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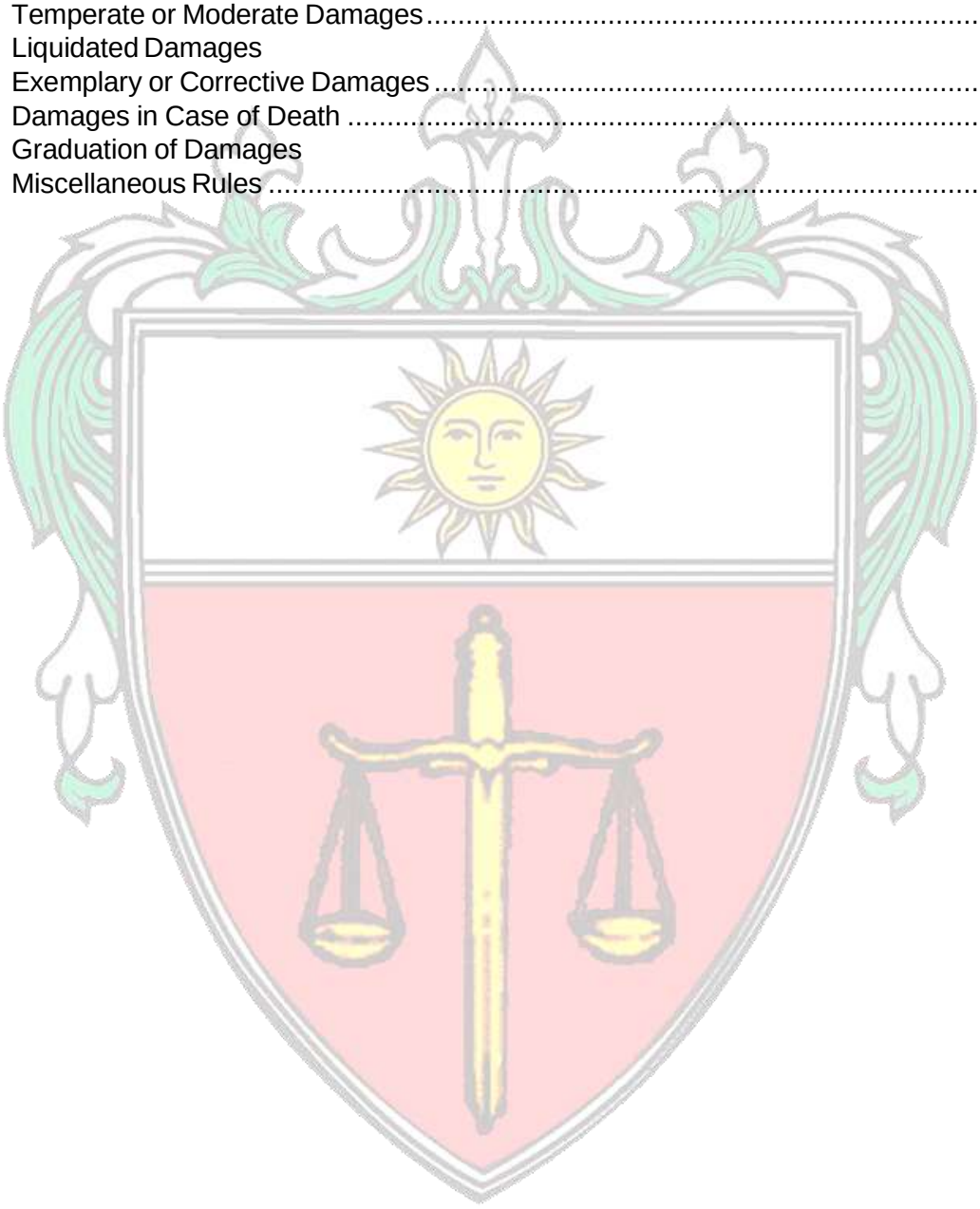

