KILLING ME SOFTLY: EXAMINATION OF THE COURT'S EMASCULATION OF ITS OWN DOCTRINES OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES*

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ABSTRACT

Jurisprudence shows numerous exceptions to the court-created doctrines of *primary jurisdiction* and *exhaustion of administrative remedies*. Thirty-four (34) exceptions are found, the latest one being decided in 2019. This Note first revisits the history and developments of these doctrines and examines the judicial trend in this area of administrative law. It then submits that with the current number of immunities, the Court is traversing a slippery slope of instability, implicitly negating itself, and making its commitment to the trend merely illusory. Various institutional and legal effects of repeatedly adding exceptions to these doctrines are then examined, which include: sacrificing the benefits drawn from the doctrines; risking a lack of clear judicial philosophy; weakening the value of case precedents; adding burdens to the courts' decision-making process; tending towards the absence of predictability; promoting judicial activism; undermining agencies' authority; and preventing agencies' arbitrary actions. Keeping in mind the doctrine's underlying purpose, this Note finally frames a test for courts to better address the issues of primary jurisdiction and exhaustion. The analysis intends to reach simple, clear, consistent, and predictable results.

> *"Destroying things is much easier than making them."*
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> —Katniss Everdeen *in* THE HUNGER GAMES[1]

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INTRODUCTION

Should the complexity of modern government carry with it the complexity of modern jurisprudential rules? With over 30 exceptions, is the Court violating its own declaration of commitment to the trend of delegating powers to agencies crafted in response to the calls of present realities? Has jurisprudence become inconsistent with the norm of primary jurisdiction and exhaustion of administrative remedies? How should the court approach a case when confronted with these types of issues? These are the questions which this Note attempts to address and resolve.

As the world has progressed to be more complex, the necessity for specialized knowledge, training, experience, and service has also become more indispensable. The demand was obvious; the supply, correspondingly, needed to catch up. As such, Congress created administrative agencies—"now not unreasonably called the *fourth department of the government*."[2]

The Supreme Court, in turn, recognized the need to create and share jurisdiction to these bodies. They were seen as effective ways to decongest court dockets, while solving highly specialized questions falling within their respective areas of expertise.[3] With this trend, the twin doctrines of *primary administrative jurisdiction* and *exhaustion of administrative remedies* were born. The operation of these doctrines touches not just on the administrative agencies, but also on the judicial, executive, and legislative departments.

However, because of numerous exceptions carved out by the Court, these two doctrines have become confusing to interpret. This calls for careful scrutiny of the rules involved, so that they may be more uniformly and consistently applied.

This Note is divided into five parts.

Law. Much gratitude is also extended to Prof. Roentgen F. Bronce for his academic and professional experience and for guiding the formulation of the ideas of this Note. Finally, the author thanks Dece Christine C. Fulache for her thoughtful inputs.

[1] SUZANNE COLLINS, THE HUNGER GAMES 121 (2008).

[2] Solid Homes, Inc. v. Payawal, G.R. No. 84811, 177 SCRA 72, Aug. 29, 1989. (Emphasis supplied).

[3] Arturo Balbastro, *Administrative Law and Administrative Procedure*, 68 PHIL. L.J. 124 (1993). *See also* Pangasinan Transp. Co., Inc. v. Pub. Serv. Comm'n [hereinafter "*Pangasinan Transportation*"], 70 Phil. 221 (1940); Calalang v. Williams [hereinafter "*Calalang*"], 70 Phil. 726 (1940).

Part I presents a brief history of administrative agencies and the evolution of the related principle of delegation of powers in the context of eras of regulation, from the old *laissez-faire* model to the prevailing scheme of governmental interventions.

Part II gives a glimpse of the Court's liberal approach in allowing permitted delegation to administrative agencies. Sub-parts A and B study the nature, foundations, benefits, effects of noncompliance, and judicial direction with respect to the doctrines of primary jurisdiction and exhaustion of administrative remedies, respectively.

Part III sets forth the Court-created exceptions and examines their justifications as a whole. Further, Sub-part A deals with the clean-up and elimination of those which the author regards as not "true exceptions." Sub-part B proposes new general classifications among the remaining exceptions, which will be useful in framing the test in Part V. Sub-part C compares the Philippine formulation, treatment and analysis of exceptions with its American counterpart.

Part IV endeavors to uncover and inspect the different institutional and legal impacts created by these exceptions.

Finally, Part V offers a proposal as to how the courts should interpret and apply the doctrines and their exceptions. General factors in formulating a judicial test are first considered, and then a five-step analysis is advanced.

I. FROM *LAISSEZ-FAIRE* TO INTERVENTION: THE EVOLUTION OF THE DELEGATION OF POWERS TO ADMINISTRATIVE AGENCIES

Even before the United States first entered the Philippines, the economic concept of *laissez-faire* was viewed to have already been abandoned. It was a common remark among legal writers and scholars that *laissez-faire* was breaking down, or at least undergoing some form of modernization.[4]

Laissez-faire is a system in which transactions of private persons and entities are free from any government control or intervention. This system of thought influenced American jurisprudence on constitutional law. As described by U.S. Supreme Court Justice Benjamin Cardozo: "*Laissez-faire* was not only a counsel of caution which statesmen would do well to heed. It was

[4] James LeRoy, *"Laissez-Faire" in the Philippine Islands,* 12 J. POL. ECON 2, 194 (1904).

a categorical imperative which statesmen, as well as judges, must obey."[5] For the longest time, all the branches of the American government conformed to this principle. Its influence began to wane during the administration of President Roosevelt, when the government was allowed to more significantly intervene in private interests and properties.[6] By 1943, the United States had accepted *laissez-faire*'s loss of dominance in government.[7]

Meanwhile, the principle of governmental non-interference never found full acceptance in the Philippines,[8] notwithstanding the fact that American legal doctrines strongly influenced our system, especially during colonial rule. Certainly, at that time, "the ghost of the *laissez-faire* concept no longer stalk[ed] the juridical stage."[9]

The Philippine Supreme Court, in the case of *Rubi v. Provincial Board of Mindoro*,[10] declared for the first time that:

> *The doctrines of laissez*[-]*faire and of unrestricted freedom of the individual, as axioms of economics and political theory, are of the past.* The modern period has shown a widespread belief in the amplest possible demonstration of governmental activity. *The courts unfortunately have sometimes seemed to trail after the other two branches of the Government in this progressive march.*[11]

The 1935 Constitution continued this approach. The modern policy gave way, to some extent, to the government's assumption of the right to encroach or intervene principally in contractual relations clothed with public interest.[12] As noted in *Edu v. Ericta*:

> What is more, to erase any doubts, the Constitutional Convention saw to it that the concept of *laissez-faire* was rejected. *It entrusted to our government the responsibility of coping with social and economic problems with the commensurate power of control over economic affairs.* Thereby it

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[5] BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 77 (1921), *cited in* Edu v. Ericta [hereinafter "*Edu*"], G.R. No. 32096, 35 SCRA 481, 490, Oct. 24, 1970.

[6] ROBERT JACKSON, THE STRUGGLE FOR JUDICIAL SUPREMACY: A STUDY OF A CRISIS IN AMERICAN POWER POLITICS 74 (1941), *cited in* Agric. Credit & Coop. Fin. Admin. v. Confederation of Unions in Gov't Corps. & Offices [hereinafter "*Agric. Credit*"], G.R. No. 21484, 30 SCRA 649, 671, Nov. 29, 1969.

[7] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

[8] *Agric. Credit*, 30 SCRA 649 (Fernando, *J., concurring*).

[9] Alfanta v. Noe, G.R. No. 32362, 53 SCRA 76, 91, Sept. 19, 1973.

[10] [Hereinafter "*Rubi*"], 39 Phil. 660, 717-18 (1919).

[11] *Id.* (Emphasis supplied.)

[12] Leyte Land Transp. Co., Inc. v. Leyte Farmers' & Laborers' Union, 80 Phil. 842 (1948), *citing* Ang Tibay v. Ct. of Indus. Rel., 69 Phil. 635 (1940).

> could live up to its commitment to promote the general welfare through state action.[13]

But the Court did not stop there. It continued:

> *To repeat, our Constitution which took effect in 1935 erased whatever doubts there might be on that score. Its philosophy is a repudiation of laissez-faire.* One of the leading members of the Constitutional Convention, Manuel A. Roxas, later the first President of the Republic, made it clear when he disposed of the objection of Delegate Jose Reyes of Sorsogon, who noted the "vast extensions in the sphere of governmental functions" and the "almost unlimited power to interfere in the affairs of industry and agriculture as well as to compete with existing business" as *'reflections of the fascination exerted by [the then] current tendencies' in other jurisdictions."* He spoke thus: "My answer is that this constitution has a definite and well defined [sic] philosophy, not only political but social and economic... If in this Constitution the gentlemen will find declarations of economic policy they are there because they are necessary to safeguard the interest and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically imposes.["][14]

As discussed, no less than the 1935 Constitution removed any doubt on the influence of *laissez-faire* on governmental functions. Its constitutional philosophy was even said to be antithetical to the *laissez-faire* concept.[15] The 1973 and 1987 Constitutions likewise adopted the same philosophy on governance.[16]

The trend, indeed, is to accept and implement the principle of State intrusion, even into the affairs of private persons. The very existence of government renders imperative the power to restrain, allow, or control the individual to some extent, depending on the particular needs of the segment of society sought to be benefited.[17] This indirectly leads to the creation,

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[13] *Edu*, 35 SCRA 481, 491. (Emphasis supplied.)

[14] *Id.* at 492. (Emphasis supplied, citations omitted.)

[15] Phil. Virginia Tobacco Admin. v. Ct. of Indus. Rel., G.R. No. 32052, 65 SCRA 416, July 25, 1975, *citing* Alalayan v. Nat'l Power Corp., 24396, 24 SCRA 172, July 29, 1968.

[16] Ass'n of Phil. Coconut Desiccators v. Phil. Coconut Auth., G.R. No. 110526, 286 SCRA 109, Feb. 10, 1998, *citing Edu,* 35 SCRA 481; Antamok Goldfields Mining Co. v. Ct. of Indus. Rel., 70 Phil. 340 (1940).

[17] *See, generally*, *Rubi*, 39 Phil. 660.

development, and strengthening of the powers of government agencies tasked with implementing public policies.

The demand is to strengthen the government's capacity to intervene through its agencies, more so because the Philippines is seen as incapable of providing even the most basic legal and administrative underpinnings necessary for the *laissez-faire* model.[18] As explained by Karl Paul Polanyi, an economic historian and political economist, "the historical development of *laissez-faire* [...] necessitates an [...] enormous increase in the administrative functions of the state"[19]—an enormous increase in continuous, centrally organized, direct, and controlled interventionism.

Originally, the government had but few functions because there were only a few activities to regulate and control.[20] But as modern life became more sophisticated, the subjects of government regulations correspondingly increased. Government functions multiplied, requiring an immense expansion of public administration. As jurisprudence affirms:

> [W]ith the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the laws, the rigidity of the theory of separation of governmental powers has, to a large extent, been relaxed by permitting the *delegation of greater powers by the legislative and vesting a larger amount of discretion in administrative and executive officials*, not only in the execution of the laws, but also in the promulgation of certain rules and regulations calculated to promote public interest.[21]

It then became essential for Congress to create more administrative bodies, boards, agencies, and tribunals that focused on highly specialized and technical matters. These creations filled the gaps in the lack of expertise suffered by the legislature and the judiciary.

Since 1916,[22] the Court has upheld in many instances the creation of these agencies and the accompanying delegation of powers. The judicial branch has long recognized that the administration of laws requires an

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[18] Joel Rocamora, *Formal Democracy and its Alternatives in the Philippines: Parties, Elections and Social Movements*, *in* DEMOCRACY AND CIVIL SOCIETY IN ASIA: VOLUME 2. INTERNATIONAL POLITICAL ECONOMY SERIES (Lele J., Quadir F. eds., 2000). (Citations omitted.)

[19] *Id.* (Citations omitted.)

[20] HECTOR DE LEON, ADMINISTRATIVE LAW: TEXT AND CASES 10 (2010).

[21] *Calalang*, 70 Phil. 726, 732. (Emphasis supplied.)

[22] Compañia General de Tabacos de Filipinas v. Bd. of Pub. Utility Comm'rs, 34 Phil. 136 (1916).

exercise of discretion,[23] and that in a society replete with ever-changing and growing technical quandaries, Congress simply cannot keep up without the ability to delegate power under general directives.[24] The Court sustained this recognition when it said that there has been a growing tendency towards the delegation of powers by the legislative branch and the corresponding approval by courts of such practice.[25] This consequent delegation of powers and functions is a well-recognized exception[26] to the doctrine of non-delegation of powers,[27] which applies to all three branches of government.[28]

Quite interestingly, the Supreme Court in *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*[29] observed that the delegation of legislative power has become the rule and its non-delegation the exception. Occasions are rare when executive or judicial powers have to be delegated, but in the case of legislative power, such have become increasingly common and frequent, if not necessary.[30]

In a long string of cases, the Supreme Court has adhered to the liberal interpretation of the doctrine of non-delegation and upheld permissible delegations to administrative bodies. *Echegaray v. Secretary of Justice*[31] explains the philosophy behind the delegation as follows:

> The reason for delegation of authority to administrative agencies *is the increasing complexity of the task of government requiring expertise as well as the growing inability of the legislature to cope directly with the myriad problems demanding its attention.* The growth of society has ramified its

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[23] "In determining what [Congress] may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the government coordination." J. W. Hampton, Jr. & Co. v. United States, [hereinafter "*Hampton*"], 276 U.S. 394, 406 (1928).

[24] Mistretta v. United States [hereinafter "*Mistretta*"], 488 U.S. 361, 372 (1989); *See also* Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 398 (1940): "[D]elegation by Congress has long been recognized as necessary in order that the exertion of legislative power does not become a futility."

[25] *See* Provincial Bus Operators Ass'n of the Phil. v. Dep't of Lab. Emp't, G.R. No. 202275, 872 SCRA 50, 87, July 17, 2018.

[26] Abakada Guro Party List v. Ermita, G.R. No. 168056, 469 SCRA 14, 115-17, Sept. 1, 2005; Santiago v. Comm'n on Elections, G.R. No. 127325, 270 SCRA 106, Mar. 19, 1997, *citing* People v. Vera, 65 Phil. 56 (1937); ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 87 (1996).

[27] Based on the Latin maxim "*potestas delegata non delegari potest*" (what has been delegated cannot be delegated).

[28] Quezon City PTCA Fed'n, Inc. v. Dep't of Educ., G.R. No. 188720, 784 SCRA 505, 525, Feb. 23, 2016.

[29] G.R. No. 76633, 166 SCRA 533, Oct. 18, 1988.

[30] *Id* at 544.

[31] G.R. No. 132601, 297 SCRA 754, Oct. 12, 1998.

> activities and created peculiar and sophisticated problems that the legislature cannot be expected to attend to by itself. [...] *On many problems involving day-to-day undertakings, the legislature may not have the needed competence to provide the required direct and efficacious, not to say, specific solutions.* These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.[32]

Moreover, as to the functions of agencies, the Court occasioned to clarify that:

> [These functions] are those which involve the regulation and control over the conduct and affairs of individuals for their own welfare and the promulgation of rules and regulations to better carry out the policy of the legislature or such as are devolved upon the administrative agency by the organic law of its existence.[33]

The rise of administrative agencies, their growing bureaucracy, their active interventions, and the new authorities entrusted upon them spring from the fact that the government lacks the time to respond to problems, the necessary expertise, and organizational aptitude for effective and continuing regulation of new developments in the country.[34] Indeed, it is worth looking into the powers and discretion given to these administrative bodies, which were previously found only in the three branches of government.

II. A LOOK AT THE JUDICIARY'S COMMITMENT TO THE MODERN TREND

Chief Justice John Marshall of the U.S. Supreme Court declared that Congress may not delegate powers that "are strictly and exclusively legislative," as it may only delegate those powers which "[it] may rightfully exercise itself."[35]

There is a very thin line between that which the legislature may rightfully delegate to others, and that which it cannot. According to Chief

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[32] *Id.* at 784-85. (Emphasis supplied.)

[33] *In re* Rodolfo U. Manzano, A.M. No. 88-7-1861-RTC, 166 SCRA 246, 250-51, Oct. 5, 1988.

[34] *See* Salvador Carlota, *Philippine Administrative Rulemaking and Adjudication in the Twentieth Century: Issues, Trends, and Perspectives*, *in* 1 GRANDEUR: LECTURES DELIVERED ON THE OCCASION OF THE CENTENNIAL OF THE UNIVERSITY OF THE PHILIPPINES, COLLEGE OF LAW 72, 85, 88 (Dante B. Gatmaytan ed., 2013).

