

DE-MONOPOLIZING THE PHILIPPINE LEGAL PRACTICE: THE CONSTITUTIONAL SCOPE AND OPERATIVE EFFECTS IN A MANAGED SYSTEM OF LIBERALIZATION BY THE JUDICIARY*

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*Why is there always a secret singing
When a lawyer cashes in?
Why does a horse hearse snicker,
Hauling a lawyer away?¹*

Behind the free market ideology there is a model, often attributed to Adam Smith, which argues that market forces – the profit motive – drive the economy to efficient outcomes as if by an invisible hand. One of the great achievements of modern economics is to show the sense in which, and the conditions under which, Smith's conclusion is correct. It turns out that these conditions are highly restrictive.²

The Philippines is going through a subdued revolution in its role as a member of the international community in designing an integrated global economic order. In laying its foundations, the individual players are the lawyers, whose field is a set of pertinent, defined, and functional legal rules that would govern the complexities of transnational corporations and the trade relationship between the players themselves.

Yet, while the forces that are flattening the world³ are becoming increasingly experienced throughout the globe, the practice of law largely remains the province of individual jurisdictions. In the Philippines, legal

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¹ Carl Sandburg, *The Lawyers Know Too Much*, in COMPLETE POEMS OF CARL SANDBURG 189 (Harcort Brace Jovanovich ed., 1970).

² JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002). Emphasis supplied.

³ THOMAS FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE 21ST CENTURY* (2006).

practice is confined exclusively⁴ to Filipinos⁵, restricted primarily by the Constitution itself:

“The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.”⁶

The author’s main claim is that the practice of law cannot be liberalized by the General Agreement on Trade in Services⁷ (GATS) but only through judicial legislation by the Supreme Court wherein the power is vested to by the Constitution. Its determination must be based on a managed system of liberalization to address the two-fold requirements of addressing economic necessity of transnational practice and of the advancement of Filipinos in the legal profession.

The paper is divided into five parts: *Part I* provides for a historical approach on territorial jurisdiction as an exercise of sovereignty in the practice of law in the Philippines; *Part II* discusses the origins of the growth of multijurisdictional practice, how the GATS definition of trade in services may include legal services, and economic justifications and jurisprudence for opening up the practice of law in the Philippines; *Part III*, however, maintains: (1) that the practice of law is within the province of the Judicial Department, a power that cannot be derogated, (2) that the GATS nationalist treatment principle is not a bar to a narrower scope of practice for foreign lawyers vis-à-vis Filipino lawyers and is only a consideration of the Supreme Court in formulating rules for potential liberalization of the profession, and (3) the potential reverse discrimination of delimiting the legal practice, despite the reciprocity principle; *Part IV* presents significant laws of Singapore and Malaysia and the situation of the liberalization of their legal services as models of the operational framework for liberalization in the Philippine setting; and *Part V* takes off from Part IV in providing for considerations in the Supreme Court’s promulgation of rules in the extra-jurisdictional practice of law focusing on joint law venture and maintaining protective measures as a matter of public interest.

⁴ RULES OF COURT, Rule 138, § 3 provides for exemptions only for “citizens of the United States of America who before July, 4, 1946, were duly licensed members of the Philippine Bar x x x.”

⁵ § 2: Requirements for all applicants for admission to the bar. – “Every applicant for admission as a member of the bar must be a citizen of the Philippines, at least twenty-one years of age, of good moral character, and a resident of the Philippines; and must produce before the Supreme Court satisfactory evidence of good moral character, and that no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.”

⁶ CONST. art. XII, § 14, ¶ 2.

⁷ General Agreement on Trade in Services (hereinafter “G.A.T.S.”) (1994).

I. RESTRICTIVE JURISDICTIONAL PRACTICE OF LAW AS A SOURCE OF POWER

In the “era of territorial jurisdiction”⁸ the state’s jurisdictional powers were deemed static and exclusive within its boundaries; thus, protecting territorial integrity from foreign intrusions was taken as a jurisdictional issue, based primarily on traditional sovereignty, which defined the scope of authority divided into states.

However, because of the pervasiveness of corporate economic organizations in civil cases, where personality is different from the stakeholders, and the nature of business and consumers as multinational, the doctrine shifted from literal boundaries to multifarious connections. In the “contacts era,” jurisdiction could then be established upon consent and acceptance thereof, which is mainly lodged on domestic law.⁹ If such is the case, the regulation of private actors who submit thereto justified the belief that jurisdiction is an extension of state power, thus becoming subject to particular domestic laws, despite the international character and nature of the private entity.

Jurisdiction was the drawing up of boundaries of a country’s domestic sphere of power over private entities and the clearly demarcating lines of authority between countries. Because the state is the atomic unit of political separation in the international community, jurisdictional division necessarily affects the responsibility of each state and its individual members, and by keeping watch on claims to one’s own jurisdiction, states act to either “expand or restrict the jurisdictional space” open to other states.

In the legal profession, jurisdiction is exercised by way of restriction and almost exclusively within the ambit of individual states by way of imposing requirements of various kinds – nationality, examination, experience – either strengthening the territorial aspect or contacts aspect of jurisdiction, or both.

In the Philippines, the purpose of the Constitutional limitation to Filipinos in the practice of professions was to “lend more importance to the provision that the patrimony and economy of the nation must be under the

⁸ Andrew Strauss, *Beyond National Law: the Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts*, 36 HARV. INT’L L.J. 373 (1995).

⁹ *Id.*

control of Filipinos,” and in the exercise of rights, privileges and concessions, the provisions regarding National Economy and Patrimony, also involves the exercise of professions.¹⁰ Thus, the Philippine concept of jurisdictional practice of law is primarily territorial and nationalistic.

The limitation, however, exempts that which is “prescribed by law,” only insofar as there is reciprocity based on “substantial equality.”¹¹ Reciprocity agreements and treaties with other jurisdictions, permitted by legislation, allowed the practice of professions by aliens.

In the name of comity, courts often recognize and enforce foreign judgments or limit domestic jurisdiction to hear claims or apply law. The interest balancing analysis is used in the principle of comity such that it weighs private and public interests against the likelihood that its exercise of jurisdiction might offend a foreign sovereign or cause hardship to a foreign party, thereby facilitates the stability of private expectations in international trade and commerce.¹² Although comity recognizes foreign laws and judgments, the problem is in the capability, experience and know-how of the lawyer who practices such.

