactment and approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefore.

A statute appropriating money for the City's liability should first be passed by the national legislature, old rule

HOEY VS. BALDWIN, G.R. No. 1078 (December 15, 1902) EN BANC Act No. 183, the Charter of the City of Manila does not have any provision pertaining to the payment of judgments which may be assessed against the city. A city has no control over its revenue because all of it, as fast as it is received, is paid to the Insular Treasurer. Before the city can use any of its money for the purpose of paying judgments against it or for any other purpose, Congress must pass a law specifically appropriating the money. Thus, despite the fact that a court would decide that the City of Manila is liable to pay the unpaid salary of its employee, a statute appropriating money for such purpose should first be enacted.

Effect of Signing by Local Chief Executive of Appropriations Ordinance

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION An appropriation ordinance signed by the local chief executive authorizes the release of public funds. A valid appropriation of public funds lifts its exemption from execution. The mayor's signature approving the budget ordinance was his/her assent to the appropriation of funds. If he/she did not agree with such allocation, he/she could have vetoed the item pursuant to Section 55 of the Local Government Code of 1991.

90-Day Inaction of DBM in reviewing Appropriation Ordinances

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 1225350 (December 3,

2002) EN BANC Under Section 326 of the Local Government Code of 1991, if within 90 days from receipt of the copies of the appropriation ordinance, the Department of Budget and Management (DBM) takes no action, the appropriation ordinance shall be deemed to have been reviewed in accordance with law and shall continue to be in full force and effect. Since the DBM did not take positive action, it can no longer question the legality of the provisions in the appropriation ordinance granting additional allowances to judges.

Supplemental budget can be approved after adoption of internal rules of procedure on 1st day of session.

MALONZO VS. ZAMORA, G.R. No. 137718 (July 27, 1999) EN BANC A supplemental budget can be approved after adoption of internal rules of procedure on 1st day of session. Section 50 of the Local Government Code of 1991 "does not require the completion of the updating or adoption of the internal rules of procedure before the *Sanggunian* could act on any other matter like the enactment of an ordinance (supplemental budget). It simply requires that the matter of adopting or updating the internal rules of procedure be taken up during the first day of session". Further, there is nothing in the law, however, which prohibits that the three readings of a proposed ordinance be held in just one session day.

Valid disbursements based on reenacted budget

VILLANUEVA VS. OPLE, G.R. No. 165125 (November 18, 2005) THIRD DIVISION Mere failure of the local government to enact a budget did not make all its disbursements illegal. Section 323 of the Local Government Code of 1991 provides for the automatic reenactment of the budget of the preceding year. Money can thus be paid out of the local treasury since there is a valid appropriation. However, only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted.

Appropriation ordinance adjusting the salaries of city officials and employees valid

DEPARTMENT OF BUDGET AND MANAGEMENT VS. CITY GOVERNMENT OF CEBU, G.R. No. 127301 (March 14, 2007) EN BANC An appropriation ordinance adjusting the salaries of city officials and employees to conform with the correct position titles under Joint Commission Circular Nos. 37 and 39 is valid where it did not upgrade the positions of the covered officials. The ordinance clearly stated that the correct salary

grades of all positions in the local government would still be based on the said circular.

Disbursement of funds

Vice-Governor has the authority to approve vouchers and payment for procurement of supplies needed by Sangguniang Panlalawigan

ATIENZA VS. VILLAROSA, G.R. No. 161081 (May 10, 2005) EN BANC The Vice-Governor, not the Governor has the authority to approve disbursement vouchers and payment for procurement of supplies needed by *Sangguniang Panlalawigan*. Since it is the Vice-Governor who approves disbursement vouchers and approves the payment for the procurement of the supplies, materials and equipment needed for the operation of the *Sangguniang Panlalawigan*, then he/she also has the authority to approve the purchase orders to cause the delivery of the said supplies, materials or equipment. The authority granted to the Vice-Governor to sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the *Sangguniang Panlalawigan* as well as to approve disbursement vouchers relating thereto is greater and includes the authority to approve purchase orders for the procurement of the supplies, materials and equipment necessary for the operation of the *Sangguniang Panlalawigan*.

Role of treasurer

HALLASGO VS. COMMISSION ON AUDIT REGIONAL OFFICE NO. X, G.R. No. 171340 (September 11, 2009) EN BANC A municipal treasurer has the duty to perform her responsibilities diligently, faithfully and efficiently. It behooves her to exercise the highest degree of care over the custody, management and disbursement of municipal funds. Thus, her failure to keep current and accurate records, repeated withdrawal of funds without the appropriate disbursement vouchers, failure to ensure the timely liquidation of her cash advances even after the lapse of more than one year, and failure to account for funds in her custody constitute gross misconduct, a grave offense punishable under Section 52, Rule IV of the Civil Service Rules with dismissal for the first offense, without prejudice to the Ombudsman's right to file the appropriate criminal case against the erring officer or other responsible individuals.

ACHONDOA VS. PROVINCE OF MISAMIS OCCIDENTAL, G.R No. L-10375 (March 30, 1962) EN BANC One of the functions of the Provincial Treasurer is to have charge of the disbursement of all provincial funds and other

funds, the custody of which may be entrusted to him/her by the by law or by other competent authority. Where the provincial treasurer finds that the funds in his/her possession are not sufficient to cover the expenses of the provincial government, his/her duty is to apprise the provincial board of such shortage in order that it may devise ways and means to remedy the situation, and if notwithstanding such step the provincial board cannot remedy the situation, what the provincial treasurer should do is to suspend the payment of any expenditure. However, the treasurer does not have the power to cover the shortage by borrowing money because such power devolves upon the provincial governor itself (Section 2086, Revised Administrative Code). Thus the act of the provincial treasurer in securing a loan to pay the salaries of the employees of the province is *ultra vires* not binding on the province.

Municipal Councilors have authority to file suits against unlawful disbursements

CITY COUNCIL OF CEBU VS. CUIZON, G.R. No. L-28972 (October 31, 1972) EN BANC City councilors have the right and legal interest to file suit and to prevent what they believe to be unlawful disbursements of city funds by virtue of the questioned contracts and commitments entered into by the city mayor notwithstanding the city council's revocation of his/her authority with due notice thereof to the bank. City councilors are deemed to possess the necessary authority, and interest, if not duty, to file the present suit on behalf of the City and to prevent the disbursement of city finds under contracts impugned by them to have been entered into by the city mayor without lawful authority and in violation of law.

Taxpayer suit is proper only when there has been an unlawful expenditure of public funds

ANTI-GRAFT LEAGUE VS. SAN JUAN, G.R. No. 97787 (August 1, 1996) EN BANC When no unlawful expenditure of public funds has been shown, a taxpayer suit may not be instituted against local elective officials questioning the transaction validly executed by and between the local government unit and a private corporation for the simple reason that the taxpayer is not privy to the contract.

Public funds cannot be used to hire private lawyers

RAMOS VS. COURT OF APPEALS, G.R. No. 99425 (March 3, 1997) THIRD DIVISION Public funds should not be expended to hire private lawyers to represent a local government unit in litigations for and on behalf of the latter.

Public funds cannot be used for the widening and improvement of privately-owned sidewalks

ALBON VS. FERNANDO, G.R. No. 148357 (June 30, 2006) SECOND DIVISION Under Section 335 of the Local Government Code, no public money shall be appropriated or applied for private purposes. Thus, local government units (LGUs) cannot use public funds for the widening and improvement of privately-owned sidewalks. The implementing rules of PD 957, as amended by PD 1216, provide that it is the registered owner or developer of a subdivision which has the responsibility for the maintenance, repair and improvement of the subdivision's roads and open spaces prior to their donation to the concerned LGU.

LGU officials may be compelled by courts to perform certain acts relative to public funds.

LUMAYNA VS. COMMISSION ON AUDIT, G.R. No. 185001 (September 25, 2009) EN BANC Sangguniang Bayan members who approved a 5% salary increase of municipal employees cannot be compelled to refund the disallowed amount where the salary increase's disbursement was done in good faith. Although the increase exceeded the limitation for personal services appropriations, this alone is insufficient to overthrow the presumption of good faith in favor of the municipal officials. This is especially so since the disbursement was done under the color and by virtue of resolutions enacted pursuant to a local budget circular, and only after the Sangguniang Panlalawigan declared operative the annual municipal budget.

ALTRES VS. EMPLEO, G.R. No. 180986 (December 10, 2008) EN BANC The issuance of a certification as to availability of funds for the payment of the wages and salaries of local officials awaiting appointment by the Civil Service Commission (CSC) is not a ministerial function of the city treasurer. The requirement of certification of availability of funds under Section 344 of the Local Government Code is for the purpose of facilitating the approval of vouchers issued for the payment of services already rendered to, and expenses incurred by, the local government unit. Since the CSC has not yet approved the appointment, there were yet no services performed to speak of, and there was yet no due and demandable obligation.

YUJUICO VS. ATIENZA, G.R. No. 164282 (October 12, 2005) SECOND DIVISION The school board of a local government can be directed by

mandamus to satisfy a final money judgment when the local government identified the source of the payment of just compensation (the Special Education Fund) in an expropriation case. Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered 'just' for the property owner is made to suffer the consequence of being immediately deprived of his/her land while being made to wait for five years.

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION An appropriation ordinance signed by the local chief executive authorizes the release of public funds. A valid appropriation of public funds lifts its exemption from execution. The mayor's signature approving the budget ordinance was his/her assent to the appropriation of funds. If he/she did not agree with such allocation, he/she could have vetoed the item pursuant to Section 55 of the Local Government Code of 1991.

