committed, namely imprudence, which produced two effects. (In the *Pabulario* case, the effects were slight physical injuries and damage to property.)

CONCLUSION

The traditional view, based on Article 3 of the Revised Penal Code and reaffirmed in the *Faller* case, that negligence is simply a way of committing an offense has been modified. The *Quizon* case has declared that negligence is not merely a manner of committing a crime but a crime itself punishable under Article 365 of the Revised Penal Code. This ruling, however, has to be qualified. With regard to crimes in which negligence is an essential element, the *Quizon* ruling does not apply; the negligence is not a crime in itself, but simply a way of committing a crime. (Art. 3). With regard to crimes in which negligence is not an essential element but which may nevertheless result from negligence, the *Quizon* ruling applies; the negligence is not only a manner of committing an offense, but an offense distinct in itself. (Art. 365) We have enumerated those crimes in the Revised Penal Code in which negligence is an essential element, and those in which it is not but may nevertheless result from it. This we did by referring to a previous issue of this journal. Lastly, we discussed the repercussions of the *Quizon* ruling in five other areas of law, namely, the designation of offenses, the gravity of the penalties, the complexing of crimes, the jurisdiction over the offenses, and the number of informations to be filed.

RAUL R. CABRERA

A QUESTION OF EXHAUSTION

I. INTRODUCTION

To the three branches of the government, a fourth one can be added, namely, the administrative agencies. These agencies administer the law. In doing so, they promulgate rules and regulations which have the force of law. In the exercise of their power of regulation, they hear and decide cases.

Although administrative agencies are vested with broad powers, their decisions are always subject to court review. However, aggrieved parties cannot immediately resort to court action. The doctrine of exhaustion of administrative remedies is well entrenched in Philippine jurisprudence. Like other legal doctrines, the doctrine of exhaustion of administrative remedies is riddled with exceptions.

As modern society becomes more complicated, we can expect Congress to create more administrative agencies. Hence, it is of paramount importance to know when an aggrieved party must exhaust all administrative remedies before resorting to court action and when he need not exhaust administrative remedies.

II. THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. STATEMENT OF THE DOCTRINE

The Supreme Court has explained the doctrine of exhaustion of administrative remedies in the following terms:

> The doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act. The doctrine is based on considerations of comity and convenience. If a remedy is still available in 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 the courts.[1]

The application of the doctrine presupposes that the administrative remedy is (a) available to the aggrieved party on his initiative (b) more or less immediately and (c) will substantially protect his claim or right.[2]

[1] Montes v. Civil Service Board of Appeals, 101 Phil. 490, 493 (1957). See also Lamb v. Phipps, 22 Phil. 456, 491 (1912).

[2] JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 424.

B. Philosophy Underlying the Doctrine

Many reasons have been cited to back up the doctrine of exhaustion of administrative remedies.

The doctrine is founded not only on practical considerations but also on comity existing among the different branches of the government. Comity requires the courts to stay their hands until the administrative processes have been completed. [3] In short, the doctrine is based on convenience and respect: convenience of the parties and respect for a co-equal branch of the government. [4]

Besides, administrative agencies should be given a chance to perform their duties without being constantly interrupted by writs from judges. Otherwise, orderly proceedings in administrative tribunals will be impossible and court time will be wasted on trivial procedural problems.

The doctrine also rests on the presumption that the administrative agency, if given a complete chance to pass upon that matter, will decide correctly.[5]

Moreover, the doctrine provides for a policy of orderly procedure which favors a preliminary administrative process and serves to thwart attempts to swamp the courts with cases by resorting to them in the first instance. [6] It would be absurd for courts to hear cases which may be unnecessary if resort were had to administrative agencies. [7] This will save delay and expenses.

Another basis is the desire of the courts to have the advantage of prior expert consideration of the matter, [8] Besides, premature judicial intervention may defeat the legislative intent that full use should be made of the administrative agency's specialized understanding within the particular field involved in the case. Administrative agencies possess technical knowledge superior to that of judges.

Another reason offered is that judicial review of administrative decisions is obtained through special civil actions. Such proceedings cannot ordinarily prosper if there is an appeal or any

[3] Madriñan v. Sinco, G. R. No. L-14559, Nov. 29, 1960.

[4] Montes v. Civil Service Board of Appeals, *supra* note 1.

[5] De Los Santos v. Limbaga, G.R. No. L-15976, Jan. 31, 1962; Cruz v. Del Rosario, G.R. No. L-17440, Dec. 26, 1963; and Escoto v. Pineda (CA) 53 O.G. 7742, 7745 (1957).

[6] Silver Swan Manufacturing Co. v. Commissioner of Customs, G.R. No. L-17435, June 29, 1963. See also Sampaguita Shoe & Slipper Factory v. Commissioner of Customs, 102 Phil. 850, 858 (1958).

[7] Cruz v. Del Rosario, *supra* note 5.

[8] Tañada & Carreon, Political Law of the Philippines 514.

plain, speedy and adequate remedy in the ordinary course of law. [9]

This may be true if judicial review is sought by filing a petition for certiorari, prohibition or mandamus. However, judicial review may also be obtained by petition for review, appeal by certiorari, quo warranto proceedings, petition for a writ of habeas corpus, action for declaratory relief, collateral attack through injunction, action for damages, and action for restitution. [10]

III. Development of the Doctrine

A. Beginnings

Way back during the Spanish era, the doctrine of exhaustion of administrative remedies was already part of the Philippine legal system.

Article 8 of the regulations governing the confirmation of land titles, as approved by the Royal Decree of January 26, 1889, provided, "In no case will the judical authorities take cognizance of any suit against the decrees of the civil administration concerning the sale of royal lands unless the plaintiff shall attach to the complaint documents which show that he has exhausted the administrative remedy." [11]

With the arrival of the Americans, the American justices who composed the majority of the Supreme Court supplanted the Spanish version of the doctrine of exhaustion of administrative remedies with the Anglo-American edition. As a result, the doctrine today is the product of evolution along the Anglo-American lines without any link with Spanish jurisprudence.

B. Judicial Review

Although administrative agencies are clothed with broad powers, their decisions are always subject to court review. Otherwise, judicial power would also be vested upon the administrative agencies in violation of the principle of separation of powers. [12]

Besides, Article VIII, Section 2 (5) of the Constitution prohibits Congress from depriving the Supreme Court of its jurisdic-

[9] Gonzales, Administrative Law, Law on Public Officers, and Election Law (2nd ed.) 103.