[35] Wayman v. Southard [hereinafter "*Wayman*"], 23 U.S. 1, 41 (1825).

Justice Marshall, "that there is some difficulty in discerning the exact limits," and that "the precise boundary of this power is a subject of delicate and difficult inquiry, into which a court will not enter unnecessarily."[36] The solution of the Court has been to reject such challenges in all but the most extreme cases, and to admit delegations of vast and broad powers to the executive branch or administrative agencies.[37] As evidenced by a long line of American cases, the judiciary has consistently ruled the challenged delegations of power as valid and upheld the grants of authority.[38]

J. W. Hampton, Jr. & Co. v. United States is pivotal in the development of this modern theory. The U.S. Supreme Court ruled that there was a valid delegation made by Congress to the President with regard to the authority to set tariff rates that would equalize the country's production costs. The decision emphasized that in seeking the cooperation of another branch, Congress is restrained only by "common sense and the inherent necessities of the governmental coordination."[39] Rather vaguely, the Court went on to elaborate:

> The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations.
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> Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an executive, or, as often happens in matters of state legislation, it may be left to a popular vote of the residents of a district to be affected by the legislation. While, in a sense, one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district. As Judge Ranney of the Ohio Supreme Court, in Cincinnati, *Wilmington &*

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[36] *Id.* at 42. *See also* 1 KENNETH DAVIS, ADMINISTRATIVE LAW TREATISE § 3 (2d ed., 1978); LOUIS JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION § 2 (1965).

[37] *Wayman,* 23 U.S. at 42.

[38] *Id.*

[39] *Hampton*, 276 U.S. 394, 406.

> *Zanesville Railroad Co. v. Commissioners* (1 Ohio St. 77, 88), said in such a case:
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> > "The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, *and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law.* The first cannot be done; to the latter, no valid objection can be made."[40]

This ambiguous statement of the Court was fairly explained when it formulated the "intelligible principle" test,[41] which states that there is a valid delegation of power, legislative or adjudicatory, when Congress shows intelligible principle that must be obeyed by the President or the administrative agency concerned. Since then, the Court has not struck down any challenged delegation to an agency,[42] provided the test is met while applying relaxed standards. This practice will likely remain settled and respected by all branches of government.

Louis Jaffe, a legal scholar and professor, spoke of administrative law as a changing and evolving system. He envisioned agencies as merely filling in the details, insisted on the importance of administrative discretion to specialized areas, and postulated that the restrictive approach of the courts may overlook "deep currents of social force."[43] He maintained that the delegation of governmental powers was the "dynamo of modern government,"[44] and proposed a system that was much more capable of adapting promptly and effectively to the exigencies of the times.[45] He renounced the specter of non-delegation, with his pragmatic view of sound governance and workable administration. He further pointed out that:

> Power should be delegated where there is agreement that a task must be performed and it cannot be effectively performed by the legislature without the assistance of a delegate or without an expenditure of time so great as to lead to the neglect of equally important business. Delegation is most commonly indicated where

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[40] *Id.* at 406-07. (Emphasis supplied.)

[41] *Id.* at 409. The "intelligible principle" test of *Hampton* is the same as the "legislative standards" test of A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935) and Panama Refining Co. v. Ryan, 293 U.S. 388 (1935).

[42] *Mistretta*, 488 U.S. 361, 373.

[43] Louis Jaffe, *An Essay on Delegation of Legislative Power*, 47 COLUM. L. REV. 359 (1947), *cited in* Free Tel. Workers Union v. Minister of Lab. & Emp't, G.R. No. 58184, 108 SCRA 757, 772, Oct. 30, 1981.

[44] *Id.*

[45] Daniel Rodriguez, *Jaffe's Law: An Essay on the Intellectual Underpinnings of Modern Administrative Law Theory*, 72 CHI.-KENT L. REV. 1159 (1997).

> the relations to be regulated are highly technical or where their regulation requires a course of continuous decision.[46]

In our jurisdiction, as early as 1940, the Court has explicitly recognized and accepted the constantly growing practice of delegation of powers to administrative agencies. This was first articulated in *Pangasinan Transportation Co., Inc. v. Public Service Commission*, citing American jurisprudential rules[47] and is reiterated in the doctrinal case of *Calalang v. Williams*:

> [W]e find the rule prohibiting delegation of legislative authority, and from the earliest time American legal authorities have proceeded on the theory that legislative power must be exercised by the legislature alone. It is frankness, however, to confess that as one delves into the mass of judicial pronouncements, he finds a great deal of confusion. [...] Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the *delegation of greater powers by the legislature*, and *toward the approval of the practice by the courts.*[48]

Justifying its new commitment to adhere to such trend while underscoring the emerging principle of subordinate delegation adopted by practically all modern governments, the Court also held that:

> While courts have undertaken to lay down general principles, *the safest is to decide each case according to its peculiar environment, having in mind the wholesome legislative purpose intended to be achieved.*[49]

Prior to the Court's pronouncement in *Pangasinan Transportation*, the Philippine government followed a strict approach towards non-delegation of powers. This rigid application, however, was found to be self-defeating, unduly restrictive, and decidedly unrealistic.[50] It was seen as a threat or hindrance to the national efforts for progress and development. The

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[46] Jaffe, *supra* note 43, at 361.

[47] These cases are: Dillon Catfish Drainage Dist. v. Bank of Dillon, 141 S. E. 274, 275, 143 S. Ct. 178 and State vs. Knox County, 54 S. W. 2d. 973, 976, 165 (Tenn. 319).

[48] *Pangasinan Transportation,* 70 Phil. 221, 228-29. (Emphasis supplied).

[49] People v. Rosenthal [hereinafter "*Rosenthal*"], 68 Phil. 328, 343 (1939). (Emphasis supplied, citations omitted.)

[50] Free Telephone Workers Union v. Minister of Lab. & Emp't, G.R. No. 58184, 108 SCRA 757, 771, Oct. 30, 1981.

inflexibility of the division of State powers poses difficulties for social and economic legislation needed by the present and foreseeable future.

It is worth repeating that the Court rationalized this observance, on several occasions, based on the ever-increasing needs for legislation and adjudication born out of "the growing complexity of modern life"[51] as well as "the increasing social challenges of the times."[52] *People v. Rosenthal*, penned by Justice Jose Laurel, with an even more explicit formulation later in *Pangasinan Transportation* appearing in the quoted excerpt from *Edu*, marked a key shift in the direction of a more liberal attitude practiced by the courts.

A. Doctrine of Primary Jurisdiction: Rule Written in Stone

In *Machete v. Court of Appeals*,[53] a complaint for collection of back rentals was filed before the Regional Trial Court (RTC). The plaintiff alleged that defendants failed to pay their rentals despite repeated demands. Defendants countered that the case was an agrarian dispute and, therefore, should be within the jurisdiction of the Department of Agrarian Reform Adjudication Board ("DARAB"). The Supreme Court sided with the defendants and invoked the well-settled doctrine in administrative law of primary jurisdiction. It explained:

> [T]here exists an agrarian dispute in the case at bench which is exclusively cognizable by the DARAB. The failure of [defendants] to pay back rentals pursuant to the leasehold contract with [the plaintiff] is an issue which is clearly beyond the legal competence of the trial court to resolve. *The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.*[54]

An earlier case of *Quintos v. National Stud Farm*[55] affirmed this basic concept, otherwise called the "doctrine of prior resort," citing American jurisprudence.[56] It was first developed in cases primarily involving regulated

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[51] Int'l Hardwood & Veneer Co. v. Pangil Fed'n of Lab., 70 Phil. 602, 611 (1940).

[52] *Agric. Credit*, 30 SCRA 649, 662.

[53] G.R. No. 109093, 250 SCRA 176, Nov. 20, 1995.

[54] *Id.* at 182.

[55] [Hereinafter "*Quintos*"], G.R. No. 37052, 54 SCRA 210, Nov. 29, 1973.

[56] Public Utilities Comm'n v. United States, 355 U.S. 534 (1958); United States v. W. Pac. R. Co. [hereinafter "*W. Pac. R. Co.*"], 352 U.S. 59 (1956).

industries.[57] Its function is to serve as guidance for the courts on whether to take cognizance of a controversy or not. This is essential in achieving consistency in our administrative and judicial system and as courtesy to the other branch of government, though the powers given to agencies are not purely executive in nature. Stated simply, when the agency has jurisdiction of the case, the court should not assume jurisdiction. As the Court aptly put:

> It is true that the doctrine of primary jurisdiction or prior resort goes no further than to determine whether it is the court or the agency that should make the initial decision. Parker, in his text, would put the matter thus: "The fact that a governmental authority is empowered to deal with a given type of matter gives rise to a *presumption that it has exclusive jurisdiction* over the matter. If the law delegates A to make decisions this means that *in dubio* B is not so delegated. Davis clarifies the point in this wise: *"The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether the court should refrain from exercising its jurisdiction until after, an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court."* The important thing is that the dispute be determined according to the judgment, in the language of an American Supreme Court decision, *"of a tribunal appointed by law and informed by experience."*[58]

The courts "cannot" and "will not"[59] resolve a dispute which involves a question within the jurisdiction of an administrative tribunal. This is especially true "where the question demands the exercise of sound administrative discretion requiring the special knowledge, training, experience, and services of the administrative tribunal to determine technical and intricate matters of fact."[60] The case of *Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez*[61] illustrates this rationale. In this case, the Supreme Court recognized that the MWSS was in the best position and competence to evaluate and decide which bid for a waterworks project was compatible with its development plan.

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[57] "[Primary jurisdiction] has been longest and most widely applied in the regulated industries[.]" CHILDRESS AND DAVIS, FEDERAL STANDARDS OF REVIEW at 14.08. *See* United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 353 (1963): "[primary jurisdiction] requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme."

[58] *Quintos*, 54 SCRA at 215-16. (Emphasis supplied, citations omitted.)

[59] *See* Villaflor v. Ct. of Appeals [hereinafter "*Villaflor*"], G.R. No. 95694, 280 SCRA 297, 326, Oct. 9, 1997.

[60] *Id.*

[61] G.R. No. 109113, 240 SCRA 502, Jan. 25, 1995.

In a similar manner, the Supreme Court sustained the referral to an administrative agency concerning an issue on the validity of a coal operating contract that was sought to be rescinded in an action before the RTC. The rescission was ordered by the trial court. However, the Court of Appeals reversed the decision, holding that the trial court had no jurisdiction, and the Bureau of Energy Development should resolve the controversy pursuant to a Presidential Decree. Agreeing with the Court of Appeals, the Court in *Industrial Enterprises, Inc. v. Court of Appeals*[62] ruled:

> It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then *relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court.* This is the doctrine of primary jurisdiction.
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> *The Trial Court does not have the competence to decide matters* concerning activities relative to the exploration, exploitation, development and extraction of mineral resources like coal. *These issues preclude an initial judicial determination.*[63]

Case law, thus, teaches us that when a case is within the primary jurisdiction of the government agency, courts must abstain from exercising their authority to take on the case. Courts should not interfere with the administrative processes and discretion when the controversy is addressed to the agency entrusted with the regulation of such activities. This is consistent with the principle of valid delegation of powers—quasi-judicial powers, to be specific—where an administrative agency is empowered to exercise fact-finding, investigative, as well as adjudicatory powers to properly dispose of a case filed before it. It is then the task of the courts to initially refer an administrative question to the administrative agency for its resolution.

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[62] [Hereinafter "*Industrial Enterprises*"], G.R. No. 88550, 184 SCRA 426, Apr. 18, 1990.

[63] *Id.* at 431-32. (Emphasis supplied.)

The court yields to the agency because of the latter's expertise, but this does not amount to an ouster of the court's jurisdiction.[64] The administrative judgment operates either as substitution for judicial decision or as foundation for or perchance to make unnecessary later judicial proceedings.[65] This makes the court-created doctrine of primary jurisdiction a cousin of better-known abstention doctrines practiced by the U.S. federal courts[66] which permit, and sometimes mandate, federal courts to refrain from addressing matters cognizable by state administrative agencies.

So what happens to the judicial process when an administrative body can properly take cognizance of the controversy while its jurisdiction is also original and concurrent with that of the court? The Court held that "in such case, the judicial process is *suspended* pending referral of such issues to the administrative body for its view."[67]

Therefore, the purpose behind the doctrine is not satisfactorily served when the case before the regular court is dismissed outright. *Industrial Enterprises* stresses that the application of the doctrine does not call for such an action. Instead, the case only needs to be suspended or deferred, until after the matters within the competence and expertise of the administrative body are threshed out and determined. This is exactly what the doctrine seeks to resolve: the potential conflicts and confusion created by such concurrent jurisdiction between agencies and courts.[68] The decision in *Vidad v. RTC-Negros Oriental*[69] also resolves the related issue that "while no prejudicial question strictly arises where one is a civil case and the other is an administrative proceeding, in the interest of good order, it behooves the court to suspend its action on the cases before it pending the final outcome of the administrative proceedings."[70]

It bears emphasizing that the doctrine of primary jurisdiction basically calls for the determination of administrative questions by administrative

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[64] Conrad and Co., Inc. v. Ct. of Appeals, G.R. No. 115115, 246 SCRA 691, July 18, 1995. *See also* Houston Compressed Steel Corp. v. State, 456 S.W.2d 768, 772 (Tex. Civ. App. 1970): "[i]f the issue is one inherently judicial in nature, courts are not ousted from jurisdiction unless legislature has granted exclusive jurisdiction to an administrative body."

[65] Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767 (1947); 2 AM JUR 2d, ADMINISTRATIVE LAW § 513.

[66] Bryson Santaguida, *The Primary Jurisdiction Two-Step*, 74 U. CHI. L. REV 1517 (2007).

[67] Sherwill Dev'. Corp. v. Sitio Sto. Niño Residents Ass'n, Inc. [hereinafter "*Sherwill*"], G.R. No. 158455, 461 SCRA 517, 530, June 28, 2005. (Emphasis supplied.)

[68] Paula Knippa, *Primary Jurisdiction Doctrine and the Circumforaneous Litigant*, 85 TEX. L. REV. 5, 1290 (2007).

[69] [Hereinafter "*Vidad*"], G.R. No. 98084, 227 SCRA 271, Oct. 18, 1993.

[70] *Id.* at 276.

agencies rather than courts. And these questions are ordinarily questions of fact.[71] The court, then, is spared from the laborious task of determining factual matters.

Sound public policy and practical considerations are said to be the bases of the doctrine of primary jurisdiction.[72] The Court often describes the doctrine as "sense-making and expedient."[73] Legal scholar Frank Cooper offered two reasons behind this rule: first, to take full advantage of administrative expertness; and second, to attain uniformity of application of regulatory laws.[74]

The knowledge, processes, and motives of agencies are different from that of courts. Agencies are so-called "experts" on the subject matter of statutes which they execute.[75] They usually hire technical specialists, maintain relations with relevant stakeholders, and are considered as repeat players on their political mandate.[76] Moreover, as the implementing arm of the government with first-hand experience, they have a strong comparative advantage in interpreting the laws they enforce.[77] Regular courts, on the other hand, are ill-equipped to understand certain issues and may not be competent enough to balance all relevant considerations.

Granting an agency with the first opportunity to hear and decide an issue will also foster the desired uniformity, which could be attained if a specialized agency would initially look over certain matters. Indeed, the centralization of decision-making sanctions uniform policymaking, which is essential in complying with the purposes of the concerned regulatory law.[78]

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[71] CARLO CRUZ, PHILIPPINE ADMINISTRATIVE LAW 239 (2016), *citing* 1 VON MAUR, FEDERAL ADMINISTRATIVE LAW, § 214; Ros v. Dep't of Agrarian Reform, G.R. No. 132477, 468 SCRA 471, Aug. 31, 2005; Bautista v. Mag-isa Vda. De Villena, G.R. No. 152564, 438 SCRA 259, Sept. 13, 2004; Manila Electric Co. v. Barlis, G.R. No. 114231, 357 SCRA 832, Feb. 1, 2002.

[72] DE LEON, *supra* note 20, at 357.

[73] Pambujan Sur United Mine Workers v. Samar Mining Co., Inc. [hereinafter "*Pambujan*"], 94 Phil. 932, 941 (1954).

[74] 2 FRANK COOPER, STATE ADMINISTRATIVE LAW 563 (1965).

[75] Referred to as "comparative competence" in Santaguida, *supra* note 66, at 1526.

