

# Undue Influence: The Sobriety of the Presumption of Regularity Doctrine in the Determination of the “Under the Influence of Alcohol” Requirement in the Anti- Drunk and Drugged Driving Act of 2013

*Emmanuel Rey P. Cruz\**

|   |     |
|---|-----|
| I. INTRODUCTION.....  | 376 |
| <i>A. The Necessity of Anti-Drunk Driving and Drugged Driving<br/>        Legislation in the Philippines</i>                  |     |
| II. SURVEY OF PHILIPPINE LAWS AND JURISPRUDENCE<br>PERTAINING TO DRUNK AND DRUGGED DRIVING.....                               | 380 |
| <i>A. The Land Transportation and Traffic Code</i>  |     |
| <i>B. Application for Driver’s License Under Republic Act No. 9165</i>  |     |
| III. THE SALIENT POINTS OF REPUBLIC ACT NO. 10586 WITH<br>RESPECT TO “UNDER THE INFLUENCE OF ALCOHOL” .....                   | 384 |
| <i>A. The Field Sobriety Test</i>   |     |
| IV. ANALYTICAL FRAMEWORK PENDING THE ISSUANCE OF THE<br>IMPLEMENTING RULES AND REGULATIONS FOR REPUBLIC<br>ACT NO. 10586..... | 391 |
| <i>A. Presumption of Regularity in the Performance of Official Functions</i>  |     |
| V. WHO WATCHES THE WATCHMEN?.....   | 396 |
| <i>A. Presumption of Regularity</i>   |     |
| VI. CONCLUSION.....   | 399 |

---

\* ’12 J.D., Ateneo De Manila University School of Law. The Author was a Member of the Board of Editors of *Ateneo Law Journal*. He was the Associate Lead Editor of the fourth issue of the 54th volume and the Lead Editor of the second issue of the 56th volume. The Author previously wrote *Proponent: The Provisions of the RH Bill as Productive Approaches in Addressing Present Philippine Issues*, 56 ATENEO L.J. 215 (2011); *Opponent: The Provisions of the RH Bill as Abortive Approaches in Addressing Present Philippine Issues*, 56 ATENEO L.J. 228 (2011); and *Outlawing Lolita: Testing the Constitutionality and Practicality of the “Victimless” Provisions of the Anti-Child Pornography Act of 2009*, 55 ATENEO L.J. 757 (2010). He also co-wrote *The Philippine Capital Market: Issues and Challenges*, 56 ATENEO L.J. 465 (2012) with Franchesca Abigail C. Gesmundo.

*Cite as* 58 ATENEO L.J. 375 (2013).

*Quis custodiet ipsos custodes?*  
(*Who watches the watchmen?*)

— Juvenal<sup>1</sup>

## I. INTRODUCTION

Vehicular accident is one of the leading causes of death in the Philippines.<sup>2</sup> Some news reports estimate that for the first half of the year 2012, there were a total of 593 vehicular accident-related deaths from January to June, while 2,376 people were injured overall.<sup>3</sup> Some of these accidents were attributed to “human error,” in instances of “bad overtaking, bad turning, over-speeding, using [cell phones] while driving, drunk driving[,] and overloading.”<sup>4</sup> Though these numbers would link vehicular fatalities to a host of human activities involving lapses of judgment on the road, drunk driving as a reason for accidents assumes a different nature since the lapse of judgment, so to speak, commences way before a person takes the wheel, unlike the other instances of “human error.”<sup>5</sup>

For the year 2012, several fatalities arising from drunk driving were reported.<sup>6</sup> On 12 July 2012, a 12-year old boy was killed in Manila after getting hit by a car with an alleged drunk driver behind the wheel.<sup>7</sup> On 16 October 2012, an 11-year old girl who was riding a motorcycle died after it collided with a tricycle, where the driver had been drinking liquor before

- 
1. JUVENAL, SATIRES VI, lines 347–8.
  2. See generally Rafael Castillo, *Saving our teen drivers from road mishaps*, PHIL. DAILY INQ., Aug. 26, 2011, available at <http://business.inquirer.net/15111/saving-our-teen-drivers-from-road-mishaps> (last accessed Sep. 12, 2013).
  3. Trade Union Congress of the Philippines, *Traffic mishaps kill 593 in first half of 2012*, available at <http://www.tucp.org.ph/news/index.php/2012/07/traffic-mishaps-kill-593-in-first-half-of-2012/#more-46595> (last accessed Sep. 12, 2013).
  4. *Id.*
  5. International Center for Alcohol Policies, *Drinking and Driving*, available at <http://www.icap.org/PolicyTools/ICAPBlueBook/BlueBookModules/15DrinkingandDriving/tabid/175/Default.aspx#1> (last accessed Sep. 12, 2013).
  6. See NATIONAL STATISTICS OFFICE, *THE PHILIPPINES IN FIGURES 2012 22* (2013).
  7. Jamie Marie Elona, *Boy killed in alleged drunk driving incident in Manila — MMDA*, PHIL. DAILY INQ., July 12, 2012, available at <http://newsinfo.inquirer.net/227709/boy-killed-in-alleged-drunk-driving-incident-in-manila-mmda> (last accessed Sep. 12, 2013).

the accident.<sup>8</sup> On the same date, a man was sideswiped by a motorcycle whose driver was under the influence of liquor.<sup>9</sup> On 21 January 2013, a woman was killed after she fell off a speeding motorcycle and got run over by a passenger bus in Commonwealth Avenue.<sup>10</sup> The person driving the motorcycle was reportedly inebriated at the time of the incident.<sup>11</sup> On 13 October 2012, a local television host and actress also garnered media attention after she crashed her sports utility vehicle onto a center island in Marikina City, thereby hitting the fence, while under the influence of alcohol.<sup>12</sup> The fence subsequently hit another vehicle, where the driver and the passengers sustained minor injuries.<sup>13</sup> Lastly, and more tragically, as recent as 5 July 2013, five children were killed while two others were injured by a pickup truck allegedly driven by a drunk driver.<sup>14</sup>

According to Senator Gregorio B. Honasan II, both in his sponsorship speech and as reiterated in a Senate Press Release dated 28 January 2013,<sup>15</sup> “[i]n the Philippines, [driving under the influence (DUI)] remains a serious problem that has claimed the lives and limbs of victims annually.”<sup>16</sup>

On 27 May 2013, President Benigno S. Aquino III signed Republic Act (R.A.) No. 10586 or the “Anti-Drunk and Drugged Driving Act of 2013” into law.<sup>17</sup> This legislation originated from House Bill (H.B.) No. 4251<sup>18</sup>

- 
8. Joy Quito & Chito O. Aragon, *Drink n’ drive in road deaths of girl, man*, PHIL. DAILY INQ., Oct. 16, 2012, available at <http://newsinfo.inquirer.net/289772/drink-n-drive-in-road-deaths-of-girl-man> (last accessed Sep. 12, 2013).
  9. *Id.*
  10. Julie M. Aurelio, *Drunk driving kills woman in Quezon City*, PHIL. DAILY INQ., Jan. 21, 2013, available at <http://newsinfo.inquirer.net/344577/drun-driving-kills-woman-in-quezon-city> (last accessed Sep. 12, 2013).
  11. *Id.*
  12. Kristine Felisse Manganay, *TV host-actress in road accident faces several raps — police*, PHIL. DAILY INQ., Oct. 15, 2012, available at <http://entertainment.inquirer.net/63002/tv-host-actress-in-road-accident-faces-several-raps-police> (last accessed Sep. 12, 2013).
  13. *Id.*
  14. Joey Gabieta, *Drunk driver slams pickup truck into kids on roadside, kills 5*, PHIL. DAILY INQ., July 5, 2013, available at <http://newsinfo.inquirer.net/439159/drun-driver-slams-pickup-truck-into-kids-on-roadside-kills-5> (last accessed Sep. 12, 2013).
  15. Senate of the Philippines, Press Release: Senate approves bill on drunk and drugged driving, available at [http://www.senate.gov.ph/press\\_release/2013/0128\\_prib8.asp](http://www.senate.gov.ph/press_release/2013/0128_prib8.asp) (last accessed Sep. 12, 2013).
  16. S. JOURNAL Sess. No. 42, at 1236, 15th Cong., 3d Reg. Sess. (Dec. 11, 2012).
  17. An Act Penalizing Persons Driving Under the Influence of Alcohol, Dangerous Drugs, and Similar Substances, and for Other Purposes [Anti-Drunk and Drugged Driving Act of 2013], Republic Act No. 10586 (2013).