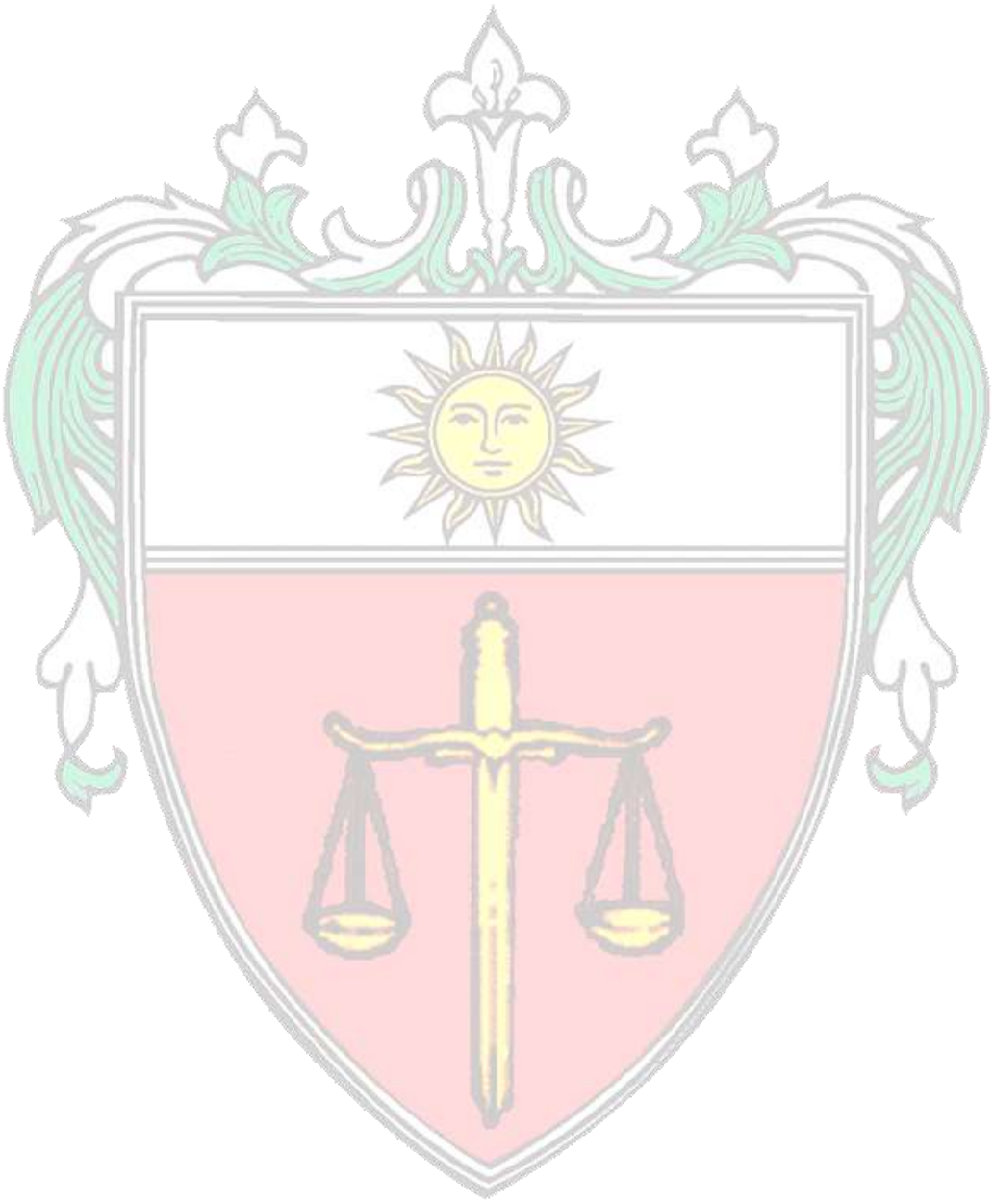

I. Effect and Application of Laws (Civil Code)

Congress passed a law imposing taxes on income earned out of a particular activity that was not previously taxed. The law, however, taxed incomes already earned within the fiscal year when the law took effect. Is the law valid? (2011 BAR)

(A) No, because laws are intended to be prospective, not retroactive.
(B) No, the law is arbitrary in that it taxes income that has already been spent.
(C) Yes, since tax laws are the lifeblood of the nation.
(D) Yes, tax laws are an exception; they can be given retroactive effect.

The doctrine of stare decisis prescribes adherence to precedents in order to promote the stability of the law. But the doctrine can be abandoned (2011 BAR)

(A) When adherence to it would result in the Government's loss of its case.
(B) When the application of the doctrine would cause great prejudice to a foreign national.
(C) When necessary to promote the passage of a new law.
(D) When the precedent has ceased to be beneficial and useful.