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION The rule is and has always been that all government funds deposited in the Philippine National Bank or any other official depositary of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit, remain government funds and may not be subject to garnishment or levy, in the absence of a corresponding appropriation as required by law. The rule is based on obvious considerations of public policy. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. However, the rule is not absolute and admits of a well-defined exception, that is, when there is a corresponding appropriation as required by law. Otherwise stated, the rule on the immunity of public funds from seizure or garnishment does not apply where the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government. In such a case, the monetary judgment may be legally enforced by judicial processes.

MUNICIPALITY OF SAN MIGUEL, BULACAN VS. FERNANDEZ, G.R. No. L-61744 (June 25, 1984) FIRST DIVISION Public funds are not subject to levy and execution. The reason for this is that they are held in trust for the people, intended and used for the accomplishment of the purposes for which municipal corporations are created, and that to subject said properties and public funds to execution would materially impede, even defeat and

in some instances destroy said purpose. Thus, all the funds of a municipality in the possession of its Municipal Treasurer as well as those in the possession of the Provincial Treasurer are also public funds and as such they are exempt from execution. Further, Presidential Decree No. 477, known as "The Decree on Local Fiscal Administration" provides that "No money shall be paid out of the treasury except in pursuance of a lawful appropriation or other specific statutory authority." Otherwise stated, there must be a corresponding appropriation in the form of an ordinance duly passed by the *Sangguniang Bayan* before any money of the municipality may be paid out.

PASAY CITY VS. COURT OF FIRST INSTANCE OF MANILA, BRANCH X, G.R. No. L-32162 (September 28, 1984) SECOND DIVISION As a general rule, all government funds deposited with the Philippine National Bank by any agency or instrumentality of the government, whether by way of general or special deposit, remain government funds and may not be subject to garnishment or levy. However, when an ordinance has already been enacted expressly appropriating an amount as payment, then said case is covered by the exception to the general rule that "judgments against a State in cases where it has consented to be sued, generally operate merely to liquidate and establish plaintiff's claim in the absence of express provision; otherwise they cannot be enforced by processes of the law; and it is for the legislature to provide for the payment in such manner as it sees fit.

VILLEGAS VS. AUDITOR GENERAL, G.R. No. L-21352 (November 29, 1966) EN BANC A city auditor may be compelled by the courts by *mandamus* to sign vouchers needed for the purchase of the city's garbage trucks. The proposed expenditure of city funds involved is legal. The purchase contract was entered into by the Mayor acting within the scope of his/her authority and an appropriation was made to cover the disbursement.

YUVIENGCO VS. GONZALES, G.R. No. 14619 (May 25, 1960) EN BANC The orders of the judge commanding the Provincial Treasurer and Assistant Treasurer to deposit the money to pay a contractor of school buildings are not arbitrary and capricious. They are the proper parties to the case since they are the legitimate custodians of the public funds of said province, the very officials in charge of the disbursement of all provincial funds.

Special Education Fund

LEYCANO VS. COMMISSION ON AUDIT, G.R. No. 154665 (FEBRUARY 10, 2006) EN BANC A provincial school board may create inspectorate teams. This power is implied from the authority under Section 99(b) of the Local

Government Code of 1991 for the Board to disburse funds from the Special Education Fund pursuant to the budget prepared and in accordance with existing rules and regulations. The Board has the power to institute measures for ascertaining that the disbursements intended will, in fact, be in accordance with the prepared budget.

YUJUICO VS. ATIENZA, G.R. No. 164282 (October 12, 2005) SECOND DIVISION The school board of a local government can be directed by *mandamus* to satisfy a final money judgment when the local government identified the source of the payment of just compensation (the Special Education Fund) in an expropriation case. Just compensation means not only the correct determination of the amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered 'just' for the property owner is made to suffer the consequence of being immediately deprived of his/her land while being made to wait for five years.

COMMISSION ON AUDIT OF THE PROVINCE OF CEBU VS. PROVINCE OF CEBU, G.R. No. 141386 (November 29, 2001) EN BANC The Special Education Fund under Section 1 of Republic Act No. 5447 may be expended for the organization and operation of extension classes. Section 534 of the Local Government Code of 1991 only repealed Section 3 of Republic Act No. 5447. College scholarship grants are not among the projects for which the SEF may be appropriated.

Procurement

Reliance on subordinates

LEYCANO VS. COMMISSION ON AUDIT, G.R. 154665 (FEBRUARY 10, 2006) EN BANC All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. A public officer cannot be expected to probe records, inspect documents, and question persons before he/she signs vouchers presented for his/her signature unless there is some added reason why he/she should examine each voucher in such detail. When an exceptional circumstance exist which should have prodded the officer, and if he/she were out to protect the interest of the municipality he/she swore to serve, he/she is expected go beyond what his/her subordinates prepared or recommended. Thus, a provincial treasurer should have perceived the anomaly in the existence of Acceptance Reports executed by Department of Education officials prior to the

Inspectorate Team's assessment of the projects and its issuance of a certificate of inspection when it should have been clear to the treasurer that the acceptance or turnover of projects of the School Board which he/she heads is effected only after these projects have gone through the Inspectorate Team.

Exceptions to competitive bidding requirement

SISON VS. PEOPLE, G.R. No. 170339, 170398-403 (March 9, 2010) THIRD DIVISION Republic Act No. 7160 requires that where a local chief executive requesting a requisition sits in a dual capacity, the participation of a sanggunian member (elected from among the members of the sanggunian) is necessary. None of the regular members of the Committee on Awards may sit in a dual capacity. Where any of the regular members is the requisitioning party, a special member from the sanggunian is required. The prohibition is meant to check or prevent conflict of interest as well as to protect the use of the procurement process and the public funds for irregular or unlawful purchases.

ONG VS. PEOPLE, G.R. No. 176546 (September 25, 2009) THIRD DIVISION Section 356 of the Local Government Code (LGC) states the general rule that the acquisition of supplies by local government units shall be through competitive bidding. Section 366 of the LGC provides the only instances when public bidding requirements shall be dispensed with, to wit: (1) personal canvass of responsible merchants; (2) emergency purchases; (3) negotiated purchase; (4) direct purchase from manufacturers or exclusive distributors; and (5) purchase from other government entities. Under Section 366 of the LGC and Commission on Audit Resolution Nos. 95-244 and 95-244-A, a local chief executive could only resort to negotiated purchase if two requisites are present: (1) public biddings have failed for at least two consecutive times; and (2) no suppliers have qualified to participate or win in the biddings.

CABRERA VS. MARCELO, G.R. Nos. 157419-20 (December 13, 2004) SECOND DIVISION Under Section 356 of the Local Government Code of 1991, the general rule is that the acquisition of supplies by local government units shall be through competitive public bidding. The rule admits of exceptions, so Section 366 provides. The provision authorizes the procurement of supplies without the benefit of public bidding under any of the following modes: (a) personal canvass of responsible merchants; (b) emergency purchase; (c) negotiated purchase; (d) direct purchase from manufacturers or exclusive distributors; and (e) purchase from other government entities. With regards the 4th exception, a qualification is found in the Rules. In case there are two or more known manufacturers of

the required supplies or property, canvass of prices of the known manufacturers shall be conducted to obtain the lowest price for the same quality of said supplies or property. This proviso reiterates Section 370 of the Code. The qualification is consistent with the thrust of the law that ensures the minimization of expenditures of the public fund.

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION Public bidding may have been dispensed with, not only because "time is of the essence" but in recognition of the reality that offering property to be used as a dumpsite is not an attractive nor lucrative option for property owners. This reality is all the more glaring in the current situation where Metro Manila local government units are seemingly unable to cope with the disastrous lack of garbage dumping sites. A major part of the problem is that no one wants to be the dumping ground of someone else's garbage. This problem is compounded by recent events where tragedy has befallen scavengers and residents in a dumpsite that should have been closed years ago. It would no longer be prophetic to say that had Quezon City used the subject dumpsite and discontinued the use of the Payatas dumpsite way back in 1991, tragedy therein would have been averted.

Appropriations required

LLORENTE VS. SANDIGANBAYAN, G.R. No. 122166 (March 11, 1998) FIRST DIVISION A local chief executive is not duty-bound to approve and sign a voucher when there is no appropriations ordinance and when there is no certification of availability of funds for the intended purpose. For not signing the voucher, bad faith cannot be imputed against him/her.

CHAPTER 7
LOCAL LEGISLATION

Nature and Scope of Local Lawmaking Authority

Nature of local legislative powers

LAGCAO VS. LABRA, G.R. 155746 (October 13, 2004) EN BANC The legislative acts of the *Sangguniang Panlungsod* in the exercise of its lawmaking authority are denominated ordinances.

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the State. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe upon the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC Local legislative bodies exercise only delegated legislative powers conferred on them by Congress. As mere agents, local governments are vested with the power of subordinate legislation.

Rule against undue delegation of legislative powers applies as well to LGUs.

VILLEGAS VS. TSAI PAO HO, G.R. 29646 (October 10, 1978) EN BANC The ordinance is also void because it constitutes undue delegation of legislative power to the Mayor. The ordinance does not lay down any criterion or standard to guide the Mayor in the exercise of his/her discretion in the issuance or denial of an alien employment permit.