[10] Rivera, Law of Public Administration 950.

[11] Quoted in *Valenton v. Murcia*, 3 Phil. 537, 554 (1904). See also Article 5 of the regulations approved by the Royal Decree of October 26, 1881 and Article 23 of the regulations approved by the Royal Decree of February 16, 1889 cited in *Valenton v. Murcia, supra*, at 555.

[12] Espinosa v. Makalintal, 79 Phil. 134, 137 (1947).

tion to review the decisions of inferior courts in cases involving questions of law. This provison should be construed to include administrative agencies. Otherwise, Congress can circumvent the Constitution by creating more and more administrative agencies that will erode the jurisdiction of the Supreme Court to decide questions of law.

The Constitution intended to make the Supreme Court the final arbiter on questions of law. If the Constitution did not want to let the judge of an inferior court to be the final arbiter on questions of law, with more reason administrative agencies cannot have the final say on questions of law.

Article VIII, Section 2(3) of the Constitution prohibits Congress from depriving the Supreme Court of its jurisdiction to review cases in which the jurisdiction of a trial court is in issue. Likewise, this should be construed to include administrative agencies.

Finally, the right to judicial review is implied in the constitutonal guaranty of due process of law. [13] Due process demands that administrative proceedings affecting property rights should be subject to court review and to judicial determination made upon notice and hearing. [14]

Thus, even if the law creating an administrative agency does not provide for judicial review, it must be presumed that Congress did not intend to deprive the aggrieved parties of their constitutional right to judicial review. [15]

C. Lack of Cause of Action

What is the effect of resorting to court action without exhausting administrative remedies? Will the court have no jurisdiction, or will the plaintiff have no cause of action?

In the case of *Pineda v. Court of First Instance of Davao,* the the Supreme Court held, "The rule to the effect that administrative remedies must first be exhausted merely implies, however, the absence of a cause of action, and does not affect the jurisdiction of the court, either over the parties, if they have been properly summoned, or over the subject matter of the case. [16]

[13] English Freight Co. v. Knox 180 SW 2d 633, 640 (1944).

[14] 16A C.J.S., Constitutional Law 629.

[15] Parker v. Board of Barber Examiners, 84 So 2d 80, 86 (1955). See also Meyer v. Board of Trustees of Firemen's Pension & Relief Fund, 6 So 2d 713 (1942) and State v. Jefferson Parish School Board, 19 So 2d 153 (1943).

Determining whether failure to exhaust administrative remedies involves lack of cause of action or lack of jurisdicition is not a purely academic question. Different conclusions can be drawn from the effect of failure to exhaust administrative remedies.

As failure to exhaust administrative remedies does not involve lack of jurisdiction, the appellate court cannot issue a writ of certiorari or prohibition in so far as the proceedings in the lower court are concerned.

It was precisely on the strength of this that the Supreme Court refused to issue a writ of prohibition in *Atlas Consolidated Mining and Development Corp. v. Mendoza.* [17] Thus, it seems that the Supreme Court erred in restraining the lower court from hearing the case in *Villanueva v. Ortiz* on the ground that the plaintiff had not exhausted all administrative remedies. [17]

Since failure to exhaust administrative remedies merely involves lack of cause of action, this defense cannot be raised for the first time on appeal. If it involved lack of jurisdicition, this issue can be raised on appeal for the first time. [18]

So inexorable is the doctrine of exhaustion of administrative remedies that ignorance of the administrative proceedings or of the doctrine itself is no excuse for failure to observe it.

In *Lucas v. Durian,* the Supreme Court dismissed an action brought after four years to annul the issuance of a homestead patent on the ground that the plaintiff should have lodged his case with the Bureau of Lands during the hearing of the application for a homestead patent.

The Supreme Court explained, "He (the plaintiff) cannot claim that he was not duly notified because the proceedings partook of the nature of one in rem." [19]

In *Llarena v. Lacson,* the Supreme Court ruled, "The fact that petitioner is only a fourth grader in the primary school does not excuse him from not knowing and availing himself of the administrative remedy." [20]

[16] Pineda v. Court of First Instance, G.R. No. L-12602, April 25, 1961. See also Municipality of Hinabangan v. Municipality of Wright, G.R. No. L-12603, March 25, 1960; Atlas Consolidated Mining and Development Corp. v. Mendoza, G.R. No. L-15809, Aug. 30, 1961; and Hodges v. Municipal Board G.R. No. L18276, Jan. 12, 1967.

[17] *Supra* note 16.

[17A] Villanueva v. Ortiz, G.R. No. L-11413, May 28, 1958.

[18] Hodges v. Municipal Board, *supra* note 16. See also Martinez v. Castillo (CA) 59 O.G. 3796 (1962).

[19] Lucas v. Durian, G.R. No. L-7886, Sept. 23, 1957.

[20] Llarena v. Lacson, G.R. No. L-15696, May 30, 1960.

E. Finality of the Decision

Although the trend of the decisions of the Supreme Court is that there must be a final decision rendered by an administrative agency before the courts can entertain a case, the decisions are conflicting in some major points.

The first decision on this point was handed down in *Sampaguita Shoe & Slipper Factory v. Commissioner of Customs.* [21]

Sampaguita Shoe & Slipper Factory imported some goods which it declared as patent leather. The Collector of Customs declared the goods upper parts of shoes and ordered them forfeited. The Commissioner of Customs assented to the decision.

Sampaguita Shoe & Slipper Factory filed a petition to set aside the decision. The Collector of Customs referred the petition to the Commissioner of Customs, who reiterated his concurrence in the decision of the Collector of Customs.

Sampaguita Shoe & Slipper Factory appealed to the Court of Tax Appeals. The Court of Tax Appeals ruled that it had no jurisdiction because of the failure to appeal the decision of the Collector of Customs to the Commissioner of Customs.

The Supreme Court affirmed the decision of the Court of Tax Appeals:

> The action of the Commissioner as regards the matter referred to him by the Collector is only supervisory in nature and his conformity or disagreements to the rulings of the latter did not transform said decisions into that (sic) of the Commissioner. Independently of the opinion of the Commissioner on matters brought to his attention for advice by the Collector the parties therefore still have the right to appeal the controversy to him for proper determination of his office.