[76] *Id., citing* Clark Byse, *Judicial Review of Administrative Interpretation of Statutes: An Analysis of Chevron's Step Two*, 2 ADMIN L. J. 255, 260–61 (1988).

[77] Colin Diver, *Statutory Interpretation in the Administrative State,* 133 U. PA. L. REV. 549, 574–82 (1985).

[78] *Pambujan*, 94 Phil. at 941.

Abejo v. Dela Cruz[79] highlights the importance of this doctrine with regard to the prompt resolution of cases and the de-clogging of court dockets. The Court, through Chief Justice Teehankee, said:

> *In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters,* subject to judicial review in case of grave abuse of discretion, *has become well-nigh indispensable.*[80]

Aside from the interest of greater promptness in the disposition of cases, consistency in regulation, and equally important objectives of delegation of powers,[81] among others, the preliminary resort to administrative agencies is beneficial to parties because of the "desirable flexibility in administrative procedure."[82] Agencies can act without regard to legal technicalities or forms. They are given a wide latitude, including the authority to take judicial notice of facts within their special competence, in evaluating evidence and in exercising their quasi-judicial functions.[83]

On sound policy grounds, practical considerations which shaped our judicial system, and benefits afforded to parties and the government as a whole, the tendency now is that courts do not interfere unless their intervention is appropriately and legally called for, such in the determination of whether there has been grave abuse of discretion[84] on the part of any government instrumentality. This has been the rule since the establishment of administrative agencies. Stated otherwise, the doctrine of primary jurisdiction has always been firmly established in our system, improbable to erase, and difficult to change—just as though *the rule has been written in stone.*

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[79] [Hereinafter "*Abejo*"], G.R. No. 63558, 149 SCRA 654, May 19, 1987.

[80] *Id.* at 669-70. (Emphasis supplied.)

[81] Lee Loevinger, *The Administrative Agency as a Paradigm of Government: A Survey of the Administrative Process*, 40 IND. L.J. 3, 293-94 (1965), *citing* the Address by Congressman Oren Harris to U.S. Chamber of Commerce, Washington, D.C., Feb. 4, 1965. Congressman Oren Harris said that the delegation is hoped to accomplish the following objectives: (1) to provide expertness in the particular areas to be regulated; (2) to expedite the handling of anticipated large workloads by being able to give undivided attention; (3) to be vigorous in enforcing the policies laid down in the enabling statutes; (4) to evolve more specific yardsticks in applying broad congressional policies; and (5) to assist the Congress in shaping new and effective policies to meet the changing conditions and new needs.

[82] Marcelo v. Bungubung, G.R. No. 175201, 552 SCRA 589, 615, Apr. 23, 2008.

[83] *See* Quiambao v. Ct. of Appeals, G.R. No. 128305, 454 SCRA 17, Mar. 28, 2005; Republic v. Express Telecomm. Co., Inc., G.R. No. 147096, 373 SCRA 316, Jan. 15, 2002.

[84] Also known as the Court's "expanded" judicial power. CONST. art. VIII, § 1.

The Court is conscious of the current trend and accedes to the rule[85] of vesting jurisdiction in administrative boards, tribunals, or commissions to resolve disputes in specialized fields,[86] such as in corporations, labor, public utilities, traffic management, taxation, agricultural lands, intellectual property rights, customs, and public transportation. The Court in *Industrial Enterprises* revisited the import of the doctrine and affirmed that:

> In recent years, it has been the *jurisprudential trend to apply this doctrine [of primary jurisdiction]* to cases involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in character.[87]

In another case, the Court further noted that history vindicated the view that:

> *[B]etween the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former.* Thus: Increasingly, this Court has been committed to the view that unless the law speaks clearly and unequivocally, *the choice should fall on an administrative agency.'*[88]

That is to say, unless there is a provision in the law, when in doubt, the choice should fall on the administrative agency.[89] The Court has always been committed to this "unmistakable trend." And we expect it to be consistent on this matter.

Pursuant to the doctrine of primary jurisdiction, once initial action is taken by the administrative agency, the administrative process must continue up to the highest level (agency) before one may resort to judicial tribunals (courts).[90] This is a requirement under the doctrine of exhaustion of administrative remedies, the next legal concept explored in this Note.

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[85] *See Vidad*, 227 SCRA 271.

[86] *See* Antipolo Realty Corp. v. Nat'l Housing Auth., G.R. No. 50444, 153 SCRA 399, Aug. 31, 1987, *citing Abejo*, 149 SCRA 654.

[87] *Industrial Enterprises*, 184 SCRA 426, 431. (Emphasis supplied.)

[88] Nat'l Fed'n of Lab. v. Eisma, G.R. No. 61236, 127 SCRA 419, 428, Jan. 31, 1984. (Emphasis supplied, citations omitted.)

[89] *See, e.g.* Phil. Am. Mgmt. & Fin. Co., Inc. v. Mgmt. & Supervisors Ass'n of the Phil.-Am. Mgmt. & Fin. Co., Inc., G.R. No. 27953, 48 SCRA 187, Nov. 29, 1972. *But see* Allied Free Workers Union v. Apostol, 102 Phil. 292 (1957); Bay View Hotel, Inc. v. Manila Hotel Workers Union, 21803, 18 SCRA 946, Dec. 17, 1966; Republic Sav. Bank v. Ct. of Indus. Rel., 20303, 21 SCRA 226, Sept. 27, 1967.

[90] CRUZ, *supra* note 71, at 239.

B. Doctrine of Exhaustion: Judicial System's Cornerstone

As a general rule, no recourse to regular courts can be made until all administrative remedies have been exhausted. Before a party may seek court intervention, they should first avail of all the means afforded to them by administrative processes.[91] The issues which administrative agencies are authorized to hear and decide should not be instantly taken from them and submitted to courts without first giving such agencies the opportunity to dispose of the same.[92] This is the doctrine of exhaustion of administrative remedies—the "*cornerstone of our judicial system.*"[93]

The rule is as old as U.S. federal administrative law.[94] It was said that, more often than not, Congress has since written exhaustion requirements into many statutes to ensure and guide the application of the doctrine.[95] American legal scholar Raoul Berger correctly maintained that judicial relief was "conditioned upon exhaustion of the administrative remedy."[96]

Akin and corollary to the doctrine of primary jurisdiction, the doctrine of exhaustion of administrative agencies works to restrain the court from assuming jurisdiction over a question that is well within the expertise and competence of an administrative agency. Courts must wait and allow agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[97] Thus, before seeking the intervention of the courts, it is a precondition that a party should first avail of all the existing administrative means.[98] The objective of exhaustion is definitely to give the quasi-judicial body an opportunity to act and correct errors, if any, committed in the administrative forum. This promotes an

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[91] Associated Commc'ns & Wireless Servs., Ltd. (ACWS), Ltd. v. Dumlao, G.R. No. 136762, 392 SCRA 269, Nov. 21, 2002, *citing* Zabat v. Ct. of Appeals, G.R. No. 122089, 338 SCRA 551, Aug. 23, 2000.

[92] *Id.* at 281.

[93] Universal Robina Corp. (Corn Division) v. Laguna Lake Dev. Auth., G.R. No. 191427, 649 SCRA 506, 511, May 30, 2011. (Emphasis supplied.) This is the first Philippine case that referred to the doctrine of exhaustion as a "*cornerstone of our judicial system.*"

[94] Raoul Berger, *Exhaustion of Administrative Remedies*, 48 YALE L.J. 981, 981 n.1 (1939). "Federal administrative law may be said to have taken shape with the advent of the Interstate Commerce Commission in 1887. The earliest manifestation of the exhaustion doctrine is found in Dundee Mortgage Trust Inv. Co. v. Charlton[.]"

[95] Peter Devlin, *Jurisdiction, Exhaustion of Administrative Remedies, and Constitutional Claims*, 93 N.Y.U. L. REV. 1234, 1242 (2018).

[96] Berger, *supra* note 94, at 1006.

[97] Caballes v. Perez-Sison, G.R. No. 131759, 426 SCRA 98, Mar. 23, 2004.

[98] Systems Plus Comput. Coll. of Caloocan City v. Local Gov't of Caloocan City, G.R. No. 146382, 408 SCRA 494, Aug. 7, 2003.

orderly and systematic procedure. The case of *Abe-Abe v. Manta*[99] describes the exhaustion doctrine in this fashion:

> The rule on exhaustion of administrative remedies before resorting to the court means that *there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts "to swamp the courts by a resort to them in the first instance."*[100]

The Court made a similar ruling in *Tan v. Director of Forestry*[101] when it ruled that "the administrative remedies afforded by law must first be exhausted before resort can be had to the courts. [...] Some matters and some questions are by law delegated entirely and absolutely to the discretion of particular branches of the executive department of the government."[102] This reinforces the idea that agencies are separate entities bestowed with distinct powers and duties.

The decision in *Oporto v. Members of the Board of Inquiry and Discipline of the NAPOCOR*[103] tells us that going to court, while the remedies in the administrative level are not yet exhausted, is "premature and precipitate" and is violative of the doctrine of exhaustion of administrative remedies.

Our system follows the rule that where the law has laid out or delineated the procedure by which administrative appeal or remedy could be effected, the same should be followed before one can commence a recourse to judicial action.[104] The steps necessary to exhaust all remedies are specific to the statutory scheme. The Court in *C.N. Hodges v. Municipality Board of the City of Iloilo*[105] thus held that "the rule requiring exhaustion of administrative remedies applies only 'when there is an express legal provision requiring such administrative step as a condition precedent to taking action in court.'"[106]

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[99] [Hereinafter "*Abe-Abe*"], G.R. No. 4827, 90 SCRA 524, May 31, 1979.

[100] *Id.* at 532. (Emphasis supplied, citations omitted.)

[101] [Hereinafter "*Tan*"], G.R. No. 24548, 125 SCRA 302, Oct. 27, 1983.

[102] *Id.* at 322, *quoting* Lamb v. Phipps, 22 Phil. 456, 491-92 (1912).

[103] [Hereinafter "*Oporto*"], G.R. No. 147423, 569 SCRA 93, Oct. 15, 2008.

[104] Pascual v. Provincial Bd. of Nueva Ecija [hereinafter "*Pascual*"], 106 Phil. 466 (1959), *citing* Miguel v. Vda. de Reyes, 93 Phil. 542 (1953); Coloso vs. Board of Acct., 92 Phil. 938 (1953); Ang Tuan Kai vs. Imp. Control Comm'n, 91 Phil. 143 (1952).

[105] G.R. No. 18276, 19 SCRA 28, Jan. 12, 1967.

[106] *Id.* at 33. (Emphasis supplied.)

As earlier mentioned, the administrative judgment must first be appealed to the superiors up to the highest administrative level before the court may intervene and a judicial review may be undertaken. A person challenging the decision of an agency must first pursue all of the agency's available remedies before going to court. Hence, by way of examples, a decision of the provincial treasurer must first be elevated to the Secretary of Finance;[107] a decision from the Regional Office of the Department of Environment and Natural Resources (DENR) has to be raised to the DENR Head Office;[108] a decision of the Board of Accountancy should first be appealed to the Professional Regulation Commission;[109] and a decision of the President of the University of the Philippines must first be brought to its Board of Regents before going to court.[110]

The Office of the President is empowered by the same doctrine to review any determination or disposition of a department head. The Court in *Land Car, Inc. v. Bachelor Express, Inc.*,[111] citing Section 17, Article VII of the 1987 Constitution, ruled that the action of a department head bears only the implied approval of the President. The latter is not prevented from exercising his prerogatives to review the administrative decisions of all executive departments, bureaus and offices, pursuant to the President's power of control.[112]

Exhaustion of administrative remedies is a long-standing principle and the Supreme Court has set out clear guidelines on the matter. *Paat v. Court of Appeals*[113] expounds on this by stating that "if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought."[114] It is clear that the doctrine contemplates an administrative remedy or remedies, other than the quasi-judicial body's principal authority to take cognizance of the case.

One of the reasons for the exhaustion of administrative remedies is the well-entrenched principle on separation of powers. This enjoins the

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[107] Berdin v. Mascariñas, G.R. No. 135928, 526 SCRA 592, July 6, 2007.
[108] Morcal v. Laviña, G.R. No. 166753, 476 SCRA 508, Nov. 29, 2005.
[109] Antolin v. Domondon, G.R. No. 165036, 623 SCRA 163, July 5, 2010.
[110] CRUZ, *supra* note 71, at 264.
[111] G.R. No. 154377, 417 SCRA 307, Dec. 8, 2003.
[112] *Id.* at 312.
[113] [Hereinafter "*Paat*"], G.R. No. 111107, 266 SCRA 167, Jan. 10, 1997.
[114] *Id.* at 175.

judiciary to adopt a policy of non-interference on matters falling primarily, albeit not exclusively, within the competence of the other departments.[115]

The doctrine of exhaustion is founded on practical and legal reasons. It is based on the convenience of the parties and the judiciary's respect for its co-equal executive branch. It also ensures that legislative power is respected by courts[116] for an agency's jurisdiction is determined by laws enacted by the legislative branch. The leading case of *Cruz v. Del Rosario*[117] highlights the importance of this doctrine in the following wise:

> When an adequate remedy may be had within the Executive Department of the government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. *This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a co-equal office in the government.* If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency opportunity to decide the matter by itself correctly, but also to prevent unnecessary and premature resort to courts. *This has been a consistent ruling in a chain of cases* decided by [the Supreme Court].[118]

Further still, in stressing the courts' duty to uphold this principle, according to *Dimson (Manila), Inc. v. Local Water Utilities Administration*:[119]

> [The doctrine of exhaustion] operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. *The Court has always adhered to this precept, and it has no reason to depart from it now.*[120]

Historically, the doctrine is said to be created by courts to promote an autonomous administrative branch and an efficient justice system.[121] It seeks to protect agency authority and autonomy based on judicial deference to the congressional delegation of power. The doctrine discourages the parties from evading the agency's own procedures and gives the agency a chance to

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[115] Merida Water District v. Bacarro [hereinafter "*Merida*"], G.R. No. 165993, 567 SCRA 203, Sept. 30, 2008. *See also* Perfecto Fernandez, *The Philippine Legal System and Its Adjuncts: Pathways to Development*, 67 PHIL. L.J. 21, 39 (1992).

[116] Kilusang Mayo Uno v. Aquino, G.R. No. 210500, 899 SCRA 492, Apr. 2, 2019.

[117] G.R. No. 7440, 9 SCRA 755, Dec. 26, 1963.

[118] *Id.* at 758. (Emphasis supplied.)

[119] G.R. No. 168656, 631 SCRA 59, Sept. 22, 2010.

[120] *Id.* at 72. (Emphasis supplied.)

[121] Devlin, *supra* note 95, at 1234.

correct its mistakes, such as through an internal appeals process or reconsideration.[122] Judicial efficiency and economy are promoted because when an agency can right its own wrong, then there is no need for further litigation.[123]

Exhaustion also fosters efficiency in the administrative process by avoiding its interruption and fragmentation.[124] Aside from the other obvious benefits of lower costs and greater ease of self-representation,[125] the factual record in the administrative forum is more comprehensive, with the agency having a chance to offer its expertise when the case reaches the court.[126] Hence, the court gets the benefit of the agency's useful records and factual findings, leading to a more effective and more rapid disposition of cases.

As confirmed in a battery of cases, availing of administrative remedies is cheaper and provides for an efficient resolution of disputes.[127] Allegations of partiality or loss of faith in an administrative body are not excuses for an instant resort to judicial review. As the Court held: "Bare misgivings about the ability of a quasi-judicial agency to render impartial justice would not, standing alone, be a sufficient reason to dispense with the exhaustion of administrative remedies doctrine."[128] The Court continued that, "[a]s it were, the doctrine ensures the efficient and speedy disposition of cases."[129]

An underlying principle of the doctrine rests on the presumption that the administrative agency, if afforded a complete and appropriate chance to pass upon the matter, will decide the same correctly.[130] Official acts are presumed to be correct and lawful, and that if errors are committed by subordinates, the superiors will decide the same correctly, or correct any

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[122] *Id.* at 1241 n.38.

[123] *Id.* nn. 39–40.

[124] David Kreutzer & Meghan Morrissey, *Doctrine of Exhaustion of Administrative Remedies as an Offensive Tool*, 38 COLO. LAW. 53 (2009).

[125] Marcia Gelpe, *Exhaustion of Administrative Remedies: The Lesson from Environmental Cases*, 53 WASH. L. REV. 1, 10 (1985). Gelpe adds that "[e]ven if exhaustion were never required, legislatures and agencies could reasonably decide to establish procedures for granting administrative remedies simply to benefit parties who cannot afford litigation."

