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Agenda for September 10, 2019
Item No. 11

G.R. No. 230642 – OSCAR B. PIMENTEL, ET AL. *v.* LEGAL EDUCATION BOARD, AS REPRESENTATIVE BY ITS CHAIRPERSON, HON. EMERSON B. AQUENDE, AND LEB MEMBER HON. ZENAIDA N. ELEPAÑO

G.R. No. 242954 – FRANCIS JOSE LEAN L. ABAYATA, ET AL. *v.* HON. SALVADOR MEDIALDEA, EXECUTIVE SECRETARY, ET AL.

Promulgated: September 10, 2019

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SEPARATE CONCURRING AND DISSENTING OPINION

GESMUNDO, *J.*:

Before this Court are two consolidated petitions: in G.R. No. 230642, it seeks to nullify Republic Act No. 7662 and abolish the Legal Education Board *(LEB)*; and in G.R. No. 242954, to annul and set aside LEB Memorandum Order Nos. 7-2016 and 11-2017, dated December 29, 2016 and April 20, 2017, respectively, and LEB Memorandum Circular No. 18-2018, dated October 5, 2018.

I vote to partly grant the consolidated petitions.

There is a stereotype that the study of law is a precursor for the practice of law. However, the study of law is not that simple. There may be instances when a person studies law for its philosophy, wisdom, and concepts; and choose not to take the bar examinations as he or she is not interested in becoming a lawyer. Thus, the study of law does not always result into the practice of law. Nonetheless, even after hurdling the bar, lawyers and judges are still mandated to continue the study of law. It is a well-settled rule that the study of law is a never-ending and ceaseless process.[1]

The study of the law is not an exact science with definite fields of black and white and unbending rules and rigid dogmas. The beauty of this discipline in the words of Justice Holmes, is the "penumbra shading gradually from one extreme to another," that gives rise to those honest differences of opinion among the brotherhood as to its correct interpretation. Honest differences are allowed and, indeed, inevitable, but we certainly must frown on stilted

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[1] *Heirs of Piedad v. Exec. Judge Estrera*, 623 Phil. 178, 188 (2009).

readings to suit one's motives, especially if they are less than noble. The law does not permit this, and much less, for that matter, does equity.[2]

Academic Freedom of Institutions of Higher Learning

It is clear that the study of law is within the domain of academic freedom. In *Ateneo de Manila University v. Judge Capulong*,[3] the Court stated that the term "academic freedom", which has evolved to describe the emerging rights related to intellectual liberty, has traditionally been associated with freedom of thought, speech, expression and the press; in other words, it has been identified with the right of individuals in universities, such as professors, researchers and administrators, to investigate, pursue, discuss and, in the immortal words of Socrates, "to follow the argument wherever it may lead," free from internal and external interference or pressure. Obviously, its optimum impact is best realized where this freedom is exercised judiciously and does not degenerate into unbridled license. Early cases on this individual aspect of academic freedom have stressed the need for assuring to such individuals a measure of independence through the guarantees of autonomy and security of tenure.[4]

Academic freedom has long been recognized by our organic laws. Section 5, Article XIV, of the 1935 Constitution states that universities established by the State shall enjoy academic freedom. Likewise, Section 8, Article XV, of the 1973 Constitution states that all institutions of higher learning shall enjoy academic freedom. Under the present Constitution, Section 5, Article XIV, states that academic freedom shall be enjoyed in all institutions of higher learning. Verily, institutions of higher learning, such as schools, colleges, and universities offering a degree program in law, all have constitutionally enshrined academic freedom.

Academic freedom of institutions of higher learning have the following essential freedoms: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study.[5] This was first discussed in the Supreme Court of the United States *(SCOTUS)* case of *Sweezy v. New Hampshire*.[6] In that case, Paul Sweezy, who was an economist and lecturer in the University of New Hampshire, was subpoenaed by the State Attorney General to answer several questions, which included inquiries regarding his lectures on Socialism at the university. Paul Sweezy refused to

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[2] *Royal Lines, Inc. v. Court of Appeals*, 227 Phil. 570, 575 (1986).
[3] 294 Phil. 654 (1993).
[4] Id. at 672-673.
[5] Id. at 673.
[6] 354 U.S. 234 (1957).

answer particular questions and was declared in contempt of court. The SCOTUS reversed the contempt charge on the basis of violation of academic freedom and stated that:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.[7]

In the concurring opinion of Justice Frankfurter, he explained the importance of academic freedom in a university, *viz*:

> "In a university knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.
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> .....
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> "Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university.
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> .....
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> ". . . It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university—**to determine for itself on academic grounds who may teach, what may be**

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[7] Id.

> **taught, how it shall be taught, and who may be admitted to study.**"[8] (emphasis supplied)

In the subsequent case of *Keyishian v. Board of Regents,*[9] the SCOTUS held that a law cannot force teachers to sign an oath stating they are not members of certain communist parties pursuant to their academic freedom and because the law is overbreadth, to wit:

> Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us, and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection."

On the other hand, in *University of California Regents v. Bakke,*[10] the SCOTUS tackled the legality of the university policy which requires a particular number of minorities for admission. It grounded its analysis on academic freedom and stated that "the university's use of race in its admission may use for the attainment of a diverse student body. Nothing less than the nation's future depends upon leaders trained through wide exposure to the ideas and mores of students as diverse as this United States. **In seeking the right to select those students who will contribute the most to the 'robust exchange of ideas,' a university seeks to achieve a goal that is of paramount importance in the fulfillment of its mission.** Both tradition and experience lend support to the view that the contribution of diversity is substantial."[11] Nevertheless, while race may be considered as one of the several factors for admission, the SCOTUS ruled that the specific or fixed number of minorities for university admission is too unreasonable. The ruling in *University of California Regents v. Bakke* was affirmed in *Grutter v. Bollinger,*[12] regarding admission in the University of Michigan Law School, *Gratz v. Bollinger,*[13] regarding the point system admission policy of the University of Michigan, and *Fisher v. University of Texas.*[14]

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[8] Id.
[9] 385 U.S. 589 (1967).
[10] 438 U.S. 265 (1978).
[11] Id.
[12] 539 U.S. 306 (2003).
[13] 539 U.S. 244 (2003).
[14] 570 U.S. 297 (2013).