Legislation and devolution

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC Ordinances passed in the exercise of the general welfare clause and devolved powers of local governments need not be approved by the devolving agency in order to be effective.

Local legislation, presumption of regularity

Ordinances may not be the subject of collateral attack.

SAN MIGUEL BREWERY, INC. VS. MAGNO, G.R. No. L-21879 (September 29, 1967) EN BANC A municipal ordinance is not subject to collateral attack. Public policy forbids collateral impeachment of legislative acts.

Regularity of enactment may not be impeached by parol evidence

REYES VS. COURT OF APPEALS, G.R. No. 118233 (December 10, 1999) EN BANC It is a general rule that the regularity of the enactment of an officially promulgated statute or ordinance may not be impeached by *parol* evidence or oral testimony either of individual officers and members, or of strangers who may be interested in nullifying legislative action.

Party asserting the lack of a procedural requirement has burden of proof

LEYNES VS. COMMISSION ON AUDIT, G.R. No. 143596 (December 11, 2003) EN BANC An ordinance must be presumed valid in the absence of evidence showing that it is not in accordance with the law. A third party has the burden of proving that a municipal council did not comply with the condition provided in Section 447 of the Local Government Code of 1991, the budgetary requirements and general limitations on the use of municipal funds stated in Sections 324 and 325 of the Code and the implementing guidelines issued by the Department of Budget and Management. The third party also had the burden of showing that the *Sangguniang Panlalawigan* erroneously approved said resolution despite its non-compliance with the requirements of the law.

FIGUERRES VS. COURT OF APPEALS, G.R. No. 119172 (March 25, 1999) SECOND DIVISION The lack of a public hearing is a negative allegation. Hence, the party asserting it has the burden of proof. Failure to rebut the presumption of validity that no public hearings were conducted prior to the enactment thereof means the constitutionality or legality of the questioned ordinance must be upheld. The same rule applies to ordinances that fix the assessment levels, being in the nature of a tax ordinance.

SERAFICA VS. TREASURER OF ORMOC CITY, G.R. No. L-24813 (April 28, 1969) EN BANC The City Council is presumed to have complied with its duty and that the ordinance is valid unless and until the contrary has been duly established.

UNITED STATES VS. CRISTOBAL, G.R. No. 11401 (August 23, 1916) EN BANC The Court has the right to assume that officials have done that which the law requires them to do, in the absence of positive proof to the contrary. Further, considering the general powers of the municipal councils as defined in Act No. 82 and its amendments, a municipal ordinance which prohibits persons engaged in fishing from closing up or obstructing in any way public navigable rivers, or *esteros*, or other watercourses or bodies of water located within the jurisdiction of the municipality is valid.

UNITED STATES VS. TEN YU, G.R. No. 7482 (December 28, 1912) EN BANC The question of the validity of every statute is first determined by the legislative department of the Government itself, and the courts should resolve every presumption in favor of its validity. Courts are not justified in adjudging a statute invalid in the face of the conclusions of the legislature when the question of its validity is at all doubtful. The courts must assume that the validity of a statute was fully considered by the legislature when adopted.

Unconstitutionality must be established.

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION An ordinance enjoys the presumption of validity and, as such, cannot be restrained by injunction. Nevertheless, when the validity of the ordinance is assailed, courts are not precluded from issuing an injunctive writ against its enforcement when: (1) the petitioner assailing the ordinance has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of validity; and (2) the petitioner has shown a clear legal right to the remedy sought.

LUCENA GRAND CENTRAL TERMINAL VS. JAC LINER, G.R. No. 148339 (February 23, 2005) EN BANC Traffic congestion is a public concern. However, when the ordinance prohibits the operation of all bus and jeepney terminals including those already existing, allows the operation of only one common terminal located outside the city, the franchise for which was granted to another person, compels existing terminals to close down and subject the users thereof to fees, rentals and charges, and grants an exclusive franchise to one operator when it is shown that this is not the only solution to the traffic congestion problem does not conform with the second standard. The ordinance is characterized by overbreadth. It is its reasonableness, not its effectiveness, which bears upon its constitutionality.

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC

Ordinances enacted by local government units enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. When doubt exists, even if well-founded, there can be no finding of unconstitutionality.

GARCES VS. ESTENZO, G.R. No. L-35487 (May 25, 1981) EN BANC The questioned resolutions do not directly or indirectly establish any religion, nor abridge religious liberty, nor appropriate any public money or property for the benefit of any sect, priest or clergyman. The image was purchased with private funds and not tax money. Said image was purchased in connection with the celebration of the barrio fiesta.

SAMSON VS. CITY OF BACOLOD, G.R. No. L-28745 (October 23, 1974) SECOND DIVISION The movie operators who claim to have been deprived of their property without due process of law by a city ordinance alleged to be *ultra vires* have the burden of demonstrating the alleged nullity of the ordinance. Ordinances are presumed valid. Reliance on the possible adverse effect on property rights of a regulatory measure under the police power by itself is not sufficient to declare the ordinance unconstitutional under the due process clause. Municipal councilors are presumed to be familiar with the needs of their particular municipality and with all the facts and circumstances which surround the subject. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well being of the people. The courts should not lightly set aside legislative action when there is not a clear invasion of personal or property rights under the guise of police regulation.

MORCOIN CO, LTD. VS. CITY OF MANILA, G.R. No. L-15351 (January 28, 1961) EN BANC Ordinances enjoy the presumption of the validity or reasonableness. The presumption may be refuted when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by proper evidence.

Clear invasion and transgression of personal or property rights under the guise of police regulation should be proven,

MEJORADA VS. MUNICIPAL COUNCIL OF DIPOLOG, G.R. No. 37389 (August 31, 1973) EN BANC The courts will not lightly set aside legislative action unless a clear invasion and transgression of personal or property rights under the guise of police regulation is shown, since in the case of municipalities, the councilors as the elected representatives of the

people, must in the very nature of things be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action.

ERMITA-MALATE HOTEL AND MOTEL OPERATIONS ASSOCIATION, INC. VS. CITY MAYOR OF MANILA, G.R. No. L-24693 (July 31, 1967) EN BANC An ordinance is presumed to be valid and should not be set aside unless there is a clear invasion of personal property rights under the guise of police regulation. Framers of the ordinance are presumed to be familiar with the necessities of their particular municipality or city and with all the facts and circumstances which surround the subject. Unless, therefore, the ordinance is void on its face, the necessity for evidence to rebut its validity is unavoidable.

Presumption of regularity with respect to role of executive in local legislation.

YU KING VS. CITY OF ZAMBOANGA, G.R. No. L-20406 (December 29, 1966) EN BANC Absent any evidence to the contrary, a mayor is presumed to have certified a tax ordinance as required under Commonwealth Act No. 39. Local officials are presumed to have exercised their functions in connection with the enactment of the ordinance.

The Ordinance

Ordinance is a rule of conduct or action,

UNITED STATES VS. PABLO TRINIDAD, G.R. No. L-3023 (January 16, 1907) FIRST DIVISION As a municipal statute, the ordinance is a rule of conduct or of action, laid down by the municipal authorities that must be obeyed by the citizens of Manila. It was drafted, prepared, promulgated by such authorities for the information of all concerned under and by virtue of the powers conferred upon them by the Charter of the said city.

Tests of a valid ordinance

WHITE LIGHT CORPORATION VS. CITY OF MANILA, G.R. No. 122846 (January 20, 2009) EN BANC For an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate

trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION For an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy and (6) must not be unreasonable.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC An ordinance must not violate the constitutional safeguard of due process and equal protection of laws.

LAGCAO VS. LABRA, G.R. 155746 (October 13, 2004) EN BANC The tests of a valid ordinance are well established. A long line of decisions has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable. Anent the first criterion, ordinances shall only be valid when they are not contrary to the Constitution and to the laws. The ordinance must satisfy two requirements: it must pass muster under the test of constitutionality and the test of consistency with the prevailing laws. That ordinances should be constitutional uphold the principle of the supremacy of the Constitution. The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC The tests of a valid ordinance are well established. An ordinance must conform to the following substantive requirements: (1) It must not contravene the constitution or any statute; (2) It must not be unfair or oppressive; (3) It must not be partial or discriminatory; (4) It must not

prohibit but may regulate trade; (5) It must be general and consistent with public policy; and (6) It must not be unreasonable. An ordinance which prohibits and penalizes the setting up of casinos contravene Presidential Decree No. 1869 and the public policy embodied therein insofar as it prevents Philippine Amusement and Gaming Corporation from exercising the power conferred on it to the operate a casino in the City.

Legislation must be reasonable

LUCENA GRAND CENTRAL TERMINAL VS. JAC LINER, G.R. No. 148339 (February 23, 2005) EN BANC Traffic congestion is a public concern. However, when the ordinance prohibits the operation of all bus and jeepney terminals including those already existing, allows the operation of only one common terminal located outside the city, the franchise for which was granted to another person, compels existing terminals to close down and subject the users thereof to fees, rentals and charges, and grants an exclusive franchise to one operator when it is shown that this is not the only solution to the traffic congestion problem does not conform with the second standard. The ordinance is characterized by overbreadth. It is its reasonableness, not its effectiveness, which bears upon its constitutionality.

Ordinances should be consistent with national law

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Ordinance No. No. 8027 disallowing the maintenance of oil storage facilities in the Pandacan area does not expressly conflict with R.A. 7638 and R.A. 8479. The cited laws merely gave the Department of Energy general powers to "establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy sources," and to "encourage certain practices in the [oil] industry which serve the public interest and are intended to achieve efficiency and cost reduction, [and] ensure continuous supply of petroleum products." These general powers can be exercised without emasculating the local government units of their power to enact zoning ordinances for the general welfare of their constituents.

