

G.R. NO. 230642 – OSCAR B. PIMENTEL, ET AL., V. LEGAL EDUCATION BOARD, ET AL.

G.R. NO. 242954 – FRANCIS JOSE LEAN ABAYATA, ET AL., V. HON. SALVADOR MEDIALDEA, ET AL.

Promulgated: September 10, 2019

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CONCURRING and DISSENTING OPINION

LAZARO-JAVIER, J:

We all have different competencies. Some of us are intellectually gifted, some of us athletically gifted, some of us are great listeners. Everyone has a different level of what they can do.¹

Don't take on things you don't believe in and that you yourself are not good at. Learn to say no. Effective leaders match the objective needs of their company with the subjective competencies. As a result, they get an enormous amount of things done fast.²

PREFATORY

The pursuit of excellence has never been a bad thing. From our ranks, we shower accolades to the best, brightest, most efficient, most innovative – the cut above the rest. Soon, the Court will again be recognizing excellence of execution among our judges and clerks of court, conferring on them the judicial excellence awards. These awards do not come cheap. They are laden with perks and advantages that are sorely denied others. Yet this is not discrimination. The differential treatment is not based on something like the color of one's skin or the circumstances regarding one's birth – the differential treatment arises not from an unchanging and unchangeable characteristics and traits, but from circumstances largely within the awardees' control and efforts. Exclusion necessarily comes with quality.

To strive for excellence and to require others to also trail this path in matters of privilege is not usurping that other's role in this regard. This is the case where the *requirer* of excellence shares the same goal of excellence as the *required*. More in point to the present cases, who would *not* want something more from a law student whose answer to the following question is as follows –

Teacher: Q - What are fruits as they relate to our study of Obligations & Contracts?

¹ *A to Z Quotes* at <https://www.azquotes.com/quotes/topics/competencies.html> (last accessed July 23, 2019), attributed to Michelle Bachmann.

² *A to Z Quotes* at <https://www.azquotes.com/quotes/topics/competencies.html> (last accessed July 23, 2019), attributed to Peter Drucker.

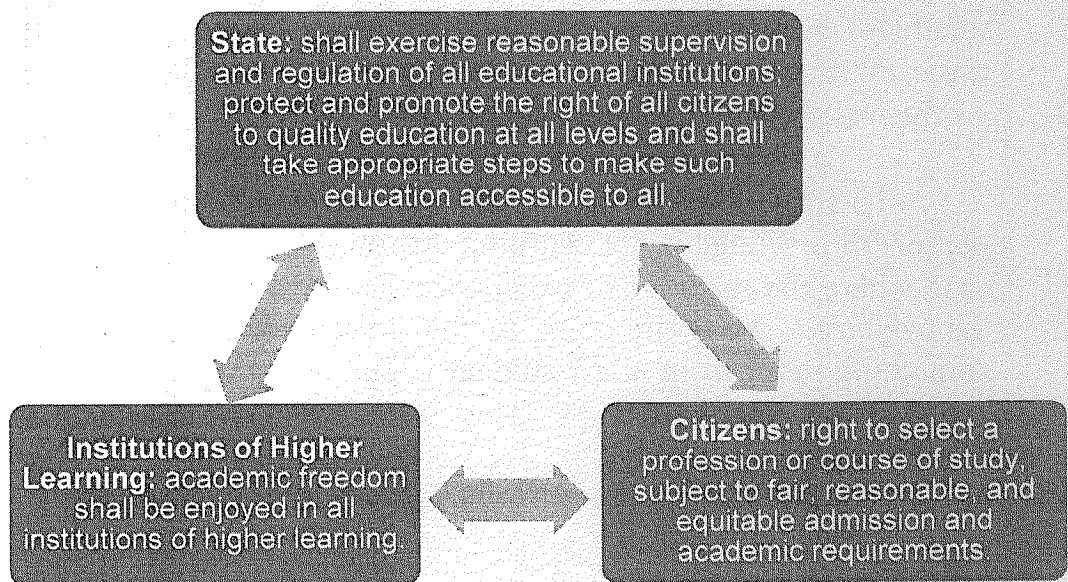
Student - "The Obligations and contracts is very beneficial to our life. The fruit I relate is Banana. This fruit have a vitamins and it gave the beneficial like became taller."³

Each of us has distinct competencies. Some run quicker than others. A few love to ruminate. There are fifteen (15) Justices in the Court, and in a room full of lawyers and judges, this is as exclusive as it can get. Of the several hundreds who take the Bar, not everyone gets over the hurdle. In any World Cup, there are only a number of aspirants. The top-tier law schools cannot accommodate a slew of the applicants. It is not society's fault that not every Army officer comes from the Philippine Military Academy, or a lawyer can claim blue, maroon, red, yellow, or green as the color of his or her scholastic pedigree. The right of each citizen to select a course of study is subject to fair, reasonable, and equitable admission and academic requirements.

If we are agreed that quality and excellence and their resulting exclusionary effect are valid objectives in any institution of higher learning like law schools, we next ask, who decides whom to accept in such institutions, like law schools? We should also be concerned with things like curriculum, faculty, internal administration, library, laboratory class and other facilities.⁴ This is because when we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in educational technology and teaching methodologies, improvement of research quality, and others.⁵ Who speaks for these requisites?

ANALYTICAL FRAMEWORK

To resolve the cases here, it is important to understand the relationship of the intersecting constitutional rights and interests as visually reflected below:



³ Quoted with permission, name of school, teacher, and student purposely withheld.

⁴ *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018.

⁵ *Ibid.*

Not one of these rights and interests is superior to any of the others. Each has an impact on any of the others in terms of meaning and application. It is the Court's duty to weigh and balance these rights and interests according to the circumstances of each case.

In the exercise of the **State's power to reasonably supervise and regulate all educational institutions**, the State is mandated to protect and promote not just any access to education but access to *quality* education. So the State is expected to initiate, innovate, and implement measures to achieve this objective.

It is established that **"the duty of providing quality education entails the duty of screening those who seek education.** Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression....** As already seen, however, there is also recognition of the right of the school to impose admission standards. **The State itself may also set admission standards."**⁶

Which of the State agencies is responsible for this task? The Court has already recognized that –


....the Constitution indeed mandates **the State to provide quality education**, the **determination of what constitutes quality education is best left with the political departments who have the necessary knowledge, expertise, and resources to determine the same.** The deliberations of the Constitutional Commission again are very instructive:

Now, Madam President, **we have added the word "quality" before "education" to send appropriate signals to the government that, in the exercise of its supervisory and regulatory powers, it should first set satisfactory minimum requirements in all areas: curriculum, faculty, internal administration, library, laboratory class and other facilities, et cetera, and it should see to it that satisfactory minimum requirements are met by all educational institutions**, both public and private. When we speak of quality education we have in mind such matters, among others, as curriculum development, development of learning resources and instructional materials, upgrading of library and laboratory facilities, innovations in educational technology and teaching methodologies, improvement of research quality, and others.

Here and in many other provisions on education, the principal focus of attention and concern is the students. I would like to say that in my view there is a slogan when we speak of quality of education that I feel we should be aware of, which is, "Better than ever is not enough." In other words, even if the quality of education is good now, we should attempt to keep on improving it.⁷ (*emphasis added*)

⁶ Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

⁷ *Council of Teachers and Staff of Colleges and Universities of the Philippines*, *Supra* note 4.



A citizen - not any individual but a citizen - has the right to select a profession or a course of study leading to that chosen profession; however, the citizen is not guaranteed admission to the profession or to the course of study and school of his or her choosing. The right given to every citizen is *to select* - a profession or course of study. BUT this right *does not necessarily give rise to and guarantee a right to pursue, and engage in, the chosen profession of the citizen or a right to be admitted to the course of study and school of the citizen's choosing.* The citizen must have to consider the State's duty to regulate and supervise *reasonably* educational institutions, which *would have to include measures* to assure the citizen's access to *quality* education, as well as the **express limitation inherent in every citizen's right to select a profession or course of study, i.e. - - - fair, reasonable, and equitable admission and academic requirements.**

As the intersecting rights and interests show, the State has a stake in the determination and imposition of the **fair, reasonable, and equitable admission and academic requirements** *through* the duty of the *political departments* of the State to reasonably regulate and supervise educational institutions towards, among others, assuring the citizen of access to *quality* education.

In addition, the *Constitution* also recognizes the important role that **academic freedom** plays in providing *quality* education. **Institutions of higher learning including law schools enjoy academic freedom in the highest legal order possible.** Written in jurisprudence are the substance and parameters of this constitutional privilege and duty which entitles its holders to determine for itself on academic grounds *who may teach, what may be taught, how it shall be taught, and who may be admitted to study.* Subsumed under this entitlement is the capacity of institutions of higher learning to determine and impose *fair, reasonable, and equitable admission and academic requirements.*

Both the State through its political departments *and the institutions of higher learning* have roles to play in providing our citizens access to *quality* education. It is **our duty** to **balance** the **academic freedom** of institutions of higher learning and the State's exercise of reasonable supervision and regulation. *Academic freedom is not absolute.*

The foregoing rights and interests of the State, the citizen, and the institutions of higher learning interplay in the present cases. These rights and interests very strongly suggest that these cases *are not and have never been about a willy-nilly and free-wheeling intellectual inquiry* of individuals on the nature of the law or its relevance to everyday life and its application to real life situations, or about those individuals whose only interest in obtaining legal education is to get qualified for some higher civil service postings.