Include: Conflict of Laws (Private International Law)

Q: Ted, married to Annie, went to Canada to work. Five (5) years later, Ted became a naturalized Canadian citizen. He returned to the Philippines to convince Annie to settle in Canada. Unfortunately, Ted discovered that Annie and his friend Louie were having an affair. Deeply hurt, Ted returned to Canada and filed a petition for divorce which was granted. In December 2013, Ted decided to marry his childhood friend Corazon in the Philippines. In preparation for the wedding, Ted went to the Local Civil Registry of Quezon City where his marriage contract with Annie was registered. He asked the Civil Register to annotate the decree of divorce on his marriage contract with Annie. However, he was advised by the National Statistics Office (NSO) to file a petition for judicial recognition of the decree of divorce in the Philippines.

Is it necessary for Ted to file a petition for judicial recognition of the decree of divorce he obtained in Canada before he can contract a second marriage in the Philippines? (2014 BAR)

A: YES, a divorce decree even if validly obtained abroad cannot have effect in the Philippines unless it is judicially recognized through an appropriate petition filed before Philippine courts. The foreigner must file a petition under Rule 108 and prove therein the fact of divorce by presenting an official copy attested by the officer having custody of the original. He must also prove that the court which issued the divorce has jurisdiction to

issue it and the law of the foreign country on divorce *(Corpuz v. Sto. Tomas, G.R. No. 186571, August 11, 2010)*.

An Australian living in the Philippines acquired shares of stock worth P10 million in food manufacturing companies. He died in Manila, leaving a legal wife and a child in Australia and a live-in partner with whom he had two children in Manila. He also left a will, done according to Philippine laws, leaving all his properties to his live-in partner and their children. What law will govern the validity of the disposition in the will? (2011 BAR)

(A) Australia law since his legal wife and legitimate child are Australians and domiciled in Australia.
(B) Australian law since the intrinsic validity of the provisions of a will is governed by the decedent's national law.
(C) Philippine law since the decedent died in Manila and he executed his will according to such law.
(D) Philippine law since the decedent's properties are in the Philippines.

This attribute or incident of a case determine whether it is a conflict-of-laws case or one covered by domestic law. (2012 BAR)
a) Cause of action
b) Foreign element
c) Jurisdiction
d) Forum non conveniens

Atty. BUKO, a Filipino, executed a will while he was in Spain. The attestation clause of the said will does not contain Buko's signature. It is valid under Spanish law. At its probate in Manila, it is being opposed on the ground that the attestation clause does not contain BUKO's signature. Is the opposition correct? Choose the best answer. (2012 BAR)
a) Yes, because it is a fatal defect.
b) Yes, the will is not valid under Philippine law.
c) No, attestation clause is not an act of the testator.
d) No, the governing law is Spanish law.

Even if the applicable law is a foreign law, a count in the Philippines may be constrained to apply Philippine law under any of the following instances, except: (2012 BAR)
a) when the foreign law, judgment or contract is contrary to a sound and important public policy of the forum;
b) when the property subject of the case is located outside of the Philippines;
c) when the foreign law or judgment is penal in nature;
d) when the foreign law is procedural in nature.

If a will is executed by a testator who was born a Filipino citizen but became naturalized Japanese citizen at the time of his death, what law will govern its

testamentary provisions if the will is executed in China and the property being disposed is located in Indonesia? (2012 BAR)
a) Chinese law
b) Philippine law
c) Indonesia law
d) Japanese law

A Japanese national and a Filipino national entered into a contract for services in Thailand. The services will be rendered in Singapore. In case of breach, what law will govern? (2012 BAR)
a) Thailand law
b) Philippine law
c) Singapore law
d) Japanese law

Pedro (Filipino) and his wife Jane (American) executed a joint will in Canada, where such joint will is valid. In case the joint will is probated in Japan, what law will govern the formalities of the joint will? (2012 BAR)
a) American law
b) Philippine law
c) Canadian law
d) Japanese law

A French national revokes his will in Japan where he is domiciled. He then changed his domicile to the Philippines where he died. The revocation of his will in Japan is valid under Japanese law but invalid under Philippine law. The affected heir is a Malaysian national residing in the Philippines. What law will apply? (2012 BAR)
a) Japanese law
b) Philippine law
c) French law
d) Malaysian law

Pedro (Filipino) and Bill (American) entered into a contract in Australia, whereby it was agreed that Pedro will build a commercial building for Bill in the Philippines, and in payment for the construction, Bill will transfer and convey his cattle ranch located in Japan in favor of Pedro. In case Pedro performs his obligation, but Bill fails or refuses to pay, what law will govern? (2012 BAR)
a) American law
b) Philippine law
c) Australian law
d) Japanese law

Give at least two reasons why a court may assume jurisdiction over a conflict of laws case. (2010 Bar Question)

SUGGESTED ANSWER:

1. *Statute theory.* There is a domestic law authorizing the local court to assume jurisdiction.