Unlike other professions where the exemption entails meeting the requirements of the Professional Regulation Commission¹³, the practice of the legal profession is lodged under the control and supervision of the Supreme Court, by virtue of Art. VIII, Sec. 5(5) of the Constitution.¹⁴

In 1920, the Supreme Court already recognized the law on comity in relation to the admission in the legal profession, in granting admittance to Max Shoop for to the practice of law. The court relied on his admission and practice in New York, a state that conferred the privilege of admission without examination under similar circumstances to lawyers admitted in the Philippines.¹⁵ In arriving at the decision, the Court surveyed cases in the Philippine Reports, which showed an increasing reliance on English and American authorities in the formation of “Philippine Common Law,” supplemental to statute law, and that Anglo-American case law has pierced

¹⁰ PHIL. CONST. COMM., 2 RECORDS OF THE 1986 CONSTITUTIONAL COMMISSION 684 (1986).

¹¹ *Id.* at 683.

¹² Joel Paul, *Comity in International Law*, 32 HARV. INT'L L. J. 1 (1991).

¹³ Preparatory Comm. on Const. Reform, *Report of the PCCR*, 48 ATENEO L.J. 390, 415 (2003).

¹⁴ CONST. art VIII, §5: “The Supreme Court shall have the following powers: xxx (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. xxx”

¹⁵ *In re Shoop*, 41 Phil. 213, Nov. 29, 1920.

through "practically every one of the leading subjects in the field of law." This has been used in interpreting and applying written laws of the country especially since the Philippine Islands was an unorganized territory of the United States, at the time. As such, the New York rule "permits conferring privileges on lawyers admitted to the practice in the Philippine Islands similar to those privileges accorded by the rule of this court."¹⁶

The legal practice, however, remains protectionist under the nationality principle of the Constitution. In the case of *In re J.F. Boomer*,¹⁷ the Court in the separate opinion of Justice Perfecto stated that the "sovereignty of the people stands behind all public functions, and it is a matter of high and wise policy not to entrust that function to foreigners." Jurisdictional power is exercised through a strict nationality requirement.

Examining U.S. jurisprudence in admitting to the state bar without examination, the restriction has been placed more on the satisfaction of educational and legal training requirements of a state rather than nationality. In *Shaikh v. Appellate Div. of Supreme Court*,¹⁸ legal practice of an attorney in Pakistan is not to be accepted as a basis of admission without examination despite the showing that Pakistan jurisprudence is based on English common law. This is the same principle enunciated in another case¹⁹ where the court held that "however learned the applicant may have been in the laws of his own country, the court could not assume that he was fitted for the position of attorney to give advice to clients concerning New York law because the law of the applicant's country was not based upon the same system of jurisprudence as New York law." In *Sodha v. New York State Board of Law Examiners*,²⁰ the court denied admission to the New York bar without examination to an attorney from India for failing to establish considerable educational equivalence to the requirements demanded of persons taking the bar examination. In 1981, two members of the Philippine Bar, who were residing in New York, were denied application to the New York Bar without examination on the ground that only two Philippine law schools were substantially equivalent to approved law schools, neither of which was attended by them. This classification was deemed reasonable and rationale.²¹ Jurisdictional power is exercised through skills requirement.

¹⁶ *Id.*

¹⁷ 12 LAYWERS J. 421 (1947). *See also* *In re Atty. Marcial Edillon*, A.C. No. 1928, 84 SCRA 554, Aug. 3, 1978.

¹⁸ 39 N.Y.2d 676, 385 N.Y.S.2d 514, 350 N.E.2d 902 (1976).

¹⁹ *In Re Maggio* 27 App Div 129, 51 N.Y.S. 1055 (1898) *in* 14 A.L.R. 4th 7.

²⁰ 05 Misc 2d 159, 431 N.Y.S.2d 885 (1980).

²¹ *Pascual v. State Board of Law Examiners*, 79 A.D.2d 1054, 435 N.Y.S.2d 387 (1981).

Seventy-three years after *Shoop*, aside from the Philippine citizenship and residency requirements²², the case of *In re Adriano Hernandez*²³ strengthened the nationality requirement clarifying that only those who completed the required legal education in the Philippines may practice law.

II. CROSS-BORDER GROWTH AS ECONOMIC EMPOWERMENT JUSTIFYING JURISDICTIONAL ENCROACHMENT

The emergence of multijurisdictional practice was a consequence of globalization. The increase in economic power of corporations requires checking of monopolies, antitrust, and taxation. The impact of technology and e-commerce required laying foundations not only of physical infrastructure but also of legal and human resource infrastructures. Financial technologies in mergers and acquisitions, private financing, and investment banking require legal services with accountants and analysts.²⁴ Three major events in multijurisdictional practice should be examined: (1) multijurisdictional law firms and in-house multijurisdictional practice²⁵ and contemporary legal education, electronic research and technology; (2) the GATS and its implications to the Philippine legal practice; and (3) the rationale for diminishing jurisdictional bounds in the legal practice.

A. Mega Law Firms and Technologically-Assisted Practice

Due to increased worldwide trade, the collapse of stable regional markets for law firms paved way to a national and global market. In the U.S. in 1949, only five law firms employed over 50 lawyers, now over 250 law firms have lawyers of over 100, which employ over 50,000 lawyers, with an average of five office branches in different states.²⁶ Moreover, 15 transnational law firms, primarily based in the U.S., have over 95 foreign affiliates.²⁷ Their vision was to satisfy clients' "counseling, negotiating, and litigating needs without regard to the location where the service was to be delivered or the precise subject matter of the representation."²⁸ What is

²² RULES OF COURT, Rule 138, § 2.

²³ 225 SCRA xi, July 27, 1993.

²⁴ Hans van Houtte and Patrick Wautelet, *International Lawyers and Uniform Law*, in THE INTERNATIONALIZATION OF LAW 89-107 (Kluwer Law International ed., 2001)

²⁵ Mary Daly, *Resolving Ethical Conflicts in Multijurisdictional Practice – is Model Rule 8.5 the Answer, an Answer, or No Answer At All?*, 36 S. TEX. L. REV. 715, 723.

²⁶ *Id.*

²⁷ Merlin Magallona, *Transnationalization of the Practice of Law: Comments on the Uruguay Round's General Agreement on Trade in Services*, in INTERNATIONAL LAW ISSUES IN PERSPECTIVE 224 (1996), citing UN CENTER ON TRANSNATIONAL CORPORATIONS, FOREIGN DIRECT INVESTMENT AND TRANSNATIONAL CORPORATIONS IN SERVICES NEW YORK 47, 100 (1989).