Individuals **are not forbidden** from learning the law for whatever motives or purposes they may each have. Every individual has the freedom of

intellectual and non-intellectual inquiry, a cognate of each one's freedom of thought, expression, and speech that is not in any way restricted by the discussion and ruling which follows.

It is important that *we see through the distinction between intellectual inquiry within the narrow confines of educational institutions like law schools and a citizen's political right of free expression*. In this light, **academic freedom and the State's power of reasonable supervision and regulation of all educational institutions bear upon the context of the narrower academic community.**⁸ This is **different from an individual's freedom of expression which encompasses his or her freedom of intellectual inquiry** for whatever purposes it may serve him or her.

For clarity and emphasis, what we are dealing with here is *different* from merely wanting to study law for its own sake or for immediate career advancement which a law degree carries in the civil service. Our endeavour here is a *distinct* proposition that has a life of its own. In the words of the Court in *Garcia v. Faculty Admissions Committee*,⁹ "[i]t is equally *difficult to yield conformity to* the approach taken that **colleges and universities should 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.**"

Here, the **issues are defined by the education of and learning by citizens within the confines of an educational institution whose existence and operation are imbued with public concern, to pursue a course of study subject to reasonable regulation and supervision by both the State and the law school, as to access, quality and admission, and academic requirements, where the citizen if successful gets entitled to qualify for and engage in a profession that we all admit to be noble and suffused with public interest.**

I understand that some eager students would have their dreams of becoming law students scuttled. To this situation, I have only to stress the advice reflected in my chosen epigraphs above –

We all have different competencies. Some of us are intellectually gifted, some of us athletically gifted, some of us are great listeners. Everyone has a different level of what they can do.

Don't take on things you don't believe in and that you yourself are not good at. Learn to say no. Effective leaders match the objective needs of their company with the subjective competencies. As a result, they get an enormous amount of things done fast.

In the context of the Philippine Law School Admission Test (PhiLSAT), whose validity as a screening mechanism I stand by as my

⁸ Id. at 1251-1252.

⁹ G.R. No. L-40779, November 28, 1975.



resolution to this Opinion's second issue. Indeed, nothing can be more liberating than taking the epigraphs to heart and to bear on one's aspirations in life.

Our task is to consider carefully, weigh and balance the rights and interests of these stakeholders. Each is equally important, compelling, and relevant as the next right and interest. Not one is superior to another, though one may qualify the other. When considered, weighed, and balanced properly, these rights and interests will form the tapestry against which we will be able to judge the validity of the assailed statutory provisions and the relevant founding regulation. I now endeavour to do this and more.

THOUGHTFUL RUMINATIONS

First. I have been confronted with the idea that as regards **education in institutions of higher learning**, the State's supervisory and regulatory power is only an *auxiliary* power in relation to educational institutions, be it basic, secondary, or higher education. It has been said that this must be necessarily so because the right and duty to educate, being part and parcel of youth-rearing, does not inure to the State at the first instance. Rather, it belongs essentially and naturally to the parents who surrender it by delegation to the educational institutions.

I beg to differ. It is well-taken if this idea were referring only to *pre-school* or *elementary school* students. But the cases here are not about the education of young and impressionable children. They are about *the education which molds an individual into a legal professional*, the one whom another would meet to seek help about his or her life, liberty, or property. Nor are the cases here about nurturing generally socially acceptable values.

They are about piecing together building blocks *to develop focused core values essential to professions, including the legal profession*. With respect to the latter, regardless of how a potential student of law has been reared by his or her or its natural or surrogate parents, **he or she must learn focused core values that the confluence of private and public communities relevant to the legal profession has judged to be important.** In fact, some of these focused core values may be different from the basic values which the potential student of law may have been taught at home.

For example:

Home Values	Lawyer's Values
1. Be Honest	1. Duty of Confidentiality
2. Defend Only The Good Ones	2. Right to Counsel and Duty of Loyalty to Client
3. Love and Defend Your Family	3. Avoid Conflict of Interest in the Performance of Lawyer's Duties

To stress, "the **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression....**"¹⁰

The **State's supervisory and regulatory power in relation to prescribing the minimum admission requirements** has been said to be a component of police power, which as explained in *Tablarin v. Gutierrez*,¹¹ "is the **pervasive and non-waivable power and authority of the sovereign to secure and promote all the important interests and needs** — in a word, **the public order — of the general community**." Hence, the *State's supervisory and regulatory power over institutions of higher learning cannot be characterized* as a mere auxiliary power in the ordinary sense of being just a spare, substitute, or supplementary power.

Second. There are three (3) issues to be resolved here:

1. Which State agent - the Supreme Court or the Legal Education Board or both - is responsible for exercising reasonable regulation and supervision of all educational institutions? In this regard, is the reasonable regulation and supervision of legal education within the jurisdiction of the Supreme Court? If it is, what is the exact jurisdiction of the Supreme Court over the reasonable regulation and supervision of legal education? May this jurisdiction be assigned or delegated to or shared with the Legal Education Board created under RA 7662?

2. Do Subsection 7(e) of RA 7662¹² and Legal Education Board Memorandum Order No. 7, series of 2016, (LEBMO No. 7) fall within the constitutionally-permissible supervision and regulation?

3. Are Subsections 7(g) and (h) of RA 7662¹³ *ultra vires* for encroaching into the constitutional powers of the Supreme Court.

Let me address these issues sequentially.

¹⁰ Joaquin G. Bernas, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003) at 1228, citing IV RECORD 258-260.

¹¹ G.R. No. 78164, July 31, 1987.

¹² The Subsection read: "(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members...."

¹³ The Subsections read: "(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.(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."

1. **Which State agent - the Supreme Court or Congress and the Legal Education Board or both - is responsible for exercising reasonable regulation and supervision of all educational institutions? In this regard, is the reasonable regulation and supervision of legal education within the jurisdiction of the Supreme Court? If it is, what is the exact jurisdiction of the Supreme Court over the reasonable regulation and supervision of legal education? May this jurisdiction be assigned or delegated to or shared with Congress and the Legal Education Board created under RA 7662?**

I accept the *Decision's* ruling that **Congress and the Legal Education Board have primary and direct jurisdiction** to exercise reasonable supervision and regulation of legal education and the law schools providing them. **The Supreme Court has no primary and direct jurisdiction** over legal education and law schools.

The Supreme Court, however, is **not entirely irrelevant when it comes to legal education**. *Although the primary and direct responsibility* rests with Congress and the Legal Education Board to reasonably supervise and regulate legal education and law schools, the Supreme Court **can and will intervene** when a justiciable controversy hounds the discharge of the Legal Education Board's duties. The Supreme Court **will also have to intervene when its power to administer admission to the Bar** is infringed. **Admission to law school is far different from admission to the Bar**. As the *Decision* has aptly discussed, **historically, textually, practicably, and legally**, there has been **no demonstrable assignment of the function to supervise and regulate legal education to the Supreme Court**.

Textual. The confusion regarding the Supreme Court's supervisory and regulatory role stems from Subsection 5(5) of Article VIII of the *Constitution* which enunciates *the power of the Supreme Court to promulgate rules concerning the admission to the practice of law*.

Admission to the practice of law, however, is **not the same as law school admission**, which is part and parcel of legal education regulation and supervision. The former presupposes the completion of a law degree and the submission of an application for the Bar examinations, among others. In terms of proximity to membership in the Bar, *admission to the practice of law* is **already far deep into the process, the outcome of legal education plus compliance with so many more criteria**.¹⁴ On the other hand, *law admission* signals **only the start of the long and arduous process of legal education**. It is therefore speculative and somehow presumptuous to consider an applicant for *law admission* as already a candidate for *admission to the practice of law*.

Clearly, Subsection 5(5) of Article VIII **cannot be the source of power of the Supreme Court** to exercise reasonable supervision and regulation of legal education and law schools as a primary and direct jurisdiction.

¹⁴ Rules of Court, Rule 138, Secs. 2, 5, 6, 7, 10, 11, 13, 14, 16, 17, 18 and 19.

Historical. The Supreme Court **has not played a primary and direct role** in regulating and supervising legal education and law schools. Legal education and law schools **have been consistently placed** for supervision and regulation under the jurisdiction of the legislature, and in turn, the country's education departments.

For instance, it was the *University of the Philippines College of Law* which pioneered the legal education curriculum in the Philippines. **On the basis of statutory authority**, the *Bureau of Private Schools* acted as supervisor of law schools and national coordinator of law deans. Thereafter, the *Bureau of Higher Education* regulated law schools. Still further later, *DECS Order No. 27-1989, series of 1989* outlined the policies and standards for legal education, qualifications, and functions of a law dean, and qualifications, compensation and conditions of employment of law faculty, formulated a law curriculum, and imposed law admission standards.