ALLIED BANKING CORPORATION VS. QUEZON CITY, G.R. No. 154126 (October 11, 2005) THIRD DIVISION An ordinance that contravenes any statute is *ultra vires* and void. A *proviso* in an ordinance directing that the real property tax be based on the actual amount reflected in the deed of conveyance or the prevailing Bureau of Internal Revenue-zonal value is invalid not only because it mandates an exclusive rule in determining the

fair market value but more so because it departs from the established procedures stated in the Local Assessment Regulations No. 1-92 and unduly interferes with the duties statutorily placed upon the local assessor by completely dispensing with his/her analysis and discretion which the Local Government Code of 1991 and the regulations require to be exercised. Further, the charter does not give the local government that authority.

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law.

VILLARENA VS. COMMISSION ON AUDIT, G.R. No. 145383-84 (August 6, 2003) EN BANC Under the Local Government Code of 1991, local legislative bodies may provide for additional allowances and other benefits to national government officials stationed or assigned to their municipality or city. This authority, however, is not without limitation, as it does not include the grant of benefits that runs in conflict with other statutes, such as Republic Act No. 6758.

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC Ordinances should not contravene a statute. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

SOLICITOR GENERAL VS. METROPOLITAN MANILA AUTHORITY AND THE MUNICIPALITY OF MANDALUYONG, G.R. No. 102782 (December 11, 1991) EN BANC Presidential Decree No. 1605 does not allow either the removal of license plates or the confiscation of driver's licenses for traffic violations committed in Metropolitan Manila. In fact, Section 5 thereof expressly provides that "in case of traffic violations, the driver's license shall not be

confiscated." The Metro-Manila Commission was allowed to "impose fines and otherwise discipline" traffic violators only "in such amounts and under such penalties as are herein prescribed," that is, by the decree itself. Nowhere is the removal of license plates directly imposed by the decree or at least allowed by it to be imposed by the Commission. Notably, these restrictions are applicable to the Metropolitan Manila Authority and all other local political subdivisions comprising Metropolitan Manila, including the Municipality of Mandaluyong.

TERRADO VS. COURT OF APPEALS, G.R. No. L-58794 (August 24, 1984) SECOND DIVISION An ordinance which goes against the provisions of laws which are enacted by the National Legislature is illegal and void. Consequently, all acts done pursuant to such an ordinance, such as contracts entered into, are likewise null and void. A Municipal Ordinance establishing a Fishery and Hunting Park and Municipal Watershed is against the provisions of the law for it granted exclusive fishery privileges to a private corporation without benefit of public bidding in violation Act No. 4003, the Fisheries Act.

DE LA CRUZ VS. PARAS, G.R. No. L-42571-72 (July 25, 1983) EN BANC An ordinance enacted by virtue of the exercise of police power is valid, unless it contravenes the fundamental law of the Philippine Island, or an Act of the Philippines Legislature, or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right. Where the power to legislate upon a given subject and the mode of its exercise and the details of such legislation are not prescribed, the ordinance passed pursuant thereto must be a reasonable exercise of the power, or it will be pronounced invalid. An ordinance revoking existing permits and prohibiting the issuance of business permits for the operation of night clubs, cabarets, and dance halls and likewise prohibiting the employment therein of hostesses is a nullity. Certainly the ordinance on its face is characterized by over breadth. The purpose sought to be achieved could have been attained by reasonable restriction rather than by an absolute prohibition. It is clear that municipal corporations cannot prohibit the operation of night clubs.

PRIMICIAS VS. MUNICIPALITY OF URDANETA, G.R. No. L-26702 (October 18, 1979) EN BANC Whenever there is a conflict between an ordinance and a statute, the ordinance must give way. Therefore a local legislative body intending to control traffic in public highways is supposed to classify first, and then mark them with proper signs. Approval by the Land Transportation Commissioner is also required under the statute.

REPUBLIC OF THE PHILIPPINES VS. LARDIZABAL, G.R. No. L-41351 (October

28, 1977) FIRST DIVISION By Executive Proclamation No. 312, the area in Baguio City known as the Slaughterhouse Compound was reserved as a sanitary camp and livestock yard of the City and placed under its administration. The City Council passed Resolutions authorizing the lease of the compound for a period of 25 years renewable for a like period at the option of both parties. It is clear that the area in question has been reserved for sanitary camp and livestock yard under the administration of the City. The proclamation expressly prohibits the disposition of the reserved area.

PEOPLE VS. CHONG HONG, G.R. No. 45363 (June 13, 1938) EN BANC The enlargement upon the provisions of a statute of the state, as by the imposition of additional penalties, does not result in inconsistency. As a general rule, additional regulation to that of the state law does not constitute a conflict therewith. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription. The fact that the ordinance does not speak of recidivism, which the general law treats of with more severity, is not indicative of inconsistency. There can be no inconsistency if either is silent where the other speaks.

Void act confers no right

ZOOMZAT VS. PEOPLE OF THE PHILIPPINES, G.R. No. 135535 (February 14, 2005) FIRST DIVISION In the absence of constitutional or legislative authorization, municipalities have no power to grant franchises to cable television operators. Only the National Telecommunications Commission has such authority. Consequently, the protection of the constitutional provision as to impairment of the obligation of a contract does not extend to privileges, franchises and grants given by a municipality in excess of its powers, or *ultra vires*. Being a void legislative act, the ordinance granting a franchise did not confer any right nor vest any privilege.

Ordinances may enhance and/or co-exist with national legislation on the same subject matter,

UNITED STATES VS. PASCUAL PACIS, G.R. No. 10363 (September 29, 1915) EN BANC The mere fact that there is already a general statute covering an act or omission is insufficient to negate the legislative intent to empower the municipality to enact ordinances with reference to the same act or omission under the 'general welfare clause' of the Municipal Charter (Act No. 1963). Under the general welfare clause, a municipality may enact an ordinance prescribing additional penalties where the act

or omission committed within its territorial limits constitutes a separate offense or when it aggravates the character of the offense. But the subject matter of the ordinance must fall within the purview of the general welfare clause and must be in harmony with the provisions of the general statute, and reasonably calculated to secure the ends sought to be attained by its enactment.

UNITED STATES VS. JOSON, G.R. No. 7019 (September 29, 1913) EN BANC Municipalities may exercise such powers as are expressly given by the charter and such other powers as are necessarily implied from such express powers. Municipalities can exercise such powers only as have been either expressly or by necessary or implied implication conferred upon them, or such as are essential to its declared objects and purposes. The General Charter of the Municipalities of the Philippine Islands (Act No. 82 and its amendments) is sufficiently broad in its provisions to authorize them to adopt an ordinance prohibiting the gambling game of 'jueteng' and to provide punishment, within the limitations of said charter, for violation of such ordinance. If the charter of a municipality fully authorizes the purpose of protecting the peace and good order of the municipality, an ordinance adopted in strict accordance with said charter provisions is valid, even though there is a state law existing upon the same subject, regulating the same question.

UNITED STATES VS. TIENCO, G.R. No. L-7852 (August 18, 1913) EN BANC Section 33 of Act No. 1147 prohibits the slaughtering of large cattle at the municipal slaughtering house for human consumption or for food without a permit duly secured from the municipal treasurer. An ordinance prohibiting slaughter of large cattle within a municipality, even though the object should be for sale, without the permit of the president of the municipal board of health is not inconsistent with the Act. Both the ordinance and the general law prohibit the slaughtering of large cattle without a permit. The mere fact that a municipality, for the purpose of protecting the health of its people, requires a permit from the president of the municipal board of health for the slaughtering of large cattle, does not contravene nor it is repugnant to the provisions of the general law of the State requiring, for the purposes mentioned in the general law, a permit from the municipal treasurer for the slaughtering of large cattle.

Ordinance must be specific and clear

PRIMICIAS VS. MUNICIPALITY OF URDANETA, G.R. No. L-26702 (October 18, 1979) EN BANC Regulatory ordinances of municipalities must be clear, definite and certain.

Ordinances are subject to repeal or modification

ALLIED THREAD CO., INC. VS. CITY MAYOR OF MANILA, G.R. No. L-40296 (November 21, 1984) EN BANC Section 54 of Presidential Decree No. 426 provides that "for an ordinance intended to take effect on July 1, 1974, it must be enacted on or before June 15, 1974." Amendments made after the deadline of local tax ordinances enacted prior to the deadline can be made. The subsequent amendments to the basic ordinance did not in any way invalidate it nor move the date of its effectivity. To hold otherwise would limit the power of the defunct Municipal Board of Manila to amend an existing ordinance as exigencies require.

INTING VS. BELDEROL, G.R. No. L-25890 (January 31, 1972) EN BANC A conflict between two ordinances would result to the repeal of the earlier ordinance by virtue of the repealing clause of the latter ordinance.

Ordinance may, through its provision, require a qualified majority for its modification or repeal ,

CASINO VS. COURT OF APPEALS, G.R. No. 91192 (December 2, 1991) SECOND DIVISION Although the charter of the City of Gingoog and the Local Government Code of 1983 require only a majority vote for the enactment of an ordinance, the Resolution in question cannot be validly amended without complying with the categorical requirement of three – fourths majority vote incorporated in the very ordinance sought to be amended.