2. *Comity theory.* The local court assumes jurisdiction based on the principle of comity or courtesy.

ALTERNATIVE ANSWER:

3. Public Order. To maintain peace and order, disputes that disturb the peace of the forum should be settled by the courts of the forum even though the application of a foreign law is necessary for the purpose.

4. Humanitarian Principle. An aggrieved party should not be left without remedy in a forum even though the application of a foreign law by the courts of the forum is unavoidable in order to extend relief.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

The doctrine of "processual presumption" allows the court of the forum to presume that the foreign law applicable to the case is the same as the local or domestic law. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. If the foreign law necessary to resolve an issue is not proven as a fact, the court of the forum may presume that the foreign law is the same as the law of the forum.

On December 1, 2000, Dr. Juanito Fuentes executed a holographic will, wherein he gave nothing to his recognized illegitimate son, Jay. Dr. Fuentes left for the United States, passed the New York medical licensure examinations, resided therein, and became a naturalized American citizen. He died in New York in 2007. The laws of New York do not recognize holographic wills or compulsory heirs.

Can the holographic will of Dr. Fuentes be admitted to probate in the Philippines? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, the holographic will of Dr. Fuentes may be admitted to probate in the Philippines because there is no public policy violated by such probate. The only issue at probate is the due execution of the will which includes the formal validity of the will. As regards formal validity, the only issue the court will resolve at probate is whether or not the will was executed in accordance with the form prescribed by the law observed by the testator in the execution of his will. For purposes of probate in the Philippines, an alien testator

may observe the law of the place where the will was executed (Article 17, NCC), or the formalities of the law of the place where he resides, or according to the formalities of the law of his own country, or in accordance with the Philippine Civil Code (Art. 816, NCC).Since Dr. Fuentes executed his will in accordance with Philippine law, the Philippine court shall apply the New Civil Code in determining the formal validity of the holographic will. The subsequent change in the citizenship of Dr. Fuentes did not affect the law governing the validity of his will. Under the New Civil Code, which was the law used by Dr. Fuentes, the law in force at the time of execution of the will shall govern the formal validity of the will (Article 795, NCC).

Assuming that the will is probated in the Philippines, can Jay validly insist that he be given his legitime? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, Jay cannot insist because under New York law he is not a compulsory heir entitled to a legitime.

The national law of the testator determines who his heirs are, the order that they succeed, how much their successional rights are, and whether or not a testamentary disposition in his will is valid (Article 16, NCC). Since, Dr. Fuentes was a US citizen, the laws of New York determines who his heirs are. And since New York law does not recognize the concept of compulsory heirs, Jay is not a compulsory heir of Dr. Fuentes entitled to a legitime.

Emmanuel and Margarita, American citizens and employees of the U.S. State Department, got married in the African state of Kenya where sterility is a ground for annulment of marriage. Thereafter, the spouses were assigned to the U.S. Embassy in Manila. On the first year of the spouses' tour of duty in the Philippines, Margarita filed an annulment case against Emmanuel before a Philippine court on the ground of her husband's sterility at the time of the celebration of the marriage.

A. **Will the suit prosper? Explain your answer. (3%)** (2009 Bar Question)

SUGGESTED ANSWER:

No, the suit will not prosper. As applied to foreign nationals with respect to family relations and status of persons, the nationality principle set forth in Article 15 of the Civil Code will govern the relations of Emmanuel and Margarita. Since they are American citizens, the governing law as to the ground for annulment is not Kenyan law which Margarita invokes in support of sterility as such ground; but should be U.S. law, which is the national law of both Emmanuel and Margarita as recognized under Philippine law. Hence, the Philippine court will not give due course to the case based on Kenyan law. The nationality principle as expressed in the application of national law of foreign nationals by Philippine courts is established by precedents (Pilapil v. Ibay-Somera, 174 SCRA 653 [1989], Garcia v.

Recio, 366 SCRA 437 [2001], Llorente v. Court of Appeals 345 SCRA 92 [2000], and Bayot v. Court of Appeals 570 SCRA 472 [2008]).

