SETTING BOUNDARIES ON THE DEFINITION OF "PRACTICE OF LAW" IN PHILIPPINE JURISPRUDENCE*

*Emir-Deogene Villafuerte Mendoza***
*Maria Selena Golda Remulla Fortun****

I. INTRODUCTION

A video in which a lawyer explains legal concepts in an episode of a television show[1] and a video lecture on law in an online learning platform[2]—both of these were formulated for informational purposes, and yet both fall under the Philippine definition of "practice of law."

The Supreme Court, in a line of decisions traceable to the landmark case of *Cayetano v. Monsod*,[3] defines the practice of law as "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill."[4]

Curiously, the Court did not settle for a single definition of the term "practice of law" in its decision in *Cayetano* but merely cited a number of definitions from various sources. Proposing a single definition combining all of the above sources, however, is not the goal of this paper.

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* *Cite as* Emir-Deogene Mendoza & Maria Selena Golda Fortun, *Setting Boundaries on the Definition of "Practice of Law" in the Philippines*, 93 PHIL. L.J. 192, [page cited] (2020).

** Juris Doctor, University of the Philippines College of Law, Class Valedictorian, cum laude (2019); BA Public Administration, University of the Philippines Diliman, *summa cum laude* (2015).

*** Juris Doctor, University of the Philippines College of Law (2018); Bachelor of Business Administration, University of the Philippines Diliman, *cum laude* (2014).

[1] LegalEagle, *Real Lawyer Reacts to SpongeBob SquarePants (Krabs vs Plankton) ft. TierZoo*, YOUTUBE, Oct. 17, 2019, *at* https://www.youtube.com/watch?v=eFReTj2KsM0 (last accessed Dec. 1,2019).

[2] Skillshare, Online Law Classes, SKILLSHARE, *at* https://www.skillshare.com/browse/law (last accessed Dec. 1, 2019).

[3] Cayetano v. Monsod [hereinafter "Cayetano"], G.R. No. 100113, 201 SCRA 210, Sept. 3, 1991.

[4] Tan, Jr. v. Gumba, A.C. No. 9000, Jan. 10 2018, *citing* Eustaquio v. Navales, A.C. No. 10465, 792 SCRA 377, 384, June 8, 2016, *which cites* Feliciano v. Bautista-Lozada, A.C. No. 7593, Mar. 11, 2015, *citing* Lingan v. Atty. Calubaquib, A.C. No. 5377, June 30, 2014, *which cites* Cayetano v. Monsod, G.R. No. 100113, Sept. 3, 1991.

The *Cayetano* ruling recognizes how the legal profession has evolved over time. However, the discussion in this paper demonstrates that the ruling, with its broad definition, poses more dangers than benefits. It goes against other equally important State interests, such as the people's right to be informed of their rights (which is a matter of official concern) and the right to freedom of expression.

This discussion proposes that the definition of "practice of law" be limited by adding the phrase "in representation of an existing or prospective client and in the course of representing such client or with a view to professional employment" to the *Cayetano* definition. Thus, *sharing information to the public in general, without an existing or prospective client, should not be considered a "practice of law." However, the opposite should be considered "practice of law."* Under this definition, factors such as the media, remuneration received, or the possession of a license to practice law, should not be relevant in determining what constitutes the practice of law.

Part II discusses the *Cayetano* decision, how the Supreme Court cited it in succeeding jurisprudence, and the existing literature in the Philippines on *Cayetano* and in the United States, from which many definitions quoted in *Cayetano* originated. Part III contrasts, on the one hand, the state interests of guaranteeing equal access to opportunities for public service implied by *Cayetano* and of ensuring that the practice of law is limited to individuals of good moral character as expressed in succeeding cases, and on the other hand, the competing state interests of ensuring the people's right to information on matters of public concern and the right to freedom of expression. Lastly, Part IV recommends a limited definition of "practice of law" and addresses possible repercussions of this proposed definition.

II. *CAYETANO V. MONSOD*

A. The Decision

Cayetano is a landmark decision of the Supreme Court. Primarily a political law case, it concerned the definition of "practice of law" as a qualification for appointment as Chairman of the Commission on Elections (COMELEC).[5] Senator Renato Cayetano had questioned Christian Monsod's possession of such qualification. The Court observed that "there seems to be no jurisprudence as to what constitutes practice of law as a legal

[5] CONST. art. IX-C, § 1 (1).

qualification to an appointive office."[6] Several definitions of the term "practice of law" from multiple sources followed. The first definition was taken from the third edition of Black's Law Dictionary:

> The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law. An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.[7]

The second cited definition comes from *Land Title Abstract and Trust Co. v. Dworken*,[8] an American decision which stated that the practice of law is not limited to the conduct of cases in court. The third is also from an American decision, *State ex. rel. Mckittrick v. C.S. Dudley and Co*,[9] which ruled that a person would also be considered to be in the practice of law when:

> [H]e, for a valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, *board, body, committee, or commission constituted* by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law.

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[6] *Cayetano*, 201 SCRA at 212.
[7] *Id.*, *citing* Black's Law Dictionary (3rd. ed. 2003).
[8] 129 Ohio St. 23, 193 N. E. 650 (1934).
[9] 102 S.W. 2d 895, 340 Mo. 852 (1937).

The fourth definition is from the Court's decision in *Philippine Lawyers Association v. Agrava*[10] citing American Jurisprudence:[11]

> *The practice of law* is not limited to the conduct of cases or *litigation in court*; it embraces the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, and in addition, conveying. In general, all *advice to clients*, and all action taken for them in matters *connected with the law* incorporation services, assessment and condemnation services contemplating an appearance before a judicial body, the foreclosure of a mortgage, enforcement of a creditor's claim in bankruptcy and insolvency proceedings, and conducting proceedings in attachment, and in matters of estate and guardianship have been held to constitute law practice, as do the preparation and drafting of legal instruments, *where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.*

The fifth definition is from Volume 3 of Moran's Comments on the 1953 Rules of Court,[12] which similarly cited American jurisprudence:[13]

> *Practice of law* under modern conditions consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of legal advice on a large variety of subjects, and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs. *Although these transactions may have no direct connection with court proceedings, they are always subject to become involved in litigation.* They require in many aspects a high degree of *legal skill*, a wide experience with men and affairs, and great capacity for adaptation to difficult and complex situations. These customary functions of an attorney or counselor at law bear an intimate relation to the administration of justice by the courts. No valid distinction, so far as concerns the question set forth in the order, can be drawn between that part of the work of the lawyer which involves appearance in court and that part which involves advice and

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[10] 105 Phil. 173, 176-177, Feb. 16, 1959.