In *Gonzales v. Aldana* the petitioners, war veterans who were civil service non-eligibles, were temporarily appointed as teachers. They heard of a plan to replace them with civil service eligibles. Invoking Republic Act No. 1363, which gives war veterans preference in appointments to government positions, they asked the Secretary of Education to retain them.

They received no reply. Instead, the Assistant Director of Public Schools told them they could be replaced. They wrote the Commissioner of Civil Service, but he endorsed the letter to the Director of Public Schools.

[21] Sampaguita Shoe & Slipper Factory v. Commissioner of Customs, *supra* note 6 at 857. See also Negros Navigation Co. v. Commissioner of Customs, G.R. No. L-18629, May 31, 1963.

Later, the petitioners received notice of their replacement. They sued to restrain their dismissal. The Director of Public Schools raised the defense of failure to exhaust administrative remedies.

The Supreme Court brushed aside this argument:

> When petitioners wrote to the Commissioner of Civil Service and to the Secretary of Education, and they failed to obtain the relief sought, and instead the Director of Public Schools threatened to replace them, they had already given an opportunity to those high officials to act upon the petition, which practically, in our opinion, is equivalent to exhaustion of administrative remedies provided by law. [22]

This ruling seems to be designed to prevent administrative agencies from sitting on a case. Granting that this is a valid argument, is immediate resort to the courts the remedy? Should the courts immediately take cognizance of the case? Should not the remedy be a petition for mandamus to compel the administrative agency concerned to render a decision?

The ruling in *Sanchez v. Francisco* seems to be the correct one. The plaintiffs, policemen with civil service eligiblity, were dismissed for allegedly engaging in politics and uttering threats. They filed a notice of appeal from the decision.

The mayor pigeonholed the appeal to prevent the Commissioner of Civil Service from reviewing the case. The plaintiffs sued for reinstatement and back wages. The defense put up was failure to exhaust administrative remedies by appealing to the Commissioner of Civil Service.

What the Supreme Court did was to order the mayor to send the appeal to the Commissioner of Civil Service. The Supreme Court explained, "It being obvious, therefore, that the administrative investigation against appellee has not been finally disposed of, the proper remedy is not what they pray for in their complaint but to prosecute their appeal." [23]

In the later case of *Gonzales v. Secretary of Education,* the Supreme Court ruled, "The aggrieved party must not merely initiate the prescribed administrative procedures to obtain relief, but must pursue them to their appropriate conclusion before seeking judicial intervention." [24]

[22] Gonzales v. Aldana, G.R. No. L-14576, April 27, 1960.
[23] Sanchez v. Francisco, G.R. No. L-12539, March 16, 1961.
[24] Gonzales v. Secretary of Education, G.R. No. L-18496, July 30, 1962.

If there must be a final decision by the administrative tribunal before the courts will entertain a case, what about proceedings in the administrative tribunal tainted with grave abuse of discretion? This was the question the Supreme Court answered in *Salcedo v. Municipal Council of Candelaria.*

The mayor filed administrative charges against Salcedo, the chief of police. Salcedo objected to the investigation conducted by the municipal council on the ground that the complaint was not sworn to. The municipal council overruled his objection.

The mayor suspended Salcedo, and the municipal council extended the suspension indefinitely. Salcedo asked the members of the municipal council to disqualify themselves on the ground of bias, but the municipal council rejected his motion. Salcedo resorted to court action, but the lower court dismissed the case for failure to exhaust administrative remedies by appealing to the Commissioner of Civil Service.

The Supreme Court reversed the decision of the lower court:

> Manifestly, the trial judge in interpreting Section 2 of Republic Act No. 557, had considered the rulings of the municipal council in accepting and giving due course to the complaint inspite of lack of oath, in not disqualifying themselves from hearing the administrative case, and in extending the period of suspension beyond the sixty-day period provided for by law, as decisions appealable to the Commissioner of Civil Service. . . . It is obvious that the decision appealable to the Commissioner is the one having to do with the merits of the administrative charges after the proper hearing. . . . The trial court should have taken cognizance of the case.[25]

A scrutiny of the cases on finality of decision will show that they are not as irreconcilable as they seem to be.

Before a party can resort to court action, there must first be a final decision rendered by the administrative agency. This means that the aggrieved party must not merely initiate the administrative proceedings but must pursue the proceedings till a final decision is rendered.[26]

The case of *Gonzales v. Aldana* can be reconciled with this by interpreting the notice of replacement the Director of Public Schools gave as a final decision bearing the approval of the Secretary of Education and the Commissioner of Civil Service, since the Commissioner of Civil Service endorsed the petition to the Director of Public Schools and the notice was issued after the plaintiffs had sent their petition to the Secretary of Education.

[25] Salcedo v. Municipal Council, G.R. No. L-18714, Oct. 31, 1963.
[26] Gonzales v. Secretary of Education, *supra* note 24.

The case of *Sampaguita Shoe & Slipper Factory v. Commissioner of Customs* can be distinguished from the case of *Gonzales v. Aldana.* In the latter case, failure to exhaust administrative remedies involved lack of cause of action. In the former, the failure to exhaust administrative remedies did not involve lack of cause of action.

Section 7 of Republic Act No. 1125 gives the Court of Tax Appeals jurisdiction to review the decisions of the Commissioner of Customs. Thus, what the Court of Tax Appeals can review is the decision of the Commissioner of Customs, not the decision of the Collector of Customs.

F. The Question of Jurisdiction

Ordinarily, the question of jurisdiction is for the courts to decide. However, the Supreme Court ruled in *Lubugan v. Castrillo* that administrative remedies must be exhausted even on the question of jurisdiction.

The Supreme Court said in this case, "The law does not state that an appeal to the said official (the Secretary of Agriculture and Natural Resources) shall be taken only to correct an alleged error of judgment and not one of jurisdiction. An appeal may cover all questions of law and fact for its purpose is to give a chance to the executive official to correct whatever error may be committed by his subordinates and thus avoid a court action."[27]

This ruling can perhaps be justified on the ground that under Sections 1 and 2 of Rule 66 of the Rules of Court, the court may issue a writ of certiorari or prohibition against an administrative tribunal acting without jurisdiction only if there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

However, the Supreme Court has ruled in several cases that the doctrine of exhaustion of administrative remedies applies to cases involving lands belonging to the public domain but not to lands bought by the government for resale to private individuals.[28] What was involved in *Lubugan v. Castrillo* was land the government bought for subdivision and resale to private individuals.