and Senate Bill (S.B.) No. 3365,<sup>19</sup> which were filed on 21 February 2011 and 11 December 2012, respectively.<sup>20</sup> A quick comparison of H.B. No. 4251 and S.B. No. 3365 would show that the proposed provisions were crafted almost identically, differing only in numbering and other minor details.<sup>21</sup> Also, an inspection of the legislative history of both bills would show that there was unanimous agreement among the legislators as to the necessity of this law and the sufficiency of its text, both in the House of Representatives and in the Senate, as shown by the lack of protracted interpellations or objections in both Houses.<sup>22</sup>

*A. The Necessity of Anti-Drunk Driving and Drugged Driving Legislation in the Philippines*

In his sponsorship speech, Senator Honasan explained that in March 2012, the Land Transportation Franchising and Regulatory Board released data pertaining to vehicular accidents.<sup>23</sup> The data showed that out of 86,602 vehicular accidents, three percent, a staggering number, are drug or alcohol-related.<sup>24</sup> This would amount to around 2,598 accidents out of the total number.<sup>25</sup> This rationale is further reiterated in a Senate Press Release dated 30 July 2013.<sup>26</sup> When juxtaposed with the recent incidents involving drunk driving as indicated above, this statistic may bolster the argument that this legislation is urgent and of dire necessity. Senator Honasan further elaborated, thus —

It is not clear how the figures have been arrived at[,] but with the lack of equipment and proper training used to check drunk driving, it is not [far-fetched] to assume that the incidences generally attributed to driver's error

---

18. An Act Penalizing Persons Driving Under the Influence of Alcohol, Dangerous Drugs, and Similar Substances and for Other Purposes, H.B. No. 4251, 15th Cong., 1st Reg. Sess. (2011).

19. Anti-Drug And Drunk Driving Act of 2012, S.B. No. 3365, 15th Cong., 3d Reg. Sess. (2012).

20. 15th Congress, House Bill No. 4251, History, available at [http://congress.gov.ph/legis/search/hist\\_show.php?congress=15&save=1&journal=&switch=0&bill\\_no=HB04251](http://congress.gov.ph/legis/search/hist_show.php?congress=15&save=1&journal=&switch=0&bill_no=HB04251) (last accessed Sep. 12, 2013) & 15th Congress, Senate Bill No. 3365, Legislative History, available at [http://www.senate.gov.ph/lis/bill\\_res.aspx?congress=15&q=SBN-3365](http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-3365) (last accessed Sep. 12, 2013).

21. See generally H.B. No. 4251 & S.B. No. 3365.

22. See Committee on Transportation, H. Rep No. 666, 15th Cong., 3d Reg. Sess. (2011).

23. S. JOURNAL Sess. No. 42, at 1236.

24. *Id.*

25. *Id.*

26. Senate of the Philippines, *supra* note 15.

may be traced to other factors like the use of drugs and alcohol which would increase the percentage of DUI.<sup>27</sup>

While the logic of the assumptions laid out by Senator Honasan as reiterated in the Senate Press Release may be debated,<sup>28</sup> the same does not detract from the perceived importance of R.A. No. 10586. Thus, for the purposes of this Article, the necessity and timeliness of R.A. No. 10586 will not be scrutinized further.

Likewise, the *malum prohibitum* nature of R.A. No. 10586 is recognized, and the implications of this nature of the law are conceded. When a law is *malum prohibitum*, “[i]ntent is [ ] immaterial and mere commission of the prohibited act is punishable.”<sup>29</sup> As elucidated in the case of *People v. Lo Ho Wing*,<sup>30</sup> —

It is a wrong because it is prohibited by law. Without the law punishing the act, it cannot be considered a wrong. As such, the mere commission of said act is what constitutes the offense punished and suffices to validly charge and convict an individual caught committing the act so punished, regardless of criminal intent.<sup>31</sup>

The intentions of R.A. No. 10586 are applauded, but the implications of some of its provisions are nevertheless perceived with a certain degree of caution. Even if the wisdom of the measure is accepted, this does not preclude questioning the assumptions made by the law with respect to its enforcement and its effect on everyday human experiences. In fact, even Malacañang Palace recognizes the possibility of “unscrupulous law enforcers who may take advantage of the implementation of the new law,” as Deputy Presidential Spokesman Abigail Valte said in a press conference held on 30 May 2013.<sup>32</sup> When asked about how law enforcement officers can be prevented from abusing the law and using it as a means to extort drivers, Valte answered, thus —

Safety nets. Of course, you can always report any law enforcement officer that will — that is of the mind to abuse this particular new law. The grievance mechanisms are in place and ... the reporting of law enforcement

---

27. S. JOURNAL Sess. No. 42, at 1235.

28. Senate of the Philippines, *supra* note 15.

29. *People v. Chua*, 680 SCRA 575, 591 (2012) (citing *People v. Chua*, 615 SCRA 132, 141-42 (2010)).

30. *People v. Lo Ho Wing*, 193 SCRA 122 (1991).

31. *Id.* at 130 (citing *People v. Bayona*, 61 Phil. 181 (1935)).

32. The Daily Tribune, *Aquino signs law versus drunk, drugged drivers*, THE DAILY TRIB., May 31, 2013, available at <http://www.tribune.net.ph/index.php/metro-section/item/14751-aquino-signs-law-versus-drunk-drugged-drivers> (last accessed Sep. 12, 2013).

officers who may want to take advantage of this particular law [is encouraged].<sup>33</sup>

## II. SURVEY OF PHILIPPINE LAWS AND JURISPRUDENCE PERTAINING TO DRUNK AND DRUGGED DRIVING

Laws and jurisprudence tackling the issue of drunk and drugged driving are limited, which leads to the lack of enrichment of the subject matter in this point of criminal law.<sup>34</sup> In fact, the attention given to this matter is largely tangential or incidental, that is, it was never the main issue in the law where specific mention of drunk or drugged driving was made; it was included almost as an afterthought, pursuant to addressing the issue of traffic and transportation in general, or the issue of dangerous drugs in its entirety.<sup>35</sup> In addition, the law specifically including drunk and drugged driving in its text does so only in passing, with no elucidating determination as to its place in penal legislation or its elements as a prohibited act.<sup>36</sup> Such references were, in fact, utilized only to support some other rationalization different from drunk or drugged driving.<sup>37</sup>

### *A. The Land Transportation and Traffic Code*

The Philippines actually had a law that punished “driving under the influence,” and which preceded R.A. No. 10586, for many decades.<sup>38</sup> The Land Transportation and Traffic Code was enacted on 20 June 1964, almost a full 50 years before R.A. No. 10586 was signed into law.<sup>39</sup> The Land Transportation and Traffic Code decreed in Section 53 that “[n]o person shall drive a motor vehicle while under the influence of liquor or narcotic drug,”<sup>40</sup> and that the same should be punishable by “a fine of not less than [₱200.00] nor more than [₱500.00], or imprisonment of not more than three

---

33. Willard Cheng, PNoy signs law vs drunk, drugged driving, *available at* <http://www.abs-cbnnews.com/focus/05/30/13/pnoy-signs-law-vs-drunk-drugged-driving> (last accessed Sep. 12, 2013).