Ordinance distinguished from a Resolution

MUNICIPALITY OF PARANAQUE VS. V.M. REALTY CORPORATION, G.R. No. 127820 (July 20, 1998) FIRST DIVISION A municipal ordinance is different from a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary in nature. Additionally, the two are enacted differently — a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the *Sanggunian* members. Thus, in the exercise of the power to expropriate by local governments, the enabling instrument must be an ordinance, not a resolution since the Section 19 of the Local Government Code of 1991 is specific in this regard.

GARCIA VS. COMMISSION ON ELECTIONS, G.R. No. 111230 (September 30, 1994) EN BANC A resolution is used whenever the legislature wishes to

express an opinion which is to have only a temporary effect while an ordinance is intended to permanently direct and control matters applying to persons or things in general.

BINAY VS. DOMINGO, G.R. No. 92389 (September 11, 1991) EN BANC A resolution may be passed by a *sanggunian* providing financial assistance to qualified families benefiting only a limited number of persons.

MASCUÑANA VS. PROVINCIAL BOARD OF NEGROS OCCIDENTAL, G.R. No. L-27013 (October 18, 1977) SECOND DIVISION A municipal ordinance is not the same as a resolution of the municipal council. Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated ordinances. A resolution is less solemn and formal than an ordinance. It is an act of a special or temporary character, not prescribing a permanent rule of government, but is merely declaratory of the opinion of a municipal corporation in a given matter, and in the nature of a ministerial or administrative act, and is not a law.

Resolution passed in the manner and with the statutory formality required is binding and effective as an ordinance.

FAVIS VS. CITY OF BAGUIO, G.R. No. L-29910 (April 25, 1969) EN BANC The objection that the powers granted to the City — including the power to close streets — shall be carried into effect by ordinance, is directed at form, not at substance. It has been held that even where the statute or municipal charter requires the municipality to act by ordinance, if a resolution is passed in the manner and with the statutory formality required in the enactment of an ordinance, it will be binding and effective as an ordinance. Such resolution may operate regardless of the name by which it is called.

Resolutions once used for legislation

MANECLANG VS. INTERMEDIATE APPELLATE COURT, G.R. No. L-66575 (September 30, 1986) SECOND DIVISION A municipal resolution authorizing public bidding for the lease of all municipal ferries and fisheries was passed by members of the Municipal Council in the exercise of their legislative powers. The Municipality acting through its duly-constituted municipal council is clothed with authority to issue resolutions dealing with its municipal waters.

Effect of approval, ratification of acts

CITY OF CALOOCAN VS. COURT OF APPEALS, G.R. No. 145004 (May 3, 2006) SECOND DIVISION A city mayor has the authority to file suits for the recovery of funds and property on behalf of the city, even without the prior authorization from the Sanggunian. Nowhere in the enumerated powers and duties of the Sanggunian can one find the requirement of such prior authorization in favor of the mayor for the purpose of filing suits on behalf of the city. Being the proper party to file such suits, the city mayor must necessarily be the one to sign the certification against forum-shopping, and not the city legal officer, who, despite being an official of the City, was merely its counsel and not a party to the case.

DOLAR VS. BARANGAY LUBLUB, G.R. No. 152663 (November 18, 2005) THIRD DIVISION The authority of the *Punong Barangay* to accept a donation on behalf of the *barangay* is deemed ratified when through the years, the *sanggunian* did not repudiate the acceptance of the donation and when the *barangay* and the people of the *barangay* have continuously enjoyed the material and public service benefits arising from the infrastructures projects put up on the subject property.

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION An appropriation ordinance signed by the local chief executive authorizes the release of public funds. A valid appropriation of public funds lifts its exemption from execution. The mayor's signature approving the budget ordinance was his/her assent to the appropriation of funds. If he/she did not agree with such allocation, he/she could have vetoed the item pursuant to Section 55 of the Local Government Code of 1991.

GREATER BALANGA DEVELOPMENT CORPORATION VS. MUNICIPALITY OF BALANGA, BATAAN, G.R. No. 83987 (December 27, 1994) FIRST DIVISION A resolution was issued stating that a parcel of was earmarked for the expansion of the Balanga Public Market and that the *Sangguniang Bayan* therefore resolved to annul the said Mayor's permit insofar as it concerns the operation of a public market. Under the Batas Pambansa Blg. 337, the *Sangguniang Bayan* has the power to provide for the establishment and maintenance of public markets in the municipality and "to regulate any business subject to municipal license tax or fees and prescribe the conditions under which a municipal license may be revoked." However, when a resolution merely mentioned the plan to acquire the lot for expansion of the public market adjacent thereto and when no expropriation proceedings are instituted in court, the land owner cannot be deprived of its right over the land. The *Sangguniang Bayan* has the

duty in the exercise of its police powers to regulate any business subject to municipal license fees and prescribe the conditions under which a municipal license already issued may be revoked.

ADLAWAN VS. INTERMEDIATE APPELATE COURT, G.R. No. 73022 (February 9, 1989) SECOND DIVISION The law specifically entrusts the sole authority to issue permits for cockpits to the mayors. The municipal council's duty is merely to ratify the mayor's decision before the same can be actually implemented. The Council cannot, on its own instance or initiative, pass upon the licensability of a particular cockpit and thereafter recommend it to the mayor for approval and a resolution issued by a municipal council recognizing a particular cockpit as the legal municipal cockpit is *ultra vires.* The procedure provided for by law must be followed and the process incorporated therein cannot be reversed. A municipal council cannot issue a resolution recognizing a particular cockpit and then submit the same for the approval of the mayor. This is a reversal of the process provided for by law and as such cannot be sanctioned.

Ordinance re-enacted

ANGELES VS. CITY OF DAVAO, G.R. No. 49097 (March 31, 1944) EN BANC Any defect or illegality of an ordinance enacted by a municipality under Act No. 4142 prescribing a limit as to the amount of slaughter fee was cured by the re-enactment of the ordinance by the municipality-turned-city since Commonwealth Act No. 155 which amended Act No. 4142 authorized the city to impose a reasonable slaughter fee. Any defect or illegality which municipal ordinance might have by reason of the limitation provided by Act No. 4142, was cured or by the re-enactment of said ordinance under Commonwealth Act No. 155.

Nature of ordinance, prior to Local Government Code of 1991

PEOPLE VS. SABARRE, G.R. No. 45522 (June 20, 1938) EN BANC It must be considered that an ordinance has not the character of and is not a general law, but is merely a regulation of a local nature, and one perfectly valid and effective, provided it is in harmony with the general laws in force. Therefore, it is not indispensable that its subject should appear in the title, for the provisions of the Act of Congress of July 1, 1902 which reads "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill" refer to the general laws that govern in a State and to those enacted in these Islands which, indeed, must not embrace more than one subject and that subject must be expressed in the title. This constitutional provision has no application to municipal ordinances, as these do not partake of the

nature of laws, but are mere rules provided for the fulfillment of the laws.

UNITED STATES VS. GENATO, G.R. No. 5197 (February 10, 1910) EN BANC Act No. 183 known as the Charter of Manila expressly authorizes the Board to enact ordinances which will regulate, control and prevent discrimination in the sale and supply of gas, electricity, and telephone and street railway service, and fix and regulate rates and charges therefore where the same has not been fixed by Congress. The municipal ordinances published by a municipal board are complementary of and constitute the regulations for enforcing the general or special laws enacted by the Legislature. In order to fulfill its duties and administer the interests of the city for the benefit of the inhabitants, the Municipal Board is authorized by its charter to prepare and enact ordinances within its authority expressly conferred, provided that in their enactment and promulgation the board does not exceed its powers.

Ordinances with penalties and sanctions, rule prior to Local Government Code of 1991

CONDE VS. MAMENTA, G.R. No. 71989 (July 7, 1986) FIRST DIVISION A Municipal Ordinance fixing the rates of monthly rentals of market stalls also provides that the lessee of a space, stall, *tienda* or booth who fails to pay the monthly rental fee shall pay a surcharge of 25% of the total rent due. Neither of the enactments makes non-payment of fees an offense nor provides for punishment for violation thereof. The surcharge imposed for late or non-payment of monthly rentals is not a penalty under criminal law but an additional amount added to the usual charge. It is more of an administrative penalty, which should be recoverable only by civil action. There being no offense defined nor punishment prescribed, a criminal action will not lie against a person who refused to pay the increased rates.

DE GUZMAN VS. SUBIDO, G.R. No. L-31683 (January 31, 1983) FIRST DIVISION The violation of a municipal ordinance, enacted by a city under legislative authority, as in the case of ordinances prohibiting and punishing gaming and the keeping of gaming houses is not a crime, in the proper sense of the term, for such ordinances are not public laws, and the punishment for their violation is imposed by the State. Prosecutions to enforce penalties for violations of municipal ordinances are not criminal prosecutions and the offenses against these ordinances are not criminal cases. The law of municipal corporations distinguishes between acts not essentially criminal relating to municipal regulations for the promotion of peace, good order, health, safety, and comfort of residents and acts intrinsically punishable as public offenses. A penalty imposed for the breach of a municipal regulation is not necessarily an exercise of the

sovereign authority, to define crimes and provide for their punishment, delegated to a local government.

DE GUZMAN VS. SUBIDO, G.R. No. L-31683 (January 31, 1983) FIRST DIVISION A violation of a municipal ordinance to qualify as a 'crime' must involve at least a certain degree of evil doing, immoral conduct, corruption, malice, or want of principles reasonably related to the requirements of the public office.