Academic Freedom in Philippine Jurisdiction

The four essential freedoms constituting academic freedom have also been discussed by our jurisprudence. In *University of the Phils. v. Civil Service Commission*,[15] the Court discussed institutions of higher learning's freedom to determine "who may teach." In that case, a professor was on leave of absence without pay for four (4) years. Nevertheless, the university therein still accepted the professor back to work even though the Civil Service Commission had terminated his services. The Court ruled that the university has the academic freedom to determine who shall teach. This freedom encompasses the autonomy to choose who should teach and, concomitant therewith, who should be retained in its rolls of professors and other academic personnel.[16] It was also stated therein that "since academic freedom is a dynamic concept, we want to expand the frontiers of freedom, especially in education, therefore, we shall leave it to the courts to develop further the parameters of academic freedom."[17]

Jurisprudence has also recognized that institutions of higher learning have the enshrined freedom to determine "who may be admitted to study." In *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,[18] it involved a student who wanted to compel the Loyola School of Theology to accept her in their Master of Arts in Theology program. The respondent therein invoked its academic freedom to admit students in its program. The Court denied the petition and held that the respondent indeed had the academic freedom to determine who would be admitted to their school. It was highlighted that colleges and universities should not be looked upon as public utilities devoid of any discretion as to whom to admit or reject Education, especially higher education, belongs to a different, and certainly higher category.[19]

In *Ateneo de Manila University v. Judge Capulong*,[20] the law students involved in the hazing incident argued that the school imposed arbitrary rules and penalties regarding its admission policy. The Court held that the law school, which is an institute of higher learning, had the academic freedom to determine who may be admitted, including the power to promulgate rules concerning student discipline. The establishment of rules governing university-student relations, particularly those pertaining to student discipline,

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[15] 408 Phil. 132 (2001).
[16] Id. at 145.
[17] Id. at 145-146.
[18] 160-A Phil. 929 (1975).
[19] Id. at 945.
[20] Supra note 3.

may be regarded as vital, not merely to the smooth and efficient operation of the institution, but to its very survival.[21]

In *Licup v. University of San Carlos,*[22] the students involved committed demonstrations in the university that were far from peaceful and the school administration imposed the penalty of non-admission. The Court affirmed the penalty imposed by the school. While it is true that students are entitled to the right to pursue their education, the school is likewise entitled to academic freedom and has the concomitant right to see to it that this freedom is not jeopardized. The Court underscored that an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits that contractual right; and the Court should not review the discretion of university authorities.[23]

However, academic freedom of institutions of higher learning is not absolute; rather, it is subject to the limitation of reasonability and that it should not be arbitrarily exercised. In *Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.,*[24] the student therein, who questioned the tuition fee hike of the school, was expelled because he allegedly had Citizen's Military Training *(CMT)* deficiencies. The Court held that the school cannot invoke academic freedom to immediately expel its student based on mere deficiencies in the CMT. The Court held that "[w]hile we ordinarily would not delve into the exercise of sound judgment, we will not, however, hesitate to act when we perceive taints of arbitrariness in the process. The punishment of expulsion appears to us rather disproportionate to his having had some unit deficiencies in his CMT course. Indeed, the DECS itself is conceding to the grant of the instant petition. The circumstances lend truth to the petitioner's claim that the private respondent has strongly been influenced by his active participation in questioning PHCR's application for tuition fee increase."[25]

On the other hand, in *Morales v. The Board of Regents of the University of the Phils.,*[26] the Court emphasized that the discretion of schools of learning to formulate rules and guidelines in the granting of honors for purposes of graduation forms part of academic freedom. And such discretion may not be

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[21] Id. at 675.
[22] 258-A Phil. 417 (1989).
[23] Id. at 423.
[24] 298 Phil. 382 (1993)
[25] Id. at 388.
[26] 487 Phil. 449 (2004)

disturbed much less controlled by the courts, unless there is grave abuse of discretion in its exercise.[27]

Based on the foregoing, it is clear that institutions of higher learning are granted academic freedom by the Constitution, which includes that freedom to determine who may be admitted to study. The academic freedom of these institutions, however, are not unbridled and subject to the test of reasonableness.

LEB Memorandum Orders and Circular unreasonably restrict academic freedom

LEB Memorandum Order No. 7-2016 instituted the PhilSAT, which is an aptitude test that measures the academic potential of an examinee. Only those who pass with a 55% score on the examination shall be allowed admission in law schools. LEB Memorandum Order No, 11-2017, states that those who failed the first PhilSAT may be conditionally admitted to law schools in the first semester of school year 2017 to 2018 provided they take the next scheduled PhilSAT. On the other hand, LEB Memorandum Circular No. 18-2018 discontinued the conditional admission of students. Thus, the LEB requires the mandatory taking of the PhilSAT before being admitted to any law school; and, a student shall not be admitted if he or she fails the said examination. In other words, PhilSAT is exclusionary and those that do not pass the said test shall not be admitted in the study of law. The respondents argue that LEB's institution of the PhilSAT is within the State's power to regulate all educational institutions.

I concur with the *ponencia* that the LEB Memorandum Orders and Circular, requiring the PhilSAT as mandatory and exclusionary, are unconstitutional.

Institutes of higher learning have academic freedom, under the Constitution, and this includes the freedom to determine who may be admitted to study. Such freedom may only be limited by the State based on the test of reasonability. In this case, however, the assailed LEB Memorandum Orders fail to provide a reasonable justification for restraining the admission of students to law schools based on the following reasons:

First, by making the PhilSAT mandatory and exclusionary, the LEB significantly restricts the freedom of law schools to determine who shall be admitted as law students. Only those who pass the said examination shall be

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[27] Id. at 466.

considered for admission to these institutions of higher learning. Consequently, the LEB, through the PhilSAT, first chooses the potential law students, and only afterwards, shall the law schools be allowed to choose their students from the limited pool of student-passers. The said institutes of higher learning are barred from considering those students who failed the examinations, regardless of their previous academic grades and achievements.

Second, the LEB does not give any justification for the required passing score of 55% and the format of the examinations. The studies cited by the LEB were conducted by different organizations, for different professions, and for foreign jurisdictions. Indeed, no concrete study conducted in the Philippines for the legal profession was provided to substantiate the passing score and the test format. It is not even clear whether the consensus of the law schools in the country was secured before the LEB imposed the PhilSAT. Without any concrete basis for the conduct of the examination, it would be unreasonable to impose the same mandatorily and without exemption to the institutes of higher learning.