34. Health Justice Philippines, Drunk Driving Laws Lacking in the Philippines, *available at* <http://www.healthjustice.ph/?action=viewArticle&articleId=818> (last accessed Sep. 12, 2013).

35. *Id.*

36. An Act to Compile the Laws Relative to Land Transportation and Traffic Rules, to Create a Land Transportation Commission and for Other Purposes [LAND TRANSPORTATION AND TRAFFIC CODE], Republic Act No. 4136 (1964).

37. *Id.* § 53.

38. *Id.*

39. *Id.*

40. *Id.* § 53.

months, or both, at the discretion of the [c]ourt.”<sup>41</sup> While a penalty is indeed provided for the violation of Section 53, “driving under the influence of liquor or narcotic drug” was categorized under “Miscellaneous Traffic Rules,”<sup>42</sup> along with “reckless driving,”<sup>43</sup> “right of way for police and emergency vehicles,”<sup>44</sup> “tampering with vehicles,”<sup>45</sup> “hitching to a vehicle,”<sup>46</sup> “driving or parking on sidewalk,”<sup>47</sup> “obstruction of traffic,”<sup>48</sup> and “duty of driver in case of accident.”<sup>49</sup>

A survey of Philippine jurisprudence decided by the Supreme Court (SC) would reveal that only two cases have made explicit reference to Section 53 of the Land Transportation and Traffic Code.<sup>50</sup> In the first of these cases, the violation of Section 53 was offered to support an award of civil liability.<sup>51</sup> The second case, while it did allude to the crime of drunk driving under Section 53, merely made the reference as a point of comparison in resolving another matter, the danger of drunk passengers.<sup>52</sup>

#### 1. *Manantan v. Court of Appeals*

In *Manantan v. Court of Appeals*,<sup>53</sup> George Manantan was driving a Ford Fiera in a state of intoxication, due to his having consumed “all in all, a total of at least 12 bottles of beer.”<sup>54</sup> He was driving at a speed of about 40 kilometers per hour along the Maharlika Highway at Malvar, Santiago, Isabel. <sup>55</sup> Manantan met a passenger *jeepney* with its bright lights on at the middle portion of the highway.<sup>56</sup> He immediately tried to swerve the car to the right and move his body away from the steering wheel but he was not able

---

41. *Id.* § 56 (f).

42. LAND TRANSPORTATION AND TRAFFIC CODE, art. V.

43. *Id.* § 48.

44. *Id.* § 49.

45. *Id.* § 50.

46. *Id.* § 51.

47. *Id.* § 52.

48. LAND TRANSPORTATION AND TRAFFIC CODE, § 54.

49. *Id.* § 55.

50. See *Manantan v. Court of Appeals*, 350 SCRA 387 (2001) & *People v. Glino*, 539 SCRA 432 (2007).

51. See *Manantan*, 350 SCRA at 399.

52. See *Glino*, 539 SCRA at 436.

53. *Manantan*, 350 SCRA 387.

54. *Id.*

55. *Id.*

56. *Id.*

to avoid the oncoming vehicle.<sup>57</sup> The two vehicles collided with each other at the center of the road.<sup>58</sup> Ruben Nicolas, a passenger in the Ford Fiera, died because of the accident.<sup>59</sup>

Manantan was charged with reckless imprudence resulting in homicide, of which he was found not guilty and was acquitted by the trial court.<sup>60</sup> On appeal, the decision was modified to the extent that Manantan was held civilly liable for his “negligent and reckless act of driving his car which was the proximate cause of the vehicular accident.”<sup>61</sup> The Court of Appeals (CA) found that Manantan’s act of driving while intoxicated “was a clear violation of Section 53 of the Land Transportation and Traffic Code [ ] and pursuant to Article 2185 of the Civil Code, a statutory presumption of negligence existed.”<sup>62</sup> The CA further held that “[Manantan’s] act of violating the Traffic Code is negligence in itself ‘because the mishap, which occurred, was the precise injury sought to be prevented by the regulation.’”<sup>63</sup> The SC merely affirmed the decision of the CA.<sup>64</sup>

## 2. *People v. Glimo*

In *People v. Glimo*,<sup>65</sup> Domingo Boji was killed in an altercation with two drunken passengers in a jeepney.<sup>66</sup> The SC merely declared that “[t]here is no law banning a drunk person from riding a public vehicle, or the latter’s driver from allowing a person who appears to be drunk to board a public conveyance,”<sup>67</sup> and “[t]he present law prohibits and punishes only drunk driving.”<sup>68</sup>

From the dearth of jurisprudence arising from the violation of Section 53 of the Land Transportation and Traffic Code, it can be speculated that either the law is so effective such that any violation of the same is seldom elevated to appellate courts, or that, regardless of the prohibition and punishment imposed on drunk and drugged driving, it is still insufficient, since the Land

---

57. *Id.*

58. *Id.*

59. *Manantan*, 350 SCRA at 392.

60. *Id.* at 393.

61. *Id.* at 394.

62. *Id.*

63. *Id.*

64. *Id.* at 396.

65. *Glimo*, 539 SCRA at 432.

66. *Id.* at 438.

67. *Id.* at 436.

68. *Id.* at 435 (citing LAND TRANSPORTATION AND TRAFFIC CODE, § 53).



Transportation and Traffic Code is bereft of any supplementary provisions providing standards as to the enforcement of Section 53.<sup>69</sup> The cited jurisprudence likewise neglected to elucidate standards for the determination of the commission of the crime, or the elements of the same.<sup>70</sup> Senator Honasan would not have acknowledged it as a serious problem if Section 53 was actually effective.<sup>71</sup> It is also interesting to note that in its repealing clause, R.A. No. 10586 expressly repealed subparagraph (f), Section 56, Article 1 of the Land Transportation and Traffic Code<sup>72</sup> as to the penalty for the violation of Section 53 of the Land Transportation and Traffic Code.<sup>73</sup>

*B. Application for Driver's License Under Republic Act No. 9165*

Section 36 (a) of the Comprehensive Dangerous Drugs Act of 2002 mandating authorized drug testing for applicants for driver's license reads thus —

Section 36. Authorized Drug Testing. — Authorized drug testing shall be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the [Department of Health (DOH)] to safeguard the quality of test results. The DOH shall take steps in setting the price of the drug test with DOH accredited drug testing centers to further reduce the cost of such drug test. The drug testing shall employ, among others, two testing methods, the screening test[,] which will determine the positive result as well as the type of the drug used, and the confirmatory test[,] which will confirm a positive screening test. Drug test certificates issued by accredited drug testing centers shall be valid for a one-year period from the date of issue which may be used for other purposes. The following shall be subjected to undergo drug testing:

- (a) Applicants for driver's license. — No driver's license shall be issued or renewed to any person unless he/she presents a certification that he/she has undergone a mandatory drug test and indicating thereon that he/she is free from the use of dangerous drugs.<sup>74</sup>

---

69. LAND TRANSPORTATION AND TRAFFIC CODE, § 53.

70. *See Manantan*, 350 SCRA at 387 & *Gliño*, 539 SCRA at 432.

71. *See S. JOURNAL* Sess. No. 42, at 1235.