[11] 5 AMERICAN JURISPRUDENCE 262-63. (Emphasis supplied in the *Cayetano* decision.)

[12] MANUEL MORAN, 3 COMMENTS ON THE RULES OF COURT 665-66.

[13] *Citing In re* Opinion of the Justices 194 N. E. 313 (1995), *quoted in* Rhode Is. Bar Assoc. v. Automobile Service Assoc., 179 A. 139, 144 (1935). (Emphasis supplied in the *Cayetano* decision.)

> drafting of instruments in his office. It is of importance to the welfare of the public that these manifold customary functions be performed by persons possessed of adequate learning and skill, of sound moral character, and acting at all times under the heavy trust obligations to clients which rests upon all attorneys.

The sixth definition cited an orientation hosted by the University of the Philippines Law Center to brief new lawyers (1974–1975), which likewise quoted an American decision:[14]

> One may be a practicing attorney in following any line of employment in the profession. If what he does exacts knowledge of the law and is of a kind usual for attorneys engaging in the active practice of their profession, and he follows some one or more lines of employment such as this he is a practicing attorney at law within the meaning of the statute.

The Court then stated, without attribution, that the "[p]ractice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." This original formulation by the Court has since become one of the most commonly cited portions of the *Cayetano* ruling.[15]

The seventh and last definition is attributed to "111 ALR 23":

> To engage in the practice of law is to perform those acts which are characteristics [sic] 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.

What followed after the enumeration of these definitions is a reproduction of the 1986 Constitutional Commission deliberations regarding the qualifications of a member of the Commission on Audit. The Court cited them to show that the framers of the Constitution meant for the term "practice of law" to be interpreted liberally.

The Court then segued into a discussion of the terms "private practitioner" and "private practice," and subsequently made the following observations:

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[14] Barr v. Cardell, 155 NW 312 (1915).

[15] See discussion of subsequent cases, *infra*.

> The test that defines law practice by looking to traditional areas of law practice is essentially tautologous, unhelpfully defining the practice of law as that which lawyers do. The practice of law is defined as "the performance of any acts . . . in or out of court, commonly understood to be the practice of law.["]Because lawyers perform almost every function known in the commercial and governmental realm, such a definition would obviously be too global to be workable.
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> The appearance of a lawyer in litigation in behalf of a client is at once the most publicly familiar role for lawyers as well as an uncommon role for the average lawyer. Most lawyers spend little time in courtrooms, and a large percentage spend their entire practice without litigating a case. Nonetheless, many lawyers do continue to litigate and the litigating lawyer's role colors much of both the public image and the self-perception of the legal profession
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> In this regard[,] thus, the dominance of litigation in the public mind reflects history, not reality.[16]

The Court then discussed the discretionary character of appointment and found that grave abuse of discretion was absent. The Court closed the decision with the legal maxim that "[w]e must interpret not by the letter that killeth, but by the spirit that giveth life."

Justices Padilla, Cruz, and Gutierrez, Jr. dissented from the majority opinion for different reasons. Justice Padilla opined that the element of habituality was missing in order to constitute Monsod's performance of his tasks for the past ten years as "practice of law"—the source of this element being a Memorandum prepared by the Commission on Appointment. He argued that to constitute practice of law, "there must be a continuity or a succession of acts."[17] Thus, isolated acts, such as an instance of having to draft legal documents, could not be considered as habitual and continuous so as to constitute "practice of law" and thereby qualify Monsod for the position of COMELEC Chairman.

Meanwhile, Justice Cruz argued that the definition supplied by the *ponencia* was overly broad so as to render any activity performed by a lawyer, whether directly related to actual law practice or only incidental thereto, as a "practice of law." He remarked that the only exceptions to the given

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[16] *Cayetano*, 201 SCRA 210, 216. (Citations omitted.)

[17] *Id.* at 233. (Padilla, *J., dissenting.*)

definition would be "the lawyer whose income is derived from teaching ballroom dancing or escorting wrinkled ladies with pubescent pretensions."[18] He thus painted a vivid picture of the limited nature of said exceptions to the broad definition favored by the majority.

Justice Gutierrez reinforced the opinions of the other two justices by outlining in detail Monsod's different positions and activities over the past 10 years, which ranged from earning his Master's degree in Economics from the University of Pennsylvania, to serving as a Chief Executive Officer or President of private corporations. He illustrated Monsod's lack of commitment to the law practice; through the years, it appeared that Monsod sought legal advice more often than he gave it.

B. In Subsequent Cases

The Court has not expressly ruled whether it has chosen and adopted a specific definition of "practice of law" from among the definitions quoted in *Cayetano*. A line of cases may imply that it settled on a single definition; another line may imply that it has not. All of these cases are legal ethics cases, involving disciplinary proceedings against lawyers, as opposed to the circumstances surrounding the *Cayetano* decision, which involved the respondent's qualification to a constitutionally-created office.

In *Re: Letter of the UP Law Faculty Entitled "Restoring Integrity: A Statement by the Faculty of the University of The Philippines College of Law on the Allegations of Plagiarism and Misrepresentation in the Supreme Court*[19] (hereinafter *"Re: Letter of the UP Law Faculty"*), the Court recognized "the broad definition in *Cayetano v. Monsod*" and cited in a footnote[20] this definition in particular:

> Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." To engage in the practice of law is to perform those acts which are characteristics 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.

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[18] *Id.* at 235. (Cruz, *J.*, *dissenting.*)

[19] A.M. No. 10-10-4-SC, Mar. 8, 2011. *Re: Letter of the UP Law Faculty* concerned members of the faculty of the University of the Philippines College of Law who signed the statement "Restoring Integrity" on the Plagiarism in the case of Vinuya v. Executive Secretary, G.R. No. 162230, Apr. 28, 2010.

[20] *Re: Letter of the UP Law Faculty,* A.M. No. 10-10-4-SC, 644 SCRA 543, 625 n.134 (2011). (Citations omitted.)

In *Lingan v. Atty. Calubaquib*,[21] which was decided in 2014, the Court also used the definition attributed found in *Cayetano*.[22] A line of cases traceable from *Lingan*[23] cite the same definition. Both *Re: Letter of the UP Law Faculty* and said line of cases suggest that the Court recognized this definition as the *Cayetano* definition.