Third, law schools are given no option other than to follow the LEB Memorandum Orders and Circular. Failure to comply with these shall result in administrative sanctions, ranging from closure of the law school, phase-out of the law program, provision cancellation of its recognition and/or liability to pay a fine of ₱10,000.00 for each infraction. Even without a valid reason for the imposition of the PhilSAT requirement, the LEB completely restricts the law schools from accepting students who did not pass the said examination. The schools' exercise of academic freedom to choose their students is restricted by the threat of administrative and pecuniary sanctions.

Assuming *arguendo* that the LEB Memorandum Orders and Circular were issued under the exercise of police power of the State to regulate the rights of certain institutions, it does not justify the unreasonable restriction on the academic freedom of institutes of higher learning. Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, it may not be exercised arbitrarily or unreasonably. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. Thus, when the power is used to further private interests at the expense of the citizenry, there is a clear misuse of the power.[28]

Here, the LEB failed to establish the reasonable means to limit the academic freedom of the institutes of higher learning. Again, there is no valid explanation provided on the mandatory and exclusionary requirement of the

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[28] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 399 (1988).

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PhilSAT, its passing grade, and format of examinations. Manifestly, to impose a penalty on law schools based on an unreasonable policy that restricts academic freedom would be an invalid exercise of police power.

PhilSAT is different from the NMAT and LSAT

One of the arguments of the LEB is that the PhilSAT is comparable to the National Medical Admission Test *(NMAT),* which was upheld by the Court in *Tablarin v. Judge Gutierrez,*[29] and the Law School Admission Test *(LSAT)* in the United States.

I disagree.

There are too many differences between the PhilSAT and the NMAT that they cannot be treated in the same vein. One of the most notable differences is that in the NMAT, there is actually no passing or failing grade; rather, the examinees are merely given a percentile score. Medical schools have the discretion to determine the acceptable percentile score of their potential students. Thus, even with the NMAT, medical schools have full freedom and control of students they intend to admit. They have the sole discretion to impose the required percentile score in the NMAT, whether high or low, as a requirement for admission. In fact, some medical schools are even allowed to conditionally accept students who have not yet taken their NMAT.

Unlike the NMAT, the PhilSAT provides for a strict passing score of 55%. This passing score was provided by the LEB and not decided by the law schools themselves. These law schools have no option in adjusting the passing score and they can only accept students who pass the said test. Stated differently, law schools have no discretion to determine which students they will admit insofar as the PhilSAT requirement is concerned.

On the other hand, the LSAT is a nationwide admission test for law schools in the United States. The said test is administered by the Law School Admission Council *(LSAC)*, which is a non-profit corporation comprised of more than 200 law schools in the United States and Canada. The institutes of higher learning themselves participate, prepare, and conduct the LSAT, and not their government.[30] Nonetheless, even if there is the LSAT in the United States, the said examination is not an absolute requirement for law school admission. The American Bar Association Standards and Rules of Procedure

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[29] 236 Phil. 768 (1987).

[30] *See* Developing and Assembling the Law School Admission Test, Ronald Armstrong, Dmitry Belov, Alexander Weissman, Interfaces, Vol. 35, No. 2, March – April 2005, p. 141.

merely require each student-applicant to take a valid and reliable admission test and it is not only confined to the LSAT.[31] Thus, law schools in the United States are allowed to require other admission tests provided that these are valid and reliable. Indeed, the LSAT requirement in the United States does not unreasonably restrict the academic freedom of the law schools therein.

With the PhilSAT, however, the examination is mandatory and exclusionary, and local law schools have no discretion to choose a different admission test. The law schools are only confined to choosing those students who pass the PhilSAT, which does not provide any valid justification for restricting academic freedom.

Evidently, both the NMAT and the LSAT are different from the PhilSAT. The former respect and consider the academic freedom of institutes of higher learning in their liberty of choosing their students; while with the latter, law schools are unreasonably constrained in determining the students it may accept for enrollment.

Uniform Admission Examination instituted by Foreign Law Schools

I firmly believe that PhilSAT should be set aside; instead, the law schools in the Philippines, through the Philippine Association of Law Schools *(PALS),* and under the mere supervision of LEB, should establish a unified, standardized, and acceptable law admission examination. Said examination must be unrestrictive of academic freedom, cost-efficient, accessible, and an effective tool in assessing incoming law students. At the onset, I will discuss the constitutional viability of a unified law admission examination, spearheaded by the law schools, pursuant to their right to academic freedom.

There was a time when law schools could follow the advice of Wigmore, who believed that "the way to find out whether a boy [or girl] has the makings of a competent lawyer is to see what he [or she] can do in a first year of law studies."[32] In those days there were enough spaces to admit every applicant who met minimal credentials, and they all could be given the opportunity to prove themselves in law school. But by the 1920's many law schools found that they could not admit all minimally qualified applicants,

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[31] *See* Standard 503, Chapter 5, Admission and Student Services, 2017-2018 American Bar Association Standards and Rules of Procedure.

[32] Wigmore, Juristic Psychopoyemetrology—Or, How to Find Out Whether a Boy Has the Makings of a Lawyer, 24 Ill. L. Rev. 454, 463-464 (1929)

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and a selection process began. The pressure to use some kind of admissions test mounted, and a number of schools instituted them.[33]

In the United States, the LSAT was formulated by the LSAC. The idea of LSAT began on May 17, 1945, when Frank Bowles, Admission Director at Columbia Law School, wrote to the President of College Entrance Examination Board *(CEEB)* suggesting the creation of a law capacity test to be used in admission decisions. It was discussed that the validity of the LSAT would be linked to its correlation with grades in the first year of law study. Consequently, correlation with success in taking the bar examination was rejected because candidates often take the bar exam several times and everybody passes them sooner or later. It was also highlighted that the more law schools participating in the LSAT, the greater the numbers for testing validity and the more widely the costs would be spread.[34]

On August 15, 1947, representatives of Columbia, Yale and Harvard law schools met with the representatives of the CEEB. The representative of Harvard opined that the LSAT would help make decisions on "those borderline on college record and those from unknown colleges."[35] **It was also agreed upon to invite more law schools to participate and that the creation of the test would also create a new organization of law schools.** As of 2000, the LSAC now consists of a total 198 law schools.[36]

On November 10, 1947, the initial LSAT was discussed and the law schools from Rutgers, Northwestern, Syracuse, Stanford, Cornell, the University of Southern California, New York University, the University of Pennsylvania, Yale, and Harvard also participated.[37] **The founders of the test were adamant that it could not and must not be the only criterion for admission.**

Further, the LSAT has played an important role in opening the legal profession at all levels to men and women whose ancestors had been the object of merciless prejudice and overt discrimination. This does not mean that the test is a foolproof gauge of merit. It is merely what it was designed to be—a tool to aid in the admissions decision. It was not designed as a pass or fail grading system.[38] The entire rationale for the test was the need to supplement the information supplied by the undergraduate record. The scores on the test

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[33] Dissenting Opinion of Associate Justice William O. Douglas in DeFunis *v.* Odegaard, 416 U.S. 312 (1974)
[34] WILLIAM P. LAPIANA, A History of the Law School Admission Council and the LSAT, Keynote Address, 1998 LSAC Annual Meeting.
[35] Id. at 5-6.
[36] Id.
[37] Id. at 6 & 8.
[38] Id. at 10.