72. Anti-Drunk and Drugged Driving Act of 2013, § 19.

73. Section 56 (f) of the Land Transportation and Traffic Code provides —

(f) Driving a motor vehicle while under the influence of liquor or narcotic drug, a fine of not less than two hundred pesos nor more than five hundred pesos, or imprisonment of not more than three months, or both, at the discretion of the [c]ourt.

LAND TRANSPORTATION AND TRAFFIC CODE, § 56 (f).

74. An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds therefor, and for Other Purposes

Section 19 of R.A. No. 10586 has also repealed this provision.<sup>75</sup> Justification for this repeal was enunciated by Senator Vicente C. Sotto III, the principal author of R.A. 10586, in a Senate Press Release dated 23 June 2013.<sup>76</sup> Senator Sotto pointed out that the mandatory drug test under Section 36 (a) of the Comprehensive Dangerous Drugs Act of 2002 has become “a waste of money for motorists as well as an ineffective requirement.”<sup>77</sup> According to data from the DOH and the Dangerous Drugs Board (DDB) relied upon by Senator Sotto in the same Senate Press Release, “out of millions tested[,] a mere 0.06% resulted to positive results in the drug tests conducted by the Land Transportation Office covering the period [from] 2002 to 2010.”<sup>78</sup> Senator Sotto opined that the low turnout may be due to the fact that “drug users tend to refrain from usage during the period leading to the application for or renewal of their driver’s license.”<sup>79</sup> This, he said, “has led to a mockery of the drug test requirement.”<sup>80</sup>

### III. THE SALIENT POINTS OF REPUBLIC ACT NO. 10586 WITH RESPECT TO “UNDER THE INFLUENCE OF ALCOHOL”

R.A. No. 10586 is straightforward in defining the prohibited act, almost in the same manner as the Land Transportation and Traffic Code.<sup>81</sup> Section 5 of the law provides that “[i]t shall be unlawful for any person to drive a motor vehicle while under the influence of alcohol, dangerous drugs[,] and/or other similar substances.”<sup>82</sup> Though it made some changes as to

---

[Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165, § 36 (a) (2002).

75. Anti-Drunk and Drugged Driving Act of 2013, § 19.

76. Senate of the Philippines, Press Release: AD & DDA revokes mandatory drug testing — Sotto, *available at* [http://www.senate.gov.ph/press\\_release/2013/0623\\_sotto1.asp](http://www.senate.gov.ph/press_release/2013/0623_sotto1.asp) (last accessed Sep. 12, 2013).

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Compare* LAND TRANSPORTATION AND TRAFFIC CODE, § 53, *with* Anti-Drunk and Drugged Driving Act of 2013, § 5. Section 53 of the Land Transportation and Traffic Code provides that “[n]o person shall drive a motor vehicle while under the influence of liquor or narcotic drug.” LAND TRANSPORTATION AND TRAFFIC CODE, § 53.

On the other hand, Section 5 of the Anti-Drunk and Drugged Driving Act of 2013 provides that “[i]t shall be unlawful for any person to drive a motor vehicle while under the influence of alcohol, dangerous drugs[,] and/or other similar substances.” Anti-Drunk and Drugged Driving Act of 2013, § 5.

82. Anti-Drunk and Drugged Driving Act of 2013, § 5.

wording of the provision, for instance, changing “liquor” to “alcohol,”<sup>83</sup> “narcotic drug” to “dangerous drugs,”<sup>84</sup> and the addition of the phrase “and/or other similar substances,”<sup>85</sup> the intention of both provisions are almost identical.

A motor vehicle is defined as “any land transportation vehicle propelled by any power other than muscular power,”<sup>86</sup> while “driving under the influence of alcohol” is defined as “the act of operating a motor vehicle while the driver’s blood alcohol concentration level has, after being subjected to a breath analyzer test, reached the level of intoxication.”<sup>87</sup> The level of intoxication, as mentioned in this provision, is to be established jointly by the DOH, the National Police Commission (NAPOLCOM), and the Department of Transportation and Communications (DOTC).<sup>88</sup> Since the offense is punishable by a special law and is *malum prohibitum*, the only inquiry in this instance is — “has the law been violated?”<sup>89</sup>

Even if the provision of R.A. No. 10586 as to the punishable act involved is clear, the determination of a violation requires several tests embodied in the law.<sup>90</sup> The first of these are “field sobriety tests.”<sup>91</sup> After the law enforcement officer and deputized local traffic enforcement officer have administered the said tests and the driver failed the same, it shall be “the duty of the law enforcement officer to implement the mandatory determination of the driver’s blood alcohol concentration level through the use of a breath analyzer or similar measuring instrument.”<sup>92</sup>

At this juncture, the scope of the present analysis will be narrowed down only to the aspect of drunk driving, particularly the determination of sobriety when there is probable cause to believe that the subject is driving under the influence of alcohol.<sup>93</sup> In particular, the conduct of the field sobriety tests by law enforcement officers and deputized traffic enforcement officers and the implications thereof will be determined with the presumption of regularity

---

83. Compare LAND TRANSPORTATION AND TRAFFIC CODE, § 53, with Anti-Drunk and Drugged Driving Act of 2013, § 5.

84. *Id.*

85. *Id.*

86. Anti-Drunk and Drugged Driving Act of 2013, § 3 (h).

87. *Id.* § 3 (e).

88. *Id.*

89. *U.S. v. Go Chico*, 14 Phil. 128, 133 (1909) (citing *Gardner v. People*, 199 U.S. 325 (1905)).

90. Anti-Drunk and Drugged Driving Act of 2013, § 6.

91. *Id.*

92. *Id.* § 6, ¶ 2.

93. *Id.*

in the performance of official functions<sup>94</sup> as the point of reference in order to prevent abuse by the law enforcement officer or deputized traffic enforcement officer. The inequality of “position” at the time of determination of probable cause, and the difficulties involving the dual nature of the sobriety tests (whether the mere fact of being “under the influence,” i.e., being intoxicated, or actual “impairment” is determined) will also be considered.

#### A. *The Field Sobriety Test*

Under R.A. No. 10586, field sobriety tests are defined by Section 3 (g) as “standardized tests to initially assess and determine intoxication, such as the *horizontal gaze nystagmus* [(HGN)], the *walk-and-turn* [(WAT)], the *one-leg stand* [(OLS)], and other similar tests as determined jointly by the [DOH], the [NAPOLCOM,] and the [DOTC].”<sup>95</sup> Field sobriety tests shall be conducted when the law enforcement officer “has probable cause to believe that a person is driving under the influence of alcohol by apparent indications and manifestations.”<sup>96</sup> These indications and manifestations include circumstances on the road such as “overspeeding, weaving, lane straddling, sudden stops, [and] swerving,”<sup>97</sup> as well as those perceived on the person of the driver like “poor coordination or the evident smell of alcohol in a person’s breath.”<sup>98</sup> The field sobriety tests assume a mandatory nature in Section 8, where a driver’s refusal to undergo these tests will result in “the confiscation and automatic revocation of his or her driver’s license.”<sup>99</sup> Further, this confiscation is in addition to other penalties provided in R.A. No. 10586 and/or other pertinent laws.<sup>100</sup>

##### 1. Specific Field Sobriety Tests

It should also be noted that while R.A. No. 10586 expressly enumerated the said tests in its text, the law did not attempt to define them.<sup>101</sup> They are merely mentioned in the definition of “field sobriety tests” in Section 3

---

94. *People v. Santos*, 536 SCRA 489, 503 (2007). The presumption of regularity in the performance of official functions is a principle applied in evidentiary evaluation that transactions made in the normal course of business are assumed to have been conducted in the usual manner unless there is evidence to prove otherwise. *Id.*

95. Anti-Drunk and Drugged Driving Act of 2013, § 3 (g) (emphasis supplied).

96. *Id.* § 6.