Besides, the doctrine of exhaustion of administrative remedies

[27] Lubugan v. Castrillo, G.R. No. L-10521, May 29, 1957.
[28] Marukot v. Jacinto, 98 Phil. 128 (1955); Santiago v. Cruz, 98 Phil. 168 (1955); De Lemos v. Castañeda, G.R. No. L-16287, Oct. 27, 1961; and Tiangco v. Lauchang, G.R. No. L-17598, Sept. 30, 1963.

does not apply to cases involving purely legal questions.[29] Is not the question whether a certain administrative agency has jurisdiction over a certain case a purely legal question?

G. Suspension of Period for Appeal

The decisions of the Supreme Court did not always involve substantive law. In *Secretary of Agriculture and Natural Resources v. Judge of the Court of First Instance of Manila,* the Supreme Court ruled that a motion for reconsideration suspends the running of the thirty-day period within which to bring court action to review a decision of the Secretary of Agriculture and Natural Resources.

The Supreme Court explained, "The considered opinion of the members of the Court is that the Legislature has adopted the principle contained in the Rules (of Court) as to the manner of perfecting appeals in ordinary civil actions for the purpose of uniformity and to prevent the confusion that may be caused to litigants and lawyers by an appeal different from that applicable in courts of justice."[30]

Although the ruling in this case was based on the wording of the law involved, the decision can be extended to cases where the law is silent. The Rules of Court can be applied by analogy, for a different procedure for appeals may confuse lawyers and litigants.

What is intriguing is the ruling in *Geukeko v. Araneta.* In this case, the government bought the Tambobong Estate for subdivision and resale to private individuals. The Director of Lands granted Geukeko's application to buy a portion of the estate despite the opposition of Geukeko's sublessees.

The sublessees brought court action to annul the decision. The Court dismissed the case for failure to exhaust administrative remedies. The sublessees appealed the decision of the Director of Lands to the Secretary of Agriculture and Natural Resources.

Geukeko asked the court to restrain the Secretary from reviewing the decision on the ground that the sixty-day period for appealing from the decision of the Director of Lands as fixed in an administrative order had already lapsed. The Secretary answered that it was his policy to consider the filing of a court action as suspending the period of appeal.

[29] Ynchausti & Co. v. Wright, 47 Phil. 866 (1925); Pascual v. Provincial Board, G.R. No. L-11959, Oct. 31, 1959; Tapales v. President of the University of the Philippines, G.R. No. L-17523, March 30, 1963; Gonzales v. Hechanova. 60 O.G. 802, (1963); Cariño v. ACCFA, G.R. No. L-19808, Sept. 29, 1966; Abaya v. Villegas, G.R. No. L-25641, Dec. 17, 1966; Hodges v. Municipal Board G.R. No. L-18276, Jan. 12, 1967; Dauan v. Secretary of Agriculture and Natural Resources, G.R. No. L-19547, Jan. 31, 1967.

[30] Secretary of Agriculture and Natural Resources v. Judge G.R. No. L-7752, May 27, 1955.

The Supreme Court upheld the Secretary:

> Authorities sustain the doctrine that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the court construing such rule or regulation and such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary. . . . Taking into consideration all the factors of the controversy, We are of the opinion and thus hold that the dismissal of the action in court does not constitute an impediment to the filing of the appeal before the Secretary of Agriculture and Natural Resources. The only requisite in such a case would be that the period within which said remedy may be invoked has not yet prescribed.[31]

Suppose the Secretary never adopted the policy in question, would the outcome be different? Suppose the Secretary adopted the policy after the court had dismissed the action, could it be applied retroactively?

The ruling in this case is based on the hidden premise that all administrative remedies must be exhausted. The Supreme Court has ruled in several cases that there is no need to exhaust all administrative remedies in cases involving lands the government bought for subdivision and resale to private individuals.[32]

H. Appeal to the President

The weight of authority favors the view that exhaustion of administrative remedies does not require appeal from the Department Secretaries to the President.[33] If the decision is not that of a Department Secretary but of some other administrative agency, the decision must first be appealed to the President, unless the law expressly provides that appeal should be laid at the doorsteps of the courts.

[31] Geukeko v. Araneta, 102 Phil. 706, 713-714 (1957).

[32] *Supra* note 28.

[33] Demaisip v. Court of Appeals, G.R. No. L-13000, Sept. 25, 1959; Marinduque Iron Mines Agents v. Secretary of Public Works and Communications, G.R. No. L-15982, May 31, 1963; Lovina v. Moreno, G.R. No. L-17821, Nov. 29, 1963; Tulawie v. Provincial Agriculturist, G.R. No. L-18945, July 31, 1964; Extensive Enterprises Corp. v. Sarbro & Co., G.R. No. L-22383, May 16, 1966; Santos v. Secretary of Public Works and Communications, G.R. No. L-16949, March 18, 1967; Aragon v. Peralta, G.R. No. L-21390, Nov. 18, 1967; Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967; Santos v. Moreno, G.R. No. L-15829, Dec. 4, 1967.

The Department Secretaries are *alter egos* of the President. Hence, their decisions are deemed to be those of the President unless the law expressly provides disapproved. This is not true in the case of other administrative agencies.

The President can review the decisions of administrative agencies because of his power of control. Article VII, Section 10 (1) reads in part, "The President shall have control of all the executive departments, bureaus or offices." Control has been defined as the power of an officer to alter, modify, nullify, or set aside what a subordinate has done in the performance of his duties and to substitute the judgment of the former for that of the latter. [34]

Thus, decisions of the defunct Import Control Commission had to be appealed to the President before aggrieved parties could resort to court action. [35] The same holds true of the decisions of the Commissioner of Immigration. [36]

Decisions of the Chief of Staff of the Armed Forces must also be appealed to the President. The basis of this is Article VII, Section 10 (2) of the Constitution, which reads in part, "The President shall be commander-in-chief of all armed forces of the Philippines."