Effect of repeal of municipal code by administrative code on ordinances

UNITED STATES VS. BLANCO, G.R. No. L-12435 (November 9, 1917) EN BANC Since the Municipal Code (Act No. 82) was repealed by the enactment of the Administrative Code, the ordinance enacted pursuant to the earlier law should be deemed to have been abrogated at the same time. While the Administrative Code repealed the Municipal Code, it still conferred upon and confirmed to all duly organized municipalities the power to enact and maintain ordinances in substantially the same language as that found in the Municipal Code. Thus, the enactment of the Administrative Code did not have the effect of abrogating or repealing a municipal ordinance enacted and maintained in the exercise of a power confirmed to the municipality by the Code itself.

Local Legislative body, the *Sanggunian*

Sanggunian is a collegial body whose principal function and duty is legislation.

ZAMORA VS. CABALLERO, G.R. No. 147767 (January 14, 2004) THIRD DIVISION A *sanggunian* is a collegial body. Legislation, which is the principal function and duty of the *sanggunian*, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the *sanggunian* done outside the parameters of the legal provisions aforementioned are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session.

Sanggunian cannot revoke or invalidate acts of national government

DOCENA VS. SANGGUNIANG PANLALAWIGAN OF EASTERN SAMAR, G.R. No. 96817 (June 25, 1991) EN BANC A *sanggunian* has no authority to review and, if it so decides, reject the appointment made by Secretary of Interior and Local Government for the vacancy in the *Sangguniang Panlalawigan*. It has no authority to do so being still under the general supervision of the Chief Executive whose alter ego is the Secretary of the Interior and Local Government.

Sanggunian is not a tribunal, board, or officer exercising judicial or quasi-judicial functions

LIGA NG MGA BARANGAY NATIONAL VS. CITY MAYOR OF MANILA, G.R. No. 154599 (January 21, 2004) EN BANC A petition for certiorari filed against a *Sangguniang Panlungsod* assailing the legality of an ordinance will not lie since the *sanggunian* does not fall within the ambit of tribunal, board, or officer exercising judicial or quasi-judicial functions. The enactment of an ordinance was done in the exercise of legislative and executive functions of the *Sanggunian* and mayor respectively and do not partake of judicial or quasi-judicial functions. Further, the Supreme Court has no original jurisdiction over actions to declare an ordinance unconstitutional or illegal since the action is in essence a petition for declaratory relief.

Metropolitan Manila Commission took over legislative functions of the local boards during the martial law era in the Metro Manila area.

RICARDO CRUZ VS. COURT OF APPEALS, G.R. No. L-44178 (August 21, 1987) THIRD DIVISION The dissolution of the Municipal Board was among the measures which followed the promulgation of martial law. It did not follow, however, that the City Mayor automatically became both executive and legislature of the local government. He/she was never vested with legislative power. The Metropolitan Manila Commission took over the legislative functions of the Municipal Board of Manila. Under Presidential Decree No. 824, the Commission had the power to "review, amend, revise or repeal all ordinances, resolutions and acts of cities and municipalities within Metropolitan Manila."

Power to subpoena and hold persons in contempt, not delegated to local governments

NEGROS ORIENTAL II ELECTRIC COOPERATIVE, INC. VS. SANGGUNIANG PANLUNGSOD OF DUMAGUETE, G.R. No. L-72492 (November 5, 1987) EN BANC The contempt power, as well as the subpoena power, which the framers of the fundamental law did not expressly provide for but which the then Congress has asserted essentially for self-preservation as one of three co-equal branches of the government cannot be deemed implied in the delegation of certain legislative functions to local legislative bodies. These cannot be presumed to exist in favor of the latter and must be considered as an exception to Section 4 of Batas Pambansa Blg. 337 which provides for liberal rules of interpretation in favor of local autonomy. Since the existence of the contempt power in conjunction with the subpoena power in any government body inevitably poses a potential derogation of individual rights, *i.e.*, compulsion of testimony and punishment for refusal to testify, the law cannot be liberally construed to have impliedly granted such powers to local legislative bodies. It cannot be lightly presumed that the sovereign people, the ultimate source of all government powers, have reposed these powers in all government agencies. The intention of the sovereign people, through their representatives in the legislature, to share these unique and awesome powers with the local legislative bodies must therefore clearly appear in pertinent legislation.

Role of presiding officer

MUNICIPALITY OF PASACAO VS. PROVINCIAL BOARD OF CAMARINES SUR, G.R. No. L-21788 (August 28, 1969) EN BANC Where the resolution of the Provincial Board was approved in the absence of the Provincial Governor, who was out on official business, and one of the two Board members acted in his/her place as presiding officer in the session, the decision reached is valid. The failure of the Provincial Governor to question the authority of the said Board member to preside was in effect a ratification of the action taken.

CASTILLO VS. VILLARAMA, G.R. No. 24649 (September 18, 1965) EN BANC Although Section 5 of Republic Act No. 2264 makes the provincial governor the presiding officer of the provincial board, it does not make his/her presence indispensable for the valid transaction of business for it not only considers the presence of three members (out of the total membership of five) sufficient to constitute a quorum for that purpose, but also anticipates a case when the governor is absent, in which case the vote of a majority of the members present shall constitute a binding act of

the Board. The designation of the governor as presiding officer is obviously meant to apply to meetings where he/she is present, he/she being the Executive and highest officer in attendance.

RIVERA VS. VILLEGAS, G.R. No. L-17835 (May 31, 1962) EN BANC While the vice-mayor is an integral part of the Municipal Board of manila, he/she acts only as the "presiding officer" thereof. Hence, he/she does not have the power and attributes of a municipal councilor nor the status of a regular member of its municipal board. In short, the Vice-Mayor possesses no more than the prerogatives and authority of a presiding officer as such, and those specified by law, *i.e.*, to vote in case of tie, and to sign all ordinances and resolutions and measures directing the payment of money or creating liability enacted or adopted by the Board. Consequently, he/she has no right to address the Council to give his/her opinion on the matter under discussion, and otherwise perform other acts belonging exclusively to the members of the Board.

BAGASAO VS. TUMANGAN, G.R. No. L-10772 (December 29, 1958) EN BANC The presiding officer of the Municipal Board, being a member thereof duly elected by popular vote, may exercise his/her right to vote as member on any proposed ordinance, resolution or motion under Republic Act No. 526. To limit his/her right to vote to a case of deadlock or tie would curtail his/her right and prerogative as a member of the Municipal Board

Succession of presiding officer to higher office, effect on functions

GAMBOA, JR. VS. AGUIRRE, G.R. No. 134213 (July 20, 1999) EN BANC When the Vice-Governor exercises the "powers and duties" of the Office of the Governor, he/she does not assume the latter office. He/she only 'acts' as the Governor but does not 'become' the Governor. His/her assumption of the powers of the provincial Chief Executive does not create a permanent vacuum or vacancy in his/her position as the Vice-Governor. But he/she does temporarily relinquish the powers of the Vice-Governor, including the power to preside over the sessions of the *Sangguniang Panlalawigan* even if the Local Government Code of 1991 is silent on this matter. A Vice-Governor who is concurrently an Acting Governor is actually a quasi-Governor. This means, that for purposes of exercising his/her legislative prerogatives and powers, he/she is deemed as a non-member of the *Sanggunian* for the time being.

Officials and employees of the Sangguniang Panlalawigan are appointed by the Vice-governor

ATIENZA VS. VILLAROSA, G.R. No. 161081 (May 10, 2005) EN BANC While the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the *Sangguniang Panlalawigan* because such authority is lodged with the Vice-Governor. The authority to appoint casual and job order employees of the *Sangguniang Panlalawigan* belongs to the Vice-Governor. The authority of the Vice-Governor to appoint the officials and employees of the *Sangguniang Panlalawigan* is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. The budget source of their salaries is what sets the employees and officials of the *Sangguniang Panlalawigan* apart from the other employees and officials of the province. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the *Sangguniang Panlalawigan*, as well as those of the Office of the Vice-Governor, whose salaries are paid out of the funds appropriated for the *Sangguniang Panlalawigan*. As a corollary, if the salary of an employee or official is charged against the provincial funds, even if this employee reports to the Vice-Governor or is assigned to his/her office, the Governor retains the authority to appoint the said employee pursuant to Section 465(b)(v) of the Local Government Code of 1991.

Review power of higher sanggunian

LEYNES VS. COMMISSION ON AUDIT, G.R. No. 143596 (December 11, 2003) EN BANC Under Section 327 of the Local Government Code of 1991, the *Sangguniang Panlalawigan* is specifically tasked to review the appropriation ordinances of its component municipalities to ensure compliance with Sections 324 and 325 of the Code. In the absence of proof to the contrary, the *Sangguniang Panlalawigan* is presumed to have acted with regularity.

MODAY VS. COURT OF APPEALS, G.R. No. 107916 (February 20, 1997) EN BANC The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same. Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. The provincial (board's) disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president. Such has been the consistent course of

executive authority.

CASINO VS. COURT OF APPEALS, G.R. No. 91192 (December 2, 1991) SECOND DIVISION Review is a reconsideration or re-examination for purposes of correction. The power of review is exercised to determine whether it is necessary to correct the acts of the subordinate and to see to it that he/she performs his/her duties in accordance with law.