97. *Id.* § 6, ¶ 1.

98. *Id.*

99. *Id.* § 8.

100. *Id.*

101. Anti-Drunk and Drugged Driving Act of 2013, § 3 (g).

(g).<sup>102</sup> Thus, for the purposes of this Article, the definitions of these tests shall be gleaned from the text of the 2004 DWI Detection and Standardized Field Sobriety Testing Student Manual,<sup>103</sup> as issued by the United States Department of Transportation and the National Highway Traffic Safety Administration (NHSTA).

The structure of R.A. No. 10586 with respect to the field sobriety testing aspect is similar to the Standardized Field Sobriety Test (SFST).<sup>104</sup> The SFST is a battery of three tests “administered and evaluated in a standardized manner to establish probable cause.”<sup>105</sup> These three tests constitute the standard pre-arrest procedure for evaluating the crime of driving while intoxicated (DWI) in most law enforcement agencies throughout the United States (U.S.).<sup>106</sup> Again, these tests are the HGN, the WAT, and the OLS.<sup>107</sup> These enumerated tests were designed as tools to assist officers in making post-stop DWI arrest decisions. However, even in this context, care must be exercised because the “normal variation in human physical and cognitive capabilities, and the effects of alcohol tolerance, result in uncertainties when arrest decisions are made exclusively on the basis of ... performance tests.”<sup>108</sup>

It is evident that these tests, as part of the battery, were not intended to be conclusive.<sup>109</sup> As mentioned, the combination of human differences and the effects of alcohol produce a plethora of possible results that would belie the effectiveness of a uniform treatment, and would demand a case-to-case approach as to the appreciation of the results of these tests.

*a. Horizontal Gaze Nystagmus*

---

102. *Id.*

103. United States Department of Transportation, DWI Detection and Standardized Field Sobriety Testing Student Manual (An Outline on the Administration of Standardized Field Sobriety Tests), *available at* <http://www.justia.com/criminal/drunk-driving-dui-dwi/docs/dwi-student-manual-2004.pdf> (last accessed Sep. 12, 2013).

104. *See* National Highway Traffic Safety Administration, Standardized Field Sobriety Testing, *available at* <http://www.nhtsa.gov/people/injury/alcohol/sfst/contents.htm> (last accessed Sep. 12, 2013).

105. *Id.*

106. *Id.*

107. *Id.*

108. National Highway Traffic Safety Administration, *supra* note 104.

109. *Id.*

The HGN is considered as the most reliable field sobriety test.<sup>110</sup> “Nystagmus” means the involuntary jerking of the eyes.<sup>111</sup> Specifically, “HGN refers to an involuntary jerking of the eyes that the subject is not aware is happening, that occurs as the eyes gaze toward the side.”<sup>112</sup> As the eyes move to the side, they will begin to jerk sooner as the person’s blood alcohol concentration increases.<sup>113</sup>

The law enforcement officer performs the HGN test by having the suspect follow the motion of a small stimulus held within a short distance from the latter’s nose.<sup>114</sup> This stimulus should be in contrast with the background, and should be followed with the eyes.<sup>115</sup> The actual test consists of the law enforcement officer asking the suspect “to stand with feet together, hands at sides, hold head still, and follow the motion of the small stimulus with the eyes only.”<sup>116</sup>

*b. The Walk-And-Turn*

The WAT consists of the instructions stage and the walking stage.<sup>117</sup> In the instructions stage, the subject must stand with their feet in heel-to-toe position, keep their arms at their sides, and listen to the instructions given by the law enforcement officer.<sup>118</sup> In the walking stage, the subject takes nine heel-to-toe steps, turns in a prescribed manner, and takes nine heel-to-toe steps back, while counting the steps out loud and while watching their

---

110. Delaware Justice of the Peace of Courts, Re: Admissibility of the Horizontal Gaze Nystagmus (HGN) Field Sobriety Test, Legal Memorandum 85-139 (Apr. 4, 1996) (U.S.).

HGN testing is widely known and generally accepted, based on the following evidence: scientific and legal studies and articles; expert testimony that HGN is well-documented in the medical community and widely used by law enforcement; the 1977 NHTSA study showing HGN testing to be the most reliable field method of predicting impairment; and case law from other jurisdictions showing that most courts addressing the issue have, at a minimum, admitted HGN evidence to determine probable cause.

*Id.*

111. United States Department of Transportation, *supra* note 103, at VII-2.

112. *Id.*

113. *Id.*

114. *Id.* at VII-2, 6, & 14.

115. *Id.*

116. *Id.* at VII-10.

117. National Highway Traffic Safety Administration, *supra* note 104.

118. *Id.*

feet.<sup>119</sup> During the turn, the subject keeps the front foot on the line, turns in a prescribed manner, and uses the other foot to take several small steps to complete the turn.<sup>120</sup>

Specifically, the law enforcement officer requires the suspect to first maintain a heel-to-toe stance while instruction is given, then walk down a line heel-to-toe for nine steps, turn and walk back heel-to-toe nine steps.<sup>121</sup> The subject should try not to raise his or her arms.<sup>122</sup> The law enforcement officer then looks for “mistakes” such as losing balance during instruction, walking too soon, stops in walking, missing toe with heel, raising of arms, walking off the line, improper turning, and taking the wrong number of steps.<sup>123</sup>

*c. The One-Leg Stand*

The OLS consists of the instructions stage and the balance and counting stage.<sup>124</sup> In the instructions stage, the subject must stand with feet together, keep arms at sides, and listen to the instructions.<sup>125</sup> In the balance and counting stage, the subject must raise one leg, either leg, approximately six inches off the ground, toes pointed out, keeping both legs straight.<sup>126</sup> While looking at the elevated foot, count out loud in the following manner: “one thousand and one,” “one thousand and two,” “one thousand and three,” until told to stop.<sup>127</sup>

The OLS tests a subject’s balance while standing with one leg on the ground while the other leg is extended and straight at a 45-degree angle.<sup>128</sup>

---

119. United States Department of Transportation, *supra* note 103, at VII-5.

120. *Id.*

121. Brian Neill, *Comment: State v. Homan*, 28 OHIO N.U. L. REV. 149, 155 (2001) (citing United States Department of Transportation, DWI Detection and Standardized Field Sobriety Testing Student Manual (An Outline on the Administration of Standardized Field Sobriety Tests) VIII-13, available at <http://www.mass.gov/eopss/images/msp/crimelab/oat/sfst-train-manuals/oat-2000-sfst-manual.pdf> (last accessed Sep. 12, 2013) [hereinafter DWI Testing Manual 2000]).

122. Neill, *supra* note 121 (citing DWI Testing Manual 2000, *supra* note 121, at VIII-14).

123. *Id.*

124. National Highway Traffic Safety Administrator, *supra* note 104.

125. *Id.*

126. *Id.*

127. *Id.*

128. Ryan Ashworth, *Cases Concerning Criminal Law: State v. Schmitt*, 31 OHIO N.U. L. REV. 490, 495 (2004) (citing DWI Testing Manual 2000, *supra* note 121, at VIII 12-13).