Under Section 2 of Commonwealth Act 598, the President could reverse or modify decisions of the Civil Service Board of Appeals. This was omitted in the Civil Service Act of 1959. This omission can only mean that decisions of the Civil Service Board of Appeals are final and need not be appealed to the President.

Thus, Section 18 (b) of the Civil Service Act of 1959 must be deemed to have repealed the ruling in *Montes v. Civil Service Board of Appeals* that the aggrieved party must appeal to the President. [37]

Despite the above provisions of the Civil Service Act of 1959, the President can still review the decisions of the Commissioner of Civil Service and the Civil Service Board of Appeals as a general rule by virtue of his power of control. Appeal, however, is merely permissive.

In fact, the Supreme Court has already ruled that although the Commissioner of Civil Service has exclusive jurisdiction over approval of all appointments in the competitive service, his decisions imposing disciplinary sanctions on erring government employees may be reviewed by the President. [38]

[34] Mondano v. Silvosa, 51 O.G. 2884, 2888 (1955).

[35] Ang Tuan Kai & Co. v. Import Control Commission, 91 Phil. 143, 145 (1952).

[36] Gaw Law v. Conchu, G.R. No. L-20267, Oct. 31, 1964.

[37] Montes v. Civil Service Board of Appeals, *supra* note 1.

I. Express Requirement of Law

Decisions are conflicting as to whether or not there must be a law expressly requiring the exhaustion of administrative remedies.

In *Corpus v. Cuaderno,* the Supreme Court ruled that there must be a law expressly requiring exhaustion of administrative remedies.

The Monetary Board dismissed Corpus on the ground that his position was highly technical and the Governor of the Central Bank had lost confidence in him. Corpus sued for reinstatement. The Governor invoked the doctrine of exhaustion of administrative remedies. The Supreme Court spurned this defense saying, "There is no law requiring an appeal to the President in a case like the one at bar." [39]

In *Cruz v. Del Rosario,* it was argued that no law expressly required appeal to higher administrative authorities from the decision of the Land Tenure Administration.

The Supreme Court rejected this contention:

> Section 2 of the Land Tenure Administration Administrative Order No. 1 providing for the rules and regulations concerning appeals from the decisions or orders of the Land Tenure Administration expressly declares that a decision or order of the Land Tenure Administration may be appealed to the Office of the President within thirty days from the date the interested party received notice thereof. . . . Administrative rules, regulations and orders have the efficacy and force of law so long as they do not contravene any statute or the Constitution. [40]

Trouble begins when the rulings in the above cases are correlated with the decisions in other cases. The Supreme Court did not follow the rulings in the above cases in *Madriñan v. Sinco* [41] and *Panti v. Provincial Board.* [42] In these two cases, no law required appeal to higher administrative agencies; just the same the Sup-

[38] Millares v. Subido, G.R. No. L-23281, Aug. 10, 1967 and Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967.

[39] Corpus v. Cuaderno, G.R. No. L-17860, March 30, 1962. See also Municipal Council of Lemery v. Provincial Board, 56 Phil. 260 (1931); Azuelo v. Arnaldo, G.R. No. L-15144, May 26, 1960; and Hodges v. Municipal Board, G.R. No. L-18276, Jan. 12, 1967.

[40] Cruz v. Del Rosario, G.R. No. L-17440, Dec. 26, 1963.

[41] G.R. No. L-14559, Nov. 29, 1960.

[42] G.R. No. L-14047, Jan. 30, 1960.

reme Court applied the doctrine of exhaustion of administrative remedies.

It may be argued that a distinction should be made. If the court action is in the nature of certiorari, mandamus, or prohibition, the administrative remedies should be exhausted even if no law requires it. If the proceeding is an ordinary civil action, there is no need to exhaust all administrative remedies.

This was the distinction the Supreme Court hinted at when it said in *Diego v. Court of Appeals*, "We note that this defense (failure to exhaust administrative remedies) was not interposed in the Court of First Instance. . . . Perhaps because such defense might only be valid in special civil actions, . . . wherein petitioner must prove he has no other speedy and adequate remedy." [43]

This attempt to make a distinction must fail in the face of the rulings in *Azuelo v. Arnaldo* [44] and *Corpus v. Cuaderno*.[45] In these two cases, the petitioners prayed for a writ of mandamus. Yet, the Supreme Court shunted aside the defense of failure to exhaust administrative remedies on the ground that no law required it.

The better rule seems to be that in both ordinary and special civil actions, except quo warranto proceedings, the aggrieved party must exhaust all administrative remedies. Otherwise, all the reasons cited to justify the doctrine of exhaustion of administrative remedies will go to nought.

The weight of authority favors the rule that there is no need to appeal from the decision of a Department Secretary to the President before bringing court action. [46] This is one of the exceptions to the doctrine of exhaustion of administrative remedies.

If there is no need to appeal the decisions of subordinate government officials in the absence of an express legal provision requiring it, then there is no reason for singling out the decisions of Department Secretaries and making them an exception to the doctrine of exhaustion of administrative remedies. In this case, the general rule would already include the decisions of Department Secretaries.

J. Public Lands

In *Miguel v. Reyes*, which involved a sales application to public land, the Supreme Court held, "If plaintiffs were aggrieved by

[43] Diego v. Court of Appeals, 102 Phil. 494, 499 (1957).
[44] *Supra* note 39.
[45] *Supra* note 39.
[46] *Supra* note 33.

the action or decision of the Director of Lands, their remedy was to appeal to the Secretary of Agriculture and Commerce. . . . Having failed to exhaust their remedy in the administrative branch of the government, plaintiffs cannot now seek relief in the courts of justice."[47]

In *Santiago v. Cruz*, the Supreme Court refused to apply the doctrine of exhaustion of administrative remedies, because "We are dealing with lands of private ownership even if they were acquired by the government for resale to private persons." [48]

Thus, the doctrine of exhaustion of administrative remedies applies to disposable land of the public domain but not to private land the government bought for subdivision and resale to private individuals.

The basis of the distinction made by the Supreme Court is that no law requires exhaustion of administrative remedies in the case of private lands bought for resale. As has already been discussed, the better rule is that even in the absence of a law expressly requiring exhaustion of administrative remedies, a party must appeal to the higher administrative authorities before resorting to judicial action.