Impracticable. The Supreme Court **has no office and staff** dedicated to the task of supervising and regulating legal education and law schools. It also **has no expertise** as educators of these tertiary students. It has **no budget item** for this purpose.

Legal. Section 12 of Article VIII of the Constitution¹⁵ **prohibits members of the Supreme Court** from being designated to any agency (*which includes functions*) **performing quasi-judicial or administrative functions.** The spirit of this prohibition **precludes the Court from exercising reasonable supervision and regulation of legal education and law schools.** The **reason** is that **this task involves administrative functions** - "those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence."¹⁶

*Manila Electric Co. v. Pasay Transportation Co.*¹⁷ has emphasized that **the Supreme Court should only exercise judicial power and should not assume any duty which does not pertain to the administering of judicial functions.** In that case, a petition was filed requesting the members of the Supreme Court, sitting as a board of arbitrators, to fix the terms and the compensation to be paid to Manila Electric Company for the use of right of way. The Court held that it would be improper and illegal for the members of the Supreme Court, sitting as a board of arbitrators, whose decision shall be final, to act on the petition of Manila Electric Company. The Court explained:

¹⁵ The provision reads: "The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions."

¹⁶ In Re: Designation of Judge Manzano as Member of the Ilocos Norte Provincial Committee on Justice, 248 Phil. 487 (1988).

¹⁷ 57 Phil 600 (1932).

We run counter to this dilemma. Either the members of the Supreme Court, sitting as a board of arbitrators, exercise judicial functions, or as members of the Supreme Court, sitting as a board of arbitrators, **exercise administrative or quasi judicial functions.** The first case would appear not to fall within the jurisdiction granted the Supreme Court. Even conceding that it does, it would presuppose the right to bring the matter in dispute before the courts, for any other construction would tend to oust the courts of jurisdiction and render the award a nullity. But if this be the proper construction, **we would then have the anomaly of a decision by the members of the Supreme Court, sitting as a board of arbitrators, taken therefrom to the courts and eventually coming before the Supreme Court, where the Supreme Court would review the decision of its members acting as arbitrators.** Or in the second case, **if the functions performed by the members of the Supreme Court, sitting as a board of arbitrators, be considered as administrative or quasi judicial in nature, that would result in the performance of duties which the members of the Supreme Court could not lawfully take it upon themselves to perform.** The present petition also furnishes an apt illustration of another anomaly, for we find the Supreme Court as a court asked to determine if the members of the court may be constituted a board of arbitrators, which is not a court at all.

The Supreme Court of the Philippine Islands represents one of the three divisions of power in our government. **It is judicial power and judicial power only which is exercised by the Supreme Court. Just as the Supreme Court, as the guardian of constitutional rights, should not sanction usurpations by any other department of the government, so should it as strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act.** The Supreme Court and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administering of judicial functions. *(emphasis added)*

Imposing regulatory and supervisory functions upon the members of the Court constitutes judicial overreach by usurping and performing executive functions. In resolving the first issue, we are duty bound **not to overstep** the Court's boundaries by taking over the functions of an administrative agency. We **should abstain from** exercising any function which is not strictly judicial in character and is not clearly conferred on the Court by the Constitution.¹⁸ To stress, "the Supreme Court of the Philippines and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected with the administration of judicial functions."¹⁹

2. Do Subsection 7(e) of RA 7662 and Legal Education Board Memorandum Order No. 7, series of 2016 (LEBMO No. 7) fall within the constitutionally-permissible supervision and regulation?

I submit that both Subsection 7(e) of RA7662 and LEBMO No. 7, series of 2016, as a minimum standard for admission to a law school, fall within the

¹⁸ Manila Electric Co. v. Pasay Transportation Co., *Id.*

¹⁹ Noblejas v. Teehankee, 131 Phil. 931 (1968).

constitutionally-permissible reasonable supervision and regulation by the State over all educational institutions.

Subsection 7(e) of RA 7662 states “[f]or the purpose of achieving the objectives of this Act, the Board shall have the following powers and functions... (e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members...”

On the other hand, LEBMO No. 7 imposes as an admission requirement to a law school *passing (defined as obtaining a 55% cut-off score²⁰)* the “one-day aptitude test that can measure the academic potential of the examinee to pursue the study of law [by testing] communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning.”²¹ This one-day test is the Philippine Law School Admission Test (PhiLSAT).

PhiLSAT is *offered at least once a year,²² recently, twice a year, and an applicant can take PhiLSAT as many times as one would want if unsuccessful in the attempt.²³ A law school may prescribe admission requirements, but these **must be in addition to passing the PhiLSAT.**²⁴*

There is **no doubt** that Subsection 7(e) of RA7662 and LEBMO No. 7 are measures to regulate and supervise law schools. The issue: are these measures *reasonable*?

I appreciate the *Decision's* ruling that the State can conduct the PhiLSAT. But I do not agree with its ruling that passing the PhiLSAT **cannot** be a minimum requirement for admission to a law school. ***This is a ruling that takes with its left hand, what it gives with the right.*** After stating that PhiLSAT is *within the State's reasonable supervisory and regulatory power* to design and provide or conduct as a minimum standard for admission to a law school, the *Decision* then *disempowers* the State of such power and authority, **when it gave discretion to the law schools to ignore PhiLSAT completely.**

The *Decision* **accepts** that PhiLSAT is a minimum standard for law school admission and is therefore **valid** under the State's power to regulate and supervise education in a reasonable manner. Since PhiLSAT is valid, though it may infringe a portion of a law school's academic freedom, then it cannot be set aside. It is a **contradiction in terms** to say that PhiLSAT is a valid regulation but that it can be ignored.

Reasonableness is the **standard endorsed by the Constitution.** **Reasonableness** requires **deference.** It is the *stark opposite* of the search for *the correct measure* of regulation and supervision, which means there **can only be**

²⁰ Nos. 7 and 9, LEBMO No. 7.

²¹ No. 2, LEBMO No. 7.

²² No. 5, LEBMO No. 7.

²³ No. 3, LEBMO No. 7.

²⁴ No. 11, LEBMO No. 7.

one proper means of regulating and supervising educational institutions. Where the power, however, refers to the exercise of *reasonable* regulation or supervision, a reviewing court **cannot substitute** its own appreciation of the appropriate solution; rather it **must determine** if the **outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.**²⁵

Where the standard is **reasonableness**, there **could be more than one solution, so long as each of them is reasonable**. If the process and the solution fit comfortably with the principles of **justification** (*i.e., existence of a rational basis for the action*), **transparency**, and **intelligibility** (*i.e., the adequacy of the explanation of that rational basis*), it is **not open** to a reviewing court to **substitute** its own view of the **preferable solution**.

Conversely, where a regulation or supervision is determined to be **unreasonable**, it means that while there **could have been many appropriate measures** to regulate or supervise, the **particular regulation or supervision** which was adopted is **not reasonable**.

The **existence of justification** or whether there exists a *rational basis* to support the regulation, lies at the core of the definition of **reasonableness**. The **test of justification** is a **test of proportionality**.²⁶ Accordingly:

First, the **objective of the regulation** must be **pressing and substantial** in order to **justify a limit on a right**. This is a threshold requirement, which is analyzed without *yet* considering the scope of the infringement made by the regulation, the means employed, or the effects of the measure. The integrity of the justification analysis requires that the **objective of the regulation be properly stated**. The **relevant objective is the very objective of the infringing measure, not the objective of the broader provision upon which the regulation hinges**.

²⁵ Manila Memorial Park Inc. v. Secretary of the Department of Social Welfare and Development, G.R. No. 175356. December 3, 2013: "**Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it. On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity** absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. **Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales** due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, **Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain** because of sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. **As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive.** (*emphasis added*).

²⁶ Ichong v. Hernandez, 101 Phil 1155 (1957).

Second, the **means** by which the objective is furthered **must be proportionate**. The **proportionality inquiry** comprises **three (3) components**: (i) **rational connection to the objective**, (ii) **minimal impairment of the right**, and (iii) **proportionality between the effects of the measure (a balancing of its salutary and deleterious effects) and the stated objective of the regulation**. The proportionality inquiry is both normative and contextual, and requires that a court balances the interests of society with the interests of individuals and groups.

The **question at the first step** of the proportionality inquiry is **whether the measure** that has been adopted **is rationally connected to this objective**. This can be proved by **evidence of the harm** that the regulation is meant to address. In cases where such a causal connection is not scientifically measurable, **the rational connection can be made out on the basis of reason or logic**.

The **second component** of the **proportionality test** requires evidence that **the regulation at issue impairs the right as little as reasonably possible**. This can be shown by what the regulation seeks to achieve, what the effects of the regulation could be (*i.e., if they are overinclusive or underinclusive*) or how the regulation is tailored to respond to a specific problem.

At the **final stage** of the **proportionality analysis**, it must be asked **whether there is proportionality between the overall effects of the infringing regulation and the objective**. This involves **weighing the salutary effects of the objectives and the deleterious effects of the regulation**. Are the benefits of the impugned regulation illusory and speculative? Or are these benefits real? Is it clear how the objectives are enhanced by the regulation? Are the deleterious effects on affected rights holders serious? What are these deleterious effects? What is the harm inflicted on these rights holders?