ANOTHER SUGGESTED ANSWER:

The forum has jurisdiction over an action for the annulment of marriage solemnized elsewhere but only when the party bringing the action is domiciled in the forum. In this case, none of the parties to the marriage is domiciled in the Philippines. They are here as officials of the US Embassy whose stay in the country is merely temporary, lasting only during their fixed tour of duty. Fence, the Philippine courts have no jurisdiction over the action.

B. Assume Emmanuel and Margarita are both Filipinos. After their wedding in Kenya, they come back and take up residence in the Philippines. Can their marriage be annulled on the ground of Emmanuel's sterility? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, the marriage cannot be annulled under Philippine law. Sterility is not a ground for annulment of marriage under Article 45 of the Family Code.

ANOTHER SUGGESTED ANSWER:

No, the marriage cannot be annulled in the Philippines.

The Philippine court shall have jurisdiction over the action to annul the marriage not only because the parties are residents of the Philippines but because they are Filipino citizens. The Philippine court, however, shall apply the law of the place where the marriage was celebrated in determining its formal validity (Article 26, FC; Article 17, NCC).

Since the marriage was celebrated in Kenya in accordance with Kenyan law, the formal validity of such marriage is governed by Kenyan law and any issue as to the formal validity of that marriage shall be determined by applying Kenyan law and not Philippine law.

However, while Kenyan law governs the formal validity of the marriage, the legal capacity of the Filipino parties to the marriage is governed not by Kenyan law but by Philippine law (Article 15, NCC). Sterility of a party as a ground for the annulment of marriage is not a matter of form but a matter of legal capacity. Hence, the Philippine court must apply Philippine law in determining the status of the marriage on the ground of absence or defect in the legal capacity of the Filipino parties. Since sterility does not constitute absence or defect in the legal capacity of the parties under Philippine law, there is no ground to avoid or annul the marriage. Hence, the Philippine court has to deny the petition.

A. If Ligaya, a Filipino citizen residing in the United States, file a petition for change of name before the District Court of New York, what law shall apply? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

New York law shall apply. The petition for change of name filed in New York does not concern the legal capacity or status of the petitioner. Moreover, it does not affect the Registry of any other country including the country of birth of the petitioner. Whatever judgment is rendered in that petition will have effect only in New York. The New York court cannot, for instance, order the Civil Registrar in the Philippines to change its records. The judgment of the New York Court allowing a change in the name of the Petitioner will be limited to the records of the petitioner in New York and the use of the new name in all her transactions in New York. Since the records and processes in New York are the only ones affected the New York Court will apply New York law in resolving the petition.

ALTERNATIVE ANSWER:

Philippine law shall apply (Art. 15, NCC). Status, conditions, family rights and duties are governed by Philippine laws as to Filipinos even though sojourning abroad.

ANOTHER ALTERNATIVE ANSWER:

If Ligaya, a Filipino, files a petition for change of name with the District Court of New York, the laws of New York will govern since change of name is not one of those covered by the principles of nationality.

B. If Henry, an American citizen residing in the Philippines, files a petition for change of name before a Philippine court, what law shall apply? Explain (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Philippine law will apply. The petition for change of name in the Philippines will affect only the records of the petitioner and his transactions in the Philippines. The Philippine court can never acquire jurisdiction over the custodian in the US of the records of the petitioner. Moreover, change of name has nothing to do with the legal capacity or status of the alien. Since Philippine records and transactions are the only ones affected, the Philippine court may effect the change only in accordance with the laws governing those records and transactions. That the law cannot be but Philippine law.

ALTERNATIVE ANSWER:

U.S. Law shall apply as it is his national law. This is pursuant to the application of lex patriae or the nationality principle, by which his legal status is governed by national law, the matter of change of name being included in legal status. The Supreme Court has

reiterated in several cases, that the lex patriae as provided in Article 15 of the Civil Code is applicable to foreign nationals in determining their legal status (supra).

II. Human Relations (Arts. 19-22, Civil Code)

Spouses Magtanggol managed and operated a gasoline station on a 1,000 sq.m. lot which they leased from Francisco Bigla-awa. The contract was for a period of three (3) years. When the contract expired, Francisco asked the spouses to peacefully vacate the premises. The spouses ignored the demand and continued with the operation of the gasoline station.

One month after, Francisco, with the aid of a group of armed men, caused the closure of the gasoline station by constructing fences around it.