[126] *Id.* at 17.

[127] Pub. Hearing Comm. of the Laguna Lake Dev. Auth. v. SM Prime Holdings, Inc., G.R. No. 170599, 631 SCRA 73, Sept. 22, 2010,

[128] Montanez v. Provincial Agrarian Reform Adjudicator [hereinafter "*Montanez*"], G.R. No. 183142, 600 SCRA 217, 237, Sept. 17, 2009.

[129] *Id.*

[130] Univ. of the Phil. v. Catungal, G.R. No. 121863, 272 SCRA 221, May 5, 1997; CRUZ, *supra* note 71, at 270.

previous mistake, if any, committed in the administrative forum.[131] As a matter of fact, the filing of a motion for reconsideration at the administrative level is encouraged so that the agency deciding on the case can correct its own error committed either through misapprehension of facts or misappreciation of evidence.[132] This renders judicial intervention unnecessary.

Furthermore, for reasons of law, comity, and convenience, the courts will shy away from a dispute until the system of administrative redress has been completed and complied with.[133] Strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which would otherwise have burdened their already heavily-loaded dockets.[134] Indeed, the doctrine of exhaustion of administrative remedies is consistently obeyed to promote proper relationships between the courts and administrative agencies,[135] to provide an orderly procedure prescribed by law,[136] as well as to prevent the attempts "to swamp the courts"[137] by resorting to them unnecessarily and prematurely.[138]

When a party does not observe the rule of exhaustion, the case may be *dismissed* for lack of cause of action.[139] The complaint becomes afflicted with the vice of prematurity, making the alleged controversy therein not ripe for judicial determination.[140] This technical effect is much the same as the failure to comply with the conciliation requirement under the Local Government Code.[141] Thus, absent any finding of waiver or estoppel, the premature invocation of the court's intervention is fatal to one's case.[142]

The Supreme Court, in a few cases, nevertheless appears to have confused the doctrine of exhaustion of administrative remedies with the

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[131] Dagudag v. Paderanga, A.M. No. RTJ-06-2017, 555 SCRA 217, June 19, 2008; Buston-Arendain v. Gil, G.R. No. 172585, 555 SCRA 561, June 26, 2008.

[132] Gerona v. Datingaling, A.C. No. 4801, 398 SCRA 148, Feb. 27, 2003; Halimao v. Villanueva, A.C. No. 3825, 253 SCRA 1, Feb. 1, 1996.

[133] Ongsuco v. Malones, G.R. No. 182065, 604 SCRA 499, 511–12, Oct. 27, 2009.

[134] *Merida*, 567 SCRA 203, 209.

[135] DE LEON, *supra* note 20, at 361.

[136] Antonio v. Tanco, G.R. No. 38135, 65 SCRA 448, July 25, 1975.

[137] DE LEON, *supra* note 20, at 361 n.68.

[138] Lopez v. City of Manila [hereinafter "*Lopez*"], G.R. No. 127139, 303 SCRA 448, Feb. 19, 1999.

[139] *Montanez*, 600 SCRA 217; *Paat*, 266 SCRA 167, 175.

[140] Aquino v. Aure, G.R. No. 153567, 546 SCRA 71, Feb. 18, 2008.

[141] LOCAL GOV'T CODE, § 412. Barangay conciliation is a condition precedent for filing a claim, and compliance of the same must be alleged in the pleading. Failure to resort to conciliation is a ground for the dismissal of the case.

[142] Asia Int'l Auctioneers, Inc. v. Parayno, G.R. No. 163445, 540 SCRA 536, Dec. 18, 2007.

doctrine of primary jurisdiction. For instance, the Court said in *Sunville Timber Products, Inc. v. Abad*[143] that "[t]he doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice."[144] A similar declaration was reiterated in *Estrada v. Court of Appeals*:[145]

> [U]nder the doctrine of exhaustion of administrative remedies, *where competence to determine the same issue is placed in the trial court and an administrative body* and the issue involves a specialized and technical matter, *relief should first be sought before the administrative body prior to instituting suit before the regular courts*.
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> * * *
>
> The doctrine of exhaustion of administrative remedies requires that resort be first made with the administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to a court of justice for review.[146]

The foregoing statement (and confusion) has been cited in the subsequent cases of *BATELEC II Electric Cooperative, Inc. v. Energy Industry Administration Bureau*,[147] *Morcal v. Laviña*, *The Alexandria Condominium Corp. v. Laguna Lake Development Authority*,[148] and *Republic v. O.G. Holdings Corp.*,[149] among others.

Despite these pronouncements, the principles are fixed and apparent. The administrative agencies in the exercise of their adjudicatory powers, when their jurisdiction is original and concurrent with the courts, are given the first opportunity to decide the case properly lodged before them. This is the doctrine of primary jurisdiction. If unsatisfied with the ruling, the adverse party must appeal or elevate the decision within the administrative forum using all the mechanisms given by the statute, before resorting to review by courts. This is the doctrine of exhaustion of administrative remedies. Both doctrines complement each other, the former generally a pre-requisite to the operation of the latter.

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[143] G.R. No. 85502, 206 SCRA 482, Feb. 24, 1992.
[144] *Id.* at 486.
[145] G.R. No. 137862, 442 SCRA 117, Nov. 11, 2004.
[146] *Id.* at 125-26. (Emphasis supplied.)
[147] G.R. No. 135925, 447 SCRA 482, Dec. 22, 2004.
[148] G.R. No. 169228, 599 SCRA 452, Sept. 11, 2009.
[149] G.R. No. 189290, 847 SCRA 31, Nov. 29, 2017.

The rule of primary jurisdiction is claimed to be "conceptually analogous" to the doctrine of exhaustion of administrative remedies.[150] Both prudential doctrines share not only similar objectives but also similar analytical steps in their application. They are used to determine the timing of the court's decision-making, and to consider the allocation of such power between courts and agencies, as well as the best use of expertise.[151]

At the start of this discussion, the doctrine of exhaustion of administrative remedies was introduced as the "cornerstone of our judicial system." Yet, in a long line of cases, no clear and direct reason was provided for by the Court when it made such a statement. Even legal scholars and writers have failed to adequately explain such a description.

But as can be gleaned, the observance of this mandate is a sound policy and practice that should not be ignored. This is perhaps the reason why the doctrine is called the cornerstone, or the foundation, of our judicial system. Without it, the system falls.

And by the constant reiteration in case law of the Court's restraint in assuming authority to decide administrative disputes, we expect the Court to be (once again) consistent on this matter.

III. EXCEPTIONS: JUSTIFICATIONS AND PROPOSED CLASSIFICATIONS

The broad language of *Industrial Enterprises* and *Paat* are often more honorably ignored than followed. As the Supreme Court has held in many instances, the doctrines of primary jurisdiction and exhaustion of administrative remedies are not iron-clad rules.[152] They recognize the following exceptions:

(1) When the question raised is purely legal;[153]
(2) When the administrative agency is in estoppel;[154]

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[150] Aaron Lockwood, *The Primary Jurisdiction Doctrine: Competing Standards of Appellate Review*, 64 WASH. & LEE L. REV. 707, 739 n.251 (2007).

[151] *Id.*

[152] Vigilar v. Aquino, G.R. No. 180388, 639 SCRA 772, Jan. 18, 2011; Republic v. Lacap [hereinafter "*Lacap*"], G.R. No. 158253, 517 SCRA 255, March 2, 2007.

[153] Valmonte v. Belmonte, G.R. No. 74930, 170 SCRA 256, Feb. 13, 1989; Begosa v. Chairman, Phil. Veterans Admin., G.R. No. L-25916, 32 SCRA 466, Apr. 30, 1970.

[154] Samar II Elec. Coop. v. Seludo, G.R. No. 173840, 671 SCRA 78, Apr. 25, 2012.

(3) When there are circumstances indicating urgency of judicial intervention;[155]
(4) When the issue raised is the constitutionality of the statute;[156]
(5) When the rule does not provide plain, speedy, adequate remedy;[157]
(6) When resort to exhaustion will only be oppressive and patently unreasonable;[158]
(7) When the administrative remedy is only permissive or voluntary and not a prerequisite to the institution of judicial proceedings;[159]
(8) When the application of the doctrine will only cause great and irreparable damage which cannot be prevented except by taking the appropriate court action;[160]
(9) When it involves the rule-making or quasi-legislative functions of an administrative agency.[161]
(10) When the rule of qualified political agency applies, such as when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;[162]
(11) When the respondent officer has acted in violation of due process;[163]
(12) When there is an unreasonable delay or official inaction that will irretrievably prejudice the complainant;[164]

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[155] Dep't of Agrarian Reform v. Apex Investment & Fin. Corp. [hereinafter "*Apex Investment*"], G.R. No. 149422, 401 SCRA 283, Apr. 10, 2003; Quisumbing v. Gumban, G.R. No. 85156, 193 SCRA 520, Feb. 5, 1991.

[156] Tapales v. President & Bd. of Regents of the Univ. of the Phil. [hereinafter "*Tapales*"], G.R. No. 17523, 7 SCRA 553, Mar. 30, 1963.

[157] Information Tech. Found. of the Phil. v. Comm'n on Elections, G.R. No. 159139, 460 SCRA 291, Jan. 13, 2004.

[158] Cipriano v. Marcelino [hereinafter "*Cipriano*"], G.R. No. 27793, 43 SCRA 291, Feb. 28, 1972.

[159] Corpus v. Cuaderno [hereinafter "*Corpus*"], G.R. No. 17860, 4 SCRA 749, Mar. 30, 1962.

[160] De Lara v. Cloribel [hereinafter "*De Lara*"], G.R. No. 21653, 14 SCRA 269, May 31, 1965.

[161] Smart Comm., Inc. v. Nat'l Telecomm. Comm'n [hereinafter "*Smart*"], G.R. No. 151908, 408 SCRA 678, Aug. 12, 2003.

[162] Pagara v. Ct. of Appeals, G.R. No. 96882, 254 SCRA 606, Mar. 12, 1996; Demaisip v. Ct. of Appeals, 106 Phil. 237 (1959).

[163] Nat'l Dev. Co. v. Collector of Customs of Manila [hereinafter "*Nat'l Dev. Co.*"], G.R. No. 19180, 9 SCRA 429, Oct. 31, 1963; *See* Aurillo v. Rabi, G.R. No. 120014, 392 SCRA 595, Nov. 26, 2002.

[164] Aquino-Sarmiento v. Morato [hereinafter "*Morato*"], G.R. No. 92541, 203 SCRA 515, Nov. 13, 1991, *citing* Gravador v. Mamigo, G.R. No. 24989, 20 SCRA 742, July 21, 1967; Azuelo v. Arnaldo, G.R. No. 15144, 108 Phil. 293 (1960).

(13) When the challenged administrative act is patently illegal;[165]
(14) When resort to administrative remedy will amount to a nullification of a claim;[166]
(15) When no administrative remedy or review is provided for by law;[167]
(16) When the question on non-observance to the doctrines has been rendered moot;[168]
(17) When the issues submitted in the case have become moot and academic;[169]
(18) When the application of the principle would be patently unreasonable as in such cases where the claim involved is small;[170]
(19) When strong public interest is involved;[171]
(20) Where questions involved are essentially judicial;[172]
(21) When the subject matter is a private land in land case proceedings;[173]
(22) In *quo warranto* proceedings;[174]
(23) When there is grave doubt as to the availability of the administrative remedy;[175]
(24) When the steps to be taken are merely matters of form;[176]
(25) When the administrative remedy is not exclusive but merely cumulative or concurrent to a judicial remedy;[177]
(26) When the administrative officer has not rendered any decision or made any final finding of any sort;[178]

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[165] *Apex Investment*, 401 SCRA 283.

[166] Alzate v. Aldana, G.R. No. L-14407, 107 Phil. 298 (1960).

[167] Social Security Comm'n v. Ct. of Appeals, G.R. No. 152058, 439 SCRA 239, Sept. 27, 2004; *Morato*, 203 SCRA 515.

[168] Province of Aklan v. Jody King Constr. & Dev. Corp., G.R. No. 197592, 711 SCRA 60, Nov. 27, 2013; Carale v. Abarintos [hereinafter "*Carale*"], G.R. No. 120704, 269 SCRA 132, Mar. 3, 1997.

[169] Land Bank of the Phil. v. Ct. of Appeals, G.R. No. 126332, 318 SCRA 144, Nov. 16, 1999.

[170] *Cipriano*, 43 SCRA 291.

[171] Arrow Transp. Corp. v. Board of Transp., G.R. No. L-39655, 63 SCRA 193, Mar. 21, 1975.

[172] Bueno v. Paterno [hereinafter "*Bueno*"], G.R. No. 13882, 9 SCRA 794, Dec. 27, 1963.

[173] Soto v. Jareno, G.R. No. 38962, 144 SCRA 116, Sept. 15, 1986.

[174] *See* enumeration in *Lopez*, 303 SCRA 448, 460.

[175] *Pascual*, 106 Phil. 466.

[176] *Id.*

[177] *Id.*

[178] Datiles & Co. v. Sucaldito [hereinafter "*Datiles*"], G.R. No. 42380, 186 SCRA 704, June 22, 1990.

(27) When the law expressly provides for a different review procedure;[179]
(28) When there is no express legal provision requiring such administrative step as a condition precedent to taking action in court;[180]
(29) When nothing of an administrative nature is to be or can be done, such as where the issue does not require technical knowledge and experience;[181]
(30) When the controverted act is clearly devoid of any color of authority;[182]
(31) When the controverted act has been performed without or in excess of jurisdiction;[183]
(32) When the controverted act has been performed with grave abuse of discretion;[184]
(33) When the petitioner was never a party in the administrative proceedings;[185]
(34) Other specific cases:
    a. When the administrative appeal of a decision of a Regional Director of Lands "for and by authority of the Director of Lands" was made to an Officer-In-Charge of the Bureau of Lands;[186]
    b. When no tax assessment has been made, under the Real Property Tax Code, in cases involving payments under protest of real property taxes;[187]
    c. When a government corporation has an affirmative statutory duty to disclose to the

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[179] Phillips Seafood (Phil.) Corp. v. Bd. of Investments [hereinafter "*Phillips Seafood*"], G.R. No. 175787, 578 SCRA 113, Feb. 4, 2009.

[180] Civil Serv. Comm'n v. Dep't of Budget & Mgmt. [hereinafter "*CSC*"], G.R. No. 158791, 464 SCRA 115, July 22, 2005.

[181] *Lacap*, 517 SCRA 255.

[182] Bangus Fry Fisherfolk v. Lanzanas [hereinafter "*Bangus Fry Fisherfolk*"], G.R. No. 131442, 405 SCRA 530, July 10, 2003; Cucharo v. Subido, G.R. No. 27887, 37 SCRA 523, Feb. 22, 1971.

[183] Laganapan v. Asedillo, G.R. No. 28353, 154 SCRA 377, Sept. 30, 1987.

[184] Continental Marble Corp. v. Nat'l Lab. Relations Comm'n, G.R. No. 43825, 161 SCRA 151, May 9, 1988.

[185] Cordillera Glob. Network v. Paje [hereinafter "*Paje*"], G.R. No. 215988, 901 SCRA 261, Apr. 10, 2019; Boracay Found., Inc. v. Province of Aklan, G.R. No. 196870, 674 SCRA 555, June 26, 2012.

[186] Vda. de Nazareno v. Ct. of Appeals, G.R. No. 98045, 257 SCRA 589, June 26, 1996.

[187] Manila Elec. Co. v. Barlis, G.R. No. 114231, 375 SCRA 570, Feb. 1, 2002.

public the terms and conditions of the sale of its lands and is in breach of this duty;[188] and

d. When the plaintiff is praying for damages, not the reversal of the policies of an educational institution, and the administrative agency does not have the power to award damages.[189]

The long list above has been developed over the decades through case law. As early as 1950s, the Court already recognized individually discrete exceptions to the two doctrines.[190] In 1959, *Pascual v. Provincial Board of Nueva Ecija* initially listed six exceptions to the doctrine of exhaustion of administrative remedies.[191] The number increased to seven in the 1991 case of *Aquino-Sarmiento v. Morato* and to 11 in the 1997 case of *Paat*. Further elaborating on these themes, *Republic v. Lacap* in 2007 enhanced the list to 12 exceptions.[192] The case also incorporated in its discussion the related doctrine of primary jurisdiction, holding that both rules have the same set of exceptions.[193] *Lacap* is heavily cited in jurisprudence up until today. *Province of Zamboanga del Norte v. Court of Appeals*[194] also listed 14 exceptions, though it only addressed the question of non-exhaustion. Several *individual cases* also dealt with *unique exceptions* that were not present in the then existing lists, the

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[188] Chavez v. Pub. Est. Auth., G.R. No. 133250, 384 SCRA 152, July 9, 2002.