²⁸ Daly, *supra* note 25.

essential to note is that the expansion in branches was not to practice local law but to federal law particularly securities, finance and leasing. Today, this vision practiced by the top 25 U.S. and U.K law firms has generated revenue ranging from £396 million to £1.03 billion in 2006 alone.²⁹

Meanwhile, in-house corporate clients expanded, which, in effect, made legal advice given internally more pervasive and securing the local bar in their market with unheeded regulation. This “marketplace solution” facilitated multijurisdictional practice, by allowing corporations to transfer in-house lawyers from one office to another without ado to potential violations and rendering territorial boundaries inconsequential, by delving into areas such as securities regulation, federal government contracting, environmental and labor law, and financing.³⁰

In the Philippines, one of the largest transnational firms in the world, *Baker & McKenzie*, with 69 firms in 39 countries, is connected with Philippine incorporated partnership of *Quisumbing Torres & Associates*, offering various legal services with all members admitted to the Philippine bar, and many admitted in jurisdictions in the U.S., and have practiced in Australia, Hong Kong, Indonesia, Japan, Singapore, Thailand and the United Kingdom.³¹ Also, *Ernst & Young*, a global consulting and auditing company is associated with local law firm *Sycip Gorres Velayo & Co.*, and *PriceWaterhouseCoopers*, also an assurance, tax and advisory service firm, is connected to local law firm *Joaquin Cunanan and Co.*³²

Serving multi-national clients spawned from contemporary legal education, which assists in multijurisdictional practice, as lawyers and law students have become exposed to a variety of legal perspectives from majority versus minority state views. After all, it is “in the best interests of the students, their future clients, and the legal profession to offer complete, in-depth analysis of contemporary legal issues irrespective of state borders.”³³ Similarly, legal research training through computer-assisted technologies, such as the Internet, WestLaw, and Lex Libris in the Philippines, contributed heavily to efficiencies in multijurisdictional practice

²⁹ THE LAWYER, THE LAWYER GLOBAL 100 SUMMARY KEY INFORMATION, available at http://www.thelawyer.com/global100/2006/tb_1-25.html.

³⁰ *Id.*

³¹ Baker & McKenzie, *Baker & McKenzie Locations*, at <http://www.bakernet.com/BakerNet/Locations/Asia+Pacific/Offices/Manila/default.htm> (last visited Jul. 17, 2009).

³² Harry Roque Jr., *Globalization of Legal Services: Challenges and Possibilities in the Philippine Setting*, 8TH ASEAN LAW ASSOCIATION GENERAL ASSEMBLY WORKSHOP PAPERS 55-66 (2003).

³³ Daly, *supra* note 25.

by making available statutes, regulations, cases, and other relevant information, and also by teleconferencing and communication with branches of other law firms, in a swift and cost-efficient manner.

B. The Great GATS Effect in Worldwide Services

One of the major agreements affecting the legal profession in the country is the GATS. The General Agreement on Tariffs and Trade, which focused primarily on trade liberalization and tariff reduction, expanded the multilateral trading system to services. Although these services used to be domestic and difficult to trade, the development of internationally tradable services, which principally include banking, insurance, other financial services, telecommunications, and transport, has been expanded due to information technology.

The GATS defines "service" as "any service in any sector except services supplied in the exercise of government authority,"³⁴ which broadly covers all services, including professional services in the practice of law.

The Philippines' undertakings with respect to legal services in GATS should be examined in light of the three sources of GATS obligations: (1) the general and unconditional commitments to which all members are subjected to, (2) the schedule of specific commitments to market access and national treatment, and (3) the most-favoured-nation (MFN) exemptions.

First, under the general obligations, the MFN treatment requires that any measure taken by a member to services must be "immediately and unconditionally" accorded the same on no less favorable terms, unless exemptions are sought.³⁵ GATS also allows mutual and automatic recognition of education, requirements, licenses or certifications, provided that adequate opportunities are afforded to qualification holders from third-world countries to prove competency and set "objective, reasonable, non-discriminatory and competency-based criteria for assessing professional qualifications."³⁶

³⁴ G.A.T.S., art. I (3b).

³⁵ G.A.T.S., art. II.

³⁶ Emme Waller, *Entry to the Legal Profession and the General Agreement on Trade in Services*, HONG KONG L.J. 142 (1995). See also G.A.T.S., art. VII.

With “trade in services” defined³⁷ in GATS, the following possibilities may occur³⁸:

- (a) An extension of legal services performed in a foreign jurisdiction, such as filing of pleadings, legal memoranda, or other instruments in judicial, quasi-judicial or administrative bodies, in representation of clients of Philippine nationals and foreigners;
- (b) Physical presence of a foreign law firm, including one representing a law firm, rendering legal services in cases where the interest of client of Philippine nationality, or Philippine incorporation but capital stock owned or controlled by foreign nationals, or a person of foreign nationality of incorporation doing business in the country.
- (c) Foreign lawyers establishing law practice by setting up a law firm duly recognized under Philippine law.
- (d) A foreign lawyer or firm may practice law through a Filipino lawyer or law firm.
- (e) A law partnership between Filipino and foreign lawyers will not be permitted to restrict participation of foreign capital in the firm.

Second, the specific obligations, in relation to the legal profession, are the provisions on (1) market access³⁹, which may be generally defined as an opening of legal services to non-Filipinos, and (2) national treatment⁴⁰, granting the same rights and privileges to aliens as that of citizens, thereby requiring the following to the Philippines⁴¹:

- (a) May only maintain domestic “qualification requirements and procedures, technical standards, and licensing requirements [that] do not constitute unnecessary barriers to trade in services”;
- (b) To comply with criteria of GATS as to “licensing and qualifications of technical standards”;

³⁷ G.A.T.S., art. I, ¶ 2: “For the purposes of this Agreement, trade in services is defined as the supply of a service:

- (a) from the territory of one Member into the territory of any other Member;
- (b) in the territory of one Member into the territory of any other Member;
- (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
- (d) by a service supplier of one Member, through presence of natural persons in the territory of any other Member.”

³⁸ Magallona, *supra* note 27 at 232.

³⁹ G.A.T.S., art. XVI.

⁴⁰ G.A.T.S., art. XVII.

⁴¹ Magallona, *supra* note 27, at 236.

- (c) To harmonize the requirements in legal education and training with multilaterally established standards, not discriminatory against authorization or licensing of foreign legal service suppliers.

Third, the Philippines did not provide for any exemption to Business Services, which include Professional and Other Business Services.⁴²

C. Developmental Rationale for Foreign Legal Practice

Considering the foregoing instances, the potential of foreign legal practice in the Philippines should not be taken as desolate. The Philippines has become a major player in the global economic arena, especially in the provision of services. As of 2004, of the 8.08 million Filipinos abroad, 3.6 million are overseas Filipino workers, 3.19 million are permanent residents, and 1.3 million are classified as irregular.⁴³ In 2007, the Philippines deployed 1,077,623 land and sea-based overseas Filipino workers and with an increase of 1.42 percent from the previous year.⁴⁴ These professionals have remitted US\$ 6.98 billion⁴⁵ in the country as of May 2009.