Let me deal first with Subsection 7(e) of RA 7662.

Existence of Justification. Subsection 7(e) of RA 7662 states:

(e) to prescribe minimum standards for law admission and minimum qualifications and compensation of faculty members....

The **State objectives** in the enactment of Subsection 7(e) of RA 7662 are found in Sections 2 and 3 of the same statute:

Section 2. Declaration of Policies. - It is hereby declared the policy of the State to **uplift the standards of legal education** in order to **prepare law students for advocacy, counselling, problem-solving, and decision-making, to infuse in them the ethics of the legal profession; to impress on them the importance, nobility and dignity of the legal profession as an equal and indispensable partner of the Bench in the administration of justice and to develop social competence.**

Towards this end, the State shall undertake appropriate reforms in the legal education system, **require proper selection of law students**, maintain quality among law schools, and require legal apprenticeship and continuing legal education.

Section 3. General and Specific Objective of Legal Education. - (a) Legal education in the Philippines is geared to attain the following objectives:

- (1) **to prepare students for the practice of law;**
- (2) **to increase awareness among members of the legal profession of the needs of the poor, deprived and oppressed sectors of society;**
- (3) **to train persons for leadership;**
- (4) **to contribute towards the promotion and advancement of justice and the improvement of its administration, the legal system and legal institutions** in the light of the historical and contemporary development of law in the Philippines and in other countries.

(b) Legal education shall aim to accomplish the following specific objectives:

- (1) **to impart among law students a broad knowledge of law and its various fields and of legal institutions;**
- (2) **to enhance their legal research abilities** to enable them to analyze, articulate and apply the law effectively, as well as to allow them to have a holistic approach to legal problems and issues;
- (3) **to prepare law students for advocacy, counselling, problem-solving and decision-making, and to develop their ability to deal with recognized legal problems of the present and the future;**
- (4) **to develop competence in any field of law** as is necessary for gainful employment or sufficient as a foundation for future training beyond the basic professional degree, and **to develop in them the desire and capacity for continuing study and self-improvement;**
- (5) **to inculcate in them the ethics and responsibilities of the legal profession;** and
- (6) **to produce lawyers who conscientiously pursue the lofty goals of their profession and to fully adhere to its ethical norms.** *(emphasis added)*

The **objectives of Subsection 7(e) of RA 7662 are pressing and substantial.** This is because **they arise from, or at least relate to,** the objective of achieving **quality of education (including of course legal education)**, which the *Constitution* has seen proper to *elevate* as a **normative obligation.**

The foregoing objectives **justify** a limitation on a citizen's right to select a profession and course of study because they fall under the **express limit** to this right, "*subject to fair, reasonable, and equitable admission and academic requirements.*" As well, the **overarching power of the State** to exercise reasonable supervision and regulation of all educational institutions justifies this qualification. The objectives also **justify a limitation on the academic freedom** of every law school as an institution of higher learning because **quality legal education is a constitutional obligation** of the State to **protect and promote.**

In real terms, **why would we not want law students** *who have the basic abilities to communicate clearly and concisely, analyze fact situations and the legal rules that apply to them, and understand the texts assigned to them for reading and discussion?* Why should we be *content* with *just* legal education when the *Constitution* no less and our practical wisdom demand that we *conjoin education with quality?*

As the assailed measures prescribe **mere minimum standards for law admission and minimum qualifications and compensation of faculty members**, Subsection 7(e) of RA7662 and LEBMO No. 7 are **proportionate** to the foregoing **objectives**.

Minimum law admission and minimum faculty competence and compensation requirements are **rationally** connected to **quality** legal education and **to each of the objectives** mentioned in sections 2 and 3 above-quoted. This **rational connection** is *intuitive, logical, and common-sensical*. **Prescribing these minimum standards** can lead to and accomplish the **objectives** of Subsection 7(e) as they favorably affect the **quality of students** that a law school admits as well as the **quality of law faculty** who in turn **mentors** the students whose aptitude for law studies has been tested. In the words of Professor Bernas, paraphrasing the Constitutional Commission:

.... the **duty of providing quality education entails the duty of screening those who seek education**. Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression**.... However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards.**²⁷

Subsection 7(e) **impairs the right of a citizen to select** a profession and a course of study *and* the **academic freedom** of every law school only **as little as reasonably possible**. For Subsection 7(e) prescribes only **minimum** standards of law admission and faculty competence and compensation.

This provision is **not overinclusive** or **underinclusive** as the **minimum standards do not impact** on aspects of a citizen's right to select a profession or course of study *or* the academic freedom of a law school **other than** the *admission of students into a law degree program of a law school*.

Subsection 7(e) is tailor-fit to the objective of **fostering law student success** in law school and **ensuring competent law faculty** to teach these students.

It is **reasonable to assume** that *every self-respecting law school* would see Subsection 7(e)'s requirements of *minimum standards for law admission and faculty compensation and competence* as **necessary ingredients** of

²⁷ Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

quality legal education, and that these minimum requisites would **coincide** with each law school's good practices in administering legal education.

At the **final stage** of the **proportionality analysis**, there is **proportionality between the overall salutary effects of the objectives of Subsection 7(e) and the deleterious impact of prescribing minimum standards for admission of students in law schools and minimum qualifications and compensation for the law faculty.**

The **benefits** obtained from **achieving the objectives** are obvious. *No one can argue* against students who are **academically competent** and have a **personality** ready for the rigors of legal education. It will spare both the law student and the law school of the waste of time, expense, and trauma of not being able to fit in and succeed. **Minimum** standards for law admission and law faculty competence and compensation are base-line **predictors of success in law school and quality of the legal education** it offers. Professor Bernas and the Constitutional Commission, as quoted above, shared this observation.²⁸

On the other hand, the **deleterious effect** of the **imposition of such minimum standards** is speculative.

In the first place, **petitioners offered no evidence** of the **oppressive or discriminatory nature** and **other evils** that could be attributed to the prescription of such minimum standards. In fact, the converse is true – **easily more than half** of the applicants passed the first versions of PhiLSAT.

YEAR, MONTH	PASSING RATE
2017, April	81.43%
2017, September	57.76%
2018, April	61.39%
2018, September	56.78%
2019, April	Unreleased ²⁹

Accepting that **quality** legal education is a pressing and substantial objective, the **screening of law students** and the **provision of minimum levels of competency and compensation standards for law faculty** are logical necessary steps towards achieving this objective.

Existence of Transparency and Intelligibility. It cannot be denied that Subsection 7(e) of RA 7662 was **adopted by Congress after deliberations.** These **deliberations articulate the reasons** behind the enactment of Subsection 7(e). The policy declaration and the list of objectives mentioned in RA 7662 also **adequately explain** the basis for Subsection 7(e).

²⁸ Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

²⁹The list of names of passers for the April 2019 PhiLSAT exam has been released. However, the passing rate has not been released by either the official PhiLSAT website or any other media outlet, article, or post.

Action as being within a range of possible, acceptable, and defensible outcomes. The Congress enacted Subsection 7 (e) as one of several measures to achieve the constitutional objective of **quality education**, which includes **quality legal education**. **Prescribing minimum enforceable standards** upon the admission of law students and the compensation and qualifications of law faculty **is one of these courses of action**. Actually, it is *difficult to imagine how the narrative of quality legal education could not lead to the imposition of standards referred to in Subsection 7(e)*. This **intuitive justification** for these measures was **not lost on the Constitutional Commission** who believed that the duty to provide and promote **quality education** demanded the screening of students for base-line competencies:

[T]he duty of providing quality education entails the duty of screening those who seek education. Necessarily too, the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression.... However, as already seen, there is also recognition of the right of school to impose admission standards. The state itself may also set admission standards.³⁰

I now apply the proportionality test to determine the reasonableness of LEBMO No. 7.

LEBMO No. 7, series of 2016, **governs** not only the **mechanics** but also the *regulatory and supervisory aspects* of PhiLSAT.

Like Subsection 7(e) of RA 7662, the **general objective of PhiLSAT is to improve the quality of legal education**. LEBMO No. 7's **particular objective is to measure the academic potential of an examinee to pursue the study of law**.

The **means** to these objectives is *PhiLSAT's one-day testing of communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning*.

To enforce compliance, **admission to a law degree program and a law school** requires or is dependent upon **obtaining the cut-off score of 55% correct answers in PhiLSAT**.

As stated, PhiLSAT is *offered at least once a year*,³¹ recently, twice a year, and an applicant can take PhiLSAT *as many times as one would want if unsuccessful in any of the attempts*.³²

³⁰ Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

³¹ No. 5, LEBMO No. 7.

³² No. 3, LEBMO No. 7.

There is **also a penalty for non-compliance** by a law school, that is, if it admits students flunking the PhiLSAT.³³

Law schools **may impose other admission requirements** such as but not limited to a **score higher than 55%** from an examinee.

I have already established above that **protecting and promoting quality legal education (including legal education) as an objective is pressing and substantial.**

Part and parcel of the objective of **quality** legal education is the **objective of being able to screen students** for the purpose of ascertaining their academic competencies and personal readiness to pursue legal education. As quoted above:

[T]he **duty of providing quality education entails the duty of screening those who seek education.** Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression....** However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards.**³⁴

PhiLSAT as devised is **proportionate to PhiLSAT's objectives.** The following proportionality inquiry proves this conclusion.