However, the extensive quotation of the *Cayetano* decision in the 1993 case of *Ulep v. Legal Clinic*[24] and the 2017 case of *Bonifacio v. Era*[25] suggests that the Court did not adopt a single definition. Both *Ulep* and *Bonifacio* are legal ethics cases with a specific state interest, as will be discussed below. In *Ulep*, the Court quoted the portions of *Cayetano* discussing the definitions from Black's Law Dictionary up to Moran. In *Bonifacio*, all seven definitions found in *Cayetano* were relied upon.

C. Literature

1. The Philippines

Generally, articles and notes in Philippine law journals affirm the *Cayetano* ruling by using the decision, either by way of introduction or in support of their main theses.

Balisacan censured the Code of Professional Responsibility for its failure to recognize differentiation in the legal profession, which the Court tacitly recognized in *Cayetano*.[26] Recognizing the limits laid out in *Cayetano*, Balaquiao defined the conditions under which legal process outsourcing may

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[21] Lingan v. Calubaquib [hereinafter "Lingan"], A.C. No. 5377, June 30, 2014. *Lingan* focused on unauthorized practice of law by a suspended member of the bar.

[22] *Cayetano*, 201 SCRA 210, 214, *citing* 111 ALR 23. "To engage in the practice of law is to perfo[r]m those acts which are characteristics 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."

[23] Tan, Jr. v. Gumba, A.C. No. 9000, Jan. 10, 2018, *citing* Eustaquio v. Navales, A.C. No. 10465, June 8, 2016, 792 SCRA 377, 384, *which cites* Feliciano v. Bautista-Lozada, A.C. No. 7593, March 11, 2015. All these cases centered on the same issue as *Lingan*.

[24] B.M. No. 553, June 17, 1993. The case concerned the extent of permissible advertising by lawyers and practice of law.

[25] A.C. No. 11754, Oct. 3, 2017. This is also a case on unauthorized practice of law by a suspended member of the bar.

[26] Ryan Hartzell Balisacan, *Towards Recognizing and Accomplishing Differentiation Within the Legal Profession: A Critique of the Code of Professional Responsibility's Treatment of the Non-Litigation Practice of Law*, 81 PHIL. L.J. 322, 340 (2006).

be considered legal in the Philippines.[27] Meanwhile, Bernardo stated that *Cayetano* does not foreclose his thesis that communication made by a corporation to its in-house counsel remains privileged, even if it contains non-legal matters received by such counsel in his role as a legal manager.[28]

An exception is Reyes who criticized *Cayetano* for legally prohibiting legal process outsourcing ("LPO") in the country. LPO is a business model where lawyers' services are unbundled, dissected, and distributed to different parts of the world to be performed by different teams.[29] Reyes illustrated the problem by providing as an example the in-house model. She said that if a foreign corporation were to outsource its in-house legal department to an LPO firm, the LPO firm itself would be considered as a separate entity that would become directly accountable to the client. Moreover, if the LPO firm were required to apply foreign law in certain situations, "then the Filipino lawyers will be engaged in the unauthorized practice of law, if they are not licensed to practice law in those foreign jurisdictions."[30]

Reyes pointed out:

> First, no matter what type of legal work a Filipino non-lawyer does or what type of law he or she practices, it is considered as unauthorized practice of law. If a Filipino non-lawyer absolutely cannot practice Philippine law, then with more reason he cannot practice foreign law. Because of the all-encompassing definition of "practice of law" in *Cayetano*, even mere clerical legal work is considered as practice of law in the Philippines. This might not have been the intention of the Court, but it is certainly the effect of such a broad definition. Since the practice of law is reserved for lawyers, technically, a non-lawyer cannot do even mere clerical work because such would constitute unauthorized practice of law.[31]

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[27] Balaquiao suggests that the solution lies in recognizing Filipino legal process outsourcing lawyers as lawyers. *See* Eleanor Balaquiao, *The Filipino Lawyer and The Enemy at the Gates: Rationalizing the Place of Legal Process Outsourcing in the Philippine Legal Matrix*, 85 PHIL. L.J. 303, 312-13 (2011).

[28] Pedro Jose Bernardo, *The Bersamin Dicta in Disini v. Sandiganbayan, Attorney-Client Privilege, and the In-House Counsel*, 56 ATENEO L.J. 662, 685 (2011).

[29] Carmina Reyes, *Exploring the Validity of Legal Process Outsourcing and the Meaning of "Practice of Law" in Light of the 2015 ASEAN Economic Integration*, 60 ATENEO L.J. 883, 888 (2016).

[30] *Id.* at 920.

[31] *Id.* at 927.

Reyes stated that *Cayetano* must be changed, because by attempting to broaden what constitutes "practice of law" in order to protect the legal profession, it does the exact opposite by perpetuating technical instances of unauthorized practice of law that remain unpunished and overlooked. Reyes pointed out the following problems:

> First, it breeds confusion because the difference of what the law provides and what is happening in real life. Therefore, it cannot properly regulate what actually happens because to apply the law would lead to absurd situations (where a paralegal may be penalized for researching on a case and for making a report about it, or a law student may be penalized for writing and submitting a Juris Doctor thesis).
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> Second, and more importantly, it renders ineffectual the power of regulating and banning the unauthorized practice of law, which, in turn, fosters disrespect to the system.
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> In the U.S., the work of a paralegal (who essentially performs similar tasks as a lawyer) is not considered as practice of law if "the work is of a preparatory nature, such as research, investigation, [ ] assemblage of data[,] and others [that] will assist the employing attorney in carrying the matter to a completed product, either by his personal examination and approval or by an additional effort.[32]
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> Here, there is no such distinction, because under the definition of what constitutes practice of law, any and all application of legal knowledge is considered as practicing law. This may not have been the intention of the Court when it decided *Cayetano*; indeed, they may not have foreseen the far-reaching implications of having such a broad definition. At the time *Cayetano* was decided, the practice of law was severely limited by territorial jurisdictions and physical borders. Today, those borders are vanishing; and such is further accelerated by the advent of the AEC. Now, these borders are not just disappearing because of disruptive technology - they must be erased.
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> In view of the foregoing, the *Cayetano* doctrine must be abandoned and a more streamlined definition of what constitutes practice of law (and therefore, what constitutes unauthorized

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[32] *Id.*, *citing* Ma. Cherry Joy Pamute, Recognizing Independent Paralegal Practice in the Philippines (1996) (unpublished J.D. thesis, Ateneo de Manila University, on file with the Professional Schools Library, Ateneo de Manila University).