Especially since export services grew by 7.1 percent⁴⁶ in the first quarter of 2009, and is expected to grow even more, these figures show that trade in services is a key driver of the Philippine economy and a liberalized service sector is to the country's advantage, if Filipino workers abroad, are expected to have benefits and good working and living conditions.

Also, the Philippines' foreign direct investments expanded by 70.6 percent from P34.9 billion in 2007 to P59.6 billion in 2008.⁴⁷ The growth in the Information and Communications Technology (ICT) and Business Process Outsourcing (BPO) industries has been tremendous, earning US\$ 3.3 billion in revenue and employing 235,000 in 2006, and is targeted by the

⁴² Aaditya Matoo, *MFN and the GATS*, Paper presented in WORLD TRADE FORUM CONFERENCE ON MOST-FAVOURLED NATION (MFN): PAST AND PRESENT, at Neuchâtel (Aug. 28, 1998). Table 1 Members with MFN Exemptions in the Business Services Sector: Brunei Darussalam, Bulgaria, Costa Rica, Dominican Republic, Honduras, New Zealand, Panama, Singapore, Thailand, Turkey, Venezuela Canada, Costa Rica, EU, Malaysia, Mexico, Poland, Thailand.

⁴³ COMM. ON FILIPINOS OVERSEAS, HANDBOOK FOR FILIPINOS OVERSEAS (2005), available at <http://www.cfo.gov.ph/handbook7th.pdf>.

⁴⁴ Philippine Overseas Employment Authority, *Overseas Employment Statistics 2007*, at <http://www.poea.gov.ph/stats/stats2007.pdf> (last visited Jul. 17, 2009).

⁴⁵ Bangko Sentral ng Pilipinas, *Overseas Filipino Remittances*, at http://www.bsp.gov.ph/publications/tables/2009_07/news-07152009a1.htm (last visited Jul. 17, 2009).

⁴⁶ BANGKO SENTRAL NG PILIPINAS, *SELECTED PHILIPPINE ECONOMIC INDICATORS* (2009), available at http://www.bsp.gov.ph/statistics/spei_pub/Table%2005.pdf.

⁴⁷ Nat'l. Statistics Coord. Board, *Foreign Direct Investments Quarterly Report Highlights* (Third Quarter, 2008), at <http://nscb.gov.ph/fiis/2008/3q-08/Default.asp> (last visited Jul. 17, 2009).

ICT business community to become the “BPO Capital in Asia,” with 10 percent of the world’s global market share by 2010⁴⁸.

Thus, with the complexities of international trade, lawyers would be required to facilitate the legal undertakings of various transnational and exporting companies primarily for banking and finance, corporate and commercial law, immigration, intellectual property, labor and employment, litigation, and tax, in different jurisdictions.

The Court in *Tañada v. Angara*,⁴⁹ stated that the Constitution’s “Filipino First” Policy has to be taken in view of business exchange with the rest of the world based on equality and reciprocity and limiting protection of Filipino enterprises only against unfair foreign competition and trade practices:

[W]hile sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations.⁵⁰

Thus, the reciprocity clause *appears* to justify the intrusion into sovereignty.

III. PROTECTION AND COMPETITION AS A DETERMINATIVE IN LIBERALIZING THE LEGAL PRACTICE

Three major problems are identified with extra-jurisdictional practice of law in the Philippines, exacerbated by the GATS in place and the Philippines as a Member State: (1) limitation of jurisdictional sovereignty over the practice of law, (2) “legal equality”⁵¹ as violative of equal protection, (3) competition and “reverse discrimination”⁵².

A. Diminishing Sovereignty in the Practice

The core element of the practice of law in the country that it is exercised merely by Filipinos will be diluted if not totally eliminated. The

⁴⁸ BUSINESS PROCESSING ASSOCIATION OF THE PHILIPPINES, OFFSHORING AND OUTSOURCING PHILIPPINES: ROADMAP 2010 (2007).

⁴⁹ G.R. No. 118295, 272 SCRA 18, May 2, 1997.

⁵⁰ *Id.* at 66.

⁵¹ Magallona, *supra* note 27, at 236.

⁵² Ryan Hopkins, *Will the General Agreement on Trade in Services Necessitate Federal Involvement in Lawyer Regulation? Some Constitutional Implications of Regulating the Global Lawyer*, 66 U. PITT. L. REV. 653.

instance the above interpretation of GATS is implemented, all Member States will be allowed the same rights and privileges to practice law in the country, with the most-favoured-nation principle, thereby abating jurisdictional power over the profession.

The Court ruled in *Tañada*, primarily in the context of the constitutionality of the World Trade Organization's provisions on Trade Related Aspects of Intellectual Property Rights (TRIPS), holding that treaties by its very nature limit and restrict the "absoluteness of sovereignty."⁵³ TRIPS specifies IP regulation in copyright, patents and use of technology, and procedures and dispute resolution, and is criticized because of its wealth redistribution effects and imposition of artificial scarcity against developing countries with weaker IP laws. Thus, its essence involves legislative knowledge in economic policies the wisdom of these strategies must be judged by Congress. Also, since the Philippines is a signatory to most international conventions on IP, the court held that adjustments in legislation and *even rules of procedure will not be substantial*.⁵⁴

On the other hand, the implementation of GATS in the context of the practice of law is the absolute province of the Judicial Department – and by the principle of separation of powers, the Constitution reserves the power of one department over its subjects and roles without derogation from other departments.

In the case of *In re Garcia*⁵⁵, Filipino citizen Arturo Garcia applied to practice law in the Philippines after finishing law in the Central University of Madrid and practicing in Spain, on the ground that the Philippines entered the Treaty on Academic Degrees and Exercise of Professions⁵⁶ with Spain in 1951. The Court held that:

[T]he aforementioned Treaty, concluded between the Republic of the Philippines and the Spanish State could not have been intended to modify the laws and regulations governing admission to the practice of law in the Philippines, for the reason that the Executive Department may not encroach upon the constitutional prerogative of the Supreme Court to promulgate rules for admission to the practice of law in the Philippines x x x.

⁵³ *Tañada*, G.R. No. 118295, 272 SCRA 18, 66, May 2, 1997.

⁵⁴ *Id.* at 73. Emphasis supplied.

⁵⁵ *In re Garcia*, 2 SCRA 984, Aug. 15, 1961.