Of course, there is no question that once private individuals have acquired title to land the government bought for resale, the doctrine of exhaustion of administrative remedies will no longer apply. [49]

In fact the Supreme Court has ruled in *Baladjay v. Castrillo* [50] and *Kimpo v. Tabanar* [51] that a plaintiff who alleges the land in question is his private property does not have to exhaust all administrative remedies.

IV. Exceptions to the Doctrine

A. Purely Legal Questions

Hand in hand with the evolution of the doctrine of exhaustion of administrative remedies is the development of several exceptions to the doctrine. The first exception is "purely legal questions."

[47] Miguel v. Reyes, 93 Phil. 542, 544 (1953). See also Cortez v. Avila, 54 O.G. 2177 (1957), Azajar v. Ardales, 97 Phil. 851 (1955); and Lachica v. Ducusin, 102 Phil. 551 (1957).
[48] Santiago v. Cruz, 98 Phil. 168, 172-173 (1955). See also *supra* note 28.
[49] De Jesus v. Belarmino, CA-GR 20331-R, Aug. 9, 1958.
[50] G.R. No. L-14756, April 26, 1961.
[51] G.R. No. L-16476, Oct. 31, 1961.

This is based on the principle of separation of powers. Article VIII, Section 1 of the Constitution vests the judicial power in the Supreme Court and the inferior courts. Solving a purely legal question precisely involves exercise of judicial power. Besides, administrative proceedings will contribute nothing to the adjudication of the case. Hence, there is no need to postpone judicial action.

The Supreme Court has declared that the following are purely legal questions:

1. Whether a municipal mayor may be administratively charged for acts committed during his previous term of office. [52]

2. Whether a projected importation of rice from private sources violates Republic Act No. 3452.[53]

3. Whether certain civil service eligibles removed from office through the illegal abolition of their positions are entitled to reinstatement and back wages' [54]

4. Whether a policeman with civil service eligibility dismissed without prior hearing for alleged violation of civil service rules is entitled to reinstatement.[55]

5. Whether a tax ordinance is beyond the corporate powers of a city to enact.[56]

6. Whether the Commissioner of Civil Service has the authority to cancel without hearing the appointment of a technical assistant on the ground that the appointment is void.[57]

7. Whether the Secretary of Public Works and Communications has authority to order the demolition of dams across rivers.[58]

The Supreme Court has also branded as a purely legal question disputes concerning the constitutionality of a resolution passed by the Board of Regents of the University of the Philippines fixing the terms of all deans and directors at five years [59] and of Republic Act No. 2056 authorizing the Secretary of Public Works and Communications to demolish dams built across public rivers. [60]

[52] Pascual v. Provincial Board, G.R. No. L-11959, Oct. 31, 1959 and Provincial Board v. De Guzman, G.R. No. L-23523, Nov. 18, 1967.

[53] Gonzales v. Hechanova 60 O.G. 802 (1963).

[54] Cariño v. ACCFA, G.R. No. L-19808, Sept. 29, 1966.

[55] Abaya v. Villegas, G.R. No. L-25641, Dec. 17, 1966.

[56] Hodges v. Municipal Board, *supra* note 39.

[57] Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967.

[58] Santos v. Moreno, G.R. No. L-15829, Dec. 24, 1967.

[59] Tapales v. President of the University of the Philippines, G.R. No. L-17523, March 30, 1963.

[60] Santos v. Moreno, *supra* note 58.

The Supreme Court did not follow this ruling in the case of *Madriñan v. Sinco*, in which some students of the University of the Philippines assailed the constitutionality of an order issued by the University President to govern elections in student organizations. [61]

It seems that the ruling in *Madriñan v. Sinco* is out of line. The only issue was the constitutionality of the order of the University President. Administrative agencies have no power to determine the constitutionality of laws. Only courts have this power, for this power is judicial in nature. [62]

B. Quo Warranto Proceedings

Another exception is quo warranto proceedings. The Supreme Court did not say this explicitly, but this can be deduced from the ruling in *Torres v. Quintos*. Discussing the ruling in *Abeto v. Rodas*, [63] the Supreme Court said:

> We denied said supplemental action in a minute resolution, the effect of which is of course to reject the theory that the pendency of an administrative remedy suspends the period within which a petition for *quo warranto* should be filed. . . . As said remedies neither are prerequisites to nor bar the institution of *quo waranto* proceedings, it follows that he who claims the right to hold a public office allegedly usurped by another and who desires to seek redress in the courts, should file the proper judicial action within the reglementary period. . . . Public interest requires that the right of public office should be determined as speedily as practicable. [64]

Under Section 16 of Rule 67 of the Rules of Court, quo warranto proceedings must be instituted within one year from the time the cause of action arose. To require an ousted public officer to exhaust all administrative remedies before bringing court action may result in his cause of action being barred by prescription.

C. Denial of Due Process

If an administrative agency denies a party his right to due process of law, the aggrieved party need not appeal to a higher

[61] Madriñan v. Sinco, *supra* note 41.

[62] Township v. Cromwell 326 U.S. 620 (1946); Engineers Public Service Co. v. SEC, 138 F 2d 936 (1943); Todd v. SEC, 137 F 2d 475 (1943); Panitz v. District of Columbia, 112 F 2d 39 (1940).

[63] 82 Phil. Phil. 59 (1948).

[64] Torres v. Quintos, 88 Phil. 436, 439-440 (1951). See also Gravador v. Mamigo, G.R. No. L-24989, July 21, 1967.

administrative agency before resorting to court action. This happens when the administrative officer rendered his decision without previous notice and hearing. [65]

Denial of due process, however, does not necessarily mean absence of any hearing. Even if there was a hearing, if it was marred by irregularities that robbed the aggrieved party of the chance to present his side, there is denial of due process.

In Borja v. Moreno, the hearing officer ignored the motion to dismiss, ruled that the aggrieved party's reservation of the right to cross-examine was a waiver of that right, conducted ocular inspections *motu propio,* refused cross-examination of some witnesses, called to the witness stand persons who were not witnesses, disregarded objections, refused to let a witness for the aggrieved party to testify, and ended the hearing without giving the aggrieved party full opportunity to present other witnesses.