OLAVIANO VS. ORIELL, G.R. No. L-1566 (February 25, 1948) EN BANC There is nothing in the Administrative Code that requires approval by the provincial board before a municipal ordinance or resolution becomes effective. The Code merely provides that an ordinance or resolution shall go into effect on the 10th day after its passage subject to the power of the provincial board to declare such ordinance or resolution invalid if it should find that it is beyond the powers conferred upon the council.

MUNICIPAL GOVERNMENT OF SAN PEDRO VS. PROVINCIAL BOARD OF LAGUNA, G.R. NO. 47047 (June 22, 1940) SECOND DIVISION Under Section 2233 of the Administrative Code, the provincial board, after receiving copies of ordinances or resolutions of a municipality, is required to pass on their validity and to annul them if it finds them to have been issued beyond the powers of the municipal council. Where the board was advised by the provincial fiscal that the waters which a certain municipal ordinance attempted to regulate and control were located on private property and not subject to municipal regulation, the provincial board could properly annul the ordinance though it previously approved it.

MUNICIPAL COUNCIL OF LEMERY VS. PROVINCIAL BOARD OF BATANGAS, G.R. No. 36201 (October 29, 1931) EN BANC The law grants the provincial boards quasi-judicial functions through the exercise of their power to annul resolutions and ordinances passed by municipal councils in excess of their powers or jurisdiction. The Municipal Council in a resolution acted within its legislative powers and duties in consolidating the positions of janitor for the offices of the municipal president, municipal secretary and of justice of the peace. It is their legislative duty to provide the justice of the peace court with the necessary janitor services and determine what janitor service is necessary for the justice of the peace court. The Provincial Board exceeded its quasi-judicial powers in disapproving said resolution.

GABRIEL VS. PROVINCIAL BOARD OF PAMPANGA, G.R. No. 27209 (September 17, 1927) EN BANC The only ground under Administrative Code No. 2233 upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when the measure was

enacted or issued "beyond the powers conferred upon the council or president making the same." Absolutely no other ground is recognized by law.

CHANCO VS. MUNICIPALITY OF ROMBLON, G.R. No. 5265 (January 26, 1910) EN BANC Act No. 676 provides that provincial boards have the power to annul acts, ordinances, and resolutions of municipal councils. A contract for the sale of a parcel of land, entered into by the municipality through a resolution cannot be enforced, if such resolution has been annulled by the Provincial Board. An agreement entered into by a municipality, so far as its resolutions can properly be said to constitute an agreement, must therefore be taken to have been subject to the 'implied condition' that the agreement would be invalidated in the event that the provincial board should annul the resolution prior to its actually execution.

Higher sanggunian's inaction amounts to approval

PAPA VS. SANTIAGO, G.R. NO. L-12433 (February 28, 1959) EN BANC When a Municipal Council resolution is referred to the Provincial Board as required by law, the Board may (1) approve the resolution; (2) disapprove it; (3) forward the case to the Commission and to the President without any recommendation; (4) forward the same recommending disapproval; or (5) recommending approval. When the Provincial Board neither disapproves, nor recommends its disapproval and although it did not expressly approve the resolution, it recommended its approval by the higher authorities is considered approval in the eyes of the law.

GOVERNMENT VS. GALAROSA, G.R. No. L-11525 (February 24, 1917) EN BANC The provincial board can invalidate an ordinance passed by the municipal council. The records do not show when and how the provincial board disapproved it. In such a case, it is assumed that it was done within the time and in the manner prescribed by law, as it is a presumption established by statute that official duty has been regularly performed.

Procedure for local legislation

No restrictions on the matters to be taken up during the first regular session

MALONZO VS. ZAMORA, G.R. No. 137718 (July 27, 1999) EN BANC Sections 50 and 52 of the Local Government Code of 1991 do not mandate that no other business may be transacted on the first regular session except to take up the matter of adopting or updating rules. All that the law requires is that on the first regular session, the *sanggunian* concerned shall adopt

or update its existing rules or procedure. There is nothing in the language of the law that restricts the matters to be taken up during the first regular session merely to the adoption or updating of the house rules. Moreover adoption or updating of house rules would necessarily entail work beyond the day of the first regular session. There would be a paralysis in the local legislature's work if the law were to be interpreted in that manner.

Three readings allowed in one day

MALONZO VS. ZAMORA, G.R. No. 137718 (July 27, 1999) EN BANC There is nothing in the Local Government Code of 1991 which prohibits the three readings of a proposed ordinance from being held in just one session day. It is not the function of the courts to speculate that the councilors were not given ample time for reflection and circumspection before the passage of the proposed ordinance by conducting the three readings in just one day.

Meaning of quorum

ZAMORA VS. CABALLERO, G.R. No. 147767 (January 14, 2004) THIRD DIVISION The applicable rule on quorum of local legislative bodies is found in Section 53(a) of the Local Government Code of 1991 which provides that a majority of all members of the *sanggunian* who have been elected and qualified shall constitute a quorum to transact official business. The rule is different for the Senate. 'Quorum' is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. 'Majority' when required to constitute a quorum, means the number greater than half or more than half of any total. In fine, the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan*, for while the Constitution merely states that "majority of each House shall constitute a quorum," Section 53 of the Code is more exacting as it requires that the "majority of all members of the *sanggunian* elected and qualified" shall constitute a quorum. And, while the intent of the legislature in qualifying the quorum requirement was to allow a *sanggunian* to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the *sanggunian* have assumed office, one or some of its members file for leave. What should be important then is the concurrence of election to and qualification for the office. And election to, and qualification as member of, a local legislative body are not altered by the simple expedient of filing a leave of absence. Thus, the determination of the

existence of a quorum is based on the total number of members of the *sanggunian* without regard to the filing of a leave of absence.

JAVELLANA VS. TAYO, G.R. No. L-18919 (December 29, 1962) EN BANC Under Section 2221 of the Administrative Code, a quorum to do business is present when a majority of the members of the Council were present. Consequently, all acts of that Council during such session was valid.

Journal required

ORTIZ VS. POSADAS, G.R. No. 33885 (March 3, 1931) EN BANC A municipal council shall keep a journal of its own proceedings. The 'ayes and nays' shall be taken upon the passage of all ordinances, upon all propositions to create any liability against the municipality, and upon any other proposition, upon the request of any member, and they shall be entered upon the journal.

Voting requirements

CASINO VS. COURT OF APPEALS, G.R. No. 91192 (December 2, 1991) SECOND DIVISION A *sanggunian* may provide for a vote requirement different (not majority vote) from that prescribed in the Local Government Code of 1991 for certain (but not all) ordinances as in amending a zoning ordinance.

ORTIZ VS. POSADAS, G.R. No. 33885 (March 3, 1931) EN BANC The affirmative vote of a majority of all the members of the municipal council shall be necessary for the passage of any ordinance or of any proposition creating indebtedness. Other measures, except as otherwise specially provided, shall prevail upon the majority vote of the members present at any meeting duly called and held. It is not however the intention of the Legislature to limit the requirement of a majority vote to ordinances creating a liability or appropriating money.

Mandatory public hearings required for tax ordinances

REYES VS. COURT OF APPEALS, G.R. No. 118233 (December 10, 1999) EN BANC; FIGUERRES VS. COURT OF APPEALS, G.R. No. 119172 (March 25, 1999) SECOND DIVISION Public hearings are required to be conducted prior to the enactment of an ordinance imposing real property taxes. However, it has not been proved in this case that the *Sangguniang Bayan* failed to conduct the required public hearings before the enactment of subject ordinances. Although the *Sanggunian* has the control over the records or the better means of proof regarding the facts alleged, the ones

alleging the irregularity in the public hearings still have the burden of proving their averments.

DRILON VS. LIM, G.R. No.112497 (August 4, 1994) EN BANC Notice and actual conduct of public hearings with respect to tax ordinances as well as its publication are indispensable requirements for their validity.

FAVIS VS. CITY OF BAGUIO, G.R. No. L-29910 (April 25, 1969) EN BANC The requirement of notice to be given to any and all persons interested, as specified in the City Charter, is to be given only where the ordinance calls for assessment. Notice need not be given when the resolution does not call for any kind of assessment.

Veto power

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION An appropriation ordinance signed by the local chief executive authorizes the release of public funds. A valid appropriation of public funds lifts its exemption from execution. The mayor's signature approving the budget ordinance was his/her assent to the appropriation of funds. If he/she did not agree with such allocation, he/she could have vetoed the item pursuant to Section 55 of the Local Government Code of 1991.

PILAR VS. SANGGUNIANG BAYAN OF DASOL, PANGASINAN, G.R. No. L-63216 (March 12, 1984) SECOND DIVISION While "to veto or not to veto involves the exercise of discretion" a mayor exceeded his/her authority in an arbitrary manner when he/she vetoes a resolution where there exists sufficient municipal funds from which the salary of the officer could be paid. The Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of the officer be provided for and paid the prescribed salary rate, is reckless and oppressive. Hence, by way of example or correction for the public good, the Mayor is liable personally to the officer for exemplary or corrective damages.

DE LOS REYES VS. SANDIGANBAYAN, G.R. No. 121215 (November 13, 1997) THIRD DIVISION The grant of the veto power confers authority beyond the simple act of signing an ordinance or resolution as a requisite to its enforceability. Such power accords the local chief executive the discretion to sustain a resolution or ordinance in the first instance or to veto it and return it with his/her objections to the *Sanggunian*. It is clear therefore that the concurrence of a local chief executive in the enactment of an ordinance or resolution requires not only a flourish of the

pen, but the application of judgment after meticulous analysis and intelligence as well.