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were to be used along with pre[-]law grades, recommendations, and other information as an aid in admissions.[39]

In his Dissenting Opinion in *DeFunis v. Odegaard,*[40] Justice Douglas of the SCOTUS opined that when the Law School Admission Committees consider the LSAT, undergraduate grades, and prior achievement of the applicants, it does not violate the Equal Protection Clause, to wit:

> **The Equal Protection Clause did not enact a requirement that law schools employ as the sole criterion for admissions a formula based upon the LSAT and undergraduate grades, nor does it prohibit law schools from evaluating an applicant's prior achievements in light of the barriers that he had to overcome.** A black applicant who pulled himself out of the ghetto into a junior college may thereby demonstrate a level of motivation, perseverance, and ability that would lead a fairminded admissions committee to conclude that he shows more promise for law study than the son of a rich alumnus who achieved better grades at Harvard. That applicant would be offered admission not because he is black, but because as an individual he has shown he has the potential, while the Harvard man may have taken less advantage of the vastly superior opportunities offered him. Because of the weight of the prior handicaps, that black applicant may not realize his full potential in the first year of law school, or even in the full three years, but in the long pull of a legal career his achievements may far outstrip those of his classmates whose earlier records appeared superior by conventional criteria. There is currently no test available to the Admissions Committee that can predict such possibilities with assurance, but the Committee may nevertheless seek to gauge it as best it can, and weigh this factor in its decisions. **Such a policy would not be limited to blacks, or Chicanos or Filipinos, or American Indians, although undoubtedly groups such as these may in practice be the principal beneficiaries of it.** But a poor Appalachian white, or a second generation Chinese in San Francisco, or some other American whose lineage is so diverse as to defy ethnic labels, may demonstrate similar potential and thus be accorded favorable consideration by the Committee.[41] (emphases supplied)

On the other hand, in the United Kingdom *(UK)*, there is a National Admissions Test for Law *(LNAT)*, which was adopted in 2004.[42] It is the only aptitude test currently used in the UK for the selection of people to the legal

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[39] Id. at 8.

[40] 416 U.S. 312 (1974). The *ponencia* therein denied the petition questioning the Admission Policy of University of Washington Law School in treating minorities differently in their admission to law school. It was essentially denied because the petitioner therein will already complete his law school studies, hence, the petition was moot.

[41] Id.

[42] New entry test for law students, BBC News, February 2, 2014, http://news.bbc.co.uk/2/hi/uk_news/education/3451897.stm [last accessed September 3, 2019]

profession.[43] It was established by a consortium of Universities, comprised of the following: University of Bristol, Durham University, University of Nottingham and University of Oxford, King's College London, LSE London School of Economics and Political Science, and University College London.[44] The LNAT consists of a multiple choice test and a written essay and is designed to measure the following verbal reasoning skills: comprehension, interpretation, analysis, synthesis, induction, and deduction. The test is used by participating UK law schools to aid in the selection of law students.[45]

Similar to the LSAT in the US, the LNAT is not a substitute for undergraduate grades,[46] applications, personal statements or interviews but is used by each university in the way that best suits its own admissions policy. Different universities place different emphasis on the multiple choice score and the essay question.[47]

Likewise, in India, there is also a centralized law admission test for National Law Schools, called the Common Law Admission Test *(CLAT)*. Before CLAT, each university running Bachelor of Laws courses conducted its own admission test. As a result, students aspiring for good legal education had to write a number of admission tests; and this multiplicity of admission tests caused tremendous hardship, both physically and financially, to candidates. In 2006, this issue was raised in a Writ Petition filed by Varun Bhagat against the Union of India and the various National Law Schools in the Supreme Court of India. In the course of hearing, the Chief Justice of India directed the Union of India to consult with the National Law Schools with a view to evolving a scheme for a common admission test.[48]

The common admission test required the consensus of all National Law Schools. The University Grants Commission of India brought all seven National Law Schools, namely: National Law School of India University, National Academy of Legal Studies and Research, National Law Institute University, National University of Juridical Sciences, National Law University, Hidayatullah National Law University, and Gujarat National Law University and they finalized the guidelines for the CLAT. It is expected that

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[43] Aptitude Testing and the Legal Profession, Dr. Chris Dewberry, Birkbeck, University of London, June 6, 2011, p. 61, (2011).

[44] WHY JOIN LNAT?, LNAT National Admission Test for Law, https://lnat.ac.uk/why-join-lnat/ [last accessed September 3, 2019]

[45] Supra note 43 at 61-62.

[46] In the UK, undergraduate grades are measured through A-Levels and General Certificate of Secondary Education *(GCSE)*.

[47] Supra note 44.

[48] The Pearson Guide to the LLB Entrance Examinations, Edgar Thorpe and Showick Thorpe, Pearson Education India, p. 22, 2008.

other national law schools will join in due course.[49] As of 2015, sixteen (16) national law universities in India participate in the CLAT.[50]

Law Admission Test administered by law schools in the Philippines

Accordingly, I dissent with the *ponencia* that it should still be the LEB who shall lead, control, and regulate the unified admission examinations for law schools.

While a standardized admission test for law schools is constitutionally and legally viable, it must not be the LEB spearheading the admission test. Instead, it must be initiated and organized by the law schools themselves, pursuant to their constitutionally enshrined academic freedom.