Law enforcement officers examine a subject for clues as follows: swaying, lifting arms to maintain balance, hopping, and putting the elevated foot down before the conclusion of the test.<sup>129</sup> Upon the finding of a combination of these clues, the subject is deemed legally intoxicated and subject to an arrest.<sup>130</sup>

*d. Other Similar Tests*

The other tests which were chosen for an in-depth, evaluative study by the NHSTA in 1975 were the finger-to-nose, finger count, and tracing tests.<sup>131</sup> During the “finger-to-nose” test, the subject must stand erect with closed eyes, head tipped back, and hands extended horizontally.<sup>132</sup> The subject must then touch the tip of his or her index finger to the tip of his or her nose, using both the left and right hand as the law enforcement officer instructs.<sup>133</sup> During the “finger-count” test, the subject must touch and count each finger in succession counting, “one-two-three-four, four-three-two-one” out loud.<sup>134</sup> During the “tracing test,” the subject traces a defined figure with his finger, and the law enforcement officer observes any deviation.<sup>135</sup>

2. Standards as to the Conduct of the Field Sobriety Tests

The manner by which the tests enumerated under R.A. No. 10586 are conducted in the jurisdiction of the U.S. is well-established.<sup>136</sup> By looking at the Student’s Manual, a driver from that jurisdiction expects to see the procedure by which a law enforcement officer conducts the field sobriety tests.<sup>137</sup> In sharp contrast, the text of R.A. No. 10586 provides no guidance as to the conduct of the field sobriety tests, not even a serviceable definition

---

129. Ashworth, *supra* note 128, at 495 (citing DWI Testing Manual 2000, *supra* note 121, at VIII 13-14).

130. Ashworth, *supra* note 128, at 496.

131. Daphne D. Newaz, *The Impaired Dual System Framework Of United States Drunk-Driving Law: How International Perspectives Yield More Sober Results*, 28 HOUS. J. INT’L L. 531, 543 (2006).

132. *Id.*

133. *Id.*

134. *Id.* at 50 (citing Phillip B. Price, Sr., *.10% Solution: Field Sobriety Testing*, CHAMPION MAG., Aug. 1996, at 46).

135. Newaz, *supra* note 131, at 50 (citing James J. Fazzalano, *The Use of Field Sobriety Testing in Drunk Driving Enforcement*, available at <http://www.cga.ct.gov/2000/rpt/2000-R-0873.htm> (last accessed Sep. 12, 2013)).

136. United States Department of Transportation, *supra* note 103.

137. *Id.* at VII.



of the tests enumerated.<sup>138</sup> No indication whatsoever is given whether the tests are to be conducted one after the other, whether the results of one test take precedence over the results of the others, whether failing in a single test would constitute “failure” that would warrant the mandatory determination of the driver’s blood alcohol concentration level through the use of a breath analyzer or similar measuring instrument under Section 6 thereof,<sup>139</sup> or whether passing all the tests despite the clear appearance of intoxication would warrant the breath analyzer test and other similar inquiries.<sup>140</sup> Simply put, the provisions of R.A. No. 10586, in the absence of Implementing Rules and Regulations (IRR),<sup>141</sup> lack the commensurate detail and exactitude that would assure of the regularity of the conduct of field sobriety tests.<sup>142</sup> While Deputy Presidential Spokesperson Valte would allude to “safety nets” that are clearly not written in the law,<sup>143</sup> it is left to optimism to assume that the same would find inclusion in the IRR of R.A. No. 10586.

#### IV. ANALYTICAL FRAMEWORK PENDING THE ISSUANCE OF THE IMPLEMENTING RULES AND REGULATIONS FOR REPUBLIC ACT NO. 10586

The absence of an IRR for R.A. No. 10586 at this point in time, admittedly, would limit the discussion on the implications of the abovementioned provisions, especially those involving the field sobriety tests, since an analysis of this nature would probably sound presumptuous at best, trivial at worst. Because of this, the analysis would focus on the legal principles and assumptions underpinning the said provisions, and would refrain from proposing specific measures that could be supplied by the IRR. Broad suggestions corresponding to established legal principles would be given instead.

The approach to be utilized is first, the introduction of the doctrine of “presumption of regularity of official functions,” and second, the analysis of

---

138. Anti-Drunk and Drugged Driving Act of 2013, § 6.

139. *Id.*

140. *Id.*

141. The purpose of an Implementing Rules and Regulations (IRR) is to prescribe the necessary rules and regulations on a certain subject matter. As of 7 August 2013, there is still no IRR for the Anti-Drunk and Drugged Driving Act of 2013. Therefore, there is no exact procedure on how the law enforcement officers and deputized local traffic enforcement officers shall implement Section 6 of the Anti-Drunk and Drugged Driving Act of 2013. See Commission on Audit, Revised Implementing Rules and Regulations of R.A. 9184 [Government Procurement Act], Republic Act No. 9184, rule I, § 1 (2009).

142. Anti-Drunk and Drugged Driving Act of 2013, § 6.

143. See Cheng, *supra* note 33.

how this doctrine would apply to the field sobriety tests under R.A. No. 10586. After this, the presumption of regularity as applied to the conduct of field sobriety tests will be juxtaposed with three specific concerns, and it will be determined whether the presumption of regularity doctrine would hold water in face of these concerns. Afterwards, a conclusion on the merits of the presumption of regularity doctrine as applied to the field sobriety tests will be presented.

*A. Presumption of Regularity in the Performance of Official Functions*

Under the Rules of Evidence,<sup>144</sup> specifically Rule 131, Section 3 (m), one of the disputable presumptions there provided is that “official duty has been regularly performed.”<sup>145</sup> This presumption is satisfactory if not contradicted, but may be contradicted and overcome by other evidence.<sup>146</sup> To further elaborate, a disputable presumption is “a species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence.”<sup>147</sup> The presumption that an official act or duty has been regularly performed is indulged by the law for the following fundamental reasons —

[F]irst, innocence, and not wrong-doing, is to be presumed; second, an official oath will not be violated; and third, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption.<sup>148</sup>

In sum, the SC held that this presumption evidences a rule of convenient public policy universally applied and without which, great distress would spring in the affairs of men.<sup>149</sup> The SC further clarified this doctrine, thus —

The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. *Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.*<sup>150</sup>

---

144. REVISED RULES ON EVIDENCE, rule 131, § 3 (m).

145. *Id.*

146. *Id.* rule 131, § 3.

147. *People v. de Guzman*, 229 SCRA 795 (1994).

148. *Id.* at 799.

149. *Id.*

150. *Id.* (emphasis supplied).

### I. Prevention of Abuse by the Law Enforcement Officer or Deputized Traffic Enforcement Officer

The provisions prescribing action on the part of the law enforcement officers and deputized local traffic enforcement officers to conduct field sobriety tests, specifically Section 6, are covered by the presumption of regularity of official duties after the fact.<sup>151</sup> It can be assumed pending the issuance of the IRR, in the absence of the quantum of evidence necessary to convict under R.A. No. 10586 akin to the chain of custody provision under Section 1 (b) of DDB Regulation No. 1, series of 2002,<sup>152</sup> that conviction for the crime of drunk driving hinges on the evidence to be presented by the law enforcement officer or deputized traffic enforcement officer, specifically his or her testimony as to the determination that the driver failed the field sobriety tests, and the results of the breath analyzer tests.