[189] Regino v. Pangasinan Coll. of Sci. & Tech. [hereinafter "*Regino*"], G.R. No. 156109, 443 SCRA 56, Nov. 18, 2004.

[190] *See* Emerito O. Tolentino, Danila S. Mendoza, & Jaime C. Opinion, *Administrative Law*, 35 PHIL. L.J. 716 (1960), *citing* Abella v. Rodrizuez, 50 O.G. 359 (1934).

[191] The Court held that "the rule is inapplicable where no administrative remedy is provided. Likewise, the rule will be relaxed where there is grave doubt as to the availability of the administrative remedy; where the question in dispute is purely a legal one, and nothing of an administrative nature is to be or can be done; where although there are steps to be taken, they are, under the admitted facts, merely matters of form, and the administrative process, as a process of judgment, is really over; or where the administrative remedy is not exclusive but merely cumulative or concurrent to a judicial remedy. A litigant need not proceed with optional administrative process before seeking judicial relief." *Pascual*, 106 Phil. 466, 470.

[192] *Lacap,* 517 SCRA 255, *citing* Rocamora v. Reg'l Trial Ct.-Cebu, G.R. No. 65037, 167 SCRA 615, Nov. 23, 1988; *Carale*, 269 SCRA 132; Castro v. Gloria [hereinafter "*Castro*"], G.R. No. 132174, 363 SCRA 417, Aug. 20, 2001.

[193] The Court held that "the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions." *Lacap,* 517 SCRA 255 at 265.

[194] G.R. No. 109853, 342 SCRA 549, 558-59, Oct. 11, 2000.

latest one being decided in 2019.[195] These are all consolidated in the above enumeration of the 34 exceptions.

The exemptions from the application of the doctrine of primary jurisdiction are similar to those of exhaustion. As fleshed out in Part II, both rules have identical objectives—to allocate the decision-making power between courts and agencies and to determine the timing for a court to hear and decide the case—and the same operation. As a matter of fact, the threshold question in the primary jurisdiction analysis has been proposed as this: "Is the issue susceptible to judicial review?"[196] If the answer is no, the administrative agency must make the initial decision and the court is without jurisdiction to hear the claim. This threshold question mirrors the initial inquiry on exhaustion of administrative remedies.[197]

Nevertheless, there are some exceptions that may apply to one doctrine but not necessarily to the other, such as waiver. If not invoked at the proper time, the ground on non-exhaustion of remedies is deemed waived and the court can take cognizance of the case.[198] However, the invocation of the doctrine of primary jurisdiction cannot be waived by the failure of the parties to argue it and the court may even raise the issue of primary jurisdiction *motu propio*.[199]

A. Cleaning-Up the Exceptions

The itemized enumeration of 34 exceptions includes some events, circumstances, or facts that refer to the *requisites or conditions* before the doctrines of primary administrative jurisdiction or exhaustion of administrative remedies may properly apply to a case. In other words, some exceptions are *not* actually "true exceptions" because, with the presence of such instances, the doctrines could never be put into effect at all. These should not be considered as exceptions to the general rule, for there is no general rule to speak of in the first place.

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[195] *Paje*, 901 SCRA 261. The Court therein dismissed the argument on exhaustion of remedies because the petitioner was not a party in the administrative proceedings (application of environmental compliance certificates). The Court enumerated the exceptions to the doctrine of exhaustion, but never really referred to any of them specifically. It examined the statutory provisions and ruled that the petitioner is not required to exhaust the remedies since it was never furnished a copy of the administrative decision, which would trigger the start of the internal appeal period provided under the law.

[196] Lockwood, *supra* note 150, at 742.

[197] *Id.*

[198] Republic v. Sandiganbayan, G.R. No. 112708, 255 SCRA 438, Mar. 29, 1996.

[199] Euro-Med Labs., Phil., Inc. v. Province of Batangas, G.R. No. 148106, 495 SCRA 301, July 17, 2006.

It bears noting that the requisites for the application of the doctrine of primary jurisdiction are: (1) the administrative agency is performing a quasi-judicial function; (2) an administrative body and a regular court have concurrent and original jurisdiction; and (3) the issue to be resolved requires expertise of administrative agency. Likewise, the requisites of the doctrine of exhaustion are: (1) the administrative agency is performing a quasi-judicial function; (2) judicial review is available; and (3) the court acts in its appellate jurisdiction. That the issue has not become moot or that the law itself requires resort to the administrative remedies are some presumptions inherent in these doctrines.

For example, when the subject matter "involves the rule-making or quasi-legislative functions of an administrative agency," the doctrines may correctly be disregarded because they apply only where the agency exercises quasi-judicial function. Another one is "when no administrative remedy or review is provided for by law" as this contravenes the pre-condition that the administrative processes or steps (jurisdiction, appeals, and reconsiderations) should be delineated by the statute. Hence, the same effect is true to the exceptions of "when there is no express legal provision requiring such administrative step as a condition precedent to taking action in court;" "when the administrative remedy is only permissive or voluntary and not a prerequisite to the institution of judicial proceedings," "when there is grave doubt as to the availability of the administrative remedy," "when the steps to be taken are merely matters of form," and "when the law expressly provides for a different review procedure."

For this reason, a number of exceptions may be removed from the list for being not "true exceptions," as follows:[200]

- "(7) When the administrative remedy is only permissive or voluntary and not a prerequisite to the institution of judicial proceedings;"
- "(9) When it involves the rule-making or quasi-legislative functions of an administrative agency."
- "(10) When the rule of qualified political agency applies, such as when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;"

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[200] The numbering from the original list presented at the beginning of this Part is retained to avoid confusion.

- "(15) When no administrative remedy or review is provided for by law;"
- "(16) When the question on non-observance to the doctrines has been rendered moot;"
- "(17) When the issues submitted in the case have become moot and academic;"
- "(23) When there is grave doubt as to the availability of the administrative remedy;"
- "(24) When the steps to be taken are merely matters of form;"
- "(25) When the administrative remedy is not exclusive but merely cumulative or concurrent to a judicial remedy"
- "(27) When the law expressly provides for a different review procedure;"
- "(28) When there is no express legal provision requiring such administrative step as a condition precedent to taking action in court;"
- "(33) When the petitioner was never a party in the administrative proceedings;" and
- "(34) Other specific cases:
    a. When the administrative appeal of a decision of a Regional Director of Lands "for and by authority of the Director of Lands" was made to an Officer-In-Charge of the Bureau of Lands;
    b. When no tax assessment has been made, under the Local Government Code, in cases involving payments under protest of real property taxes;"

Aside from those exceptions that are clearly deficient or violative of the pre-conditions for the doctrines' operation, the list also reveals those situations wherein the procedures are already satisfied according to the circumstances: where the administrative process as a process of judgment is really over; where by the terms of the statute the legislature intended to allow direct judicial remedy; where there is an absence of matters to be resolved from the very submission of the case; and where a specific person or entity is not duty-bound to apply the doctrine for not being made a party to the case wherein the decision to be appealed was rendered. All of which justify the non-application of the doctrines from the very beginning.

B. Proposed Classifications

The remaining exceptions in the list may then be combined and summarized into two categories:

(1) When the questions involved are purely judicial; and
(2) When there is no other plain, speedy, and adequate remedy.

Purely judicial questions embrace the following:[201]

- "(1) When the question raised is purely legal;"
- "(2) When the administrative agency is in estoppel;"
- "(4) When the issue raised is the constitutionality of the statute;"
- "(13) When the challenged administrative act is patently illegal;"
- "(19) When strong public interest is involved;"
- "(20) Where questions involved are essentially judicial;"
- "(21) When the subject matter is a private land in land case proceedings;"
- "(22) In *quo warranto* proceedings;"
- "(29) When nothing of an administrative nature is to be or can be done, such as where the issue does not require technical knowledge and experience;"
- "(30) When the controverted act is clearly devoid of any color of authority;"
- "(31) When the controverted act has been performed without or in excess of jurisdiction;"
- "(32) When the controverted act has been performed with grave abuse of discretion;"
- "(34) Other specific cases:
    c. When a government corporation has an affirmative statutory duty to disclose to the public the terms and conditions of the sale of its lands and is in breach of this duty; and
    d. When the plaintiff is praying for damages, not the reversal of the policies of an educational

[201] The numbering from the original list presented at the beginning of this Part is retained to avoid confusion.

> institution, and the administrative agency does not have the power to award damages."

The foregoing set generally includes issues involving a question of law, not of fact[202] (such as a purely legal question on breach of governmental duty or on the constitutionality of a law), and a case where nothing of an administrative nature is to be or can be done, such as where expertise, training, and experience of the administrative body are unnecessary.[203] In these cases, the regular courts have jurisdiction to pass upon the same. Construing a statute is an inherently judicial function. It is settled in our jurisprudence that there is a question of law when the doubt arises as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or the falsehood of alleged facts.[204] Moreover, administrative agencies are instituted for their factual, not legal, expertise. Therefore, requiring prior resort for legal questions to the agencies is useless.[205]

An instance where the doctrines do not find application is an action for *quo warranto*, a proceeding traditionally lodged in the courts.[206] Under the Rules of Court, a *quo warranto* proceeding involves a judicial determination of the right to the use or exercise of the office.[207] Another instance is a dispute involving a question of whether a contested lot is part of the public domain or of private ownership.[208] This type of land dispute is essentially judicial in nature and the claimant has no other recourse.

The defense of estoppel, considerations of public order, and invocation of paramount public interest are matters that the court must set aright in the exercise of its judicial power.[209] Note though that when public interest requires *urgent* judicial intervention, this exception may properly fall under the second proposed category of "no other plain, speedy, and adequate remedy," which will be examined later on.

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[202] *Castro*, 363 SCRA 417.

[203] *Tapales*, 7 SCRA 553.

[204] Macawiwili Gold Mining & Dev. Co. Inc. v. Ct. of Appeals, G.R. No. 115104, 297 SCRA 602, Oct. 12, 1998; Ramos v. Pepsi-Cola Bottling Co. of the Phil. Island, G.R. No. L-22533, 19 SCRA 289, Feb. 9, 1967.

[205] Gelpe, *supra* note 125, at 42.

[206] Republic v. Sereno, G.R. No. 237428, 863 SCRA 1, May 11, 2018.

[207] RULES OF COURT, Rule 66.

[208] Morcoso v. Ct. of Appeals, G.R. No. 96605, 208 SCRA 829, May 8, 1992.

[209] Supangan v. Santos, G.R. No. 84663, 189 SCRA 56, Aug. 24, 1990; Dy v. Nat'l Lab. Relations Comm'n, G.R. No. 68544, 145 SCRA 211, Oct. 27, 1986; *Bueno*, 9 SCRA 794.

Furthermore, the doctrines of primary jurisdiction and exhaustion of administrative remedies are confined only to cases where there is competence on the part of the administrative agency to act upon the matter complained of.[210] The doctrines have no bearing where the issue is well within the jurisdiction of the regular court and where the same court is the only competent institution to grant the relief sought, such as in an action for damages which calls for the interpretation and application of the Civil Code.[211]

Lastly, direct judicial resort may be sought where the act complained of is patently illegal or devoid of any color of authority, amounting to the obvious lack of jurisdiction of the administrative agency, or, at least, where jurisdictional issue is a mere question of law.[212] These issues cannot be resolved with finality by the administrative officer and an appeal to the superior administrative officer, if permitted, would only be an exercise in futility.[213]

Of course, whenever the agency is alleged to have committed grave abuse of discretion, the Court may always exercise its judicial power. Procedurally, the Rules of Court provide for two remedies in determining the existence of any grave abuse of discretion pursuant to the Court's constitutional mandate: the special civil actions for certiorari and prohibition.[214] Justice Marvic M.V.F. Leonen explains these remedies as follows:

> A petition for *certiorari* may be filed "[w]hen any *tribunal, board or officer* exercising *judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." A petition for prohibition may be filed "[w]hen the proceedings of any *tribunal, corporation, board, officer or person*, whether exercising *judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]"[215]

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[210] DE LEON, *supra* note 20, at 370.

[211] *Regino*, 443 SCRA 56.

[212] Mangubat vs. Osmeña, 105 Phil. 1308, 1309 (1959).

[213] Cebu Oxygen & Acetylene Co., Inc. v. Drilon, G.R. No. 82849, 176 SCRA 24, Aug. 2, 1989.

[214] RULES OF COURT, Rule 65. *See also* Araullo v. Aquino, G.R. No. 209287, 728 SCRA 1, July 1, 2014.

[215] Rappler, Inc. v. Bautista, G.R. No. 222702, 788 SCRA 442, 461, Apr. 5, 2016 (Leonen, *J., concurring*). (Emphasis supplied, citations omitted.)

The second category, *when there is no other plain, speedy, and adequate remedy*, consists of the following exceptions:[216]

- "(3) When there are circumstances indicating urgency of judicial intervention;"
- "(6) When resort to exhaustion will only be oppressive and patently unreasonable;"
- "(5) When the rule does not provide plain, speedy, adequate remedy;"
- "(8) When the application of the doctrine will only cause great and irreparable damage which cannot be prevented except by taking the appropriate court action;"
- "(11) When there is violation of due process;"
- "(12) When there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;"
- "(14) When resort to administrative remedy will amount to a nullification of a claim;"
- "(18) When the claim involved is small;" and
- "(26) When the administrative officer has not rendered any decision or made any final finding of any sort."

The rules of primary jurisdiction and exhaustion have always been understood to mean that the litigant has been furnished with a plain, speedy, and adequate remedy.[217] The application of these doctrines may be relaxed should it appear that an irreparable injury will be suffered by a party if they should await the final action of the administrative official concerned on the matter,[218] as when there is a long-continued and inordinate delay of official action, or when there is no decision yet that is ripe for review and a proper subject of an appeal to a higher administrative body or officer.[219] In these cases, there is no plain, speedy, and adequate remedy other than the immediate resort to the courts of justice.

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[216] The numbering from the original list presented at the beginning of this Part is retained to avoid confusion.

[217] *Cipriano*, 43 SCRA 291, 294.

[218] Celestial v. Cachopero, G.R. No. 142595, 413 SCRA 469, 478, Oct. 15, 2003, *citing De Lara*, 14 SCRA 269.

[219] *Datiles*, 186 SCRA 704, 711. (Emphasis supplied.) The case instructs that "there has to be some sort of a decision, order or act, more or less final in character, that is ripe for review and properly the subject of an appeal to a higher administrative body or officer [...] There being urgency in stopping public respondent Guieb's investigation but *no plain, speedy and adequate remedy in the ordinary course of law,* petitioner's recourse to the respondent court for relief by way of a petition for prohibition was proper."

Insistence on the observance of the doctrines is similarly oppressive and unreasonable when the amount involved is relatively small,[220] or when taking the administrative steps will result in a nullification of a claim being asserted, as when the period to bring the case to the court is limited by law,[221] or where some other serious conditions indicate the need for courts to interfere. It has been preserved unimpaired in our jurisprudence that the fundamental principles of justice and fairness are accorded with more importance than legal technicalities.[222]

As to the exception of violation of the right to due process, the Court had the occasion to underscore that an administrative appeal is not considered a "*plain, speedy or adequate remedy in the ordinary course of law* as would prevent petitioners from taking the present action, for it is undisputed that the respondent [administrative officer] has acted in *utter disregard of the principle of due process.*"[223] Indeed, our courts are tasked to avoid instances that bar a party forever from bringing the matter to the courts for judicial determination and could easily result in grave injustice.

It should be recalled, however, that for the special civil action of *certiorari* and prohibition to prosper, the tribunal, board, or officer exercising quasi-judicial functions should have acted "without or in excess of its or his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, *and* there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."[224] Put differently, *certiorari* and prohibition are proper only if both requirements are present: if the appropriate grounds are invoked, *and* an appeal or any plain, speedy, and adequate remedy is unavailable.[225]

The classifications proposed in this Note attempt to integrate, reconfigure, consolidate, and reduce the exceptions in our jurisprudence to only two categories—the ultimate goal of which is a better understanding of the matter at hand. They do not, by themselves, suggest any judicial test for

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[220] *Cipriano*, 43 SCRA at 293.

[221] Galano v. Roxas, G.R. No. 31241, 67 SCRA 8, Sept. 12, 1975.

[222] Sabello v. Dep't of Educ., Culture & Sports, G.R. No. 87687, 180 SCRA 623, Dec. 26, 1989.