When enabling ordinance required

CANET VS. DECENA, G.R. 155344 (January 20, 2004) FIRST DIVISION A *sanggunian* has the authority to enact an ordinance authorizing and licensing the establishment of cockpits. A mayor cannot issue a mayor's permit to operate a cockpit without an enabling ordinance. A general ordinance empowering a mayor to issue permits cannot be used to justify the issuance of a license. A mayor cannot also be compelled to issue such a license since this would constitute an undue encroachment on the mayor's administrative prerogatives.

Posting and publication requirement

FIGUERRES VS. COURT OF APPEALS, G.R. No. 119172 (March 25, 1999) SECOND DIVISION Ordinances with penal sanctions shall be posted at prominent places in the provincial capitol, city, municipal or *barangay* hall, as the case may be, for a minimum period of three consecutive weeks. Such ordinances shall also be published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned, except in the case of *barangay* ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.

DRILON VS. LIM, G.R. No. 112497 (August 4, 1994) EN BANC The omission of the posting in conspicuous places of the tax ordinance does not affect its validity considering that the ordinance was published in three successive issues of a newspaper of general circulation. The publications satisfy the dues process requirement. The requirement of translation to *Tagalog* applies to the approval of local development plans and public investment programs of the local government unit and not to tax ordinances.

ALLIED THREAD CO., INC. VS. CITY MAYOR OF MANILA, G.R. No. L-40296 (November 21, 1984) EN BANC Section 43 of the Local Tax Code provides two modes of apprising the public of a new tax ordinance, either (a) by means of publication in a newspaper of general circulation or, (b) by means of posting of copies thereof in the local legislative hall or premises and two other conspicuous places within the territorial jurisdiction of the local government.

SUBIDO VS. CITY OF MANILA, G.R. No.. L-14800 (May 30, 1960) EN BANC There is a requirement to publish each and every proposed ordinance, once before it is enacted by the Municipal Board, and again after its approval by the Mayor. But nowhere in the section is it provided that pre-discussion publication must take place after every amendment or modification on the proposed ordinance during the process of its enactment. It is not the intendment of the law that every time amendment is introduced the proposed ordinance has to be published again, for this would incur tremendous expense and unnecessary delays in the passage of municipal legislation.

RODRIGUEZ VS. CITY OF MANILA, G.R. No. 22206 (September 13, 1924) EN BANC Provisions for the publication of an ordinance after their passage, though mandatory in form, are generally held to be directory where the statute does not impliedly prescribe that the ordinance shall not go into effect until the publication is made. Where the publication of a proposed ordinance is made a condition precedent for its adoption, that statute is mandatory and the publication goes to the jurisdiction of the municipal board.

Local Initiative

Definition of local initiative

GARCIA VS. COMMISSION ON ELECTIONS, G.R. No. 111230 (September 30, 1994) EN BANC The Local Government Code of 1991 defines the concept of local initiative as the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance.

Local initiative applies to both ordinances and resolutions

GARCIA VS. COMMISSION ON ELECTIONS, G.R. No. 111230 (September 30, 1994) EN BANC The subsequent enactment of the Local Government Code of 1991 did not change the scope of coverage of local initiative, to limit it to ordinances alone. It states that initiative shall extend only to subjects or matters which are within the legal powers of the *Sanggunians* to enact. This provision clearly does not limit the application of local initiatives to ordinances, but to all "subjects or matters which are within the legal powers of the *Sanggunians* to enact," which undoubtedly includes resolutions.

Local Initiative, distinguished from referendum

SUBIC BAY METROPLITAN AUTHORITY VS. COMMISSION ON ELECTIONS, G.R. No. 125416 (September 26, 1996) EN BANC Initiative is resorted to or initiated by the people directly either because the law-making body fails or refuses to enact the law, ordinance, resolution or act that they desire or because they want to amend or modify one already existing. On the other hand, in a local referendum, the law-making body submits to the registered voters of its territorial jurisdiction, for approval or rejection, any ordinance or resolution which is duly enacted or approved by such law-making authority. While initiative is entirely the work of the electorate, referendum is begun and consented to by the law-making body. Initiative is a process of law-making by the people themselves without the participation and against the wishes of their elected representatives, while referendum consists merely of the electorate approving or rejecting what has been drawn up or enacted by a legislative body. Hence, the process and the voting in an initiative are more complex than in a referendum where the voters will simply write either 'yes' or 'no' in the ballot

Role of Courts

Questions on validity of ordinance must first be passed upon by inferior court.

ORTEGA VS. QUEZON CITY, G.R. No. 161400 (September 2, 2005) EN BANC The Supreme Court can only review, revise, reverse, modify on appeal or certiorari final judgments and orders of lower courts in all cases in which the constitutionality or validity of, among other things, an ordinance is in question. There must be first a final judgment rendered by an inferior court before the Supreme Court can assume jurisdiction. It cannot conduct original and full trial of a main factual issue such as who has a better right over a parcel of land.

LIGA NG MGA BARANGAY NATIONAL VS. CITY MAYOR OF MANILA, G.R. No. 154599 (January 21, 2004) EN BANC A petition for certiorari filed against a *Sangguniang Panlungsod* assailing the legality of an ordinance will not lie since the Supreme Court has no original jurisdiction over actions to declare an ordinance unconstitutional or illegal since the action is in essence a petition for declaratory relief.

Questions of policy, reasons and motives are beyond the power of courts to question

MUNICIPALITY OF MEYCAUAYAN VS. NIETO, CA-G.R. 20390-R (December 27, 1963) Whether to expand the market on a piece of land or construct a new market elsewhere is a policy decision. The question involving as it does the matter of what is or what is not good for the municipality, and having to be decided in the nature of things, being a question of policy, by those in whom the municipal electorate had reposed their trust, and who presumably knew or ought to know, what is best for their constituency, cannot be matters over which the Court should extend its strong arm of correction and say that the municipality had done wrong. In the absence of a showing clear and convincing, of abuse, that exercise of municipal discretion should not be corrected.

UMALI VS. CITY OF NAGA AND CITY TREASURER, G.R. L-6815 (December 29, 1954) EN BANC A City and its treasurer cannot be enjoined from enforcing an ordinance increasing the rental of lots in the city market and forcing them to accept the money consigned in Court. The determination on what is to be paid for the use of municipal property lies within the discretion of the municipal board and should not be disturbed unless it is *ultra vires*. The rental imposed by the ordinance is neither unjust nor oppressive. It took into consideration the volume of business, the amount of rentals of surrounding properties and other factors in its determination.

ABAD VS. EVANGELISTA, G.R. No. 38884 (September 26, 1933) EN BANC A municipal council, which enacts an ordinance regulating the distance between one cockpit and another, acts within its delegated police power, and it is not incumbent upon the courts of justice to inquire into the reasons and motives that prompted such municipal legislative body to regulate the distance in question. Inasmuch as the license for the establishment of a cockpit is a mere privilege which can be suspended at any time by competent authority, the fixing in a municipal ordinance of a distance of not less than two kilometers between one cockpit and another, is not sufficient to warrant the annulment of such ordinance on the ground that it is partial, even though it is prejudicial to an already established cockpit.

LUTA VS. MUNICIPALITY OF ZAMBOANGA, G.R. No. 26941 (September 27, 1927) EN BANC Section 2625(d) of the Administrative Code provides that a municipal council shall have power by ordinance or resolution to regulate, license, or prohibit the selling, giving away, or disposing, in any manner of any intoxicating, spirituous, vinous, or fermented liquors and fix the sum to be paid for such licenses. Whether certain sums fixed for certain activities

in the sale of liquors were appropriate for the purpose, could better be decided by the local authorities than by anyone else. The presumption must be, in lieu of convincing evidence to the contrary, that the ordinances are just and reasonable. The courts should not adopt a policy of petty picking at municipal officials who are attempting to perform their duties, and so through judicial interference, unduly embarrass municipal administration.

CASE VS. LA JUNTA DE SANIDAD DE MANILA, G.R. No. 7595 (February 4, 1913) EN BANC The ordinance requiring a sanitary sewer system in every building or premises in the city when the official designated notifies the owner or agent of such building or premises in writing was adopted in pursuance of express power conferred upon the city by the legislative department of the Government. The courts will not pronounce the same unreasonable, illegal, and void, unless and until it is shown to have contravened or violated some fundamental law. Courts are slow to pronounce statutes invalid or void. The question of the validity of every statute is to be first determined by the legislative department of the Government itself, and the courts should resolve every presumption in favor of its validity. The wisdom or advisability of a particular statute is not a question for the courts to determine. That is a question for the legislature to determine.

Courts may take judicial notice of municipal ordinances.

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court. A court is not required to take judicial notice of municipal ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the ordinance.

GALLEGO VS. PEOPLE. G.R. No. L-18247 (August 31, 1963) EN BANC There is no law that prohibits a court, like the Court of Appeals, from taking cognizance of a municipal ordinance. On the contrary, Section 5, Rule 123 of the Rules of Court enjoins courts to take judicial notice of matters which are capable of unquestionable demonstration.

UNITED STATES VS. BLANCO. G.R. No. L-12435 (November 9, 1917) EN BANC The court of a justice of the peace may, and should, take judicial notice of the municipal ordinances in force in the municipality wherein it sits.

Furthermore, in an appeal from the judgment of a court of the justice of the peace, the appellate courts may take judicial notice of municipal ordinances in force in the municipality wherein the case originated.