The Supreme Court disposed of the defense of non-exhaustion of administrative remedies by saying, "The manner the investigation was conducted was a denial of due process. This is one of the exceptions to the rule requiring exhaustion of administrative remedies." [66]

D. Patently Illegal Decisions

Administrative remedies need not be exhausted also when the administrative decision in question is patently illegal.

In *Mangubat v. Osmeña,* the mayor dismissed for loss of confidence a detective possessing civil service eligibility. The detective sued for renstatement and back wages. The mayor invoked the doctrine of exhaustion of administrative remedies.

The Supreme Court rebuffed this defense:

> When from the very beginning, the action of the city mayor is patently illegal, arbitrary, and oppressive; when there has been no semblance of compliance, or even an attempt to comply, with the pertinent laws; when, manifestly, the mayor has acted without jurisdiction or has exceeded his jurisdiction or has committed grave abuse of discretion; when his act is clearly and obviously devoid of any color of authority, as in the case at bar, the employee adversely affected may forthwith seek the protection of the judicial department. [67]

[65] Ayson v. Republic, 96 Phil. 271 (1954); National Development Co. v. Collector of Customs, G.R. No. L-19180, Oct. 31, 1963; Vigan Electric Light Co. v. Public Service Commission, G. R. No. L-19850, Jan. 30, 1964; Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967.

[66] Borja v. Moreno, G.R No. L-16487, July 31, 1964.

E. Irreparable Injury

If requiring an aggrieved party to exhaust all administrative remedies will cause irreparable injury, administrative remedies need not be exhausted, for the administrative remedies are inadequate to protect his rights.

Irreparable injury is the probable loss, if exhaustion is required, of the value (monetary or moral) of an asserted right. Whether the injury is irreparable or not is to be determined by weighing the necessity for immediate appeal to the courts to give realistic protection to the right claimed. [68]

The trend of the decisions of the Supreme Court is to allow government employees to immediately resort to court action if they will not be receiving their salaries while the case is dragging on. [69]

The Supreme Court has also considered the following as circumstances involving irreparable injury:

1. Where the amount appropriated for the salary increase for which a government employee was suing would revert to the general funds if not disbursed before the end of the fiscal year. [70]

2. Where the defendant lost no time in exporting the logs which the plaintiff claimed was hauled from his timber concession. [71]

3. Where a logging concessionaire disregarded the order of the Secretary of Agriculture and Natural Resources to stop cutting timber in the concession of another. [72]

4. Where a captain in the Armed Forces was reverted to the inactive status in violation of Republic Act No. 1382. [73]

[67] Mangubat v. Osmeña, G.R. No. L-12837, April 30, 1959. See also Baguio v. Rodriguez, G.R. No. L-11079, May 27, 1959; Festejo v. Municipal Mayor, 96 Phil. 286 (1954); Gonzales v. Hechanova, 60 O.G. 802 (1963); Cariño v. ACCFA, G.R. No. L-19808, Sept. 29, 1966; and Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967.

[68] Jaffe, *op. cit., supra* note 2 at 429.

[69] Guerrero v. Carbonell, G.R. No. L-7180, March 15, 1955; Fernandez v. Cuneta, G.R. No. L-14392, May 30, 1960; Abaya v. Villegas, G.R. No. L-25641, Dec. 17, 1966; Mitra v. Subido, G.R. No. L-21691, Sept. 15, 1967.

[70] Alzate v. Aldaña, G.R. No. L-14407, Feb. 29, 1960.

[71] Cotabato Timberland Co. v. Plaridel Lumber Co., G.R. No. L-19432, Feb. 26, 1965.

[72] De Lara v. Cloribel, G.R. No. L-21653, May 31, 1965.

[73] Aragon v. Peralta, G.R. No. L-21390, Nov. 18, 1967.

5. Where a mayor was suspended pending investigation of charges filed against him for offenses committed during his previous term. [74]

Thus, if the administrative agencies cannot give adequate relief, an aggrieved party may knock at the doors of the courts. As a general rule administrative agencies cannot issue a writ of preliminary injunction. This may at times be necessary to protect the rights of an aggrieved party, so that the relief he may be entitled to at the termination of the case may not prove to be illusory. To require the aggrieved party to exhaust all administrative remedies may allow the other party to buy time.

F. Estoppel

The Supreme Court has also applied the principle of estoppel to the doctrine of exhaustion of administrative remedies. This was in the case of *Tan v. Veterans Backpay Commission.*

The Veterans Backpay Commission refused to pay the claim of the widow of a Chinese guerrilla, ignored the opinion of the Secretary of Justice that even aliens were entitled to backpay, and told the widow that she may resort to court action.

When the widow filed a petition for mandamus, the Veterans Backpay Commission raised the defense of failure to exhaust administrative remedies.

The Supreme Court cast aside this defense:

> The respondent Commission is in estoppel to invoke this rule considering that in its resolution reiterating its obstinate refusal to abide by the opinion of the Secretary of Justice. . . . the Commission declared that the opinions promulgated by the Secretary of Justice are advisory in nature, which may either be accepted or ignored by the public office seeking the opinion, and any aggrieved party has the court for recourse. [75]

G. Futility of Resort to Administrative Remedies

When resort to higher administrative officials would be futile, there is no need to exhaust all administrative remedies. This the Supreme Court said in *Central Azucarera Don Pedro v. Central Bank.*

[74] Provincial Board v. De Guzman, G.R. No. L-23523, Nov. 18, 1967.
[75] Tan v. Veterans Backpay Commission, G.R. No. L-12944, March 30, 1960.
[76] Central Azucarera Don Pedro v. Central Bank, G.R. No. L-7731, Sept. 29 1958.

The Central Azucarera Don Pedro imported cloth twice to be used as sugar bags. The Central Bank slapped a special excise tax on the foreign exchange the Central Azucarera Don Psdro bought to pay for the cloth. The Central Azucarera Don Pedro asked for refund of the tax on the first importation. The Central Bank refused. The petition for reconsideration was also denied.

The Central Azucarera Don Pedro sued to recover the special excise tax slapped on both the first and the second importations. The Central Bank raised the defense of non-exhaustion of administrative remedies.