Currently, there is an organization of law schools in the country. The PALS, established in 1967, is a non-stock corporation composed of 112 law schools nationwide. It seeks to be a primary driving force in uplifting the standards of legal education in the Philippines to both meeting global standards of excellence and at the same time serve as catalyst for both the economic and human development in Philippine Society.[51]

As there is an available avenue, law schools in this jurisdiction could certainly organize a standardized admission test pursuant to their academic freedom to determine whom they will admit as their students. As discussed earlier, a unified admission test for law schools proves to be one of the effective mechanisms in determining who among the applicants are mostly likely to succeed in the first year of law study. And, more importantly, this unified admission examination is conducted and organized by the law schools themselves through their academic freedom. Manifestly, this system of unified law admission examination, conducted by the law schools themselves, has been observed and successfully implemented in the United States, U.K. and India.

The flaws in the LEB Memoranda and Orders will not be followed if the law schools will organize this unified admission test. A standardized admission examination must not be the sole measure in determining whether an applicant will be accepted in law school. The answers a student can give in

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[49] Id.

[50] NLUs enter into new CLAT MoU, ensuring full participation of all 16 NLUs (except NLU Delhi), Shrivastava, Prachi, Legally India, https://www.legallyindia.com/pre-law/all-16-nlus-can-now-conduct-clat-unlike-earlier-7-20141103-5262 [last accessed September 3, 2019]

[51] PALS reelect UE Dean Valdez, University of the East News, March 16, 2012, [https://www.ue.edu.ph/news/?p=2786 last accessed August 15, 2019]

an admission examination is limited by the creativity and intelligence of the test-maker. A student with a better or more original understanding of the problem than the test-maker may realize that none of the alternative answers are any good, but there is no way for that student to demonstrate his or her understanding. If a student is strong-minded, nonconformist, unusual, original, or creative, that student must stifle his or her impulses and conform to the norms that the test-maker established. The more profoundly gifted the candidate is, the more his or her resentment will rise against the mental strait jacket into which the testers would force his or her mind.[52] Stated differently, the unified admission test should not be exclusionary.

Accordingly, the law admission test should not be the sole basis for admission in law schools. As discussed earlier, there are other relevant factors, such as undergraduate achievements, motivation, or cultural backgrounds that the admission test cannot measure. Besides the admission test, the law school must still be given discretion to determine on its own, based on its academic freedom, the decision of whom to admit as students. Thus, the proposed standardized admission test should only be one of many criteria for admission to any law school. It would be the decision of each law school whether to accept or deny admission of a potential law student under their academic freedom which would not be curtailed by the unified law entrance examination since it would only be one of several factors for admission.

At the end of the day, the decision of creating a standardized admission test for law schools rests upon the law schools in the country. These institutions of higher learning may come together, through the PALS, and initiate for the creation and implementation of a standardized admission test. It would be the culmination of the collective effort of law schools in their exercise of academic freedom.

In the event that the law schools pursue drafting, creating and organizing a standardized admission test for legal studies in the Philippines, the LEB would not be entirely set aside in this endeavor. Under R.A. No. 7662, one of the powers of the LEB is to **supervise** the law schools in the country.[53]

The power of supervision is defined as the power of a superior officer to see to it that lower officers perform their functions in accordance with law. This is distinguished from the power of control or the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the

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[52] *See* Dissenting Opinion of Associate Justice William O. Douglas in DeFunis *v.* Odegaard, 416 U.S. 312 (1974), citing B. Hoffmann, The Tyranny of Testing 91-92 (1962).
[53] *See* Section 7(b) of R.A. No. 7662.

latter.[54] An officer in control lays down the rules in the doing of an act. It they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed.[55]

Consequently, the LEB may only supervise the proposed standardized admission test of the law schools. **It cannot substitute its own judgment with respect to said test organized by the law schools; otherwise, it would violate the academic freedom of institutions of higher learning.** The LEB may only oversee whether the policies set forth by the law schools in the admission test are reasonable and just. It cannot, however, ultimately override the collective decisions of the law schools in the admission test for law students. In that manner, the LEB serves its purpose in the supervision of legal education and, at the same time, the academic freedom of law schools is respected.

Further, to ensure the success of the law admission test initiated by the law schools in the Philippines and supervised by the LEB, concrete studies on the effectiveness of this test must be conducted. There must be an effective monitoring system for the examination. It must be determined, before and after the admission test, whether said examination actually predicts and helps the success of law students, at the very least, in their first year of legal study. The admission examination should not be conducted for the sake of merely having one. It must have some tangible and definite benefit for the law schools and potential law students. To achieve this quality-control mechanism, the law schools, through PALS, and the LEB must thoroughly coordinate with each other to determine the most effective manner in conducting the admission examinations. It is only through constant cooperation and consultation with the stakeholders that the success of any admission examination will be guaranteed.

While the State has the power to regulate the education of its citizens, the 1987 Constitution expressly grants academic freedom in all institutions of higher learning, including law schools. Thus, the right to determine whom shall be admitted to law school should rest solely in these institutions. The State cannot absolutely control this important pillar of academic freedom of institutes of higher learning. I genuinely believe that it is only through the

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[54] *Bito-onon v. Hon. Yap Fernandez*, 403 Phil. 693, 702 (2001).
[55] *Hon. Drilon v. Mayor Lim*, 305 Phil. 146, 152 (1994).

combined efforts of the law schools in the country that the envisioned unified admission test for law schools can achieve fruition based on the Constitution, the laws, and its practical implementation. Again, the LEB should only supervise the said unified admission examination conducted by the law schools.

Existing problems of the PhilSAT

If the law schools in the Philippines ultimately decide to conduct a unified and standardized law admission examination, as supervised by the LEB, then it must address the existing problems created by the PhilSAT. The problems were created precisely because the admission examination was solely conducted by the LEB, through its regulatory power. The law schools had no concrete voice in the formulation of the PhilSAT and their academic freedom is disrespected. Thus, it created several problems, particularly, financial burden and accessibility.

Under the PhilSAT, the LEB initially imposed a testing fee of ₱1,500.00 per examination, which was subsequently lowered to ₱1,000.00;[56] and there are only seven (7) testing centers across the entire country – Baguio City, Metro Manila, Legazpi City, Iloilo City, Cebu City, Davao City and Cagayan de Oro City.[57] Also, the LEB failed to explain why it had to impose said fee for a mere written examination. The sum collected by the LEB for the examination could amount to millions of pesos considering that there are thousands of students taking the PhilSAT. Glaringly, the LEB did not give any sufficient basis to justify the imposition of a ₱1,000.00 fee for an entrance examination.