[223] *Nat'l Dev. Co.*, 9 SCRA 429, 434. (Emphasis supplied.)

[224] Mahinay v. Ct. of Appeals, G.R. No. 152457, 553 SCRA 171, 179, Apr. 30, 2008. (Emphasis in the original.)

[225] Career Exec. Serv. Bd. v. Civil Serv. Comm'n, G.R. No. 197762, 819 SCRA 482, Mar. 7, 2017.

courts to follow. However, the two classifications will be useful in formulating the author's recommendation in Part V.

C. Comparison with the American Counterpart

In the United States, the case of *McCarthy v. Madigan*[226] first talked about the circumstances that lead to the non-application of the exhaustion doctrine. It used the *balancing of interests test* in deciding these cases, wherein courts will recognize an exception "if the litigant's interests in immediate judicial review outweigh the government's interests in the efficiency or administrative autonomy."[227] In that case, the U.S. Supreme Court identified three situations where the interests of the individual are particularly strong:

(1) When requiring exhaustion of administrative relief may actually prejudice subsequent judicial review;
(2) When exhaustion becomes a futile endeavor, as where the agency cannot grant effective relief; and
(3) When the agency's procedure or decision-maker is shown to be unfair or biased.[228]

Other exceptions were also developed by a few succeeding U.S. cases, still applying the *balancing of interests* analysis. These are summarized as follows:

(1) When issues of law are involved;[229]
(2) When exhaustion would cause irreparable injury to the complaining party;[230] and
(3) When the administrative agency lacks jurisdiction.[231]

When it comes to the doctrine of primary jurisdiction, the U.S. Supreme Court has held that "agencies, not the courts, ought to have primary responsibility for the programs that Congress has charged them to

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[226] [Hereinafter "*McCarthy*"], 503 U.S. 140 (1992).

[227] *Id.* at 146.

[228] *Id.* at 146-48. *See* William Funk, *Exhaustion of Administrative Remedies - New Dimensions since Darby*, 18 PACE ENVTL. L. REV. 1 (2000).

[229] McGee v. United States, 402 U.S. 479, 485-86 (1971); McKart v. United States ["*McKart*"], 395 U.S. 185, 197-200 (1969); Sierra Club v. Hardin, 325 F. Supp. 99, 117-18 n.38a (D. Alaska 1971).

[230] Matthews v. Eldridge, 424 U.S. 319, 330-31 (1976). *See* Robert Power, *Help is Sometimes Close at Hand: The Exhaustion Problem and the Ripeness Solution*, 1987 U. ILL. L. REV. 547 (1987).

[231] Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938). "An agency's lack of jurisdiction is a variation of the "inadequate agency remedy" claim that arises more frequently." Gelpe, *supra* note 125, at 36-39.

administer."[232] In another case, it further expounded that no fixed standard or criterion exists, but "[t]he question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation."[233] In most state-level courts, a known exception to the doctrine is "where the issue is one inherently judicial in nature[,] [...] the courts are not ousted from jurisdiction unless the Legislature, by a valid statute, has explicitly granted exclusive jurisdiction to the administrative body."[234]

Under both doctrines, a regular court is then required to balance a number of similar factors, including the need to reflect agency expertise, the need to conserve judicial resources, the need to develop the record, and the futility of administrative processes.[235] Additionally, neither doctrine is to be imposed if the burdens on the parties are too great, that is, courts must always avoid great damage or prejudice.

Many American legal scholars assert that primary jurisdiction and exhaustion are really different means to promote the general concepts of judicial efficiency, deference, and restraint. They are but two paths a court may take when relinquishing its adjudicatory power to an agency.[236] The similarities are compelling. In essence, it can be stated that the rules of primary jurisdiction and exhaustion of remedies have the same exceptions, just like in our jurisdiction.

Therefore, there are only six identified exceptions in the United States, from which the Philippines basically patterned its general principles in administrative law.[237] This figure is relatively small compared to the Philippine Supreme Court's 33 exceptions, excluding some specific cases not expressly classified nor classifiable in its previous enumerations.

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[232] *McCarthy*, 503 U.S. 140, 145.

[233] *W. Pac. R. Co.*, 352 U.S. 59, 64.

[234] Gregg v. Delhi-Taylor Oil Corp., 344 S.W.2d 411, 415 (Tex. 1961). *See also* Bexar Metro. Water Dist. v. City of Bulverde, 156 S.W.3d 79, 90 (Tex. App.-Austin 2004); Ivanishvili v. U.S. Dep't of Justice, 433 F.3d 332, 343 (2d Cir. 2006); State ex rel. Shevin v. Tampa Electric Co., 291 So. 2d 45, 47 (Fla. Dist. Ct. App. 1974); Juliff Gardens, L.L.C. v. Tex. Comm'n on Envtl. Quality, 131 S.W.3d 271, 279 (Tex. App.-Austin 2004, no pet.).

[235] *See, e.g.* Far E. Conference v. United States, 342 U.S. 570, 573-74 (1952); Ricci v. Chicago AJercantile Exch., 409 U.S. 289, 306 (1973); Rosado v. Wyman, 397 U.S. 397, 406 (1970).

[236] Lockwood, *supra* note 150, at 743; *See also* Gene Duncan, *Primary Jurisdiction and Exhaustion of Administrative Remedies*, 16 WYO. L.J. 290 (1962); Michael Botein, *Primary Jurisdiction: The Need for Better Court/Agency Interaction*, 29 RUTGERS L. REV. 867 (1975-1976).

[237] *See, generally*, IRENE CORTES, PHILIPPINE ADMINISTRATIVE LAW: CASES AND MATERIALS (1984).

Both the American and the Philippine versions of the two rules practically have the same origin, purpose, rationale, and philosophy. So, while considering that the United States follows a common law system that relies heavily on judicial precedents,[238] it is quite shocking and disturbing why the Philippines, a mixed civil-common law jurisdiction, has come up with such a huge number of court-created exceptions.

IV. EXCEPTIONS: AN EXAMINATION OF ITS IMPLICATIONS

Given the current number, scope, and extent of exceptions, the Court seems to be "enjoying" its exercise of judicial discretion in this area of law. It created the rules; thus, it could also very well recognize exceptions thereto. But what could be the implications?

A. Sacrificing the Benefits

Whenever a court acquires jurisdiction over a case and rules on it, without first referring it to the agency concerned or without giving the parties the opportunity to exhaust all the administrative remedies available to them, it sacrifices the benefits behind these doctrines.

As examined, the doctrine of primary jurisdiction has the following advantages: (1) use of administrative expertise; (2) comparative edge in interpretation and uniformity in application of its regulations; (3) prompt resolution of cases; (4) judicial economy, i.e. de-clogging of dockets, useful records for the court, dispensation of courts from doing fact-finding responsibilities, and prevention of unnecessary resort to the courts; and (5) flexibility of procedures. Moreover, the reasons for the observance of the exhaustion doctrine are identified as follows: (1) separation of powers; (2) comity and respect for the other branches of government; (3) convenience of parties; (4) promotion of autonomous administrative branch and protection of its authority; (5) opportunity for agencies to correct their own mistakes; (6) accurate determination of facts; (7) judicial economy; (8) efficiency in the administrative process; (9) lower costs; (10) greater ease of self-representation; (11) promotion of proper relationships between agencies and courts; and (12) orderly procedure set out by law.[239]

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[238] BLACK'S LAW DICTIONARY 313 (9th ed.); *See also* Alton Parker, *Common Law Jurisdiction of the United States Courts*, 17 YALE L.J. 1 (1907-1908).

[239] *See supra* Parts II.A. and II.B.

The rationale and legal hypotheses sought to be promoted by the twin doctrines[240] are similar. Hence, the above enumerations, though examined separately in Part II, may be *combined*. Together, they form an exhaustive list of their benefits.

The court may justify its non-observance with countervailing causes. It may reason out that an exception properly applies to a particular case, given the latter's facts and merits. However, the benefits behind the doctrines are so essential that the trade-off or compromise should not be made lightly.[241]

B. Lack of Clear Judicial Philosophy

Perceived adverse effects of and negative notions on the Supreme Court's rationalization and attitude are produced when it creates a lengthy and tedious list of exceptions to the long-standing postulates in administrative law.

Going back, the Court has consistently committed to recognize the demands of an ever-changing modern society[242] and the consequent need of specialized discretion in administering the laws;[243] to liberally permit valid delegations of powers;[244] as well as to apply the doctrine of primary jurisdiction to cases involving matters that require special competence,[245] and the doctrine of exhaustion by withholding judicial action until the administrative process has been completed.[246] More so, case law even reveals that this has been a "jurisprudential trend."[247] Yet, by carving out numerous exceptions both to the doctrine of primary jurisdiction and the exhaustion doctrine, the Court appears to directly contradict itself, deviating farther and farther away from that trend. Certainly, these inconsistencies reveal a lack of clear judicial philosophy on the matter.

C. Weakening the Value of Precedents

It is a very desirable and equally vital judicial practice in our jurisdiction that when a court has laid down a principle of law or a doctrine of general application, it will adhere to the same and apply it to future cases

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[240] Such as judicial restraint and deference to administrative decision-making.
[241] Gelpe, *supra* note 125, at 25.
[242] *Pangasinan Transportation*, 70 Phil. 221.
[243] *Calalang*, 70 Phil. 726.
[244] *See Edu*, 146 Phil. 469, 489; *Rosenthal*, 68 Phil. 328.
[245] *Industrial Enterprises*, 184 SCRA 426.
[246] *Abe-Abe*, 90 SCRA 524.
[247] *Villaflor*, 280 SCRA 297, 327.

with substantially similar facts.[248] *Stare decisis et non quieta movere.*[249] Absent any strong opposing considerations, "like cases ought to be decided alike."[250] The creation and accumulation of exceptions subsequent to the judiciary's avowal of fidelity to the general principles—individually, time after time—does not only disturb the previously-fixed foundation of the doctrines, but also invites questions on certainty of applicable standards, stability of judicial decisions, and the parties' reliance on courts.

These inconsistencies weaken the value of legal precedents. As a consequence, public confidence in the stability of such solemn pronouncements is diminished.[251] The practical authority of these precedents is then under threat of being trampled upon.

The principle of adherence to case precedents, it is worth emphasizing, has not yet lost its luster and continues to guide the bench.[252] The Court itself even made the following statement:

> "If a group of cases involves the same point, the parties expect the same decision. It would be a gross injustice to decide alternate cases on opposite principle. [...] *Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the evenhanded administration of justice in the courts.*"[253]

It is accepted in our system that the court regularly deviates from past practice when warranted by the purpose of the party or by public interest. A variable approach may impair the normative force of the rule being applied.[254] This is most especially true when the doctrine is court-created, with no well-defined scope and limitations. Such differing, often deficient and excessively complicated interpretations of the legal framework harm the court's

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[248] Chinese Young Men's Christian Ass'n of the Phil. Islands v. Remington Steel Corp. [hereinafter "*Remington Steel*"], G.R. No. 159422, 550 SCRA 180, Mar. 28, 2008.

[249] Villena v. Chavez, G.R. No. 148126, 415 SCRA 33, 34, Nov. 10, 2003.

[250] *Remington Steel*, 550 SCRA at 198.

[251] Pepsi-Cola Products, Phil., Inc. v. Pagdanganan, G.R. No. 167866, 504 SCRA 549, 564, Oct. 12, 2006.

[252] Umali v. Judicial & Bar Council, G.R. No. 228628, 832 SCRA 194, July 25, 2017.

[253] Tala Realty Services Corp., Inc. v. Banco Filipino Savings & Mortgage Bank, G.R. No. 181369, 794 SCRA 252, 262, June 22, 2016, *quoting* CARDOZO, *supra* note 5, at 33-34. (Emphasis supplied.)

[254] *See* Gabrielle McIntyre, *The impact of a lack of consistency and coherence: How key decisions of the International Criminal Court have undermined the Court's legitimacy*, 67 QUESTIONS OF INT'L L. 25, 29 (2020).

legitimacy as a judicial institution and open the door to both actual and perceived judicial arbitrariness.[255]

D. Added Burden to the Courts' Decision-Making Process

Initial scrutiny reveals that the exceptions to the doctrines of primary jurisdiction and exhaustion of administrative remedies are not clearly defined. Reasons such as "exhaustion will only be oppressive," "great and irreparable damage cannot be prevented," "grave doubt as to the availability of the administrative remedy," or "circumstances indicating urgency of judicial intervention" are vague. Most of the time, the Supreme Court does not explain with clarity what these terms mean. At times when it does, only a narrow interpretation is provided,[256] allowing lower courts to easily bypass the doctrine without addressing the underlying policies it intended to promote.[257]

There is no mathematical formula that could quantify how oppressive is "oppressive" or how urgent is "urgent.". Unfortunately, this burdens the court with an additional job of conducting an "extensive analysis of the facts"[258] for the sole purpose of ascertaining whether an exception applies.

E. Want of Predictability

Courts also go beyond recognizing the created—albeit so ambiguous—exceptions and weigh various considerations relevant to the case at hand.[259] What the courts do is an application of the doctrine on a case-to-case basis. Judges use discretion to evaluate circumstances and balance the differing interests of the parties. And this creates problems.

It is observed that such practice leads to inconsistent treatment of similar cases by the courts.[260] The assessment process causes much of the confusion and unpredictability.[261] It is altogether too obvious to say that by

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[255] *Id.*

[256] Elizabeth Ristroph, *The Role of Philippine Courts in Establishing the Environmental Rule of Law*, 42 ENVTL. L. REP. 10866 (2012), *citing Bangus Fry Fisherfolk*, 405 SCRA 530.

[257] Rebecca Donnellan, *Exhaustion Doctrine Should Not Be a Doctrine with Exceptions*, 103 W. VA. L. REV. 361, 374 (2001).

[258] Gelpe, *supra* note 125, at 26.

[259] *Id.*

[260] *Id.* at 26-27, *citing* KENNETH DAVIS, ADMINISTRATIVE LAW TREATISE 414, § 26:1 (2d ed.1983).

[261] Gail McIntyre, *Exhaustion of Administrative Remedies: Exceptions and Predictability*, 66 U. DET. L. REV. 239, 242 (1989).

so doing, the decision of the court is extremely case-specific because it generally turns on the "nature of the claim presented and the characteristics of the particular administrative procedure provided."[262] The effect is general inconclusiveness of outcome in traditional cases with questions on primary jurisdiction and non-exhaustion of remedies. What the court may have decided in older cases may no longer be true today.

Because of the lack of certainty and cohesion, parties cannot accurately predict the court's possible action. Some parties who would be entitled to a judicial resolution may not immediately seek judicial relief, while those who would be required to exhaust the means at the administrative level may decide to go directly to courts hoping that the courts will apply one of the exceptions. This may just result in the waste of time and resources for all parties in pointless litigations. When a court and an agency do not reach the same result, like cases will be treated differently.[263]

F. Judicial Activism

The Court's formulation of a high number of exceptions may also be perceived as judicial activism. Judicial activism is defined as the "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."[264] One exercising judicial activism would fashion his or her own rules and standards in support of a certain position, instead of just applying the relevant rules.[265]

From an administrative law perspective, the judge may utilize "his court, his judicial decisions, or [...] the power of judicial review to advance substantive [...] causes."[266] When a party to an administrative case comes before the court, the judge may make a ruling in line with his or her own conscience or personal ideals. Although institutional safeguards are in place to protect impartiality of judges, judicial activism is still one of the increasingly prevalent problems in the Philippines.[267] This practice is boosted by the opportunity to indiscriminately insert judicial discretion because of the wide-ranging exceptions created by the Supreme Court, varying from the obvious to the hazy.

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[262] *McCarthy*, 503 U.S. 140, 146.

[263] Gelpe, *supra* note 125, at 27.

[264] BLACK'S LAW DICTIONARY 922 (9th ed.).

[265] *See* Clifford Brown, *Judicial Activism*, 13 OHIO N.U. L. REV. 157 (1986).

[266] Raul Pangalangan, *Chief Justice Hilario G. Davide Jr.: A Study in Judicial Philosophy, Transformative Politics and Judicial Activism*, 80 PHIL. L.J. 538, 539 (2006).

[267] Alfredo Molo III, *Navigating through Shifting Sands: Reinforcing Judicial Independence in the Philippine Context*, 77 PHIL. L.J. 48, 60 (2002).