> practice of law) must be put in place in order to regulate and protect the legal profession, especially in light of recent and upcoming changes.[33]

2. The United States of America

In the United States, where many definitions cited by the Court in *Cayetano* originated, there is no uniform definition of "practice of law." Turfler observes that definitions of the practice of law vary greatly from state to state, and even scholars lack a consensus on what activities the practice of law encompasses.[34]

In 2002, a task force appointed by the American Bar Association ("ABA") proposed a definition of the term "practice of law," which stated that the practice of law "is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law."[35] A person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

> 1. Giving advice or counsel to persons as to their legal rights or responsibilities or to those of others;
> 2. Selecting, drafting, or completing legal documents or agreements that affect the legal rights of a person;
> 3. Representing a person before an adjudicative body, including, but not limited to, preparing or filing documents or conducting discovery; or
> 4. Negotiating legal rights or responsibilities on behalf of a person.[36]

Whether or not they constitute the practice of law, the following are permitted:

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[33] Reyes, *supra* note 28, at 934-35.

[34] Soha F. Turfler, *A Model Definition of the Practice of Law: If Not Now, When? An Alternative Approach to Defining the Practice of Law*, 61 WASH. & LEE L. REV. 1903, 1907, n.19 (2004).

[35] *Id.* at 1907, *citing* American Bar Association, *Task Force On The Model Definition Of The Practice Of Law, Draft (9/18/02), Definition Of The Practice Of Law*, AMERICAN BAR ASSOCIATION WEBSITE, *available at* https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ (last accessed Dec. 19, 2019).

[36] *Id.*

1. Practicing law authorized by a limited license to practice;
2. Pro se representation;
3. Serving as a mediator, arbitrator, conciliator or facilitator; and
4. Providing services under the supervision of a lawyer in compliance with the Rules of Professional Conduct.[37]

Any person engaged in the practice of law shall be held to the same standard of care and duty of loyalty to the client independent of whether the person is authorized to practice law in this jurisdiction. With regard to the exceptions and exclusions listed above, if the person providing the services is a non-lawyer, the person shall disclose that fact in writing. In the case of an entity engaged in the practice of law, the liability of the entity is unlimited while the liability of its constituent members is limited to those persons participating in such conduct and those persons who had knowledge of the conduct but failed to take remedial action immediately upon discovery of the same.[38]

The proposed definition was criticized for being "overly broad and [for] creating strong anti-competitive effects."[39] The ultimate recommendation of the Task Force, adopted by the ABA House of Delegates on August 11, 2003, was to abandon the proposed definition. It instead recommended that each state adopt its own definition of the practice of law. The recommendation included the "basic premise that the practice of law is the application of legal principles and judgment to the circumstances or objectives of another person or entity," which excludes any mention of the provider's skills.[40] Notably, this basic premise is as broad as the *Cayetano* definition cited in the *Re: Letter of the UP Law Faculty*[41] and the *Lingan v. Atty. Calubaquib*[42] line of cases.

The ABA's rejected draft definition deserves some discussion. Admittedly, the draft definition is effectively as broad as what was formulated in *Cayetano*. For one, the list of activities listed in the draft definition establishes statutory presumptions; it does not actually serve as an exhaustive list of what constitutes the practice of law. However, unlike the *Cayetano* definition, the ABA draft definition included the following limits:

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[37] *Id.*
[38] *Id.*
[39] Turfler, *supra* note 33 at 1938-39 n.1455 (2004).
[40] *Id.* at 1940.
[41] A.M. No. 10-10-4-SC, Mar. 8, 2011.
[42] A.C. No. 5377, June 30, 2014.

1. The words "with regard to the circumstances or objectives of a person";

2. The words "that require the knowledge and skill of a person trained in the law"; and

3. A list of acts that are permitted whether or not they constitute the practice of law, listed above.

In addition, the draft definition provides for a safety mechanism in case a non-lawyer engages in certain permitted acts regardless of whether they constitute the practice of law: the non-lawyer shall disclose in writing the fact that he or she is not a lawyer.

After discussing the ABA's efforts, Turfler recommended an activity-centered approach in defining the term "practice of law" in the United States, with the following benefits:

> Many efficiencies flow from an activity-centered perspective. A definition formulated from this perspective has the potential of being drawn very narrowly and encompassing all the high-risk services, while opening up competition in the rest of the legal services market. An activity-centered definition also fosters innovation in creating alternative forms of legal service delivery and providers because the market would be open for many low-risk services. The process of formulating the definition of the practice of law is also more efficient under an activity-centered approach. Instead of forcing regulators to determine abstractly the essence of what a lawyer does and making regulators weigh the consequences of both activities and individual providers, an activity-centered approach only requires an evaluation of various legal activities. The definition of the practice of law will encompass those "high-risk" services—those services with sufficiently severe consequences or those services where the market could not trust clients to adequately waive potential risks.[43]

[43] Turfler, *supra* note 33, at 1957-58.

III. COMPETING STATE INTERESTS

A. *Cayetano* and Succeeding Cases

1. Cayetano v. Monsod

The fact that the Court did not settle for a single definition of "practice in law" in *Cayetano* raises an important question: What State interest called for such a ruling?

When it decided the case, the Court in *Cayetano* recognized the evolution of the legal profession. However, such recognition has no explicit State interest. The closest State interest involved is embodied in Article II, Section 26 of the Constitution, which states that "[t]he State shall guarantee equal access to opportunities for public service."[44] However, in *Pamatong v. Commission on Elections*, the Court ruled that there is no constitutional right to run for or hold public office:

> What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort.
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> The "equal access" provision is a subsumed part of Article II of the Constitution, entitled "Declaration of Principles and State Policies." The provisions under the Article are generally considered not self-executing, and there is no plausible reason for according a different treatment to the "equal access" provision. Like the rest of the policies enumerated in Article II, the provision does not contain any judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. The disregard of the provision does not give rise to any cause of action before the courts.[45]

Even though the Court in *David v. Senate Electoral Tribunal*[46] cited said provision in support of its ruling that "[t]he Constitution guarantees equal protection of the laws and equal access to opportunities for public service,"

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[44] The provision continues, "and prohibit political dynasties as may be defined by law." Political dynasties are not involved in this discussion.

[45] G.R. No. 161872, 427 SCRA 96, 100–101, Apr. 13, 2004.