Further, the LEB also failed to consider the transportation and logistical expenses that would be incurred by an examinee coming from the far-flung areas to take the examination in the limited seven (7) testing centers. A student from the province explained the immense difficulty of taking the PhilSAT, *viz*:

6.	Q:	What personal experience do you have with the PhilSAT exam?
	A:	I first took the PhilSAT exam last April 2018.
7.	Q:	Where did you take the exam?
	A:	Cebu City.

[56] Memorandum of petitioner in G.R. No. 245954, p. 33.
[57] Sec. 5, LEB Memorandum Order No. 7, series of 2016.

8. Q: Are you a permanent resident of Cebu?
A: No.

9. Q: Where is your permanent residence?
A: I am from Maasin City, Leyte.

10. Q: If you are from Leyte, why did you take the exam in Cebu City?
A: The LEB offers the exam in only seven (7) testing centers across the country, Cebu being one of them.

11. Q: What effect did this limited number of available testing centers have on your PhilSAT experience?
A: Since the exam would not be conducted in our area, I was compelled to travel from Leyte to Cebu City. We had to travel the day after my graduation in order for me to arrive in Cebu on time to take the exam. During the registration period, we also had to travel to another town around five (5) hours away just to deposit the testing fee since the bank in our locality did not accept checkbook as a mode of payment.[58]

Thus, the unified admission test in the future, spearheaded by the law schools, must impose only reasonable fees to the examinees. **It should not be a money-making venture.** The fees of the examination should only be for the exact expense in conducting the admission test; nothing more, nothing less. There should be no additional and unnecessary financial burden imposed on the examinees.

Likewise, the admission test should be accessible to all aspiring law students, especially those from the distant regions. The unified admission test should be conducted in numerous and strategic testing sites spread throughout the country. The law schools must avoid the situation where only those privileged students living in the capital cities will have access to the said unified examination. Moreover, considering that the examination shall now be conducted by the law schools in the Philippines, **then they may consider conducting the said test in their own school at a unified time and date with the rest of the law schools in the country to guarantee the examination's accessibility.**

It must be underscored that the study of law should not be hindered by financial and geographical hardships; rather, it must be reasonable and accessible to the examinees. Otherwise, it would defeat the purpose of a unified admission examination – to ensure that those intellectually capable to

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[58] Judicial Affidavit of petitioner Gretchen M. Vasquez, Annex F of Memorandum of Abayata, et al., p. 3.

become law students, regardless of social status, shall be admitted to the study of law.

The Supreme Court and the study of law

The *ponencia* states that the Court's rule-making power covers only the practice of law and cannot be unduly widened to cover the study of law. Nonetheless, it declares that the State, though statutes enacted by Congress and administrative regulations issued by the executive, consistently exercise police power over legal education. Hence, admissions, being an area of legal education, necessarily fall within the scope of the State's police power.

I dissent.

It is impossible to completely separate the interests of the Supreme Court and the law schools and the other branches of government with respect to legal education. There are several reasons that the study of law is affected, one way or another, by the Court's rule-making power.

First, the Court has the exclusive power to promulgate rules for admission to the practice of law. Thus, the Court prescribe specific subjects that a law school must offer before its students can be admitted for the bar examinations. Section 5 of Rule 138 states:

> **Sec. 5. Additional requirements for other applicants.** - All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the examination, satisfactorily show that they have successfully completed all the prescribed courses for the degree of Bachelor of Laws or its equivalent degree, in a law school or university officially recognized by the Philippine Government or by the proper authority in the foreign jurisdiction where the degree has been granted.
>
> No applicant who obtained the Bachelor of Laws degree in this jurisdiction shall be admitted to the bar examination unless he or she has satisfactorily completed the following course in a law school or university duly recognized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, legal ethics, and clinical legal education program.
>
> A Filipino citizen who graduated from a foreign law school shall be admitted to the bar examination only upon submission to the Supreme Court of certifications showing: (a) completion of all courses leading to the degree of Bachelor of Laws or its equivalent degree; (b) recognition or

> accreditation of the law school by the proper authority; and (c) completion of all fourth year subjects in the Bachelor of Laws academic program in a law school duly recognized by the Philippine Government.[59]

Section 5 provides several requirements for the admission to the bar. Nevertheless, these requirements also affect the curriculum offered by law school. In effect, for a law school to successfully field bar examinees, it must offer all the prescribed courses for the degree of Bachelor of Laws or its equivalent degree. Thus, it cannot simply offer a two (2)-year short course on law.

More importantly, Section 5 provides for the specific courses that must be completed in a law school before a student may be allowed to take the bar examinations, to wit: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, legal ethics, and clinical legal education program. Pursuant to this provision, a law school is mandated to offer these courses; otherwise, it will not be able to produce law graduates qualified to take the bar examinations. Stated simply, Section 5 provides for the minimum courses that a law school must offer to its law students. This is one of the direct provisions of the Rules of Court: that the Court itself participate in the legal education of law students.

Second, even before a student begins his study of law, the Supreme Court already provides the requirements for his or her pre-law studies. Section 6 of Rule 138 states:

> **Sec. 6. Pre-Law.** - No applicant for admission to the bar examination shall be admitted unless he presents a certificate that he has satisfied the Secretary of Education that, before he began the study of law, he had pursued and satisfactorily completed in an authorized and recognized university or college, requiring for admission thereto the completion of a four-year high school course, the course of study prescribed therein for a bachelor's degree in arts or sciences with any of the following subjects as major or field of concentration: political science, logic, english, spanish, history and economics.

The above-quoted provision provides that any potential law student must have a four-year high school course and a bachelor's degree in arts or sciences. If a law school admits students without these completed courses, then it will not be able to produce bar examinees. Verily, this rule affects the

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[59] As amended by A.M. 19-03-24-SC, Amendment of Rule 138, Section 5 in relation to the Revision of Rule 138-A of the Rules of Court, July 23, 2019.

admission policy of the institutes of higher learning with respect to law students.

Third, the precursor of Republic Act No. 7662, which is DECS Order No. 27, also recognizes that the Supreme Court contributes to the requirements for admission in law courses, to wit:

> **Article VIII**
> **Admission, Residence and Other Requirements**
>
> **Section 1.** No applicant shall be enrolled in the law course unless he complies with specific requirements for admission by the Bureau of Higher Education and **the Supreme Court of the Philippines**, for which purpose he must present to the registrar the necessary credentials before the end of the enrolment period.