While this evidence is significant to produce the fact of conviction, one must recognize not only the dual nature of the two, but also the fact that the failure of the field sobriety tests seems to be a preliminary condition before the breath analyzer tests can be conducted.<sup>153</sup> Drawing from the U.S. experience with respect to this aspect, it can be argued that “[f]ield sobriety tests are impaired because they are highly subjective.”<sup>154</sup> Law enforcement officers “make the ultimate, subjective determination of whether to arrest a suspect, and this determination is often incorrect.”<sup>155</sup> Despite the possible incorrectness of future determinations of the same nature, under the Philippine legal system and the Rules of Evidence, this determination is presumed to be an official act done with the requisite regularity.<sup>156</sup>

Section 6 of R.A. No. 10586 provides that “[i]f the driver fails in the sobriety tests, it shall be the duty of the law enforcement officer to implement the mandatory determination of the driver’s blood alcohol concentration level through the use of a breath analyzer or similar measuring instrument.”<sup>157</sup> While there is no prohibition on the conduct of a breath analyzer test before or even simultaneous with the field sobriety tests,<sup>158</sup> there is no other provision that would permit the conduct of a breath

---

151. Anti-Drunk and Drugged Driving Act of 2013, § 6.

152. See Dangerous Drugs Board, Regulation No. 1, Series of 2002, § 1 (b) (2002).

153. Newaz, *supra* note 131, at 534 (citing Jim Fraiser, *Mississippi Informed Consent Law: A Survey of Decisions Responding to Recent Scientific Research on Tests for Intoxication*, 72 MISS. L.J. 1037, 1043 (2003)).

154. Newaz, *supra* note 131, at 534.

155. *Id.*

156. REVISED RULES ON EVIDENCE, rule 131, § 3 (m).

157. Anti-Drunk and Drugged Driving Act of 2013, § 6, ¶ 2 (emphasis supplied).

158. See generally Anti-Drunk and Drugged Driving Act of 2013.

analyzer test aside from the time when the driver fails in the sobriety tests.<sup>159</sup> Granted, this still tips the scales in favor of the law enforcement officer or deputized traffic enforcement officer, since in case of abuse, the only alternative the driver has is to “report any law enforcement officer that will — that is of the mind to abuse this particular new law,”<sup>160</sup> which would not preclude being charged with the crime of drunk driving.

## 2. Inequality of “Position” at the Time of Determining the Results of the Field Sobriety Tests

The glaring inequality between the law enforcement officer or deputized traffic enforcement officer and the driver can readily be seen by picturing the scenario addressed by R.A. No. 10586.<sup>161</sup> On the one hand stands the law enforcement officer or deputized traffic enforcement officer, clothed by the doctrine of the presumption of regularity of official duties, and on the other hand stands the driver, at the mercy of the law enforcement officer or deputized traffic enforcement officer, already shrouded with the cloud of probable cause because of the “manifestations and indications” as determined by law enforcement officer or deputized traffic enforcement officer.<sup>162</sup> The driver would, in reality, be more at the mercy of the law enforcement officer or deputized traffic enforcement officer if he or she in fact, consumed alcohol, regardless of whether or not the amount would reach the level of intoxication established by the DOH, NAPOLCOM, and DOTC.<sup>163</sup>

This becomes problematic since the mere fact of consuming alcohol, even if the driver involved is not “under the influence of alcohol” according to the level of intoxication as determined by the DOH, NAPOLCOM, and DOTC,<sup>164</sup> would put the driver into a situation where he or she might fail the field sobriety tests due to the subjective and possibly incorrect determination of the law enforcement officer or deputized traffic enforcement officer.<sup>165</sup> It is not suggested that such determination will be incorrect all the time; however, the possibility is present. The point is, the inequality between the driver and the law enforcement officer will always be present.<sup>166</sup> Also, it would be infinitely more difficult for the driver, especially if he or she is inebriated or under the influence of alcohol, to properly come up with clear and convincing evidence to overcome the presumption of

---

159. Anti-Drunk and Drugged Driving Act of 2013, § 6.

160. Cheng, *supra* note 33.

161. *See generally* Anti-Drunk and Drugged Driving Act of 2013.

162. *Id.* (citing REVISED RULES ON EVIDENCE, rule 131, § 3 (m)).

163. Anti-Drunk and Drugged Driving Act of 2012, § 3 (g).

164. *Id.*

165. Newaz, *supra* note 131, at 534 (citing Fraiser, *supra* note 153, at 1043).

166. *See generally* Anti-Drunk and Drugged Driving Act of 2003.

regularity enjoyed by the law enforcement officer<sup>167</sup> given the circumstance of possible inebriation or influence of alcohol. This also presents the danger of an arbitrary determination of probable cause or an irregular determination of failure in the field sobriety tests being validated by a subsequent mandatory alcohol test. This situation brings the discussion to this question — what do the field sobriety tests intend to determine in the first place?

3. The Duality of the Sobriety Tests: What is to be Determined? The Mere Fact of Being “Under the Influence” or Actual “Impairment?”

A clarification on the goal of field sobriety tests, while impossible to make a conclusive one at this point, should nevertheless be attempted to bring into light the nuances of the drunk driving law in other territories, particularly the U.S. This would assist in the understanding of our own fledgling law, which lacks the jurisprudential tradition and the development refined by years of decided cases brought to the courts regarding the subject matter.

“Driving under the influence” and “driving while intoxicated,” on the one hand, were defined by U.S. Federal Law as “driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit.”<sup>168</sup> Impairment, on the other hand, can be distinguished into physical impairment and legal impairment.<sup>169</sup> Physical impairment refers to “an individual’s actual ability to function.”<sup>170</sup> Legal impairment refers to “whether an individual’s [b]lood [a]lcohol [c]ontent is greater or less than a predetermined limit.”<sup>171</sup> These terms, although at times used interchangeably, are distinct from each other. Confusion arises because “[m]any individuals, including some judges, believe that the purpose of a field sobriety test is to measure driving impairment.”<sup>172</sup> In addition, “driving a motor vehicle is a very complex activity that involves a wide variety of tasks and operator capabilities. It is unlikely that complex human performance, such as that required to safely drive an automobile, can be

---

167. REVISED RULES ON EVIDENCE, rule 131, § 3 (m).

168. Highway Safety Act of 1966, 23 U.S.C. § 164 (a) (2).

169. TED VOSK & GEORGE L. BIANCHI, FIELD SOBRIETY TESTING AND DRIVER IMPAIRMENT: LINKED OR NOT? UNDERSTANDING DUI SCIENTIFIC EVIDENCE 9 (2d ed. 2009).

170. *Id.*

171. *Id.*

172. *Id.* at 15 (citing MARCELLINE BURNS ET AL., NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., DOT-HS-808-839, VALIDATION OF THE STANDARDIZED FIELD SOBRIETY TEST BATTERY AT BACS BELOW 0.10 PERCENT 27 (1998)).

measured at roadside[.] ... SFSTs do not directly measure driving impairment.”<sup>173</sup>

Regardless, the definition of “driving under the influence of alcohol” in Section 3 (e) of R.A. No. 10586<sup>174</sup> closely follows the definition under U.S. Federal Law. This would indicate, at the very least, that the field sobriety tests are geared towards determining the mere fact of being “under the influence,” even before the actual breath analyzer test. Thus, it can be assumed that the intention of R.A. No. 10586 is to use the field sobriety tests to determine the fact of “being under the influence,” as opposed to “impairment.”<sup>175</sup>

However, there has been the subscription to the view that “the paradigm which validates field sobriety tests is a fallacy.”<sup>176</sup> The field sobriety tests assume external clues as determinative; if a subject exhibits poor coordination, balance, or dexterity, then that subject is necessarily under the influence or intoxicated.<sup>177</sup> These tests also make the presumption that “a person’s level of intoxication can be measured by the way a person walks, talks, or reacts,”<sup>178</sup> regardless of the different physiological variables that determines the effect of alcohol on different subjects.

This is the danger that might open up avenues for abuse in the implementation of R.A. No. 10586.<sup>179</sup> The presumption of regularity doctrine,<sup>180</sup> coupled with the subjective nature of the field sobriety tests<sup>181</sup> and the pitfall of assuming superficial physical clues as determinative of “being under the influence,” would warrant at the very least an inspection of the possibilities not covered by any “safety nets”<sup>182</sup> in the law at present.

