

Comparing Presidential Immunity from Suit Under the 1935 and 1973 Constitutions, and the 1981 Amendments

Stephen Cu-Unjieng

28 ATENEO L.J. 85 (1983)

*KEYWORD(S): PRESIDENTIAL IMMUNITY, 1935 CONSTITUTION, 1973
CONSTITUTION, 1981 AMENDMENTS*

SUBJECT(S): CONSTITUTIONAL

In this Article, the Author demonstrates how the concept of Presidential Immunity from Suit construed strictly and limited to its bare essentials under the 1935 and 1973 Constitutions, was transformed as a principle under the 1981 Amendments. Thus, if previously, it was merely limited to the President's tenure, now it became absolute since no suit can be brought for official acts at any time. Further, the immunity has been expanded to include all others who act pursuant to the President's specific orders. Two (2) schools of thought or prevailing interpretations have been presented in understanding the relevant provision found in the Amendments. One view is held by Prof. Perfecto Fernandez, and the other by Senator Arturo Tolentino. Fernandez fears that this rather permanent nature of presidential immunity "would make the highest officials no longer servants of the people, but their masters ..." and thus "[w]hile the President and other officials are bound to obey the law, the immunity removes all sanctions against them for violation of the law." Tolentino, on the other hand, is of the view that the provision in no way removes the President's wrongdoing and felonious acts from liability and that these are not protected by the provision. Correspondingly, the Author enumerates the applicable rules of Statutory Construction which support both positions—i.e. *dura lex sed lex* for Fernandez' and legislative intent for Tolentino's. In the end, he leans toward Tolentino's restrictive view and hopes that the Supreme Court will do likewise when confronted with the same controversy.