Lastly, even after earning a law degree, the Supreme Court continues to participate in the study of law. Bar Matter No. 850, which was adopted by the Court on August 22, 2000, provides for the Mandatory Continuing Legal Education requirement for members of the Bar. Continuing legal education is required of members of the Integrated Bar of the Philippines *(IBP)* to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.[60]

Similarly, the Philippine Judicial Academy *(PHILJA)*, initially created by the Supreme Court on March 12, 1996 through the issuance of Administrative Order No. 35-96, is a separate but component unit of the Supreme Court. It is an all-important factor in the promotion of judicial education in the Philippines. It receives full patronage and support from the Court which guarantees the participation of judges and court personnel in its programs and activities. PHILJA was institutionalized as a training school for justices, judges, court personnel, lawyers, and aspirants to judicial posts.[61]

Coordination and cooperation with the various stakeholders in legal education

The Supreme Court, either directly or indirectly, affects the legal education administered by the law schools as institutes of higher learning. The

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[60] Section 1, Bar Matter No. 850.
[61] History of PHILJA, http://philja.judiciary.gov.ph/history.html [last accessed: June 6, 2019]

Court's authority over legal education is primarily observed in the bar examinations. Nevertheless, such authority or influence of the Court over legal education should be viewed in a coordinated and cooperative manner; and not as a limitation or restriction.

For more than a century, the bar examinations conducted by the Court have been the centerpiece of every law student's plight. The preparation, success and defeat of bar examinees are annual recurrences. The low passing percentage of the bar examinations proves it as one of the most difficult tests in the country. There are on-going initiatives to remedy this predicament and improve the legal education.

However, it must be stressed that the bar examination is not the sole and penultimate goal of the study of law. There is no clear evidence that grades and other evaluators of law school performance, and even the bar examination, are particularly good predictors of competence or success as a lawyer.[62] The legal education is a wide spectrum of discipline, ranging from the traditional subjects of political, civil, and remedial laws, to the liberal and innovative subjects of media, sports, and competition laws. It is not confined to litigation practice, court hearings, and drafting pleadings and other legal documents. The study of law is a dynamic concept that seeks to analyze, comprehend and apply the effects and interrelationships of the Constitution, laws, rules, and regulations, in view of a just and humane society.

Thus, instead of restricting the study of law only to the bar examinations, the Court must endeavor to promote its liberalization. The bar-centric mindset of law schools must be amended. It must be emphasized that legal education should not confine law students to the syllabi for bar examinations. Instead, law schools must encourage their students to freely take elective subjects that spark their interests; participate in legal aid clinics to render free legal service; experience debate and moot court competitions; and publish law journal articles for their respective schools. These liberalizations of legal education must be accomplished for the enrichment of the law students' knowledge. In order to implement these innovative measures, various stakeholders in the entire country must be consulted and conferred with to ensure active, wide, and effective participation.

Notably, the Court has recently issued A.M. No. 19-03-24-SC,[63] otherwise known as the Revised Law Student Practice Rule, which liberalizes the Law Student Practice. It was issued to ensure access to justice for the

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[62] *See* Dissenting Opinion of Associate Justice William O. Douglas in DeFunis *v.* Odegaard, 416 U.S. 312 (1974); citing Rosen, Equalizing Access to Legal Education: Special Programs for Law Students Who Are Not Admissible by Traditional Criteria, 1970 U. Tol. L. Rev. 321, 332-333.

[63] Dated June 25, 2019.

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marginalized sectors, to enhance learning opportunities of law students, to instill among them the value of legal professional social responsibility, and to prepare them for the practice of law. Further, the completion of clinical legal education courses was made a prerequisite of the bar examinations to produce practice-ready lawyers. Thus, the Court recognizes that, aside from the written bar examination, the practical aspect of legal education is an essential component in the formation of competent and able lawyers.

Again, while the Supreme Court has some authority over the legal education, this should be channeled in cooperation and coordination with different law schools of the country and even with the legislative and executive branch of the government, through the LEB. At best, the Court should only provide the minimum course requirements for the purpose of the bar examinations and should not be considered as a hindrance in the study of law. Beyond that, law schools are directed to promote the innovative measures in legal education in furtherance of their academic freedom. Through a comprehensive and novel approach, the goal of improving the legal education is definitely within reach.

Constitutionality of R.A. No. 7662

One of the issues raised by the parties is that R.A. No. 7662 is unconstitutional because it infringes on the power of the Court to supervise the bar examination and legal education.

With respect to that issue, the Court must emphasize the doctrine of constitutional avoidance. The doctrine states that this Court may choose to ignore or side-step a constitutional question if there is some other ground upon which the case can be disposed of.[64] To remain true to its democratic moorings, judicial involvement must remain guided by a framework or deference and constitutional avoidance. This same principle underlies the basic doctrine that courts are to refrain from issuing advisory opinions. Specifically as regards this Court, only constitutional issues that are narrowly framed, sufficient to resolve an actual case, may be entertained.[65] In other words, if the determination of the constitutionality of a particular statute can be avoided based on some other ground, then the Court will not touch upon the issue of unconstitutionality.

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[64] *See* Dissenting Opinion of Justice Del Castillo, *Poe-Llamanzares v. Commission on Elections*, 782 Phil. 292, 357-363 (2016).

[65] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 575 (2016).

Here, the powers of the LEB enumerated under Section 7 of R.A. No. 7662 are assailed because they contradict the judicial power of the Court. Section 5, Article VIII of the 1987 Constitution states:

> **Section 5.** The Supreme Court shall have the following powers:
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> x x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, **the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged**. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Some of the powers of the LEB under R.A. No. 7662 can be harmonized with the Constitution. For instance, Section 7(c) of R.A. No. 7662 states:

> **Section 7. Powers and Functions.** - For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
>
> x x x x
>
> (c) to set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities, **without encroaching upon the academic freedom of institutions of higher learning[.]** (emphasis supplied)

Said provision states that the LEB has the power to set the standards of accreditation for law schools. However, it also provides for a reasonable limitation on the exercise of such power: it should not encroach the academic freedom of institutions of higher learning. With this, the law schools are safeguarded that the LEB will not arbitrarily exercise its power to set the standards of accreditation because of the reasonable limitation of academic freedom. This reasonable limitation should also be read together with the other powers provided by R.A. No. 7662 so that the LEB will not encroach upon the constitutional rights of law schools. Pursuant to this interpretation, majority of the powers of the LEB listed under the law will conform to the organic law and the Court will not be required to pass upon the constitutionality of these statutory provisions.