[46] G.R. No. 221538, 803 SCRA 435, Sept. 20, 2016.

the discussion following such citation and the application to the facts relied exclusively on the equal protection clause. In addition, the Court did not expressly reverse its ruling in *Pamatong*. In fact, it did not refer to *Pamatong* at all. The relevant portion of *David* states:

> The equal protection clause serves as a guarantee that "persons under like circumstances and falling within the same class are treated alike, in terms of 'privileges conferred and liabilities enforced.' It is a guarantee against 'undue favor and individual or class privilege, as well as hostile discrimination or oppression of inequality.'"
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> Other than the anonymity of their biological parents, no substantial distinction differentiates foundlings from children with known Filipino parents.[47]

2. Succeeding Cases

All cases citing *Cayetano* are legal ethics cases. In contrast to *Cayetano*, the State interest involved in these latter cases is expressly stated—to ensure that the practice of law is limited to individuals of good moral character.

In *Ulep v. Legal Clinic*,[48] insert footnote here the Court stated:

> Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyers is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client and the bar from the 'incompetence or dishonesty' of those unlicensed to practice law and not subject to the disciplinary control of the court.[49]

In line with the above statement, the Court in *Bonifacio v. Era*[50] ruled that members of the bar, above anyone else, are called upon to obey court orders and processes. Graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect for their processes.

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[47] *Id.* at 522.
[48] B.M. No. 553, 223 SCRA 378, 402, June 17, 1993.
[49] *Id.*
[50] A.C. No. 11754, Oct. 3, 2017.

According to the Court in *Lingan v. Atty. Calubaquib*[51] and *Tan, Jr. v. Gumba*,[52] the practice of law is a privilege burdened with conditions and to enjoy such privilege, lawyers must adhere to the rigid standards of mental fitness, maintain the highest degree of morality, and faithfully comply with the rules of the legal profession. In *Eustaquio v. Navales*[53] and *Feliciano v. Bautista-Lozada*,[54] the Court stated that the disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession.

In *Re: Letter of the UP Law Faculty*, the Court stated:

> It would do well for the Court to remind respondents that, in view of the broad definition in *Cayetano v. Monsod*, lawyers when they teach law are considered engaged in the practice of law. Unlike professors in other disciplines and more than lawyers who do not teach law, respondents are bound by their oath to uphold the ethical standards of the legal profession. Thus, their actions as law professors must be measured against the same canons of professional responsibility applicable to acts of members of the Bar as the fact of their being law professors is inextricably entwined with the fact that they are lawyers.[55]

B. State's Policy of Full Public Disclosure

Due to advances in modern technology and the proliferation of Internet-usage in everyday life, the public has gained easier access to information. In turn, there has been a higher expectation for the full disclosure of such information. An avenue through which this may be done is through social media platforms such as Facebook, LinkedIn, and YouTube,[56] which have been used to facilitate interactions,[57] disseminate information,[58] and advertise services.[59]

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[51] A.C. No. 5377, June 30, 2014.

[52] A.C. No. 9000, Jan. 10, 2018.

[53] A.C. No. 10465, 792 SCRA 377, 384, June 8, 2016.

[54] A.C. No. 7593, Mar. 11, 2015.

[55] A.M. No. 10-10-4-SC, 644 SCRA 544, 625, Mar. 8, 2011.

[56] Kristen Mix, *Discovery of Social Media*, 5 FED. CTS. L. REV. 119, 120 (2011).

[57] Vivares v. St. Theresa's College, G.R. No. 202666, Sept. 29, 2014.

[58] Guy v. Tulfo, G.R. No. 213023, Apr. 10, 2019.

[59] Concepcion Jardeleza, *Regulation of Lawyers: Marketing Legal Services On the Web*, 86 PHIL. L. J. 243, 263 (2012).

Such use has extended to law-related content. Various law firms have put up Facebook and Instagram pages in order to publicize their associates' and partners' achievements, such as their inclusion in reputable publication listings like the "Top 100 Lawyers for the Year."[60] Partners make use of LinkedIn to advertise job openings in their respective firms.[61] YouTube and Vimeo provide streaming services in order to provide both real-time and recorded video lectures for bar exam reviewees.[62]

Lawyers in other jurisdictions even film themselves reacting to the portrayal of courtroom scenes in popular movies and television shows and upload them on YouTube, supported by advertisements. These videos cite laws, court doctrines, and rules of procedure.[63] In addition, both public and private firms upload video content advertising their respective practices.

Another emerging platform that may be a venue for teaching and discussing Philippine laws are online learning websites which effectively democratize education by allowing materials to be accessed anywhere.[64] Examples include Skillshare,[65] Brilliant,[66] Udemy, Lynda, and Coursera.[67]

Currently, websites maintained by the Philippine government, law schools, law firms, law students, and nongovernment organizations also maintain online libraries of laws, implementing rules, and other governmental issuances. A problem that may arise from this is the possibility of the public thinking that the laws posted on these sites are binding, and thus may erroneously rely on them despite the fact that the Internet is not legally recognized as a means of publishing laws. Article 2 of the Civil Code,

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[60] *See* Instagram page of Fortun, Narvasa & Salazar *at* instagram.com/fnslaw, which cited the Top 100 Lawyers as published by the Asia Law Business Journal.

[61] *See* LinkedIn profile of Sandra Olaso-Coronel *at* https://ph.linkedin.com/in/sandra-olaso-coronel-312814b9, who listed openings for positions at Yorac Sarmiento Arroyo Chua Coronel & Reyes.

[62] *See* Ateneo Law Bar Review Program, *available* at https://ateneo.edu/aps/law/bar-review-program-0, which uploaded private videos of its lecturers on its own YouTube channel.

[63] LegalEagle, *supra* note 3.

[64] Connie Chen, *Online learning may be the future of education — we compared 4 platforms that are leading the way*, BUSINESS INSIDER, Jan. 5, 2018, https://www.businessinsider.com/online-learning-platform-comparison-udemy-skillshare-lynda-coursera (last accessed Dec. 19, 2019).

[65] Skillshare, *About Skillshare*, SKILLSHARE, https://www.skillshare.com/about (last accessed Dec. 7, 2019).

[66] Brilliant, *Brilliant | Learn to think*, BRILLANT.ORG, https://brilliant.org/ (last accessed Dec. 19, 2019).

[67] Chen, *supra* note 62.

as amended by Executive Order No. 200 (1987), speaks of publication "either in the Official Gazette or in a newspaper of general circulation in the Philippines." In addition, copies of laws online may contain typographical errors or omissions, or may even be outdated.

A lawyer has the duty to promote respect for the law.[68] Such duty includes pointing out the official source of the law and its key features. A lawyer may do so personally, through print or broadcast media, or through online platforms, the latter being the easiest and most accessible form of communication.