G. Undermining Agencies' Authority

Deemed as the "fourth department," administrative agencies are the realms sought to be protected by the two doctrines. They are separate and distinct entities vested with powers in which our courts should not interfere. So, when the judiciary steps into actions that should appropriately be resolved via administrative means, the agency's interpretative authority is undercut[268] and its autonomy is diminished. This decreased authority may not channel "high-quality, aggressive argumentation to agency proceedings"[269] and may even deter the agency from taking responsibility for resolving issues and improving its procedures.[270] The effect is more deleterious when the agency has full discretionary power in the exercise of its critical regulatory role.

Frequent flouting of administrative processes could weaken the power of the agency by discouraging parties to follow its procedures.[271] Court-developed exceptions and continuous deviations from the rules may only unlock the floodgate of disrespect and loss of public faith in a segment of the government supposedly better equipped than courts by knowledge, training, experience, and specialization.

H. Preventing Agencies' Arbitrary Actions

On the other hand, the rise of the number of agencies may heighten the probability of abuse of administrative discretion, especially when the rules of primary jurisdiction and exhaustion of remedies are always required. Agencies are vested with the power and responsibility to interpret their enabling laws. Checks on them, therefore, are imperative to avoid arbitrary results that are whimsical and made in bad faith, showing "a lack of fair and careful consideration"[272] or failing "to indicate any course of reasoning and the exercise of judgment."[273] Thus, as a good side of it, direct resort to the

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[268] *See, e.g.* Chevron U.S.A., Inc., v Nat. Res. Def. Council, Inc. 467 U.S. 837, 843-44 (1984); Fed. Power Comm'n v. Louisiana Power & Light Co., 406 U.S. 621, 642, 647 (1972); *McKart*, 395 U.S. 185, 193.

[269] Santaguida, *supra* note 66, at 1526.

[270] *Id.*

[271] Kreutzer & Morrissey, *supra* note 124, *citing McKart*, 395 U.S. at 193.

[272] ACT-UP Triangle v. Comm'n for Health Servs., 345 N.C. 699, 707 (N.C. 1997). (Citations omitted.)

[273] *Id.*

courts can be seen as an effective judicial remedy to constrain these administrative agencies.[274]

With the constant availability of judicial review, the courts' lenient application of the rules may be regarded as tools intended to limit the exercise of illegal, whimsical, or unreasonable administrative decisions. American jurisprudence reminds us that:

> Regardless of the admirable purpose for which these agencies are usually established, it is a matter of frequent complaint and common knowledge that *the agencies at times act arbitrarily, or capriciously and unintentionally ignore or violate rights* which are ordained or guaranteed by the [...] [constitution], or established by law.[275]

I. The Future

Certainly, innovation and modernization in our everyday lives will continue. The delegation of adjudicative powers to administrative agencies will then be compelled to fill in the gaps and inadequacies of legislative and judicial branches of the State.[276] This is the reality. As society becomes even more complex, the need for expertise also becomes high, along with the need for the intervention of these agencies.[277] The volume and intricacy of adjudication will be far greater than that expected from the courts.[278] New and more factors will be taken into consideration.

The future in this particular legal framework is not so bright if we look at it through the lens of strict separation of powers and comity between the branches of government. As we have seen, with the exclusion of the favorable consequence of avoiding agencies' capricious actions, the underlying rationale and benefits brought about by the doctrines of primary jurisdiction and exhaustion of remedies are often neglected.

Is this a manifestation of the purported decline of the judiciary's faith in administrative expertise? There is no certainty. But a good observation is apparent: the Court's current practice of consistently adding new exceptions

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[274] *See also* Daniel Schuckers & Kyle Applegate, *The Rise of Pennsylvania's Administrative Agencies and Legislative and Judicial Attempts to Constrain Them,* 81 PA. B. ASS'N Q. 124 (2010).

[275] Keystone Raceway Cop. v. State Harness Racing Comm'n, 405 Pa. 1, 6 (1961). (Emphasis supplied.)

[276] Carlota, *supra* note 34, at 71, 88-89.

[277] Rush Limbaugh, *The Growth and Effect of Administrative Agencies and Regulations*, 40 COM. L.J. 144 (1935). *See also* Loevinger, *supra* note 81.

[278] *Id. See also* Carlota, *supra* note 34.

to these long-standing doctrines, coupled with its defiance of its own declarations of commitment to the principle of valid delegation of powers, presents us a glimpse that the future will remain the same or, worse, become more problematic. New and more exceptions may arise.

V. PROPOSAL ON HOW COURTS SHOULD APPLY THE DOCTRINES

A. General Considerations

1. Mandatory Nature

In the Philippines, giving the administrative agency the first chance to hear and decide the case properly within its jurisdiction has been held to be *mandatory* before a party could seek judicial relief.[279] The same is true to the requirement of exhausting administrative remedies.[280] Courts must continually obey and avoid running afoul of these doctrines to *achieve their noble benefits*,[281] such as judicial economy, respect to another branch of the State, accuracy in fact-finding, and use of administrative expertise, which are necessary for an ideal system of governance.

This mandatory nature is grounded in jurisdictional principle, constitutional structure, and judicial interpretation.[282] The rigidity of these rules flowed from an important premise that, generally, "[c]ourts may not create exceptions to them [...] [and that parties] will loom over the proceedings from start to finish."[283]

2. Less Judicial Discretion

Consistency is the key. The judiciary should not only be consistent as to its particular exceptions, but also as to its general affirmations.[284] It must be mindful of the current trend towards delegation of powers (with a general rule on non-interference), and the Court's commitment to stick to this trend.

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[279] *See Sherwill*, 461 SCRA 517, 530. "[T]he judicial process is *suspended* pending referral of such issues to the administrative body for its view. And in such cases, *the court cannot arrogate unto itself the authority to resolve a controversy*, the jurisdiction over which is initially lodged with an administrative body of special competence." (Emphasis supplied.)

[280] *See Oporto*, 569 SCRA 93. *See also Tan*, 125 SCRA 302.

[281] *See supra* Parts II.A. and II.B.

[282] *See* Devlin, *supra* note 95, at 1270.

[283] *Id.* at 1234.

[284] *See supra* Part II.

As earlier examined, different implications, mostly adverse, are revealed and attributed to the creation of numerous exceptions. To escape this horror or lessen the degree of the repercussions, our courts must endeavor to reach decisions that are more reliable, uniform, and certain. This is done through maintaining an attitude that is consistent while, at the same time, adaptable enough to the needs of fast-changing times.

Adaptability should never be understood as crafting case law that is sternly case-specific, illogical, unreasonable, sometimes irregular, or arbitrary. Certainty and flexibility may be regarded as two decision-making approaches at the opposite extremities. Certainty arguably promotes the "systematic answer," while flexibility, the "right answer."[285] And there is no necessary tradeoff between these values.[286] The dichotomy is and will always be there. What is being suggested here is that the system should be *more rule-bound with less to no presence of judicial discretion*.[287]

Absolute discretion is like corruption. It "marks the beginning of the end of liberty."[288] Treating the doctrines as an exercise of judicial discretion would indubitably produce dangerous results. The present practice of injecting discretion into the court decisions may even be regarded as a subtle judicial attempt to legislate.[289]

3. Underlying Principles

Like most assertions of legal scholars,[290] courts must see to it that the *underlying principles of the jurisprudential doctrines are attained.* Surely, we always go back to the purpose of the rules. Courts must ask: "Why is the rule present in our legal order? What are the values embedded in the doctrine that it pursues

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[285] *See* Kermit Roosevelt III, *Certainty versus Flexibility in the Conflict of Laws*, FACULTY SCHOLARSHIP AT PENN LAW, 2019, *available at* https://scholarship.law.upenn.edu/faculty_scholarship/2029/.

[286] *Id.*

[287] However, as being proposed in this Note, judicial discretion can be inserted but only in the *most extreme and justifiable circumstances* which warrant an application of the exception.

[288] New York v. United States, 342 U.S. 882, 884 (1951) (Black, *J., dissenting*). Although the opinion was about judicial review limiting the exercise of discretion of agencies, it is submitted that the same statement is likewise true if absolute discretion is vested in any branch of the state.

[289] *See, e.g.* Kenneth F. Hoffman, *The Doctrine of Primary Jurisdiction Misconceived: End to Common Law Environmental Protection*, 2 FLA. St. U. L. REV. 491 (1974).

[290] *See, e.g.* Santaguida, *supra* note 66; Devlin, *supra* note 95; Gelpe, *supra* note 125; Kreutzer & Morrissey, *supra* note 124; Donnellan, *supra* note 257; Jeff Brown & Lauren Miller, *Declining Jurisdiction: The Abstention Doctrines and Dominant and Primary Jurisdiction,* 41 ADVOCATE (TEXAS) 36 (2007).

to foster? Will its enforcement serve the higher ends of substantial justice that I am bound to render? Or will an exception apply to a case because the individual interest surpasses the competing policy behind the rule?" The last question may not be applicable in the Philippines, as far as resolving questions on jurisdiction and exhaustion is concerned, for we do not use nor even recognize the American *balancing of interests test.*

Stated otherwise, questions can be framed in terms of *whether the court will be promoting the fundamental objectives of the doctrines.*[291] Parties may also employ this kind of analysis in forming either offensive or defensive maneuvers to win the case. They may utilize the rules to their advantage or avoid their threats. But *probing into the basic principles that underlie them is always "a wise move."*[292]

In practice, however, a litigant should convince the court that his or her case is a worthwhile exercise of judicial resources without pursuing first the help of the "expert" agency tasked to find factual matters and interpret the law it directly enforces.[293]

4. Exceptions Being Merely Exceptions

The authority of these doctrines and their place in administrative law must be preserved—that they are the general rules. In the absence of any information to the contrary, *the default action is to apply them.* Exceptions, notwithstanding their number, scope, and extent, must always remain exceptions to the rules, and not the other way around. Exceptions should never evolve into magic words so easily invoked by litigants, permitting them to go straight to the courts.

Throughout different generations, the Court has repeatedly taken cognizance of the existence of exceptions while also adding new ones. However, these exceptions should be clear or written in our statutes, and the number of judicially created ones should be minimized, as will be discussed later.

When in doubt, courts must defer to an administrative agency and zealously observe the general rule.[294] At the outset, the identification of the

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[291] *McCarthy*, 503 U.S. 140, 145.

[292] Brown & Miller, *supra* note 290, at 38-39. (Emphasis supplied.)

[293] Paul Hodapp, *Exhaustion of Administrative Remedies: A Mystery in Search of a Muddle*, 20 COLO. LAW. 2037, 2040 (1991). However, in addressing the issue on whether to treat the doctrine simply as a rule or not, Hodapp ultimately suggests that exhaustion "should not be deemed as a rule with exceptions but as an exercise in judicial discretion."

[294] Gelpe, *supra* note 125, at 64.

factual background of the case, which is crucial in determining whether a possible exception applies, should not compel the court to conduct a broad-ranging inquiry.[295]

5. Clarity

With the current condition, it is difficult to predict future court actions. But this problem may be resolved, or at least consequences be reduced to a significant level, when the *Court expressly specifies an exhaustive list of the factors it uses* to determine whether a decision should be overruled or *how it weighs them*.[296] *Defining vague exceptions through decisions*, with sufficient precision leaving no room for interpretation, is also helpful. After all, the Court must always be sensitive to the quality of canons it accentuates and clarify broad dogmas laid down in the past.[297]

Another possible way to go forward is a well-designed system of *narrow and express rules, through the enabling laws*, containing appropriate escape clauses.[298] This is the duty that the author attempts to enjoin upon the legislature. Before the two doctrines can be put into effect, as shown in Parts II and III, the agency's jurisdiction or the steps necessary to exhaust all remedies should be delineated by the law. Ergo, exceptions thereto should likewise be delineated or described unambiguously by the same law. The court, in deciding primary jurisdiction and exhaustion issues, is then obliged to strictly apply the law in its totality.[299] In this way, discretion can no longer be exercised by the courts. The effect is a clear, cohesive, and predictable outcome of the case.

There are two important matters to consider here: (1) that the exception must be *express*, either made by the Supreme Court or the Congress; and (2) that such expression must be *clear*.

For instance, though the Revised Administrative Code does not mention any exception nor the rule of "primary jurisdiction," it nevertheless

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[295] *Id.*

[296] *See also* Congressional Research Service, The Supreme Court's Overruling of Constitutional Precedent, CRS REPORT, Sept. 24, 2018, *available at* https://fas.org/sgp/crs/misc/R45319.pdf.

[297] *See* Gios-Samar, Inc. v. Dep't of Transp. & Commc'n, G.R. No. 217158, March 12, 2019 (Leonen, *J., concurring*).

[298] *See* Roosevelt III, *supra* note 285, at 18.

[299] For laws that need interpretation, "[s]tatutes conferring powers on administrative agencies must always be construed according to their legislative intent." Spouses Suntay v. Gocolay, G.R. No. 144892, 470 SCRA 627, 637, Sept. 23, 2005.

cites the "exhausting" of remedies, but only once under the subtitle on Civil Service Commission (CSC), to wit:

> Section 37. Complaints and Grievances.
>
> * * *
>
> In case any dispute remains unresolved after *exhausting all the available remedies* under existing laws and procedures, the parties may jointly refer the dispute to the Public Sector Labor Management Council constituted under Section 46, for appropriate action.[300]

A few things, though, should be noted in the above provision: that the remedies to be exhausted refer to "existing laws and procedures;" that it deals with a particular agency; and that it only addresses the agency's internal review process. No court action is involved. This is rather different from its American counterpart, the U.S. Administrative Procedure Act (APA), which is categorical and general in terms of requiring a litigant to complete exhaustion for a case to become final and reviewable.[301]

6. "Exceptional Circumstances" as an Exception

The twin doctrines of primary jurisdiction and exhaustion of remedies are well-considered procedural rules. For this reason, the Court may justify relaxation of these rules, which procedures are required to be outlined in statutes, as the emerging trend of jurisprudence is more inclined to the liberal and flexible interpretation and application of rules of procedures.[302]

However, such is permitted only in proper cases, under *the most justifiable causes and special circumstances*,[303] and only upon showing of justifiable

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[300] REV. ADM. CODE, bk. 5, tit. 1, ch. 5, § 37, ¶ 3. (Emphasis supplied.)

[301] ADM. PROC. ACT, 5 U.S.C. § 704 (1994): "Actions reviewable. *Agency action made reviewable by statute* and *final agency action for which there is no other adequate remedy in a court* are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority." (Emphasis supplied.)

[302] Asia United Bank v. Goodland Co., Inc., G.R. No. 188051, 635 SCRA 637, Nov. 22, 2010.

[303] Fortich v. Corona, G.R. No. 131457, 289 SCRA 624, 691, Nov. 17, 1998.

reasons and of at least a reasonable attempt at compliance with them.[304] To summarily brush these rules aside may result in arbitrariness and prejudice. Unclogging dockets, eliminating backlogs of cases, or avoiding judicial delay should never be the leading motivation of the courts' tendency to veer away from actively entertaining cases.

In underscoring that the relaxation of procedural rules only applies in the most extreme cases, *Republic v. Kenrick Development Corp.*[305] instructs:

> [W]hile the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity.
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> * * *
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> Like all rules, procedural rules should be followed *except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.*[306]

Needless to say, the court's main duty is *to render justice.* The doctrines, therefore, may be validly relaxed to serve this end and to benefit the deserving. Rules should be regarded as mere tools designed to facilitate the attainment of justice. Their strict application must always be eschewed when it results in technicalities which frustrate rather than promote substantial justice.[307]

The truth is that not all citizens are situated in the same circumstances. Not all agencies have the same amount of time, resources, mechanisms, skills, and manpower to efficiently solve disputes. The theory that a party must go through the administrative ladder before seeking the aid of the strong arm of equity in our judiciary, must give way to this reality.[308] If this goes unnoticed or intently ignored, then the logical result must be a disaster to the aggrieved party.[309]

In *Cipriano v. Marcelino*, wherein the enabling law did not stipulate any exception, the Court held that it would be oppressive and patently

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[304] Magsino v. De Ocampo, G.R. No. 166944, 733 SCRA 202, Aug. 18, 2014, *citing* Mediserv, Inc. v. Ct. of Appeals, G.R. No. 161368, 617 SCRA 284, 296–97, Apr. 5, 2010.

[305] G.R. No. 149576, 498 SCRA 220, Aug. 8, 2006.

[306] *Id.* at 231. (Emphasis supplied, citations omitted.)

[307] Spouses delos Santos v. Ct. of Appeals, G.R. No. 169498, 573 SCRA 690, Dec. 11, 2008, *citing* Alberto v. Ct. of Appeals, G.R. No. 119088, 334 SCRA 756, 774, June 30, 2000.

[308] *Cipriano*, 43 SCRA 291, 294.