⁵⁶ art. 11: "The Nationals of each of the two countries who shall have obtained recognition of the validity of their academic degrees by virtue of the stipulations of this Treaty, can practice their professions within the territory of the Other xxx"

Given that "trade in services" may include legal services in its definition, the GATS having entered into by the Executive Department and the Senate's power to concur in treaties would be a usurpation of the power of the Supreme Court.⁵⁷ Regulation of the practice of law in the Philippines has heretofore been the exclusive province of the Supreme Court. If GATS commitments have to be established in control and supervision of the practice of law, constitutional questions on derogation of judicial power would have to be dealt with.

B. Legal Equality is Akin to National Treatment

With the national-treatment clause, all laws, rules, and regulations, primarily those procedural in nature, will have to be modified to be able to effect equal status among Filipino and foreign lawyers. The extreme case is that an application of "legal equality" would be violative of the national treatment because it modifies conditions of competition. It does not.

[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate.⁵⁸

In the case of *In re Griffiths*⁵⁹, Netherlands citizen married to a US citizen Fre Le Poole Griffiths sought admission to the Connecticut Bar but was denied stating that she was qualified in all respects except that she was not a US citizen. The Court struck down the rule on the ground that citizenship does not denigrate a lawyer's responsibility to the Court and his clients. "The Committee has failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients."⁶⁰

However, examining the facts and circumstances of the case, Griffiths was not only a resident of the U.S. but was also educated in a law school in Connecticut. Classification based on alienage, though suspect, may be constitutional if narrowly tailored to serve compelling governmental interest.

⁵⁷ CONST. art. VII, § 21: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." See also Magallona, *supra* note 27 at 243.

⁵⁸ *Graham v. Richardson*, 403 U.S. 365 (1971).

⁵⁹ 413 U.S. 717 (1973).

⁶⁰ *Id.*

The legal profession is of a different form of trade and service since it is primarily imbued with public interest. The first duty of the lawyer is to “uphold the Constitution, obey the laws of the land, and promote respect for law and of legal processes.”⁶¹ The dissenting opinion of Chief Justice Burger is applicable in the Philippines in that the denigration of the posture and role of a lawyer as an officer of the court was deemed improper:

The role of a lawyer as an officer of the court predates the Constitution; it was carried over from the English system, and became firmly embedded in our tradition. It included the obligation of first duty to client. But that duty never was, and is not today, an absolute or unqualified duty. *It is a first loyalty to serve the client's interest, but always within – never outside – the law, thus placing a heavy personal and individual responsibility on the lawyer.* That this is often unenforceable, that departures from it remain undetected, and that judges and bar associations have been singularly tolerant of misdeeds of their brethren, renders it no less important to a profession that is increasingly crucial to our way of life. The very independence of the lawyer from the government, on the one hand, and client, on the other, is what makes law a profession, something apart from trades and vocations in which obligations of duty and conscience play a lesser part. It is as crucial to our system of justice as the independence of judges themselves.

Moreover, the purpose in allowing foreign lawyers to practice in the Philippines is strictly for business and economic benefits to the country confined in specific industry sectors, and to further the development of the Philippine legal profession.

C. Foreign Competition and “Reverse Discrimination”

The presence of foreign law firms, which primarily have multinational companies as clients, and hiring or partnership with Filipino law firms, could be unfair competition against local law firms and local lawyers.

In the U.S. starting in the 1930s, state bars have protected their markets from out-of-state lawyers, by bar examinations, which became progressively more difficult, primarily because of the complications of legal issues, concerns of competence, and linguistic, legal and cultural differences in different jurisdictions.⁶²

⁶¹ CODE OF PROF. RESPONSIBILITY, Canon 1.

⁶² Andrew Perlman, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS 135 (2004).

Moreover, “the give-and-take of future services negotiations, may cause [Filipino] negotiators to grant foreign lawyers greater multijurisdictional practice rights than those enjoyed by [Filipino] lawyers.”⁶³ Even if not, countries have taken very different approaches in regulating multijurisdictional practice.

Applying the analysis⁶⁴, if a U.S. jurisdiction permits a Filipino lawyer, who has not attended an American Bar Association (ABA)-accredited law school, to practice law. What would happen to the Filipino lawyer who attempts to practice in another U.S. jurisdiction, which requires completion in an ABA-accredited law school. If foreign lawyers, as in the example, a U.S. lawyer, are granted greater rights in the Philippines than Filipino lawyers in the U.S., the Filipino lawyers will protest this “reverse discrimination” because of unequal treatment.

IV. THE ASEAN APPROACH TO EXTRA-JURISDICTIONAL PRACTICE

A. Singapore

Historically, the Singaporean legal profession has been open to foreign practice since its inception. The law of England was introduced to Singapore in 1826 with English institutions and administration of justice. Those who were allowed to “plead” in court were “law agents,” who were merchants and traders in the regions, and were not “legally qualified,” and the first person with “proper” legal qualifications to be admitted was an Englishman in 1859.⁶⁵

In 1970s, the foreign law firms entered Singapore in response to the country’s promotion as an international financial center. It was deemed an economic necessity when Singapore established the “Asian-Dollar Market” to provide a home for U.S. Dollars outside of the U.S. jurisdiction in 1968.⁶⁶ Laws and regulations were passed to attract and to admit foreign financial institutions, which have been operational through laws of their jurisdiction of origin and with foreign lawyers well versed in the said laws.

⁶³ *Id.*

⁶⁴ *Id.* at 1086-1087 n.136.

⁶⁵ T.P.B. Menon, *The Legal Profession in Singapore*, 1 ASEAN L.J. 89 (1982).

⁶⁶ Chan Sek Keong, *Globalising the Legal Profession*, Speech delivered at the 13TH BIENNIAL MALAYSIAN LAW CONFERENCE (Nov. 18, 2005), at http://www.malaysianbar.org.my/speeches/special_address_of_the_attorney_general_of_singapore_at_the_13th_malaysian_law_conference_.html (last visited Jul. 17, 2009).

The Legal Profession Act of Singapore⁶⁷ admits any person who is qualified⁶⁸ for admission without reference to nationality, except in the special cases of Malayan or Hong Kong practitioners. The Legal Profession (International Services) Rules 2008, widens the coverage of the Legal Profession Act, by allowing foreign law firms to practice international commercial arbitration involving Singapore laws, providing for further collaboration between Singapore and foreign law firms through established and new joint law ventures.