PhiLSAT is **rationaly connected to quality** legal education and the **measurement of one's academic potential** to pursue the study of law. To repeat, "the **duty of providing quality education entails the duty of screening those who seek education.** Necessarily too, **the talent that is required in order to merit quality education goes up as one goes higher in the educational ladder of progression....** However, as already seen, there is also recognition of the right of school to impose admission standards. **The state itself may also set admission standards.**"³⁵

PhiLSAT **helps determine** if *an examinee has the basic skills to be able to complete successfully the law school coursework.*

It is true that PhiLSAT **limits** both the *right of a citizen to select a profession and a course of study* and the *academic freedom of every institution of higher learning.* But it does so only **as little as reasonably possible.**

In the first place, the **right of a citizen to select a profession and a course of study** has an **internal limitation.** The Constitution **expressly limits this right subject to fair, reasonable, and equitable admission and academic requirements.** This **right** therefore is **not absolute,** and **PhiLSAT** as an admission requirement **falls within the limitation to this right.**

³³ No. 15, LEBMO No. 7.

³⁴ Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

³⁵ Joaquin G. Bernas, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003) at 1228, 1256, citing IV RECORD 258-260, 414-418.

In fact, as it **measures only the basic competencies necessary to survive the coursework** in a law school, PhiLSAT enhances a law school applicant's sense of dignity and self-worth as it prevents potential unmet expectations and wastage of time, resources and efforts.

If an applicant **does not obtain a score of at least 55% in this test** involving the **most basic of skills required** in a law school, despite the unlimited chances to write PhiLSAT, then **the applicant's aptitude must lie somewhere else**.

Secondly, it is **inconceivable** to think of a university program without any admission criteria whatsoever. *A self-respecting law school – a law school that abhors being referred to as a diploma mill – subscribes to some means to measure the academic and personal readiness of its students, and as a badge of honor and pride, to distinguish its students from the rest.* And, if a law school can impose standards, the **State can also do in accordance with its powers and duties under the Constitution**.

The **impact of PhiLSAT** on the *right of law schools as an institution of higher learning to select their respective students* **must be reconciled with the State's power to protect and promote quality education and to exercise reasonable supervision and regulation of all educational institutions**.

Verily, the **impact of PhiLSAT on academic freedom** is for sure, **minimal**.

The analysis takes us first to **Nos. 1 and 2 of LEBMO No. 7**, which state the "**Policy and Rationale**" of the "administration of a nationwide uniform law school admission test for applicants to the basic law courses in all law schools in the country." Thus:

1. Policy and Rationale - **To improve the quality of legal education**, all those seeking admission to the basic law courses leading to either a Bachelor of Laws or Juris Doctor degree shall be **required to take** the Philippine Law School Admission Test (PhiLSAT), a nationwide uniform admission test to be administered under the control and supervision of the [Legal Education Board].

2. Test Design. – The PhiLSAT shall be designed as a **one-day aptitude test that can measure the academic potential of the examinee to pursue the study of law**. It shall **test communications and language proficiency, critical thinking skills, and verbal and quantitative reasoning**.
(emphasis added)

No. 1 of LEBMO No. 7 states the **animating purpose, to improve the quality of legal education**, for requiring the **taking** of the **PhiLSAT** by applicants for admission to a law school.

No. 2 of LEBMO No. 7 provides the mechanism for achieving No.1.

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Nos. 7 and 9 of LEBMO No. 7 further clarify how PhiLSAT would be used to measure the academic potential of an applicant to a law school:

7. Passing Score - The **cut off or passing score** for the PhiLSAT shall be **FIFTY FIVE PERCENT (55%) correct answers**, or such percentile score as may be prescribed by the LEB.

8. Test Results - Every examinee who passed the PhiLSAT shall be issued by the testing administrator a CERTIFICATE OF LEGIBILITY (COE), which shall contain the examinee's test score/rating and general average to the bachelor's degree completed. Examinees who fail to meet the cut-off or passing score shall be issued a Certificate of Grade containing his/her test score/rating. The COE shall be valid for two (2) years and shall be submitted to the admitting law school by the applicant.

9. Admission Requirement - All college graduates or graduating students **applying for admission to the basic law course** shall be **required to pass the PhiLSAT as a requirement for admission to any law school in the Philippines**. Upon the effectivity of this memorandum order, no applicant shall be admitted for enrollment as a first year student in the basic law courses leading to a degree of either Bachelor of Laws or Juris Doctor unless he/she has passed the PhiLSAT taken within 2 years before the start of studies for the basic law course and presents a valid COE as proof thereof. *(emphasis added)*

This stage of the analysis requires us to refer to **Nos. 10 and 11 of LEBMO No. 7:**

10. Exemption. - Honor graduates granted professional civil service professional eligibility pursuant to Presidential Decree No. 907 who are enrolling within two (2) years from their college graduation are exempted from taking and passing the PhiLSAT for purposes of admission to the basic law course.

11. Institutional Admission Requirements. - The PhiLSAT shall be without prejudice to the right of a law school in the exercise of its academic freedom to prescribe or impose **additional** requirements for admission, **such as but not limited to:**

a. A score in the PhiLSAT higher than the cut-off or passing score set by the LEB;

b. Additional or supplemental admission tests to measure the competencies and/or personality of the applicant; and

c. Personal interview of the applicant *(emphasis added)*

No. 11 of LEBMO No. 7 itself expressly recognizes the right of law schools to impose screening measures in addition to the taking or writing of PhiLSAT, such as but not limited to a PhiLSAT score of higher than 55%, additional admission tests, and personal interview of the applicant.

The law school **may also opt to rely solely on the result of the PhiLSAT** in accepting students.

The **additional requirements** that a law school may impose would have to be of the same kind as a PhiLSAT score of higher than 55%, additional admission tests, or a personal interview of the applicant - the *defining characteristic* of the specie in the enumeration is the *ability to measure the competencies and/or personality of the applicant relevant to and indicative of an applicant's success in law school* - an applicant's *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning, and personality fit for success in law school*. So any screening module that makes such measurements could be imposed as an **additional measure**.

On the other hand, No. 10 of LEBMO No. 7 provides for an exemption from both writing and passing PhiLSAT. This, however, **does not exempt** an applicant from the **other admission requirements of a law school** if one has been imposed.

Thus, the **scheme** under LEBMO No. 7 can be summarized as follows:

1. **Objective:** to measure the **academic potential** of an applicant to a law school to pursue a law degree **in terms of baseline competencies** in *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning*.
2. **Means:** (a) **writing** the one-day aptitude test on communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning, and **passing** this test with a score of 55% of correct answers; (b) **non-admission** of applicants who score less than 55% in PhiLSAT and **imposition of administrative fine** against law schools admitting law students who did not write or pass PhiLSAT; and (c) **law school admission requirements in addition** to writing and passing PhiLSAT, if any.
3. **Exemption:** as stated in No. 10 of LEBMO No. 7.

PhiLSAT as an admission requirement is **reasonable** because it is **minimally impairing of academic freedom**.

The **scope of the area** measured by PhiLSAT is **limited to academic potential** - *communications or language proficiency, critical thinking skills, and verbal and quantitative reasoning* - and **does not extend to an applicant's personality or emotional quotient**.

PhiLSAT **competencies** are the **most basic of skills** needed to survive as and **gain something from being**, a law student. There is **nothing fancy, whimsical or arbitrary** about these competencies. PhiLSAT **does not intrude** into a law school's decision to prescribe **other admission requirements** covering other sets of skills.

Further, PhiLSAT's **passing score** is *minimal* - 55%. If an applicant cannot even obtain a score of at least 55% in this test involving the most

basic of skills required in a law school, then the applicant's aptitude must lie somewhere else.

A snapshot or sample of PhiLSAT questions bears this out:

TEST A. COMMUNICATION AND LANGUAGE PROFICIENCY

Section 1. Identifying Sentence Errors

Directions: Read each sentence carefully but quickly, paying attention to the underlined word or phrase. Each sentence contains either a single error or no error at all. If the sentence contains an error, select the underlined word or phrase that must be changed to make the sentence correct. If the sentence is correct, select option D.

In choosing your answers, follow the requirements of standard written English.