The Supreme Court shunted aside this defense saying, "We are of the same opinion as the trial court that it would have been an idle ceremony to make a demand on the administrative officer and after denial thereof to appeal to the Monetary Board of the Central Bank after the refund of the first excise tax had been denied." [76]

H. Decisions of Department Heads

It is in the case of decisions of Department Secretaries that the rulings of the Supreme Court are conflicting. In *Demaisip v. Court of Appeals,* the Supreme Court held that there is no need to appeal to the President "in view of the theory that the Secretary of a Department is merely an *alter ego* of the President. The presumption is that the action of the Secretary bears the implied sanction of the President unless the same is disapproved by the latter." [77]

The Supreme Court, however, deviated from this ruling in *Ham v. Bachrach Motor Co.*:

> Under the aforequoted provision of Act No. 1654 (Section 2) (d)O, forfeiture of the improvements declared by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources, is subject to review by the President of the Philippines. [78]

In *Villongco v. Moreno,* the Supreme Court said without any qualification "The other error is the failure of petitioner to avail of the administrative remedy, which consists in appealing from the decision of the Secretary of Public Works and Communications to the President of the Philippines. We find this assignment of error also to be well taken." [79]

[77] Demaisip v. Court of Appeals, G.R. No. L-13000, Sept. 25, 1959.
[78] Ham v. Bachrach Motor Co., G.R. No. L-13677, Oct. 31, 1960.
[79] Villongco v. Moreno, G.R. No. L-17240, Jan. 31, 1962.

In *Calo v. Fuertes*, the aggrieved party appealed from the decision of the Secretary of Agriculture and Natural Resources to the President. Later, he withdrew the appeal and brought court action.

The Supreme Court sustained the defense of non-exhaustion of administrative remedies saying, "The withdrawal of the appeal taken to the President of the Philippines is tantamount to not appealing it at all thereto. Such withdrawal is fatal, because appeal to the President is the last step he should take in an administrative case." [80]

The Supreme Court reverted to the ruling in *Demaisip v. Court of Appeals* in all other subsequent cases. [81]

The better rule is that there is no need to appeal to the President from the decision of a Department Secretary, because a Department Secretary is merely and *alter ego* of the President. The ruling in *Villongco v. Moreno* is hopelessly irreconcilable with the majority of the decisions of the Supreme Court on this point, but the ruling in *Ham v. Bachrach Motor Co.* and *Calo v. Fuertes* can be reconciled with the principal that the decision of a Department Secretary need not be appealed to the President.

Thus, if a law expressly provides for appeal to the President from the decision of a Department Secretary, the aggrieved party must take this step before asking for judicial review. This was the situation in *Ham v. Bachrach Motor Co.*

Even if no law expressly provides for appeal to the President, the President can review the decisions of a Department Secretary by virtue of his power of control over the executive branch which Article VII, Section 10 (1) of the Constitution grants him.[82] In such cases, however, appeal to the President is not mandatory but merely permissive. [83]

Of course, in practice it will not be the President but the Executive Secretary who will review the decision of a Department Secretary in such cases. However, "the rule which has thus gained recognition is that under our constitutional set-up, the Executive Secretary, who acts for and in behalf and by authority of the President, has undisputed jurisdiction to affirm, modify, or even reverse any order that a department head may issue." [84]

[80] Calo v. Fuertes, G.R. No. L-16537, June 29, 1962.

[81] *Supra* note 33.

[82] Pajo v. Ago, G.R. No. L-15414, June 30, 1960; Suarez v. Reyes, G.R. No. L-19828, Feb. 28, 1963; Castillo v. Rodriguez, G.R. No. L-17189, June 22, 1865; Lacson-Magallanes Co. v. Paño, G.R. No. L-27811, Nov. 17, 1967.

[83] Abejo v. Secretary of Agriculture and Natural Resources, (CA) 60 O.G. 8505 (1963).

[84] Lacson-Magallanes Co. v. Paño, *supra* note 82.

I. Express Provision of Law

Exhaustion of administrative remedies is also not necessary if the law expressly provides for immediate judicial review.

In *Gonzales v. Secretary of Labor*, the Supreme Court held, "The point raised by the Solicitor General (that the petitioner should have appealed first to the President) . . . is not well taken. Section 7 of the law creating the Wage Administration Service (Republic Act No. 602) expressly authorizes any person aggrieved by an order of the Secretary of Labor to obtain a review of such order in the Supreme Court." [85]

Even if Republic Act No. 602 did not expressly provide for immediate judicial review, Gonzales would have been justified in filing the petition for certiorari without appealing to the President first. As has already been discussed, there is no need to appeal from the decision of a Department Secretary to the President.

In *Rullan v. Valdez*, the Supreme Court cited Section 73 of Commonwealth Act No. 137, as amended by Republic Act No. 746 and said, "The law is specific that the question of ownership affecting an adverse claim (to an application for lease of certain public mineral lands) must be determined by the competent court before administrative action could proceed to its termination." [86]

V. Conclusion

The doctrine of exhaustion of administrative remedies is so well-entrenched in Philippine jurisprudence that no lawyer or jurist will dare question the doctrine itself. It is in the exceptions that disagreements are bound to arise. Under a given set of facts, should the doctrine be applied or should the case be deemed as falling under one of the exceptions?

Whether the case is one to which the doctrine of exhaustion of administrative remedies should be applied or one which falls under one of the exceptions the court can ultimately review the decision of the Administrative tribunal. The only question that remains to be decided is whether the aggrieved party must first climb all the rungs of the administrative ladder.

The courts cannot by law be stripped of their power to review the decisions of the administrative agencies, for the courts derive this power from the Constitution.

[85] Gonzales v. Secretary of Labor, 50 O.G. 1080, 1081 (1954).

[86] Rullan v. Valdez, G.R. No. L-20031, Nov. 28, 1964.

We must resign to the fact that Congress will create more administrative tribunals in the future. Unlike the regular courts, these tribunals will not be bound strictly by the rules on procedure and evidence. Their decisions will affect our daily lives more and more intimately. Yet, we can always console ourselves with the thought that the courts will always be there to review the decisions of the administrative tribunals and to curb abuse of discretion.

In fact, although courts have been identified with protection of private rights and administrative agencies with execution of public policy, we should not regard the courts as guards posted by the Constitution to keep the administrative agencies in line. Indeed, there is a great deal of truth in Jaffe's thesis that courts and administrative agencies are in a partnership of law-making and law-applying. [87]

JACINTO D. JIMENEZ

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[87] JAFFE, *op. cit.*, *supra* note 68.