The Singaporean government opened its legal profession, from mere joint ventures, to issuing Qualifying Foreign Law Practice licenses to Western law firms, to “realize the potential of [Singapore’s] legal services sector to develop into an engine of growth in its own right” and to double revenue, staffing and profits over the next five years.⁶⁹ Among the law firms who sought licenses are Clifford Chance, White & Case and Latham & Watkins, Allen & Overy, Norton Rose and Herbert Smith.⁷⁰

Individual foreign lawyers who apply as part of a foreign law firm are also subject to the requirements in the Legal Profession (International Services) Rules 2008. The law firm must apply to the Attorney-General for approval and registration of a Singapore Law Practice before entering into any arrangement that may result in the foreign lawyer (a) becoming a director, a partner or a shareholder of the Singapore law practice; or (b) sharing in the profits of the Singapore law practice.

Because the purpose of Singapore in allowing foreign lawyers to practice law in its jurisdiction is to boost industries in energy, foreign

⁶⁷ SING. LEGAL PROF. ACT (1967) is The Singapore Legal Profession Act Chapter 161. Latest revision in 2009.

⁶⁸ SING. LEGAL PROF. ACT. Part II, Div. 2, § 12:

(1) Subject to section 15, no qualified person shall be admitted as an advocate and solicitor unless he —

(a) has attained the age of 21 years;

(b) is of good character;

(c) has satisfactorily served the prescribed period of pupillage for qualified persons;

(d) has attended such courses of instruction and kept such dining terms as may be prescribed by the Board; and

(e) has passed such examinations as may be prescribed by the Board.

(2) Notwithstanding subsection (1)(d) and (e), the Board may, in its discretion, exempt a qualified person from attending such courses of instruction, keeping such dining terms and passing such examinations as may be prescribed by the Board if the Board is of the opinion that that qualified person is, by reason of his experience or for other cause, a fit and proper person to be so exempted.

⁶⁹ Molly McDonough, *Singapore Welcomes Foreign Lawyers, Grants 6 Law Firm Licenses*, ABA JOURNAL LAW NEWS NOW, Dec. 5, 2008, ¶ 4-5, available at

http://www.abajournal.com/news/singapore_welcomes_foreign_lawyers_grants_6_law_firm_licenses, quoting Singapore Law Minister K. Shanmugam.

⁷⁰ *Id.* at ¶ 2-3.

finance, and arbitration, the rules limit foreign practice to “permitted areas of legal practice”: banking law, finance law, corporate law, arbitration, intellectual property law, maritime law, and other areas of legal practice that facilitate or assist in the growth and development of the Singapore economy.⁷¹

Singapore is now host to 63 foreign law firms and 6 representative offices from 17 jurisdictions, 286 private practitioners, and 137 in-house counsel from all over the world, in response to Singaporean industries in banking and financial services, air and marine transport, logistics and distribution, oil and gas exploration, energy and power distribution, manufacturing and information technology and biotechnology.⁷²

In place in Singapore are its four modalities⁷³ to liberalize their legal services:

- (1) Foreign law firms may therefore supply legal services in *foreign* laws;
- (2) Foreign law firms may enter into Joint Law Ventures⁷⁴ and Foreign Licensing Agreements⁷⁵ to supply legal services in banking and corporate finance; and
- (3) Foreign lawyers supplying foreign law services as consultants and associates in Singapore law firms; and,
- (4) Foreign lawyers may be employed as in-house counsel by all Singapore-based enterprises to supply legal services in *all* laws.

B. Malaysia

The Malaysian Legal System, similar to that of Singapore, is based on English law, but is highly regulated by the High Court of Malaya through the Legal Profession Act of 1976. A foreign lawyer may also practice in Malaysia as an advocate, as a solicitor, or as an in-house legal advisor. Admission requirements on all accounts are, then again, highly stringent.

⁷¹ *Id.* at Part II, § 4: Application for Joint Law Venture licence.

⁷² Chan, *supra* note 66.

⁷³ Chan, *supra* note 66.

⁷⁴ A foreign lawyer may supply legal services in Singapore law provided having passed a prescribed 5-hour examination on the corporate and securities laws of Singapore. Since 2000, when the examination was prescribed, no foreign lawyer has applied to take the examination. *See also* Chan, *supra* note 66.

⁷⁵ A foreign lawyer is allowed to prepare all the documentation for the transaction without the right to give legal advice on Singapore law. *See also* Chan, *supra* note 66.

Examining Sec. 11 of the Malaysian Legal Profession Act⁷⁶, the difficulty is in par. 1 (c), where the foreign lawyer must be a resident of Malaysia, and has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons, and par. 2, which requires passing the Bahasa Malaysia Qualifying Examination, *unless the foreign practitioner falls under the exemption*⁷⁷.

The exemption provides that a foreign lawyer may practice as an advocate or solicitor for a "particular case," without the said requirements, provided that the Court determines that the foreign lawyer has "special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia."

In the case of *Cherie Booth v. Attorney General*⁷⁸, the Federal Court of Malaysia Putrajaya, held that "the words 'special qualifications or experience' refer to the particular branch of the law as a whole to which the relevant case relates rather than to the facts of the case or to a particular statute or certain provisions of that statute to which the case may relate."⁷⁹

However, the rigidity of the law is on the "non-availability" of the special qualification or experience among those admitted under normal

⁷⁶ MALAY. LEGAL PROF. ACT (1976), § 11. Qualifications for admission

(1) Subject to section 14, a qualified person may be admitted as an advocate and solicitor if he-

(a) has attained the age of eighteen years;

(b) is of good character and

(i) has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty;

(ii) has not been adjudicated bankrupt and has not been found guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (d), (e), (f), (h), (k) or (l) of subsection (6) of section 33 of the Bankruptcy Act 1967 [Act 360];

(iii) has not done any other act which, if being a barrister or solicitor in England, would render him liable to be disbarred, disqualified or suspended from practice; or

(iv) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;

(c) is either a Federal citizen or a permanent resident of Malaysia;

(d) has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons.

(2) As from the 1st January, 1984, no qualified person shall be admitted as an advocate and solicitor unless, in addition to satisfying the requirements of subsection (1), he has passed or is exempted from the Bahasa Malaysia Qualifying Examination.

⁷⁷ *Id.* at § 18 (1): Notwithstanding anything contained in this Act, the Court may, for the purpose of any one case and subject to the following subsections, admit to practise as an advocate and solicitor any person who, if he was a citizen of, or a permanent resident in, Malaysia, would be eligible to be admitted as an advocate and solicitor of the High Court and no person shall be admitted to practise as an advocate and solicitor under this subsection unless-

(a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(b) he has been instructed by an advocate and solicitor in Malaysia.

⁷⁸ Civil Appeal No. 02-22-2006 (W).