1. I was paying my bill in a restaurant when my childhood best friend suddenly come to
A B
have a short chitchat with me. No error
C D
2. Marco and Alea had been close friends for more than a decade, but people who knew them
A
thought that her relationship was something beyond friendship. No error
B C D
3. The manager said that John needed to change his ways because he often came late,
A
failed to complete his tasks on time, and his enthusiasm was not evident. No error
B C D
4. Most of my cousins wanted to be a teacher, except Santino who wanted to be an engineer.
A B C
No error
D
5. The supervisor and me would always discuss if we need to check the items so that
A B
we could avoid unexpected circumstances. No error
C D
6. We believe that it is you who has committed a grave mistake for which a sincere apology
A B C
should be extended. No error
D

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7. While the Middle Ages produced many great writers, Dante Alighieri, the iconic author of the Divine Comedy, is more celebrated than any writer from that period. No error
A B C D
8. At the forum, the candidate said that he/she did not have nothing to offer but a promise to produce more employment opportunities in the country. No error
A B C D
9. Matthew's potential to be an eloquent speaker was evident in his speech which won the admiration of not a few of his batchmates. No error
A B C D
10. A mother who knows the original value of an item can't help questioning the price of the same product when advertised on television. No error
A B C D
11. Some students today readily post their opinions and statuses on facebook, twitter, or instagram: but others, for diverse reasons, choose to post using viber. No error
A B C D
12. The voters think Lovely would have won the election if she hasn't become haughty. No error
A B C D
13. While attending the University, I used to have three roommates – one was an engineer, the second was one who wrote for the local dailies, and the third was a teacher. No error
A B C D
14. Two days before my father's death, he complained that he could not hardly breathe, so we had to take him to the hospital. No error
A B C D

Section 2. Sentence Completion

Directions: Choose the word or phrase that, when inserted in the sentence, best fits the meaning of the sentence as a whole.

23. Cecilia's mother _____ from Switzerland 30 years ago, and she found a haven in the Philippines.
- (A) emigrated
 - (B) immigrated
 - (C) has emigrated
 - (D) has immigrated
24. After seeing the movie, Andrea took her eyeglasses off and put them _____ her lap.
- (A) to
 - (B) on
 - (C) in
 - (D) at
25. Contemporary Manila, with its images of urbanization and poverty, is _____ from Old Manila, once romantically described as the Queen City of the Pacific.
- (A) a far cry
 - (B) a grain of salt
 - (C) the last straw
 - (D) the wrong tree
26. _____ the presenter had rehearsed the part she thought the most difficult, the participants did not appreciate her effort and went home unhappy.
- (A) Since
 - (B) Because
 - (C) If only
 - (D) Even though
27. Yosef presented to the team _____ than what the company purchased three years ago.
- (A) a powerfuller device
 - (B) the powerfuller device
 - (C) a more powerful device
 - (D) the more powerful device

28. She was answering her assignment on historical background of a short story _____ she discovered she was in the wrong page.
- (A) after
 - (B) but
 - (C) and
 - (D) when
29. After a tight and exhausting schedule yesterday, Ramon _____ in bed since early this morning.
- (A) lay
 - (B) lying
 - (C) has lain
 - (D) had lied
30. The passengers are informed that they have the next four hours _____ leisure, and can go wherever they wish.
- (A) at
 - (B) by
 - (C) on
 - (D) as
31. Because the problem is rather insoluble, even those who initially wanted to take it up have now dropped it like a _____.
- (A) penny for your thoughts
 - (B) piece of cake
 - (C) spilt milk
 - (D) hot potato
32. We are expected to _____ our outputs on or before Thursday next week.
- (A) turn to
 - (B) turn off
 - (C) turn in
 - (D) turn into
33. She was (the) _____ among the researchers in this institution, despite her formidable credentials.
- (A) humbler
 - (B) humblest
 - (C) more humble
 - (D) most humble

LEBMO No. 7 also **respects the academic freedom of law schools to impose additional admission measures** as they see fit. It is **only this minimal requirement** of *writing and passing PhiLSAT at the very reasonable score of 55% on multiple choice questions* that reflects an applicant's capacity for reading, writing, computing and analyzing individual questions and fact scenarios, **which the State demands of every law school to factor in as an admission requirement.**

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More, a law school **may admit as students** those *who have not written and passed PhiLSAT but have obtained professional civil service eligibility within two years from the date of their graduation in college.*

In addition, a law school *desirous of proving the propriety of another exemption from taking and passing PhiLSAT* can very well **petition the Legal Education Board** for this purpose.

To repeat, **While LEBMO No. 7 impacts on a law school's academic freedom, the impairment is minimal and based on rational considerations.**

As regards individual applicants to law school, the **demand and effect** of PhiLSAT upon them **thoughtfully account for their dignity** as individuals. This is because **PhiLSAT relieves an applicant** of the *potential pain and agony of unmet expectations and wastage of time, resources and efforts.* Unsuccessful PhiLSAT examinees may have their aptitude in something else.

In any event, the **scheme** under LEBMO No. 7 is also very **accommodating** of applicants who fail the test. PhiLSAT is now **offered twice a year**, and an applicant **can write it as many times** as he or she is willing to take.

To stress anew, PhiLSAT as envisioned in LEBMO No. 7 **minimally impairs** the *limited right of a citizen to select a profession or a course of study and a law school's academic freedom*, is **consistent with** the *State's power of reasonable regulation and supervision of all educational institutions*, and is therefore **reasonable**.

I conclude, therefore, that there is **proportionality** between the **overall salutary effects of the objectives of PhiLSAT** and the **deleterious effect of passing PhiLSAT** as an admission requirement.

As in the case for Subsection 7(e), the **benefits obtained from achieving the objectives** are obvious – *no one can argue against students who have been measured to have the necessary skills in communications and language, critical thinking, and verbal and quantitative reasoning.* On the other hand, the **deleterious effect of the imposition of PhiLSAT** to stress anew is **speculative**. There is in fact **no evidence of the evils** that could be attributed to this minimal admission requirement. It **has not been shown** that *PhiLSAT questions are arbitrary, the test results are oppressive to the examinees (in fact, as shown above, easily more than half of the applicants have passed the first versions of PhiLSAT), or the scope of PhiLSAT has occupied the entire field of admission standards and has left nothing for law schools to prescribe.* These allegations **have not been proven** to be true.

Existence of Transparency and Intelligibility. PhiLSAT has had a **long history of validation and re-validation** that both the *Decision* and the

Memorandum of the Office of the Solicitor General have been able to recount succinctly. The **bases for which PhiLSAT was conceived and required** for applicants to law school have thus been **made transparent and intelligible**. One can therefore concede that **PhiLSAT was not the result** of an *arbitrary and capricious exercise of wisdom* by its authors.

Action as being within a range of possible, acceptable and defensible outcomes. It is open to the Legal Education Board to impose PhiLSAT as one of several measures to achieve the constitutional objective of **quality education**. In fact, a **mandatory law school admission test was one of the reform agenda to improve the quality of the instruction** given by law schools as recommended by the Court's *Special Study group on Bar Examination Reforms*, and later, by the *Committee on Legal Education and Bar Matters* and the Court's *Bar Matter No. 1161*.

To reiterate, **both** Subsection 7(e) of RA 7662 and LEBMO Order No. 7 on PhiLSAT are **reasonable** forms of State regulation and supervision of law schools.

I also reflect on some of the *Decision's* ratio.

I refer to the **presumption that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law**. In a word, Subsection 7(e) and LEBMO No. 7 are **presumed to be reasonable**.

As **reasonableness is a fact-heavy determination, absent evidence of unreasonableness from petitioners**, it would be **speculative to jump to the conclusion that *PhiLSAT is in fact unreasonable***. Petitioners need to prove facts to disprove the presumption.³⁶

I agree that the subject of PhiLSAT is to improve the quality of legal education, which falls squarely within the scope of police power.

³⁶ *Emita-Malate Motel and Hotel Operators Association Inc. v. City Mayor of Manila*, G.R. No. L-24693, July 31, 1967: "**Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance.** As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity . . . The action of the elected representatives of the people cannot be lightly set aside...." It admits of no doubt therefore that there being a presumption of validity, the necessity for evidence to rebut it is unavoidable, unless the statute or ordinance is void on its face, which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus: 'The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.' **No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation of facts, the presumption of validity must prevail and the judgment against the ordinance set aside.**" (emphasis added)

But I do not agree that PhiLSAT is irrelevant to such purpose and that it is further arbitrary and oppressive. In the first place, I do not share the view that there is an apparent discord between the purpose of improving legal education and prescribing a qualifying and restrictive examination because the design of the PhiLSAT itself appears to be disconnected with the aptitude for law that it seeks to measure. The discussions above should prove that PhiLSAT is **not only relevant** to the objectives set out by the *Constitution* and RA 7662 **but is also proportionate** as a means to these objectives.

Notably, **petitioners presented no evidence on these factual issues.** Hence, it cannot be said that the ratio in the *Decision* is based on facts and circumstances. There is not even a discussion in the *Decision* on the structure and contents of the PhiLSAT tests that have been administered thus far. To be sure, the **absence of an evidentiary record makes the *Decision's* conclusions at best speculative.**

An evidentiary record is important because the *Decision* itself recognizes the presumption that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. Yet, although petitioners adduced no contrary evidence, the *Decision* goes on to conclude that the presumption of validity has been rebutted.

If there is any **evidence on record here, it is to the effect that LEBMO No. 7's PhiLSAT actually measures a potential law student's aptitude for law.** As the *Decision* itself acknowledges, the PhiLSAT is essentially an aptitude test measuring the examinee's communications and language proficiency, critical thinking, verbal and quantitative reasoning, and that it was designed to measure the academic potential of the examinee to pursue the study of law.

There is **no denying** that the **ability to read a large volume of material in English and write, think and argue in English** are **important indicators of one's ability to complete a law degree.** While PhiLSAT is **not an exact predictor of success in law school,** it is its **undeniable** role in **measuring a student's strong potentials for success** that must be taken into account.