Was the act of Francisco and his men lawful? Why? (4%) (2014 BAR)

SUGGESTED ANSWER:

No, the act was not lawful. Even if the lessee's right to occupy the premises has expired, the lessor cannot physically oust the lessee from the leased premises if the latter refuses to vacate. The lessor must go through the proper channels by filing an appropriate case for unlawful detainer or recovery of possession. Every possessor has a right to be respected in his possession (Article 539) and in no case my possession be acquired through force or intimidation as long as there is a possessor who objects thereto. (Article 536) The act of Francisco is an abuse of rights because even if he has the right to recover possession of his property, he must act with justice and give the lessees their day in court and observe honesty and good faith.

When one exercises a right recognized by law, knowing that he thereby causes an injustice to another, the latter is entitled to recover damages. This is known as the principle of (2011 BAR)

(A) res ipsa loquitur.
(B) damnum absque injuria.
(C) vicarious liability.
(D) abuse of rights.

Six tenants sued X, the landowner, for willfully denying them water for their farms, which water happened to flow from land under X's control, his intention being to force them to leave his properties. Is X liable for his act and why? (2011 BAR)

(A) No, because the tenants must be content with waiting for rainfall for their farms.
(B) No, since X owns both the land and the water.
(C) Yes, because the tenants' farms have the natural right of access to water wherever it is located.

(D) Yes, since X willfully caused injury to his tenants contrary to morals, good customs or public policy.

Janice and Jennifer are sisters. Janice sued Jennifer and Laura, Jennifer's business partner for recovery of property with damages. The complaint did not allege that Janice exerted earnest efforts to come to a compromise with the defendants and that such efforts failed. The judge dismissed the complaint outright for failure to comply with a condition precedent. Is the dismissal in order? (2011 BAR)

(A) No, since Laura is a stranger to the sisters, Janice has no moral obligation to settle with her.
(B) Yes, since court should promote amicable settlement among relatives.
(C) Yes, since members of the same family, as parties to the suit, are required to exert earnest efforts to settle their disputes before coming to court.
(D) No, the family council, which would ordinarily mediate the dispute, has been eliminated under the Family Code.

PERSONS

I. Persons and Personality (Civil Code)

Section 1 of P.D. No. 755 states: "Section 1. Declaration of Nation- al Policy. - It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and effi- ciently realized by the implementation of the 'Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers' executed by the Philippine Coconut Authority, the terms of which' Agreement' are hereby incorporated by reference; x x x"

A copy of the Agreement was not attached to the Presidential Decree. P.D. No. 755 was published in the Official Gazette but the text of the Agreement described in Section I was not published. Can the Agreement in question be accorded the status of a law? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

NO, the Agreement cannot be accorded the status of a law. A law must be published to become effective. Article 2 of the Civil Code provides that laws shall take effect after fifteen (15) days following the comple- tion of their publication in the Official Gazette, unless it is otherwise provided. The publication must be of the full text of the law since the purpose of publication is to inform the public of the contents of the law (Tanada v. Tuvera, 136 SCR A 27 {1985/). In Nagkakaisang Maralita v. Military Shrine Services (675 SCRA 359 [2013/), the Supreme Court held that the addendum to the Proclamation issued by President Mar- cos has no force and effect considering that the same was not pub- lished in the Official Gazette. Moreover, the Supreme Court in Co- juangco, Jr. v. Republic 686

SCRA 472 {2012], which is on all fours with this case, ruled that while the Agreement was incorporated by reference, it was not reproduced or attached as an annex to the law and therefore cannot be accorded to the status of a law. Publication of the full text of the law is indispensable for its effectivity.

Which of the following is NOT included in the attributes of juridical capacity? (2012 BAR)

a) Juridical capacity is inherent in every natural person, and therefore it is not acquired.
b) Juridical capacity is lost only through death.
c) Juridical capacity is the fitness to be the subject of legal relations.
d) Juridical capacity cannot exist without capacity to act.

A pedestrian, who was four (4) months pregnant, was hit by a bus driver while crossing the street. Although the pedestrian survived, the fetus inside her womb was aborted. Can the pedestrian recover damages on account of the death of the fetus?

a. Yes, because of Article 2206 of the Civil Code which allows the surviving heirs to demand damages for mental anguish by reason of the death of the deceased.
b. Yes, for as long as the pedestrian can prove that she was not at fault and the bus driver was the one negligent.
c. No, because a fetus is not a natural person.
d. No, if the fetus did not comply with the requirements under Article 41 of the Civil Code.

Answer:
D – Article 41 of the Civil Code requires that to be considered a person, a fetus with an intrauterine life of less than seven months must survive for the full twenty-four hours from complete separation from the mother's womb.