⁷⁹ *Id.*, citing Just. Mohamed Azmi in *Re Graham Starforth Hill*, 2 MLJ 269, 270-271 (1971).

circumstances practicing law in Malaysia. In *Booth*, the applicant must “satisfy the court that the special qualifications he possesses or the experience he professes to have are comparatively of such a type and character that *no advocate and solicitor practising in Malaysia* can be said to possess or equal that high degree of accomplishment which has been acquired or exhibited by the applicant.”⁸⁰

However, these rigorous requirements is predicted to be subject to amendments, because in April 2009, the Malaysian government announced its financial sector liberalization program by issuing licenses for seven banks and other players, which includes flexibility in foreign equity for investment banks, Islamic banks, insurance companies and *takaful* (Islamic microinsurance) players. To complement this policy, the “legal profession will be liberalized to allow up to five top international law firms with expertise in international Islamic finance to practice in Malaysia.”⁸¹

V. THE FUTURE OF A MANAGED SYSTEM OF LIBERALIZATION IN THE PHILIPPINE LEGAL PROFESSION

Similar to Singapore and Malaysia, the Philippines must respond to the emergence of BPO firms in the country and the development of the financial sector if the country intends to cope with the economies of its neighboring countries.

The effect of liberalizing the practice of law will have a profound effect in the Philippine jurisdiction and the global arena. The difficulty, however, is in the determination of the measures, scope, and extent in the country. There is *no need to revise or amend Art. XII, Sec. 14 of the Constitution*, since it provides for an exemption to the practice of law by Filipinos “as prescribed by law.” This exemption, and the compliance with GATS and its considerations, may be exercised by the Judicial Department since the practice of law is within its control and supervision. The proposed solution, therefore, is through judicial legislation. In discussing the Constitutionality of the integration of the Philippine Bar, the Court pronounced its “inherent power to supervise and regulate the ‘practice of law.’”⁸² The Court also considered the Commission on Bar Integration’s mass of factual data, which

⁸⁰ *Id.*, citing *Just. Sharma J in Re S.K. Lee*, 2 MLJ 40 (1971). Emphasis supplied.

⁸¹ Y.A.B. Dato’ Seri Mohd Najib Bin Tun Haji Abdul Razak, Speech delivered at the OFFICIAL OPENING OF THE 6TH INTERNATIONAL HALAL SHOWCASE AND THE 2ND WORLD HALAL RESEARCH SUMMIT 2009, Matrade Exhibition and Convention Center (May 7, 2009), at http://www.matrade.gov.my/cms/content.jsp?id=com.tms.cms.article_Article_bide_MIHAS_YAB_PM_Speech (last visited Jul. 17, 2009).

⁸² *In re Integration of the Bar of the Philippines*, 49 SCRA 22, 27, Jan. 9, 1973.

within the context of contemporary conditions in the Philippines, declared integration as “an imperative means to raise the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility fully and effectively.” These are the standards, which should be considered by the Supreme Court in determining the wisdom and Constitutionality in delimiting the practice of law in the country, while the GATS is *only one* of these factors.

A. Maintain the Constitutional Mantle of Protection through a Joint Law Venture

Lawyers will be “exposed to vulnerability in the fact global standards of legal service delivery, management, and marketing skills of [foreign] lawyers and their cutting-edge know-how in documenting and structuring international financial transactions.” However, as witnessed in Singapore, local corporate lawyers would respond quickly and extensively – as in most professions – in light of competition. To ensure this is the trick that the Philippine Supreme Court alone may deal with. Opening professions to competition allows for development of the legal profession and serves as a catalyst to jurisprudence and practice.

First, Singapore’s Joint Law Venture appears permissible but the areas of practice should be limited to legal areas to which the purpose of foreign practice is directed towards. In the Philippines, as discussed heretofore, one of the major objectives is to drive more ICT and BPO investments in the country. The intricacies of foreign investment in the Philippines in the industry involve complex laws and may require legal services of local and foreign laws, in banking and finance, insurance, commercial and corporate law, arbitration, intellectual property law, e-commerce law, and other areas of legal practice, which may facilitate the country’s economic growth and development. *Thus, foreign lawyers in a foreign firm with a joint law venture with a Philippine law firm may only practice, with the strict exception of appearing in Court, in the enumerated Philippine and foreign laws.* Constitutional law, administrative law, criminal law, family law, succession, and trust are among those, which may *not* be practiced by the foreign lawyer.⁸³ Also, the Joint Law Venture is the *only way where a foreign lawyer may provide legal services* in the country.

⁸³ SING. LEGAL PROF. ACT. Sec. 3 (1): For the purposes of the definition of “permitted areas of legal practice” in section 130A(1) of the Act, the areas of legal practice to be excluded from the ambit of that definition are —

- (a) constitutional and administrative law;
- (b) conveyancing;
- (c) criminal law;
- (d) family law;

Second, in the Joint Law Venture, a foreign lawyer may appear in the Court provided that the applicant has "special qualifications or experience" only for a particular case of a nature of limited availability among Filipino lawyers, similar to the Malaysian requirement. However, unlike Malaysia, "limited availability," instead of "non-availability," should be imposed as an admission *pro hac vice* to avoid undue advantage against a joint law venture without a Filipino knowledgeable in the field. The special qualifications in relation to the particular case in litigation and the limited availability are to the determination of the Supreme Court.

Third, the Joint Law Venture must be composed of Filipinos at least 60 percent in the partnership. Art. XII, Sec. 10 of the Constitution provides:

The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

Although this is a directive to the Congress, the Judicial Department may also consider this limitation to ensure Philippine ownership and serve a practical purpose in tracking and supervising foreign lawyers and foreign law firms against proscribed and unethical practice.

Fourth, the foreign law firm must train Filipino lawyers in the Joint Law Venture. By its nature, there is interaction and skills and knowledge transfer between the foreign law firm, which is able to draw on knowledge about domestic laws and business, and the Filipino law firm, which may access new legal and financial laws and practices, in a joint law venture. This must be taken a step further by requiring *formal training* in order to guarantee actual conveyance of skills, knowledge, and technology. The Foreign Licensing Agreement or "stand alone" treatment in Singapore appears unsuitable in

(e) succession law, including matters relating to wills, intestate succession and probate and administration;

(f) trust law, in any case where the settlor is an individual;

(g) appearing or pleading in any court of justice in Singapore, representing a client in any proceedings instituted in such a court or giving advice, the main purpose of which is to advise the client on the conduct of such proceedings, except where such appearance, pleading, representation or advice is otherwise permitted under the Act or these Rules or any other written law; and

(h) appearing in any hearing before a quasi-judicial or regulatory body, authority or tribunal in Singapore, except where such appearance is otherwise permitted under the Act or these Rules or any other written law."

that there is no necessity, incentive, and direct vehicle to transfer skills and knowledge to Filipino lawyers.