[309] *Id.*

unreasonable if the rule on exhaustion is strictly followed and petitioner is required to appeal all the way to the President of the Philippines for the collection of the meager amount of PHP 949. The Court correctly perceived that "by the time [petitioner's] appeal shall have been decided by the President, the amount of much more than [PHP 949], which is the total sum of her claim, would in all likelihood have been spent."[310]

Courts, when the situation necessitates, should decide cases with "pragmatism that is forward-looking"[311] and with "[reasonableness as its] ultimate criterion."[312] It shall never turn a blind eye to present realities.

7. Other Factors

There is no "fixed formula" governing application of the doctrines.[313] However, courts traditionally evaluate factors such as:[314] whether the issue is a question within an agency's field of expertise, whether the issue falls within the agency's discretion, whether there is a substantial risk of inconsistent rulings, whether a prior application to the appropriate agency has been made, whether an exception does not apply, and whether the party seeking for judicial relief does not overcome the burden of proving an exception.

B. Proposed 5-Step Analysis

To avoid inconsistencies and increased litigation, *inter alia*, the author proposes a five-step analysis, as follows:

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[310] *Id.* at 293.

[311] Calvin TerBeek, *Pragmatism in Practice: An Evaluation of Posner's Pragmatic Adjudication in First Amendment and Fourth Amendment Cases*, 48 S. TEX. L. REV. 471, 473 (2006), *citing* RICHARD POSNER, LAW, PRAGMATISM, AND DEMOCRACY 354 (2003).

[312] *Id.*

[313] *See also* McIntyre, *supra* note 261, at 264–65. McIntyre suggests that "[w]hen faced with a question of whether exhaustion of administrative remedies will be required, there are multiple issues to be considered. [...] To analyze any given fact situation ask:

1. Is there a statutory or regulatory exhaustion requirement?
2. Are there factual issues in dispute?
3. Are there technical issues requiring agency expertise?
4. Does the agency have the authority to grant the relief sought?
5. What will be the cost to the claimant of delay in resolution of his claim?
6. Has the agency sought judicial review or moved for summary judgment?
7. Has the agency taken a final position on the issue?
8. Is this a constitutional or legal issue collateral to substantive rights under the enabling statute?"

[314] *See, e.g. W. Pac. R.. Co.*, 352 U.S. 59, 62–63 (1956); Town of New Windsor v. Avery Dennison Corp., No. 10 CV 8611, 2012 WL 67791 at n.8 (S.D.N.Y. Mar. 1, 2012). *See also* Lockwood, *supra* note 150; Gelpe, *supra* note 125.

(1) Whether or not the reasons for the existence of the doctrine are present[315]
(2) Whether or not the purposes it serves will be aided by its application in the particular litigation[316]
(3) Whether or not the enabling statute provides for an escape clause (statutory deviation)
(4) Whether or not a statutory deviation properly applies to the present case
(5) Whether or not, due to extreme and justifiable circumstances, an exception applies

The analysis is primarily intended for courts to follow, when a question on administrative exhaustion or primary jurisdiction is raised before them. Nonetheless, it is also equally useful for the following stakeholders: government agencies, litigating parties, and practicing lawyers for devising effective strategies in building and defending their case; the legislative branch for enacting good laws that will not disrupt progress nor muddle the current legal system; and for the executive branch for knowing the extent of its accountability and the limits of its powers, among others.

The first step *is to determine the existence of the applicability of the doctrine.* To reiterate, the requisites for the application of the doctrine of primary jurisdiction are as follows: (1) the administrative agency is performing a quasi-judicial function; (2) an administrative body and a regular court have concurrent and original jurisdiction; and (3) the issue to be resolved requires expertise of administrative agency. Likewise, the requisites of the doctrine of exhaustion are: (1) the administrative agency is performing a quasi-judicial function; (2) judicial review is available; and (3) the court acts in its appellate jurisdiction. Without the presence of *all* these pre-conditions, the doctrine will not start to operate.

If the answer to Step 1 is in the affirmative, courts must proceed to answer Step 2; if the answer is in the negative, courts must not apply the doctrine.

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[315] *W. Pac. R. Co.*, 352 U.S. at 64. *See, generally* Louis L. Jaffe, *The Exhaustion of Administrative Remedies*, 12 BUFF. L. REV. 327 (1963), where Jaffe expounded on the proper application of judicial doctrine of exhaustion by identifying *the reasons for the rule*, then the *basic conditions for its operation.*

[316] *W. Pac. R. Co.*, 352 U.S. at 64.

The second step *is to identify the underlying purposes of the doctrine and examine if these will be realized through the application of the doctrine*. Separation of powers, comity, administrative autonomy, judicial economy, and prompt resolution of cases are just some of those fundamental principles common to both doctrines. This can be done by the court in the initial or preliminary examination of the case (on its face), without delving deeply into the merits and particulars of each argument.

A practical analysis is suggested that the court may:

(1) Identify the issues to be resolved and the arguments presented by the parties; and then
(2) Categorize these as to whether they fall under the two classifications of court-created exceptions[317] proposed in Part III, *when applicable.*

The above sub-test is optional. It just breaks down the broader question into specific inquiries that will aid the court to answer Step 2. This does not function as an all-inclusive assessment because some circumstances may not be present in those exceptions already recognized by the Supreme Court.

What this step actually does is that it filters, at the earliest instance, those matters that necessitate the immediate attention of the courts, notwithstanding the escape clauses that may be provided by the statute itself. The higher and grander policies of the doctrines should constantly be prioritized and respected.

Purely judicial questions, the first classification of exceptions, *do not serve the purpose of the doctrines.* Hence, courts must answer "No" in the second step when they identify that the question is a purely judicial one, without the need for administrative intervention. On the other hand, the second classification, when there is no other plain, speedy, and adequate remedy, *may* validly serve the doctrines' purpose. Courts must not immediately answer "No" but may *provisionally* answer "Yes" as this will still be subject to a further test in Step 5.

If the answer to Step 2 is in the affirmative, even provisionally, courts must continue to Step 3; if the answer is in the negative, courts are obliged not to apply the doctrine.

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[317] Proposed classifications are: (1) purely judicial questions and (2) when there is no other plain, speedy, and adequate remedy. *See supra* Part III.B.

The third step is to *go through the enabling law and check whether it provides for an escape clause.* This step presumes that there is a law which vests jurisdiction in the agency or provides for administrative remedies, as an inherent condition of the doctrines.[318] While an imprecise clause may still be subject to administrative construction (and, ultimately, to judicial construction), and though we cannot really impose upon the legislature to clearly set forth or describe it, an *express* exception or deviation from the rule which is referred to in the statute is always a better approach than a wholly discretionary, judicially developed one.

Hence, if the answer to Step 3 is in the affirmative, courts must proceed to answer Step 4; if the answer is in the negative, courts must proceed to Step 5 straightaway. Even though the law does not provide for any exception, the court must still assess whether an "exceptional circumstance" exists (Step 5).

The fourth step *is to determine the applicability of an escape clause in the case at hand.* At this point, the court shall determine the circumstances surrounding the case and resolve whether it demands non-application of the rules purely based on the law. This is the first layer of "exceptions" which the court needs to look into.

A holistic approach or an all-inclusive analysis of factual matters is unnecessary, especially if the provision itself is cogent.

If the answer to Step 4 is in the affirmative, courts must not apply the doctrine; if the answer is in the negative, courts must proceed to the next and final step.

The fifth step *is to determine the applicability of a judicial exception—the exceptional circumstance.* This is the final step and is asked when the law does not stipulate any statutory deviation at all (from Step 3) or when that deviation does not correctly apply (from Step 4).

In Step 2, if the court has identified that a circumstance falls under the second proposed classification of exceptions, then an additional test is to measure the degree of that circumstance as to its effects, importance, novelty, scope, values, or interests involved, all considered in the proper context. Accordingly, a helpful set of questions could be outlined:

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[318] This analysis parallels the step of *interpreting the enabling statutes* implicit in every grant or denial of primary jurisdiction in U.S. cases. *See* Santaguida, *supra* note 66.

(1) Is a situation, condition, event, or circumstance under the second proposed classification of court-created exceptions present (i.e., when there is no other plain, speedy, and adequate remedy)?
(2) Is the degree of such situation, condition, event, or circumstance so extreme and with the most persuasive reasons that it warrants an exception to the application of the doctrine?

After the earlier screening and clean-up of exceptions in Part III, from the original number of 34, there are now only *nine exceptions*[319] falling under the second proposed classification that may permit the non-application of the doctrines. This set is the second layer of exceptions sought to be tested in Step 5.

The determination of degree is also crucial because only those cases with the *most persuasive and meritorious exceptional circumstances* should find their way to the court's dockets; otherwise, such matters will be dismissed and referred to the competent agency.

If the answer to *both* sub-questions is "Yes," then the court is essentially answering "Yes" to the Step 5 question. It must therefore not apply the doctrine (exception appropriately applies). A "No" answer to *either* of the two sub-questions gives a "No" answer to the Step 5 question. The court is then required to apply the doctrine (exception does not appropriately apply).

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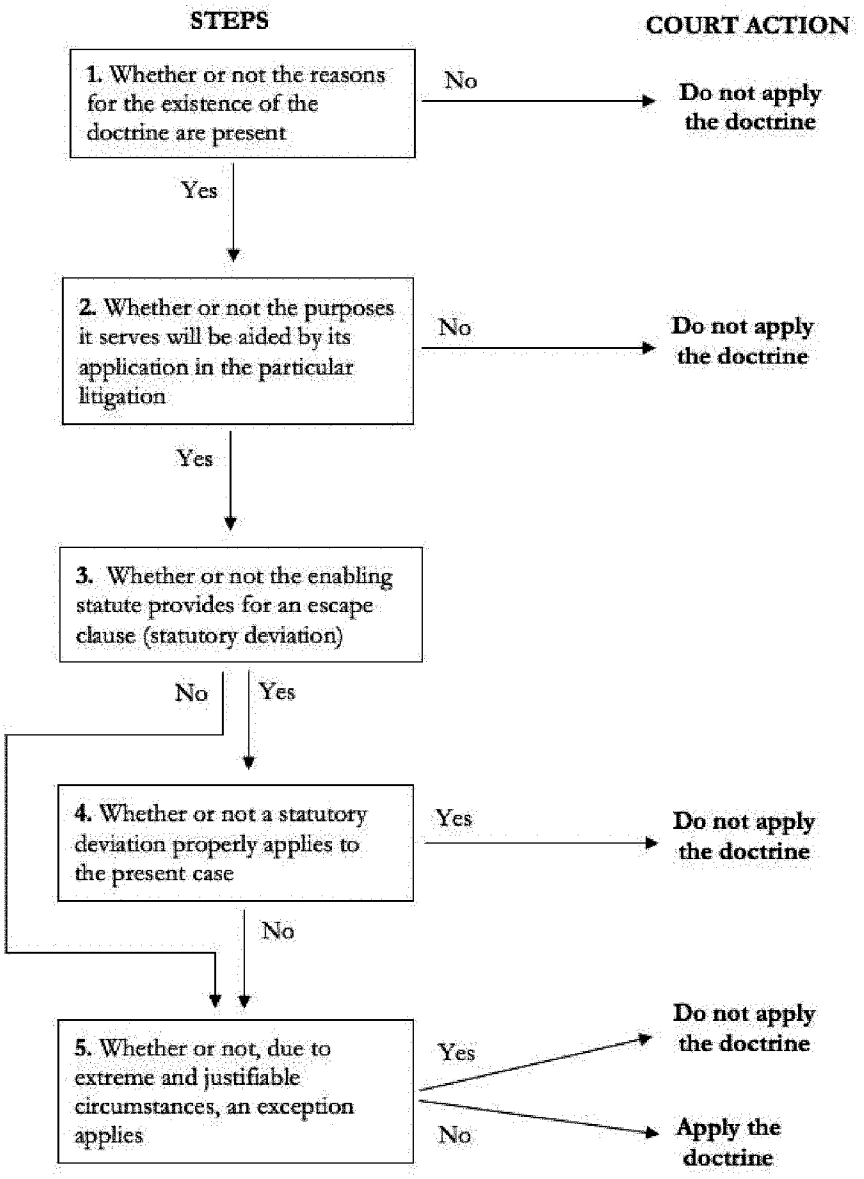
[319] The second category of exceptions, *when there is no other plain, speedy, and adequate remedy*, consists of nine (9) instances:

(1) When there are circumstances indicating urgency of judicial intervention;
(2) When resort to exhaustion will only be oppressive and patently unreasonable;
(3) When the rule does not provide plain, speedy, adequate remedy;
(4) When the application of the doctrine will only cause great and irreparable damage which cannot be prevented except by taking the appropriate court action;
(5) When there is violation of due process;
(6) When there is unreasonable delay or official inaction that will irretrievably prejudice the complainant;
(7) When resort to administrative remedy will amount to a nullification of a claim;
(8) When the claim involved is small; and
(9) When the administrative officer has not rendered any decision or made any final finding of any sort.

This process of analyzing gives way to an application that is practical, logical, and tailored to fit the peculiarities of the administrative system created by the legislature without forfeiting the value of each doctrine.

To summarize the proposed 5-step analysis, the following figure serves as a useful guide:

FIGURE 1: Proposed 5-Step Analysis



VI. CONCLUSION

> *"[W]e see logic at work attempting to develop the concrete cases given in experience into universal rules, and the struggle for life between the attempted generalizations and other competing forms. We watch the metamorphosis of the simple into the complex. We see changes of environment producing new institutions, and new taking the place of old beliefs and wants. We observe the illustrations, as striking here as in poetry or music, of the universal change of emphasis that each century brings along."*
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> –Oliver Wendell Holmes, Jr.[320]

The institutional, social, and political roles of the doctrines of primary jurisdiction and exhaustion of administrative remedies cannot be lightly overlooked.

More than ever, administrative agencies today serve a crucial role in regulating persons, whether natural or artificial. From the traditional sectors of agriculture, labor, education, health, civil service, and transportation to the more modern fields of trade, commerce, intellectual properties, banking, navigation, and telecommunications, the need for more laws becomes well-nigh. Laws, as a consequence, also become more intricate and more difficult to construe and apply, as more diverse cases are also decided. Legal disputes may touch on aspects that are not even present before. But these intricacies of contemporary life that sit behind the pretty face of societal developments are inevitable for the progress of the nation. To realize holistic governance, the implementation, regulation, and adjudication concerning complex matters beyond the reach of the traditional arms of the State can only be done by that branch of the government which is specialized in understanding these aspects and validly designated as such by the people through Congress.

Administrative agencies, that "expert" branch, are conferred with fundamental governmental powers. And for a long period of time, the Supreme Court, as the very apex of judicial authority, has created the two doctrines with the rationale of upholding judicial restraint and administrative

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[320] Oliver Wendell Holmes, Jr., *Introduction to the General Survey by European Authors in the Continental Legal Historical Series*, *in* COLLECTED LEGAL PAPERS 298, 300 (1920).

autonomy. Consistently, it declared this jurisprudential inclination of referring administrative cases to agencies, which essentially gave the latter the opportunity to correct themselves and promote the wholesome purposes of the general principles laid down by the legislature and the judiciary, among others. However, it inconsistently recognized voluminous pieces of exceptions over time. Jurisprudence became unpredictable. In this Note, the author has extracted from jurisprudence a list of 33 exceptions, excluding some specific *ratio decidendi* not explicitly and clearly classifiable. With the number alone, even without regard to their scope and extent, it is argued that the Court is going down the slippery slope of instability, implicitly negating itself, and making its earlier commitment to the trend a fib and its promise empty.

The twin doctrines, which were given birth and initially nurtured by the Court itself, are now seen to be slowly murdered by the same Court. Once our judicial branch disregards the time-honored rules of primary jurisdiction and exhaustion and condones the circumvention of the mechanisms of administrative processes on account of predominantly obscure exceptions and sometimes erroneous applications thereof, such doctrines are considered good as dead.

Undeniably, legal consequences are perceived to be mostly adverse. After considering several factors, *ceteris paribus*, the author attempts to develop a possible solution to avoid or lessen these effects. With the aim that courts must come into the picture less often, a five-step analysis is proposed to guide the courts when the issue on primary jurisdiction or exhaustion of administrative remedies is raised before them. This test cleans but still incorporates the already-created exceptions in our jurisdiction with the sublime philosophies brought about by case law and other valuable perspectives of competent authorities, while still upholding the central policy of utilizing administrative expertise. As a result, the rules would become certain, exemptions simple, legal bounds definite, and decision-making easier. The complexity of modern government, therefore, should never carry with it the complexity of modern jurisprudential rules.

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