However, if such act would already be deemed to constitute the "practice of law," the lawyer would have to refrain from doing such act to avoid being held liable for impermissible advertising. Note that the traditionally acceptable ways by which a lawyer may make known his legal services are through simple professional calling cards, publication in reputable law lists, and word-of-mouth testimonies. There has been no jurisprudence to date as to whether the act of a lawyer in giving information, whether in a general sense or with regard to a specific query, through social media or other media platforms, already constitutes impermissible advertising.[69]

Meanwhile, a non-lawyer may also discuss the law or the regulations issued pursuant to such law through the same avenues that a lawyer may avail of. However, since such act would already constitute the "practice of law" under *Cayetano* and succeeding cases, the only way for a non-lawyer to avoid incurring liability for unauthorized practice of law is to desist from such discussion or teaching.

This desistance adversely affects students in related studies (as when and aspiring accountant whose accounting classes would be stripped off of Bureau of Internal Revenue (BIR) rulings or issuances), and the general public, who may not necessarily know on their own whether national and local government officials are accurately citing the laws or rights under prevailing laws in their speeches and debates. Even the electoral process is affected, since voters cannot by themselves verify whether the promises made by candidates in speeches or debates are consistent with the Constitution and existing laws. Hence, the public is denied accurate information regarding prevailing laws and their rights under such laws.

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[68] CODE OF PROF. RESPONSIBILITY, Canon 1; Lawyer's Oath.

[69] Ulep v. Legal Clinic, B.M. No. 553, June 17, 1993; Jardeleza, *supra* note 57.

Under Article II, Section 24 of the Constitution, the State recognizes the vital role of communication and information in nation-building. Section 28 of the same Article provides that subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest. Such policy is intended to parallel Article III, Section 7 of the Constitution, which states that the right of the people to information on matters of public concern shall be recognized. Access to official records, to documents and papers pertaining to official acts, transactions, or decisions—as well as to government research data used as a basis for policy development—shall be accorded to every citizen, subject to such limitations as may be provided by law.[70]

Informing the public of the laws is also required to render operative Article 3 of the Civil Code, which provides that ignorance of the law excuses no one from compliance therewith. In its 1985 decision in *Tañada v. Tuvera*,[71] the Court stated:

> The clear object of [Section 1 of Commonwealth Act 638] is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim "ignorantia legis non excusat." It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one.[72]

The rules on legal ethics also mandates lawyers to disseminate information to the public regarding the laws they must follow and their rights under such law. The Code of Professional Responsibility enumerates two such canons:

> Canon 4. A lawyer shall participate in the development of the legal system by initiating or supporting efforts in law reform and in the improvement of the administration of justice.

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[70] The Province of N. Cotabato v. The Gov't of the Republic of the Phil. Peace Panel on Ancestral Domain, G.R. No. 183591, Oct. 14, 2008. The Court, in a footnote, states "*Vide* V Record, Constitutional Commission 26-28 (Sept. 24, 1986) which is replete with such descriptive phrase used by Commissioner Blas Ople."

[71] G.R. No. L-63915, 136 SCRA 27, 38, Apr 24, 1985.

[72] *Id.*

> Canon 5. A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating the law and jurisprudence.

C. Freedom of Expression

The *Cayetano* ruling as well as the subsequent decisions that cite it also constitute a chilling effect on the freedom of expression, a right guaranteed by the Constitution. No less than the Bill of Rights provides that no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.[73]

Because of the preferred status of the constitutional rights of speech, expression, and the press as compared to other rights, a prior restraint is vitiated by a weighty presumption of invalidity.[74] Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.

The broad definition of "practice of law" has the effect of an unlawful prior restraint against a speaker, whether or not a lawyer, by preventing him from speaking about the law, regardless of whether such statement was made in the course of, or with a view to, professional employment or for purely informational purposes. Because of such a broad definition, a non-member of the Bar may opt to keep silent for fear of being punished for the unauthorized practice of law. This has a chilling effect on academic discussions—such as a college accounting professor who cites BIR rulings or issuances to support his lectures, or even on speeches of and debates among candidates for President of the Republic—where not all of said candidates may be lawyers, since being a member of the Bar is not a constitutional qualification. These discussions and debates may end up being uploaded on social media or on learning platforms, leading to further discussions and debates.

The effect of *Cayetano* is to put a stop to all of these. The speakers' substantiated defenses of good faith may fall in light of the definitions given in *Cayetano*. Similarly, a member of the Bar, by simply giving legal information, is already engaged in the practice of law because of *Cayetano*.

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[73] CONST. art. III, § 1.

[74] Social Weather Stations, Inc. v. Comelec, G.R. No. 147571, May 5, 2001.

Since he is engaged in the practice of law, he can already be held liable for impermissible advertising, as earlier discussed.

The broad definition of "practice of law" also prevents interdisciplinary participation of both lawyers and non-lawyers. One particular example refers to legal articles co-written by lawyers and expert non-lawyers containing both legal and non-legal perspectives in various fields concerning both (i.e. psychology, science, and art). The broad definition stymies the development of not only the law and the legal profession, but also the other fields concerned, because it exposes non-lawyers to liability for the unauthorized practice of law. Liability may likewise be imposed on lawyers for encouraging or abetting an unauthorized practice of law.

The silence affects not only the speaker but also the listener. The freedom of the press, which is included in the freedom of expression, includes the freedom of access to information. In a footnote in *Chavez v. Gonzales*,[75] the Court explained:

> Freedom of access to information regarding matters of public interest is kept real in several ways. Official papers, reports and documents, unless held confidential and secret by competent authority in the public interest, are public records. As such, they are open and subject to reasonable regulation, to the scrutiny of the inquiring reporter or editor. Information obtained confidentially may be printed without specification of the source; and that source is closed to official inquiry, unless the revelation is deemed by the courts, or by a House or committee of Congress, to be vital to the security of the State.[76]

In *The Diocese of Bacolod v. Commission on Elections*,[77] the Supreme Court discussed several theories and schools of thought that strengthen the need to protect the basic right to freedom of expression:

> (A) First, this relates to the right of the people to participate in public affairs, including the right to criticize government actions;
>
> (B) Second, free speech should be encouraged under the concept of a marketplace of ideas;

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[75] G.R. No. 168338, 545 SCRA 441, Feb. 15, 2008.

[76] *Id.* at 490 n.54, *citing* JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 225 (2003 ed.)

[77] G.R. No. 205728, 747 SCRA 1, Jan. 21, 2015.