Further, as the *Decision* itself notes, the Court, through *Resolution* dated September 4, 2001, **approved the recommendations** of our own Committee on Legal Education and Bar Matters, including "d) to prescribe minimum standards for admission to law schools **including a system of law aptitude examination[.]**" The Court *could not have recommended a measure* that would have been an unreasonable imposition on potential students of law or on academic freedom.

Some law schools are already imposing strict admission standards. That is true. **But** this fact does not automatically render PhiLSAT irrelevant or unreasonable.

PhiLSAT would not have come into being had there been no legitimate concerns about improving the state of our legal education. The top law schools are precisely top law schools because of strict admission standards they have in place.

These law schools, however, are **not the only law schools** in the Philippines. They do **not have the monopoly of law students** in the country. In fact, **they are only a minority**. There are so many more law schools and law students out there, whose state of competencies LEBMO No. 7 seeks to capture.

It is also a contradiction in terms that we *laud the best admission standards and practices of some law schools*, yet **reject the passing of PhiLSAT as a requirement for law school admission**. **Their standards and practices indubitably prove a reasonable connection between the regulation of admissions to legal education and in ensuring that those allowed to study law and eventually allowed to practice law are competent, knowledgeable or morally upright.**

But these law schools are not the reason why we are debating about how to improve legal education standards. If **every** law school has exercised responsibly their role in ensuring that admission standards and practices are up to par with quality legal education, we would not be talking about requiring PhiLSAT anymore.

The indubitable social and legislative facts prove that a screening mechanism like PhiLSAT is necessary. If we are again going the way of making such screening mechanism an optional device for law school admission, as the *Decision* does, then **the Court is not just overhauling the undeniable social and legislative facts upon which Subsection 7(e) of RA 7662 was based, the Decision is also turning its back to the problems that have long beset our legal education.**

Common sense dictates that the absence of filters would clog sooner than later the pipeline of knowledge. PhiLSAT acts as that filter which removes students whose capacity, values, forbearance and aptitude may not be for the study of law. This is **true for aspiring law students** (there must be a State-imposed method to determine an entry level student's aptitude, capacity, forbearance and values for law study) as **it is true for those who want to be appointed to the Bench** (where the battery of tests administered by the JBC presumably makes not only for a fair selection process but also for a pool of competent aspirants).

I do not agree that the imposition of the PhiLSAT cut off score was made without the benefit of a prior scientific study, thereby making it arbitrary. To my mind, this is a **reversal of the onus** of who proves what. Since the *Decision admits the existence of the presumption* that the **legislature intended to enact a valid, sensible and just law** and one which **operates no**

further than may be necessary to effectuate the specific purpose of the law, it is up to the petitioners to establish that Congress - both the House and the Senate - and the Legal Education Board acted arbitrarily. **Petitioners did not adduce evidence to this effect.**

On the contrary, the other Branches of Government have tests validating PhiLSAT. It is **not for these Branches of Government to explain the relevance and validity** of these studies if, on their face, these studies appear to be relevant. **The actions of these Branches of Government are entitled to deference** not only because of the presumption above-mentioned but also due to their status as agents of sovereignty. Again, **the burden is on petitioners to prove by evidence their claim** that PhiLSAT is arbitrary for having been imposed without prior scientific study, or that petitioners' own studies disprove the presumption.

I also do not think that it is arbitrary and harsh to impose penalties upon law schools that do not make PhiLSAT a requirement for law school admission.

Again, **petitioners have not adduced evidence** that *unduly oppressiveness* will be the case. In any event, **there is nothing oppressive about penalizing an entity that does not comply with regulations.** This set-up of regulatory and even criminal penalties **has been done so often** to deter violations and enforce obedience. This is especially true *where the regulation involved is intended towards a socially positive and uplifting goal, but compliance is not assured.*

In addition, **whether to attach a penalty to a measure is a policy and not a legal decision.** The decision to impose a penalty **speaks to the utility and wisdom or desirability** of the manner by which breach of the regulation is deterred, and compliance, maximized.

There is, too, further **nothing abusive about the scoring methodology** in LEBMO No. 7. It is **common among law schools that examinations are graded based on a minimum percentage of correct answers and not on a percentile score.** The **Supreme Court's Bar examinations are scored on the basis of correct and wrong answers, and passers are those who reach the minimum required scores.**

The ruling in *Tablarin*³⁷ is relevant. This case law focused on the validity of the National Medical Admissions Test (NMAT) as a valid and reasonable police power measure as an admission standard into medical schools. *Tablarin* held that NMAT is an educational regulatory tool related to one of the legitimate objectives of police power – public order, specifically, securing of the health and physical safety and wellbeing of the population. *Tablarin* also recognized that though NMAT is at the most initial and lowest rung of the requisites to attain this police power objective, NMAT is

³⁷ 236 Phil. 768, (1987).

nonetheless an essential part of the police power objective. *Tablarin* confirmed that **NMAT serves as a gate-keeping measure to weed out misfits** in the sense of those whose aptitude and inclinations are not for the field of medicine. The fact that NMAT was described by the Court as a factor in becoming better doctors (or medical practitioners) does not detract from the ruling in *Tablarin* that **NMAT is first and foremost a legitimate screening device for those wishing to be admitted to medical schools.**

Hence, **NMAT serves the same function as that of PhiLSAT.** Because PhiLSAT is the NMAT equivalent in essential respects, the ruling in *Tablarin* justifying NMAT as a legitimate police power exercise should also apply to the cases-at-bar about PhiLSAT.

PhiLSAT serves an equivalent function as the LSAT. LSAT is a standardised test designed to identify individuals who are likely to succeed in first year law school. **Unlike in PhiLSAT which is a State-sponsored measure,** all law schools in North America require applicants to take LSAT. LSAT is administered by a non-profit corporation located in the United States.

LSAT, like PhiLSAT, is a screening device for entry into the great learning of the law. The theory behind both LSAT and PhiLSAT is that **law schools seek students who have substantial promise for success in law school, and as a result, a strong likelihood of succeeding in the practice of law as shown by their preliminary aptitude for law.**

To be sure, we **cannot distance or segregate law school experience from the practice of law** because the former should ideally segue to the latter. Law schools **do not exist exclusively just to teach law students; law schools are also there to transform their students into lawyers.** It is unrealistic to say otherwise.

If law schools were to simply exist to teach *without regard to whether their students become lawyers,* **law school education would lose both its clientele and its relevance in the real world** - this is the common sensical and obvious context of the educative process. Despite the division of authority as between legal education and practice of law and the obvious difference between them, in reality, **one bridges to the other as one cannot be dissociated from the other.**

The difference between LSAT and PhiLSAT is not conceptual but operational - that is, how much weight is to be given by institutions of higher learning - the law schools - to the scores obtained by an examinee. They also differ in the scoring system - LSAT is percentile-based while PhiLSAT as now envisioned is raw score-based.

Most law schools in common law countries **have several streams** about how an applicant is to be admitted as a law student. The **most common if not the only stream** is through high LSAT scores and grade point averages.

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So it is a common goal for those aspiring to enter law schools in those countries to take LSAT and aim for high LSAT percentiles and GPAs.

Among these law schools, there may be other streams of admission – those who have achieved extensive relevant experiences abroad or in-country and those who would bring interesting diversity to the law school student population. **But the number of these students vis-à-vis the entire population of law students in a law school is miniscule.** The students admitted through these other streams **constitute a very small minority** of the entire population of law students.

The majority are still required to show competence through LSAT scores. The lower scores an applicant has, the lower the chance the applicant can get to enrol in a law school – IF THEY HAVE ANY CHANCE AT ALL.

In any event, LSAT is not anchored on a State sponsored measure. Why the countries under LSAT regimes do not require State supervision and regulation could be attributed to their perception that their law societies (the equivalent of our Integrated Bar) and law schools are mature enough to self-regulate.

If we had no concerns about law schools which have no proportionate standards to the nobility of legal education, then perhaps we can adopt as liberal a policy as the countries utilizing LSAT and having different admission streams. But obviously, our experiences are not the same as their experiences; our situation is not similar to their situations.

In any case, **PhiLSAT tries to mirror the admission practices** where LSAT is the screening device. If LSAT *can be waived in exceptional circumstances, this exceptional stream where LSAT is waived is akin*, in the case of PhiLSAT, to recall from above, **to the exemption under No. 10 of LEBMO No. 7 for honor graduates.**

PhiLSAT as embodied in LEBMO No. 7 is not objectionable for being unreasonable. Having been imposed by a law that carries the presumption of validity and reasonableness that has not been disproven by contrary evidence from petitioners' end, PhiLSAT cannot be ignored or set aside as this has been imposed by the State through an administrative regulation – LEBMO No. 7 – which finds its basis in RA 7662.

I agree with the *Decision* that the reasonable supervision and regulation clause is not a stand-alone provision but must be read in conjunction with the other constitutional provisions which include, in particular, the clause on academic freedom. I agree as well that institutions of higher learning has a wide sphere of autonomy certainly extending to the choice of students.