#### V. WHO WATCHES THE WATCHMEN?

Instead of proposing very specific provisions for the soon-to-be issued IRR for R.A. No. 10586, such suggestions having the distinct possibility of

173. VOSK & BIANCHI, *supra* note 169, at 16 (citing BURNS ET AL., *supra* note 172, at 27).

174. Anti-Drunk and Drugged Driving Act of 2013, § 3 (e).

175. *See generally* Anti-Drunk and Drugged Driving Act of 2013.

176. Newaz, *supra* note 131, at 537 (citing John B. Mancke, *DUI Field Sobriety Tests: Have the Courts Missed a Step?*, 73 PA. B. ASS’N Q. 117, 117 (2002)).

177. *Id.* (citing RICHARD ALPERT & TEXAS DISTRICT AND COUNTY ATTORNEYS ASSOCIATION, *DWI INVESTIGATION AND PROSECUTION 21* (2003)).

178. *Id.*

179. *See generally* Anti-Drunk and Drugged Driving Act of 2013.

180. REVISED RULES ON EVIDENCE, rule 131, § 3 (m).

181. Newaz, *supra* note 131, at 534 (citing Fraiser, *supra* note 153, at 1043).

182. Cheng, *supra* note 33.

becoming moot, the Author would, instead, highlight the contentious points arising from the above-discussed principles of law, and would instead provide searching questions and answers that would test the provisions of the IRR, once issued, with respect to the presumption of regularity in the determination of whether a driver is under the influence of alcohol through the field sobriety tests.

#### *A. Presumption of Regularity*

The main question respecting the conduct of law enforcement officers and deputized traffic enforcement officers is this: how can there be a guarantee of safeguards in the conduct of field sobriety tests? A fairly weak but serviceable suggestion would be a mutual monitoring system wherein not one, but two or more officers actually conduct the field sobriety tests to produce unanimity of opinion, eliminating the subjective element that can be the cause of mistake or abuse. This, however, may not be feasible because of logistical and manpower difficulties, and those cases wherein law enforcement officers and deputized traffic enforcement officers are necessarily alone at the time the indications or manifestations producing probable cause are witnessed. Nevertheless, such a proposal, if possible, would bolster the presumption of regularity in the performance of their official duties.

##### 1. Determination of Failure of Field Sobriety Tests

It is submitted that strict guidelines should be included in the IRR of R.A. No. 10586, which would address the following: manner of testing — whether one test would suffice or all tests should be performed; priority of results — whether the most effective test, the HGN, should be administered first, and should be more determinative than the WAT or the OLS; standard for failure — whether one test result would suffice to confirm that a driver is under the influence of alcohol or an aggregate of the test results should be appreciated in subjecting the driver to a breath analyzer test; and the conflict between perception and the results of the tests — whether passing all the tests despite the clear appearance of intoxication would warrant the breath analyzer test as the mandatory determination of the driver's blood alcohol concentration level through the use of a breath analyzer or similar measuring instrument under Section 6.<sup>183</sup>

##### 2. The Conduct of Field Sobriety Tests is Highly Subjective, but Presumed Regular

As mentioned above, there is a need to clarify the conduct of field sobriety tests as to its purpose — is it conducted to determine intoxication or

---

183. Anti-Drunk and Drugged Driving Act of 2013, § 6.

impairment? It can easily be argued that there is a more logical correlation between driving impairment and vehicular accidents than between intoxication and vehicular accidents.<sup>184</sup> After all, intoxication by itself does not guarantee impairment; a driver can be intoxicated with or without being impaired.<sup>185</sup> However, driving impairment in the context of DUI or DWI is almost always absent when the driver is not intoxicated.<sup>186</sup> In narrowing the purpose of field sobriety tests, the subjectivity in the determination by law enforcement officers and deputized traffic enforcement officers will be lessened, though not completely eliminated.

*a. Is the Presumption of Regularity in Field Sobriety Tests Reasonable?*

While the presumption of regularity doctrine is necessary for our legal system, particularly official acts geared towards addressing our criminal and penal situation,<sup>187</sup> law enforcement officials and deputized traffic enforcement officers should likewise be held to a higher standard of accountability,<sup>188</sup> in the same manner that R.A. No. 10586 holds operators of motor vehicles to a strict standard of behavior that can easily result in the loss of liberty or property.<sup>189</sup>

3. Possibility of Mandatory Alcohol Testing Subsequently Validating “Arbitrary” or “Irregular” Determinations

One of the earlier concerns as to the implementation of Section 6 of R.A. No. 10586 by the law enforcement officers and deputized local traffic enforcement officers is the nature of the determination of probable cause, which can be arbitrary and the nature of the determination of failure in the field sobriety tests, which can be irregular. The main danger attached to these determinations is the subsequent validation of such acts by the mandatory alcohol testing, which would show that the driver is guilty of the *malum prohibitum* infraction as sanctioned by this special law, even if the acts leading to the conclusive proof of being under the influence of alcohol were arbitrary or irregular in nature.

---

184. See generally National Highway Traffic and Safety Administration, Driver Fitness and Medical Guidelines 15, available at <http://www.nhtsa.gov/ DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811210.pdf> (last accessed Sep. 12, 2013).

185. University Police Department & Emergency Management, Driving Under the Influence, available at <http://police.colorado.edu/crime-prevention-safety/driving-under-influence> (last accessed Sep. 12, 2013).

186. See generally United States Department of Transportation, *supra* note 103.

187. REVISED RULES ON EVIDENCE, rule 131, § 3 (m).

188. PHIL. CONST. art. XI, § 1.

189. Anti-Drunk and Drugged Driving Act of 2013, § 2.



*a. The Absence of a Strict Compliance Rule? Could there be Substantial Compliance under the Law?*

To address the above concern, it would be ideal if a strict compliance rule will be implemented with respect to the conduct of field sobriety tests similar to the strict compliance rule under Section 1 (b) of the DDB Regulation No. 1, series of 2002,<sup>190</sup> regarding the chain of custody doctrine, that would preclude successful prosecution of a driver if strict rules and procedures are not followed. This offsets the burden confronted by the driver subjected to field sobriety tests in providing clear and convincing evidence that would overcome the presumption of regularity in official functions. Further, a substantial compliance standard should not be adopted for the purpose of implementing the provisions of the Anti-Drunk and Drugged Driving Act. In this wise, the concerns mentioned above, specifically the arbitrariness of the determination of probable cause and the irregularity in the determination of failure in the field sobriety tests, will be addressed.

#### VI. CONCLUSION

The Anti-Drunk and Drugged Driving Act is a piece of much-needed legislation. The efforts of the House of Representatives and the Senate should be applauded for the foresight and the priority they gave to their respective House and Senate Bills for R.A. No 10856 to come into fruition. The dangers of operating a motor vehicle cannot be underestimated, as it is a recognized cause of fatalities in Philippine roads, especially when the influence of alcohol is introduced into the equation.<sup>191</sup> Yet the spectre of abuse hanging over the heads of the citizenry should not be ignored, especially when confronted with the reality of abuse and the everyday experience with law enforcement officers and traffic enforcement officers. In the end, it becomes a matter of balancing the interests of the government in addressing the problem of drunk driving and the interests of the citizenry, both the pedestrians and motorists, to be safe not only from vehicular fatalities but also from undue influence by virtue of the implementation of the Anti-Drunk and Drugged Driving Act of 2013.

---

190. See Dangerous Drugs Board, Regulation No. 1, Series of 2002, § 1 (b) (2002).

191. Castillo, *supra* note 2.