> (C) Third, free speech involves self-expression that enhances human dignity. This right is a means of assuring individual self-fulfillment, among others;
>
> (D) Fourth, expression is a marker for group identity;
>
> (E) Fifth, the Bill of Rights, free speech included, is supposed to protect individuals and minorities against majoritarian abuses perpetrated through the framework of democratic governance;
>
> (F) Lastly, free speech must be protected under the safety valve theory. This provides that nonviolent manifestations of dissent reduce the likelihood of violence.[78]

All such theories relate to political rights.[79] In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential for the preservation and vitality of our civil and political institutions. Such priority gives these liberties the sanctity of not permitting dubious intrusions.[80]

The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.[81] However, the ability of the people, the majority of whom are most likely to be the listeners, to participate in political life is hindered by the lack of information regarding their rights and duties under the law.

Still, it is true that not all prior restraints on speech are invalid. The Court previously pronounced:

> Hence, it is not enough to determine whether the challenged act constitutes some form of restraint on freedom of speech. A distinction has to be made whether the restraint is (1) a content-neutral regulation, i.e., merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards; or (2) a content-based restraint or censorship, i.e., the restriction is based on the subject matter of the utterance or speech.[82]

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[78] *Id.* Footnotes omitted.

[79] *See* The Diocese of Bacolod v. Comelec, G.R. No. 205728, Jan. 21, 2015.

[80] Philippine Blooming Mills Emp. Org. v. Philippine Blooming Mills Co., Inc., G.R. No. L-31195, June 5, 1973.

[81] CONST. art. II, § 1.

[82] Chavez v. Gonzales, G.R. No. 168338, 545 SCRA 441, 492-93, Feb. 15, 2008.

When speech restraints take the form of a content-neutral regulation, only a substantial governmental interest is required for its validity. However, a content-based regulation must overcome the clear and present danger rule, with the government having the burden of overcoming the presumed unconstitutionality. Such rule rests on the premise that speech may be restrained because there is substantial danger that the speech will likely lead to an evil the government has a right to prevent. This rule requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."[83]

The broad definition of "practice of law" affects the content of the speech, i.e. information regarding the law. Hence, the definition is a content-based regulation. Thus, it must overcome the clear and present danger rule.

To recall, the interests involved in the broad definition of "practice of law" are: *first*, to guarantee equal access to opportunities in the public service; and *second*, to ensure that the practice of law is limited to individuals of good moral character. The government must prove that making statements about the law, even if only for informational purposes, would create a clear and present danger of bringing about the substantive evils sought to be avoided. Otherwise, such a broad definition of "practice of law" is presumed unconstitutional for violating the constitutional right to freedom of expression.

V. RECOMMENDATIONS

A. Limiting the Definition of "Practice of Law"

Although the broad definition of "practice of law" attributed to *Cayetano* goes against important State interests, a return to the limited definition requiring habituality, continuity and participation in litigation is likewise not desirable. The evolution of the legal profession must continue to be recognized. How, then, should the "practice of law" be defined?

It is submitted that the *Cayetano* formulation be limited to the following definition:

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[83] *Id.* at 488.

> Any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience, *in representation of an existing or prospective client and in the course of representing such client or with a view to professional employment.* It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill, *in the course of representing an existing client or with a view to professional employment of a prospective client.*

The definitions cited in *Cayetano* itself supports such view. The third edition of Black's Law Dictionary definition of practice of law includes the words "to serve the interest of another with his consent." The definition from *State ex. rel. Mckittrick*[84] refers to a person who "engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective." The Court itself in its earlier ruling in the *Philippine Lawyers Association* case[85] cited the American Jurisprudence[86] definition of "practice of law," which includes the words "in general, all advice to clients, and all action taken for them." Wolfram's discussion includes the words "such as advice-giving to an importantly different one such as representing a client before an administrative agency."

Even the quoted deliberations of the 1986 Constitutional Commission implies that the "practice of law" involves a client. Commissioner Foz mentioned that "the lawyers who are employed in the [Commission on Audit (COA) use] their legal knowledge or legal talent in their respective work within COA."

The articles appearing in the Business Star, which the Court quoted extensively to support the changing role of a lawyer in the corporate setting, also imply the existence of a client. Said articles speak of "the number of attorneys employed by a single corporation," "[a] corporate lawyer, for all intents and purposes, is a lawyer who handles the legal affairs of a corporation," and "[m]oreover, a corporate lawyer's services may sometimes be engaged by a multinational corporation."[87] The Court itself stated: "Recall that the late Alexander SyCip, a corporate lawyer, once articulated on

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[84] 102 S.W. 2d 895, 340 Mo. 852.

[85] 105 Phil. 173, 176-177.

[86] 5 AMERICAN JURISPRUDENCE 262, 263.

[87] *Corporate Finance Law*, BUSINESS STAR, Jan. 11, 1989, at 4.

the importance of a lawyer as a business counselor." As a business counselor, the lawyer acts in representation of the business.

Admittedly, the other definitions cited in *Cayetano* do not include the requirement of representation. However, they include phrases such as "commonly understood to be the practice of law,"[88] "to perform those acts which are characteristics of the profession,"[89] "customary functions of an attorney or counselor,"[90] and "a kind usual for attorneys engaging in the active practice of their profession."[91] Based on the definitions above, what is commonly understood to be a characteristic or customary function of attorneys engaging in the active practice of their profession includes the representation of a client.

Monsod himself in *Cayetano* was acting in representation of a client. The Court quoted in its ruling:

> After graduating from the College of Law (U.P.) and having hurdled the bar, Atty. Monsod worked in the law office of his father. During his stint in the World Bank Group (1963-1970), Monsod worked as an operations officer for about two years in Costa Rica and Panama, which involved getting acquainted with the laws of member-countries, negotiating loans and coordinating legal, economic, and project work of the Bank. Upon returning to the Philippines in 1970, he worked with the Meralco Group, served as chief executive officer of an investment bank and subsequently of a business conglomerate, and since 1986, has rendered services to various companies as a legal and economic consultant or chief executive officer. As former Secretary-General (1986) and National Chairman (1987) of NAMFREL. Monsod's work involved being knowledgeable in election law. He appeared for NAMFREL in its accreditation hearings before the Comelec. In the field of advocacy, Monsod, in his personal capacity and as former Co-Chairman of the Bishops Businessmen's Conference for Human Development, has worked with the underprivileged sectors, such as the farmer and urban poor groups, in initiating, lobbying for and engaging in affirmative action for the agrarian reform law and lately the urban land reform bill. Monsod also made use of his legal knowledge as a member of the Davide Commission, a quasi-judicial body, which conducted numerous

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[88] State Bar Ass'n v. Connecticut Bank & Trust Co., 145 Conn. 222, 140 A.2d 863, 870 (1958).