B. Solve “Sneaking Around”⁸⁴ the Legal Profession through a Revitalized Code of Responsibility for Transnational Lawyers and Strengthened Comity

Technological advances in telecommunications and transportation have allowed conferring with clients more convenient. On the part of the lawyer, reputation and specialization have also been revealed throughout states. In the U.S., lawyers with a national or regional reputation are as likely to receive calls for legal services from prospective clients from distant states as from the lawyer's own jurisdiction. For an increasing percentage of lawyers, the legal practice has evolved from office to court work, to frequent flying and across the state, country and world to meet the clients' needs.

In the Philippines, the “practice of law” enunciated in *Cayetano v. Monsod*⁸⁵, is “any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience.”

[T]o engage in the practice of law is to perform those acts which are characteristic of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in *any degree of legal knowledge or skill*.⁸⁶

This poses “sneaking around” problems when a foreign lawyer serving concurrently as a corporate manager or business executive, uses his knowledge in law, legal procedure, training, and experience, in the management of the company, especially since corporate law practice is no longer “confined” to the Corporate Code or the Securities Code, but an “incursion as well in to the intertwining modern management issues.”⁸⁷ Also, since there is no admission *pro hac vice* in the country for litigators, there is even more, no mechanism for transactional lawyers, whose role is pre-litigation and out-of-court drafting and advising of clients. This practice is believed to be “common” but is unauthorized, especially in view of the *Cayetano* decision.

⁸⁴ Charles Wolfram, *Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice by Transactional Lawyers*, 36 S. TEX. L. REV. 665 (1995).

⁸⁵ G.R. No. 100113, 201 SCRA 210, Sep. 3, 1991.

⁸⁶ *Id.*, at 213-24, *citing* 111 ALR 23. Emphasis supplied.

⁸⁷ *Id.* *citing* The Corporate Counsel, BUSINESS STAR, Apr. 10, 1991, at 4.

In the case of *Birbrower v. Superior Court*⁸⁸, the California Supreme Court held that a New York lawyer's California activities in connection with arbitration of a commercial dispute were unauthorized practice and the lawyer was barred from recovering compensation. However, consequences of unauthorized practice of law should be more than forfeiture of attorney's fees.

What must be discussed in light of a managed system of liberalization of legal practice are the permissible scopes vis-à-vis impermissible acts by foreign transactional lawyers. The American Bar Association 2000 Ethics Commission proposed amendments to Rule 5.5 (b) of the Model Code of Professional Responsibility that the lawyer admitted to practice in another jurisdiction Y, but not in this jurisdiction X, does not engage in the unauthorized practice of law in this jurisdiction X when:

- (1) The lawyer is authorized to appear before a tribunal in this jurisdiction by law or order of the tribunal or is preparing for a proceeding in which the lawyer reasonably expects to be so authorized; or,
- (2) Other than making appearances before a tribunal with authority to admit the lawyer to practice *pro hac vice*:
 - i. A lawyer who is an employee of a client acts on the client's behalf or, in connection with the client's matters, on behalf of the client's other employees or its commonly owned organizational affiliates;
 - ii. The lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer's practice on behalf of a client in a jurisdiction in which the lawyer is admitted to practice; or
 - iii. The lawyer is associated in a particular matter with a lawyer admitted to practice in this jurisdiction.

The primary purpose of the prohibition on extra-jurisdictional practice is the protection of the Filipino client against possibly incompetent representation and the preservation of the legal practice as a matter of public interest. *The Code of Professional Responsibility may be reviewed to incorporate admission pro hac vice and transactional lawyers ethical requirements.* Allowing foreign lawyers to practice through the joint law venture discussed would enable the Philippine Courts to effectively discipline the lawyer because it has, in effect, jurisdiction over him. Meanwhile, by virtue of reciprocity, foreign lawyers

⁸⁸ 949 P.2d 1 (Cal. 1998).

who practice law without authorization from the Supreme Court through the joint law venture may be proscribed from practicing law in the Philippines and disciplined by the lawyer's country of origin and admission. The effect of discipline in the Philippines through Rule 138 of the Rules of Court, should be in the same vein as discipline imposed by the Supreme Court for Filipino lawyers who commit malpractice in another jurisdiction:

The disbarment or suspension of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts⁸⁹ xxx are deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do⁹⁰ x x x [and] the practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.⁹¹

In the case of *Velez v. De Vera*⁹², De Vera was suspended from the practice of law for two years in the Philippines finding him guilty of deceit, malpractice, gross misconduct, and unethical behavior, which is violative of Canon 16 of the Code of Professional Responsibility. The basis of his suspension was his malpractice in California when he allegedly misappropriated his client's funds and was recommended three years of suspension by the State Bar of California.

Disciplinary action against a lawyer is intended to protect the court and the public from the misconduct of officers of the court and to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable and reliable men in whom courts and clients may repose confidence.⁹³

⁸⁹ RULES OF COURT, Rule 139, ¶ 2.

⁹⁰ *Id.* at ¶ 1.

⁹¹ *Id.*

⁹² A.C. No. 6687, 496 SCRA 345, Jul. 25, 2006.

⁹³ *Id.* at 378.

CONCLUSION

Globalization has extensively affected the practice of law because, *first*, the demand for international legal advice, primarily for major capital markets, financing, mergers and acquisitions, and other transactions that involve transnational business in determining mandatory and applicable laws have increased substantially; and *second*, local lawyers and their foreign counterparts must cope with international education and emerging trends not only in laws but also in other fields, which affect the profession.

These structural changes are the challenges, which face the legal practitioner. Without authority, like a global bar, to lay down the rules in the practice, primarily in the most globalized aspects of the law, i.e., corporate and commercial laws, the fear against unscrupulous lawyers who have greater bargaining positions with more sophisticated education, experience, and technology is not implausible and not to be taken lightly.

China, Japan, Thailand, Singapore, and Malaysia have yielded to the pressures of globalization for foreign legal services. However, the Philippines' response must be in view of national interest as regards the entry of and the extent of liberalization while taking into account intervention "to offset market failures and to achieve non-economic and social objectives."⁹⁴

Without vigilant and circumspect application, the extra-jurisdictional practice of law, which appears to be already taking place in the country without supervision and regulation, jeopardizes the capacity and authority of the Philippine government especially of the Supreme Court to maintain discipline, competitiveness, and professionalism of those who practice law in the country – whether Filipino or not. This is the bane that must be averted, otherwise, the state would be relinquishing power to interests of foreign multinational law firms and their transnational companies over that of Filipino lawyers and their clients to the profession and the country's own detriment.

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⁹⁴ Chan, *supra* note 66. Emphasis supplied.