Because of X's gross negligence, Y suffered injuries that resulted in the abortion of the foetus she carried. Y sued X for, among other damages, P1 million for the death of a family member. Is Y entitled to indemnity for the death of the foetus she carried? (2011 BAR)

(A) Yes, since the foetus is already regarded as a child from conception, though unborn.
(B) No, since X's would not have known that the accident would result in Y's abortion.
(C) No, since birth determines personality, the accident did not result in the death of a person.
(D) Yes, since the mother believed in her heart that she lost a child.

Birth determines personality. Death extinguishes it. Under what circumstances may the personality of a deceased person continue to exist? (2011 BAR)

(A) In case of re-appearance of a missing person presumed dead.

(B) In protecting the works of a deceased under intellectual property laws.
(C) In case of declaration of presumptive death of a missing spouse.
(D) In the settlement of the estate of a deceased person.

Dr. Lopez, a 70-year old widower, and his son Roberto both died in a fire that gutted their home while they were sleeping in their air-conditioned rooms. Roberto's wife, Marilyn, and their two children were spared because they were in the province at the time. Dr. Lopez left an estate worth P20M and a life insurance policy in the amount of P1M with his three children --- one of whom is Roberto --- as beneficiaries.

Marilyn is now claiming for herself and her children her husband's share in the estate left by Dr. Lopez, and her husband's share in the proceeds of Dr. Lopez's life insurance policy. Rule on the validity of Marilyn's claims with reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

As to the Estate of Dr. Lopez:

Marilyn is not entitled to a share in the estate of Dr. Lopez. For purposes of succession, Dr. Lopez and his son Roberto are presumed to have died at the same time, there being no evidence to prove otherwise, and there shall be no transmission of rights from one to the other (Article 43, NCC). Hence, Roberto inherited nothing from his father that Marilyn would in turn inherit from Roberto. The children of Roberto, however, will succeed their grandfather, Dr. Lopez, in representation of their father Roberto and together will receive 1/3 of the estate of Dr. Lopez since their father Roberto was one of the three children of Dr. Lopez. Marilyn cannot represent her husband Roberto because the right is not given by law to a surviving spouse.

As to the proceeds of the insurance on the life of Dr. Lopez:

Since succession is not involved as regards the insurance is not involved as regular the insurance contract, the provisions of the Rules of Court (Rule 131, Sec. 3, [jj] [5]) on survivorship shall apply. Under Rules, Dr. Lopez, who was 70 years old, is presumed to have died ahead of Roberto, who is presumably between the ages of 15 and 60. Having survived the insured,

Roberto's right as a beneficiary became vested upon the death of Dr. Lopez. When Roberto died after Dr. upon the death of Dr. Lopez. When Roberto died after Dr. Lopez, his right to receive the insurance proceeds became part of his hereditary estate, which in turn was inherited in equal shares by his legal heirs, namely, his spouse and children. Therefore, Roberto's children and his spouse are entitled to Roberto's one-third share in the insurance proceeds.

At age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pietro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one week, they were found in an abandoned hut in Cavite. Marian and Pietro were hacked with bolos.

Marian and the baby she delivered were both found dead, with the baby's umbilical cord already cut. Pietro survived.

II. Marriage (Family Code)

State whether the following marital unions are valid, void, or voidable, and give the corresponding justifications for your answer: (2017 Bar)

(a) Ador and Becky's marriage when Ador was afflicted with AIDS prior to marriage. (2%) (2017 BAR)

SUGGESTED ANSWER:

(a) The marriage is voidable because Ador was afflicted with a serious and incurable sexually-transmitted disease at the time of the marriage. For a marriage to be annulled under Art. 45(6), the sexually-transmissible disease must be: 1) existing at the time of the marriage; 2) found to be serious and incurable; and 3) unknown to the other party. Since Ador was afflicted with AIDS, which is a serious and incurable disease, and the condition existed at the time of the marriage, the marriage is voidable, provided that such illness was not known to Becky.

(b) Carlos' marriage to Dina which took place after Dina had poisoned her previous husband Edu in order to free herself from any impediment in order to live with Carlos. (2%) (2017 BAR)

SUGGESTED ANWER:

(b) The marriage of Carlos to Dina is void for reasons of public policy. Article 38 (9) of the Family Code provides that marriage between parties where one, with the intention to marry the other, killed that other person's spouse or his or her own spouse is void from the beginning for reasons of public policy.