[89] 111 ALR 23.

[90] Moran, *supra* note 12.

[91] Barr v. Cardell, 155 NW 312.

> hearings (1990) and as a member of the Constitutional Commission (1986-1987), and Chairman of its Committee on Accountability of Public Officers, for which he was cited by the President of the Commission, Justice Cecilia Muñoz-Palma for "innumerable amendments to reconcile government functions with individual freedoms and public accountability and the party-list system for the House of Representative[s].[92]

Related concepts to the "practice of law" also require that a lawyer act in representation of such client. The attorney-client privilege does not attach until there is a client, existing only after the attorney-client relationship has been established.[93]

Lastly, all the cases citing *Cayetano*, save for the exceptional case of *Re: Letter of the UP Law Faculty*,[94] support this definition. All the lawyers involved in these disciplinary proceedings acted in representation of a client.[95] Hence, the State interest that the practice of law is limited to persons of good moral character remains protected under this proposed definition. With regard to *Re: Letter of the UP Law Faculty*, the issue of whether the law professors therein were engaged in the practice of law was not raised at all.

It must be noted that the medium (i.e. online, radio, or television), any remuneration received, or the possession of a license to practice law, are not relevant in this suggested definition of "practice of law."

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[92] *Cayetano*, 201 SCRA 210, 223-24.

[93] Regala v. Sandiganbayan, G.R. No. 105938, Sept. 20, 1996.

[94] A.M. No. 10-10-4-SC, Mar. 8, 2011.

[95] In Tan, Jr. v. Gumba, A.C. No. 9000, Jan. 10, 2018, the lawyer involved filed pleadings and appeared in court as counsel during the period of her suspension, and prior to the lifting of such order of her suspension. In Eustaquio v. Navales, A.C. No. 10465, June 8, 2016, 792 SCRA 377, 384, the lawyer concerned continued discharging his functions as an Assistant City Prosecutor for Quezon City despite his suspension. In Feliciano v. Bautista-Lozada, A.C. No. 7593, Mar. 11, 2015, the lawyer involved appeared and signed as counsel, for and in behalf of her husband, during the period of her suspension from the practice of law. In Lingan v. Atty. Calubaquib, A.C. No. 5377, June 30, 2014, the lawyer concerned continued performing his functions as Regional Director of the Commission on Human Rights Regional Office for Region II during his suspension from the practice of law. In Ulep v. Legal Clinic, B.M. No. 553, June 17, 1993, the Legal Clinic, Inc. sought clients who wanted a secret marriage, annulment of marriage, divorce, or a visa.

B. Addressing Fears Regarding Limited Definition

Limiting the definition of "practice of law" by including the element of representation does not necessarily exonerate a lawyer from liability, nor does it exempt a non-member of the Philippine Bar who is engaged in the unauthorized practice of law.

Indirect contempt is available against both a lawyer and a non-lawyer, on the following grounds under the Rules of Court:

> d. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
> e. Assuming to be an attorney or an officer of a court, and acting as such without authority[.][96]

Under subsection (d), both lawyers and non-lawyers may be sanctioned. The former may be sanctioned for misinforming his client and the latter for engaging in the unauthorized practice of law. Under subsection (e), non-lawyers may be sanctioned on the ground of assuming to be an attorney. Under this provision, all of their resulting acts may be punished by the court as indirect contempt.

Additionally, a non-member of the Bar pretending to be a lawyer may also be subject to criminal liability for *estafa* under Article 315 of the Revised Penal Code:

> Art. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished[:]
>
> (2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits[.][97]

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[96] RULES OF COURT, Rule 71, § 3. Rule 71 was not covered by the 2019 amendments.

[97] REV. PEN. CODE, art. 315 (2)(a).

As for lawyers, the defense of freedom of speech would not lie if an act would be tantamount to misinforming or misleading a client. In such case, the lawyer involved may be sanctioned for violating the Code of Professional Responsibility:

> Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.
>
> Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.[98]

Misinformation of a client is undoubtedly dishonest, immoral and deceitful conduct. Thus, a lawyer may be subjected to administrative liability for such violation.

C. Further Steps

The Supreme Court may consider the following suggestions in the formulation of a new definition of the practice of law. It may create a list of permitted activities, whether or not such activities constitute "practice of law," and require that a non-lawyer engaged in such activities disclose the fact of his or her being a non-lawyer in writing to the court, similar to the ABA-proposed draft definition. This requirement of written disclosure removes the chilling effect of *Cayetano*, which was later on reinforced by the subsequent cases citing it. The non-lawyer would also, as a result, avoid the threat of punishment for performing such acts.

The Court may also consider adopting the activity-centered approach that Turfler proposed in defining "practice of law."[99] However, before doing so, the Court must consider whether the concern that called for such a proposal—that is, the need for access to legal guidance and, hence, the need to promote competitiveness in order to lower prices—are present in this jurisdiction.[100]

VI. CONCLUSION

With the rise of social media and online learning platforms, the public has easier and more accessible ways of learning about the laws and

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[98] CODE OF PROF. RESPONSIBILITY, Canon 1, r. 1.01.
[99] Turfler, *supra* note 33.
[100] *Id.* at 1957-59.

their rights under said laws. However, giving legal information, even if for purely, informational purposes, would necessarily fall under the existing definition of "practice of law" in the Philippines. Thus, refraining from giving such information is the best step to take in order to avoid any possible liability. This resulting chilling effect, however, even if unintended, goes against the State interest of giving people information on matters of official concern, in this case, the laws and their rights under such laws, and the State interest of upholding freedom of expression. Fortunately, both interests are assured by the Constitution; thus, the unintended chilling effect must give way to these protected interests.

This discussion's recommendation—that the definition of "practice of law" be limited by including the element of representation of an existing or prospective client in the course of, or with a view to, professional employment—provides a solution to the conflict. As shown, this definition is supported by *Cayetano* itself, by the facts of the cases citing *Cayetano*, and by other concepts related to "practice of law," namely, the "attorney-client privilege" and "attorney-client relationship." Through this proposal, certainty may proceed, a free flow of ideas and information may prosper, lawyers may become more vigilant in protecting their clients' rights, and even laymen may become more willing to engage in permitted activities that are related to the practice of law to protect the interests of their fellow members of the society. With a simple change in the existing definition of "practice of law," a more transparent and active citizenry will ultimately be established, and the people's constitutional rights to life, liberty and property may accordingly be protected.

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