However, under Section 7 of R.A. No. 7662, there is a provision that is inescapably unconstitutional. No amount of judicial interpretation can evade the inevitable conclusion that this provision violates the Constitution. Section 7(h) of R.A. No. 7662 states:

> Section 7. Powers and Functions. - For the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions:
>
> x x x x
>
> (h) to adopt a system of continuing legal education. For this purpose, the Board may provide for the mandatory attendance of **practicing lawyers** in such courses and for such duration as the Board may deem necessary[.] (emphasis supplied)

The provision clearly covers the continuing legal education of practicing lawyers. However, Section 5(5), Article VIII of the Constitution states that the Supreme Court has the exclusive judicial power to: "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, **practice**, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the under-privileged." Accordingly, only the Court has the power to prescribe rules with respect to the continuing practice of lawyers.

Pursuant to this judicial power, the Court issued Bar Matter No. 850 dated August 22, 2000, adopting the rules on Mandatory Continuing Legal Education for members of the Integrated Bar of the Philippines *(IBP)*. Continuing legal education is required of members of the IBP to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.[66]

Here, Section 7(h) covers the continuing legal education of practicing lawyers. Evidently, this encroaches upon the power of the Court to promulgate rules on the practice of lawyers. The objective of R.A. No. 7662 is only to effect reforms in the Philippine legal education, not in the legal profession. In his Explanatory Note in B.M. No. 979-B, Associate Justice Jose C. Vitug stated that the concept of continuing legal education encompasses not only law students but also the members of the legal profession. The inclusion of the continuing legal education under R.A. No. 7662 implies that the LEB has jurisdiction over the education of persons who have finished the law course and are already licensed to practice law. In other words, this particular power,

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[66] Section 1, Bar Matter No. 850.

directly involves members of the legal profession, which is outside the realm of R.A. No. 7662. Undeniably, Section 7(h) of R.A. No. 7662 is unconstitutional because it violates Section 5(5), Article VIII of the Constitution.

Fate of the Legal Education Board

The *ponencia* states that LEB Memorandum Orders and Circular regarding the PhilSAT are unconstitutional because these do not meet the fair, reasonable, and equitable admission and academic requirements. Nevertheless, it states that Section 7(e) of R.A. No. 7662 is constitutional insofar as it gives the LEB, an agency of the executive branch, the power to prescribe the minimum requisites for admission to legal education.

I concur.

Although PhilSAT is declared unconstitutional for employing unreasonable means for the admission of students to law schools, the LEB still has numerous powers and responsibilities under its charter. As stated above, one of its vital functions is its power to accredit and set the standards of accreditation for law schools taking into account, among others, the size of enrollment, the qualifications of the members of the faculty, the library and other facilities.[67] If a law school is underperforming, the LEB may withdraw or downgrade the accreditation status of such law school, especially if it fails to maintain the required standards. This is an important role in ensuring that law schools keep an adequate, satisfactory, and respectable curriculum program for its law students.

Likewise, I agree with the Office of the Solicitor General that the powers and functions of the LEB should be read in accordance with its mandate to guide law students and law schools.[68] R.A. No. 7662 should not be interpreted to include matters that are already within the exclusive jurisdiction of Court, such as the bar examinations, law student practice, and the practice of law.

In addition, the powers and functions of the LEB should always be interpreted in light of the institutes of higher learning's academic freedom. Thus, the LEB should consider the academic freedom of law schools when it issues orders, circulars, and regulations under its power of supervision. The Constitution bestows institutes of higher learning academic freedom, which is further compromised of several freedoms. These freedoms may only be

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[67] Section 7(c) & (d).
[68] *See* Memorandum of the Office of the Solicitor General, pp. 38-39.

subjected to reasonable limitations. Anything beyond reasonable, or arbitrary, shall be considered an infringement of such freedoms.

The importance of LEB's role in improving the legal education in our country cannot be overemphasized. It can bridge the gap between the different law schools from the capital cities to the far-flung areas in the provinces. It can conduct studies and give recommendations on how to improve the state of legal education. It can also promote the innovative approaches in the holistic study of law. This can be achieved if the LEB is open and willing to coordinate, through consultations and meetings, with the various stakeholders, law schools, government agencies, and the Supreme Court.

However, the LEB should be strictly warned that it should not gravely abuse its discretion. Otherwise, the Court will not think twice in striking down any arbitrary exercise of power, including those that violate the fundamental rights of institutions of higher learning under their academic freedom.

Conclusion

I sincerely believe that it is now high time to develop, innovate, modernize, and improve the legal education system in our country. The petitions at bench are valuable opportunities for the esteemed members of the Court to discuss and examine the current and future state of legal education in the country. The different stakeholders must assess and recommend innovations and improvements in the country's state of legal education in view of the changes brought about by the developments in law, the needs of the people, and technological innovations. Verily, the stakeholders should be concerned in remodeling legal education because it is an indisputable fact that legal education is the very foundation upon which the exercise of the law profession rests.

The Court has repeatedly emphasized that the practice of law is imbued with public interest, and that a lawyer owes substantial duties, not only to his client, but also to his brethren in the profession, to the courts, and to the public, and takes part in the administration of justice, one of the most important functions of the State, as an officer of the court. Accordingly, lawyers are bound to maintain, not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[69]

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[69] *Atty. Villonco v. Atty. Roxas*, A.C. No. 9186, April 11, 2018.

This goal of remodeling legal education will be realized through a multi-sectoral approach of cooperation, initiative, and the promotion of free-thinking. The outdated, obsolete, and unproductive aspects in legal education that cause disadvantageous effects to the study of law should definitely be set aside. It must be underscored that the purpose of the study of law is not only to successfully hurdle the bar examinations, but also to produce competent and noble lawyers who shall represent and stand up for justice, truth, and equity for the benefit and welfare of the Filipino people.

I vote to **PARTLY GRANT** the consolidated petitions. The PhilSAT, should be **SET ASIDE**. It must be the law schools of the Philippines, through the Philippine Association of Law Schools, under the supervision of the Legal Education Board, which should formulate the unified and standardized law admission examination, carrying only reasonable fees and accessible to all aspiring law students.

ALEXANDER G. GESMUNDO
Associate Justice