Yet, this sphere of autonomy is not absolute or limitless. Autonomy cannot result in arbitrary or discriminatory admission policies. If autonomy

were to have such a result, restrictive police power can curb such actuality or tendency. **Autonomy too cannot disregard the constitutional power of the State to exercise reasonable regulation and supervision of all educational institutions.** Thus, I agree with the *Decision* that affirmative police power can be legitimately exercised in the regulation and supervision of institutions of higher learning. The *Decision* aptly ruled that institutions of higher learning enjoy ample discretion to decide for itself who to admit, being part of their academic freedom, but the State, in the exercise of its reasonable supervision and regulation over education, can impose minimum regulations. ***This is what RA 7662 and LEBMO No. 7 have done.***

The **issue is not** whether the State can intervene in the admission requirements of law schools or any other institution of higher learning – **the rule of law has already said *the State can*.** The **issue is whether the degree and breadth of the intervention that the State can legally do is reasonable supervision and regulation.**

In this light, I do not agree that the PhiLSAT cut off score is a direct intrusion into the law school's essential freedom to choose *who may be admitted to study*. I maintain that PhiLSAT plays a viable and vital role in determining an entry law student's aptitude for law. The ability to read a large volume of materials in English and write in English are important indicators of the ability to complete a law degree. Again, while the PhiLSAT is not an exact predictor of success in law school, it is a factor that must be taken into account.

For the reasons I have stated, I **disagree with the *Decision*** that in mandating that only students who scored at least 55% correct answers shall be admitted to any law school, PhiLSAT usurps the right and duty of the law school to determine for itself the criteria for the admission of students and thereafter, to apply such criteria on a case to case basis. **There is a way to read reason into LEBMO Order No. 7 that is neither strained nor unwarranted.** I have shown this in the foregoing disquisition.

Another. I **disagree with the *Decision*** that the law schools are left with absolutely no discretion to choose its students in accordance with its own policies, but are dictated to surrender such discretion in favor of a State-determined pool of applicants. **This is a hyperbole that finds no basis in fact and law.** It is **highly speculative** that the **complexion of the student body and the number of students a law school admits will be different** just because PhiLSAT was put in place. There is no evidence of that in the records. In any case, *the State is also a stakeholder in our educational institutions. The State cannot lightly be disregarded when it comes to reasonable minimal regulation and supervision.*

I therefore do not concur with the ruling that the requirement of passing the PhiLSAT insofar as admission to law school is concerned should be struck down not only for being unreasonable but also for encroaching upon the law school's exercise of discretion as to who to admit in its law program.

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In practical terms, PhiLSAT is the default means by which one could become a law student. Hence, one desirous of becoming a law student would want to take and pass PhiLSAT. If he or she fails the first time, he or she can try again and again and again. Then perhaps if one still fails PhiLSAT, legal education is not for his or her aptitude. It is not of course the end of the world. It is the door that opens to other fitting opportunities for self-improvement if not self-aggrandizement.

Accordingly, I vote to affirm the constitutionality in full of Subsection 7(e) and LEBMO Order No. 7, series of 2016.

3. Are Subsections 7(g) and (h) of RA 7662 *ultra vires* for encroaching into the constitutional powers of the Supreme Court.

These provisions read:

(g) to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo with any duly accredited private or public law office or firm or legal assistance group anytime during the law course for a specific period that the Board may decide, but not to exceed a total of twelve (12) months. For this purpose, the Board shall prescribe the necessary guidelines for such accreditation and the specifications of such internship which shall include the actual work of a new member of the Bar.

(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.

We can opt to read these provisions *niggardly or reasonably*, the *first* resulting in an obvious conflict with the Supreme Court's jurisdiction over the practice or procedure before our courts and other decision-making bodies and over members of the Bar, while the *second* seeks a middle way that does not strain the wording of these provisions.³⁸ **I opt to read these provisions with respect and deference to the legislative intent not to violate the constitutional powers of the Supreme Court. This is consistent with enshrined principles of statutory construction.**

A rule of statutory construction *long cherished* by the Court is that *law should not be construed as to allow the doing of an act which is prohibited by law*, and that *a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution*.³⁹

³⁸ Uy Ha v. City Mayor of Manila, 108 Phil. 400 (1960): "A law should not be construed as to allow the doing of an act which is prohibited by law." Philippine long Distance Co. v. Collector of internal Revenue, 90 Phil. 674 (1952): "... a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution."

³⁹ Uy Ha v. City Mayor of Manila, 108 Phil. 400 (1960): "A law should not be construed as to allow the doing of an act which is prohibited by law;" Philippine long Distance Co. v. Collector of Internal Revenue, 90 Phil. 674 (1952): "... a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution."

*Each part or section of a rule should be construed in connection with every other part or section as to produce a harmonious whole.*⁴⁰

More, the "*meaning of a word or a phrase used in a statute is qualified by the purpose which induced the legislature to enact the statute. In construing a word or phrase, the court should adopt that interpretation that accords best with the manifest purpose of the statute or promotes or realizes its object.*"⁴¹

A "*statute must always be construed as a whole, and the particular meaning to be attached to any word or phrase is usually to be ascertained from the context, the nature of the subject treated and the purpose or intention of the body which enacted or framed the statute.*"⁴² In other words, the rule's purpose or context must be the controlling guide in interpreting every provision thereof.⁴³

Accordingly, I read Subsections 7(g) and (h) with the caveat that the Legal Education Board's exercise of power over these matters is neither final, direct, primary nor exclusive for the simple reason that the subject-matters of Subsections 7(g) and (h) are **no longer about promoting the quality of legal education.**

Law practice internship or articling as it is called elsewhere *already involves the practice of law. It calls for putting one's legal education to apply to real life situations. Continuing legal education covers lawyers, not law students. It is part and parcel of ensuring a lawyer's competence, not a law student's aptitude for legal education.* Clearly, **the Legal Education Board cannot decide on these matters primarily, directly, and much less, exclusively.**

Subsections 7(g) and (h) so as not to render them unconstitutional or illegal, must be read consistent with the objective of RA 7662: is to focus on enhancing the quality of legal education, and these provisions cannot be given effect beyond that objective.

Here, the Legal Education Board *may establish a law practice internship or adopt a continuing legal education program for lawyers, as any service provider can, but these programs must be consistent with the rules already promulgated and vetted by the Court.*


In other words, the **law practice internship would have to be vetted and sanctioned by the Supreme Court – nothing of this sort moves**

⁴⁰ Ruben E. Agpalo, STATUTORY CONSTRUCTION (1995) 196-197, citing *Tamayo v. Gsell*, 35 Phil. 953 (1916).

⁴¹ Ruben E. Agpalo, STATUTORY CONSTRUCTION (1995) 148, *Supra* note 40, citing *Luzon Stevedoring Co. v. Natividad*, 43 Phil. 803 (1922), *Molina v. Rafferty*, 38 Phil. 167 (1918).

⁴² Ruben E. Agpalo, STATUTORY CONSTRUCTION (1995) 198, *Supra* note 40, citing *Sotto v. Sotto*, 43 Phil. 688 (1922), *Araneta v. Concepcion*, 99 Phil. 709 (1956).

⁴³ Ruben E. Agpalo, STATUTORY CONSTRUCTION (1995) 198, *Supra* note 40.



without the imprimatur of the Court. This requirement of **Supreme Court regulation and control** is **deemed written** into Subsection 7(g). This arises from the rule that **statutes and regulations are inferior to the Constitution**, and that **statutes and regulations are presumed to have been intended to be valid** and thus **must be read in a way that upholds the Constitution.**

Continuing legal education may also be provided by the Legal Education Board as a service provider. It may *innovate means* to serve the Supreme Court's mandatory continuing legal education program. But like the law practice internship, the **continuing legal education program the Legal Education Board will have to be vetted and sanctioned by the Court.** As in the case of Subsection 7(g), the requirement of vetting and sanctioning by the Court is **deemed written** into Subsection 7(h) of RA 7662.

As a result, I vote to affirm the constitutionality of Subsections 7 (g) and (h) of RA 7662.

CONCLUSION

With due respect to the majority, the dispositive portion of the Decision is quite ambivalent, and if I may so, engages in circular reasoning. It reads in part:

The Court further declares:

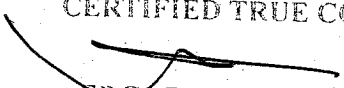
As **CONSTITUTIONAL:**

1. Section 7(c) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to set the standards of accreditation for law schools taking into account, among others, the qualifications of the members of the faculty without encroaching upon the academic freedom of institutions of higher learning; and
2. Section 7(e) of R.A. No. 7662 insofar as it gives the Legal Education Board the power to prescribe the minimum requirements for admission to legal education and minimum qualifications of faculty members without encroaching upon the academic freedom of institutions of higher learning.

Pray tell, what can the LEB do now without encroaching on the academic freedom of law schools – if it is unconstitutional for LEB to require a qualifying examination such as PhiLSAT, when LEB can only recommend but not impose? Where does the exercise of regulation and supervision in this kind of ruling come in? Truly, the *Decision* takes with its left hand what it gives with its right. We are back to square one.


AMY C. LAZARO-JAVIER

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court