(c) Eli and Fely's marriage solemnized seven years after the disappearance of Chona, Eli's previous spouse, after the plane she had boarded crashed in the West Philippine Sea. (2%) (2017 BAR)

SUGGESTED ANSWERS:

(c) The marriage is void under Article 35 (4) in relation to Article 41 of the Family Code. The requisites of a valid marriage under Article 41 are as follows: 1) the prior spouse had been absent for four consecutive years, except when the disappearance is in danger of death which only requires two years; 2) the present spouse had a well-founded belief that the abent spouse was already dead; and 3) the spouse present must institute a summary proceeding for declaration of presumptive death. There is nothing in the facts that Eli instituted a summary proceeding for declaration of presumptive death of his previous spouse and this cannot be presumed. Thus, the exception under Article 35 (4) is inapplicable and the subsequent marriage is void.

ALTERNATIVE ANSWER:

(c) If the marriage was celebrated under the New Civil Code, the marriage would be valid, as no declaration of presumptive death is necessary under Article 391 of the said Code.

(d) David who married Lina immediately the day after obtaining a judicial decree annulling his prior marriage to Elisa. (2%) (2017 BAR)

SUGGESTED ANSWERS:

(d) The marriage was valid as there were no facts showing that David and Elisa have properties and children, which would render the marriage void under Article 53 of the Family Code in relation to Article 52. In addition, David and Lina have no impediment to marry.

ALTERNATIVE ANSWER:

(d) If the spouses have properties and children, the marriage is void under Article 53 of the Family Code in relation to Article 52. For a marriage subsequent to a judgment of annulment of a previous marriage to be valid, the properties of the spouses must have been partitioned and distributed, the presumptive legitimes of children, if any, must have been delivered, and the aforementioned facts must be recoreded in the civil registry and registries of property. The marriage was entered into the day after obtaining of a judicial decree of annulment and it would have been impossible for David to comply with the requirements in such a short time. Therefore, the marriage is void.

(e) Marriage of Zoren and Carmina who did not secure a marriage license prior to their wedding, but lived together as husband and wife for 10 years without any legal impediment to marry. (2%) (2017 BAR)

SUGGESTED ANSWER:

(e) If Zorena and Carmina lived together as husband and wife for 10 years prior to their marriage, then the marriage is valid, despite the absence of the marriage license. An exception to the rule that a marriage shall be void if solemnized without a license under Article 35 (3) is that provided for under Article 34 of the Family Code. When a man and a woman have lived together as husband and wife for at least 5 years and without any legal impediment to marry each other, they may celebrate the marriage without securing a marriage license.

Romeo and Juliet, both Filipinos, got married. After a few years, Juliet got word from her mother that she can go to the United States for naturalization. Juliet promised she will be back the moment she becomes an American. After sometime, Romeo learned from a friend that Juliet already became a US citizen and even divorced him to marry a wealthy American businessman. Romeo filed a petition before the Regional Trial Court praying that an order be issued authorizing him to remarry pursuant to Article 26 of the Family Code. Decide the petition with reasons. (5%) (2016 BAR)

SUGGESTED ANSWER:

If the time of Juliet's acquisition of U.S. citizenship preceded the time when she obtained the divorce decree, then the divorce decree can be given effect in the Philippines, and consequently, Romeo will be capac- itated to remarry under Philippine law. On the other hand, if Juliet ob- tained the divorce decree before she acquired U.S. citizenship, then the foreign divorce decree cannot be recognized by Philippine courts.
Article 26, paragraph 2 of the Family Code provides that where a mar- riage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have ca- pacity to remarry under Philippine law. In Republic v. Orbecido (472 SCRA 114 [2005])i the Supreme Court ruled that Article 26, paragraph 2 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The reckoning point is not their citizenship at the time of celebration of marriage, but their citizenship at the time the divorce decree is obtained abroad by the alien spouse capacitating him/her to remarry.

ALTERNATIVE ANSWER:

The petition should not be granted. A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the di- vorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other evidentiary facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence (Republic v. Or- becido, 366 SCRA 437 (20011). In this case, no evidence was ad- duced to prove the divorce between Romeo and Juliet and the validity of the same under IJ.S. law.

Leo married Lina and they begot a son. After the birth of their child, Lina exhibited unusual behavior and started to neglect her son; she frequently went out with her friends and gambled in casinos. Lina later had extra-marital affairs with several men and eventually abandoned Leo and their son. Leo was able to talk to the psychiatrist of Lina who told him that Lina suffers from de- mentia praecox, a form of psychosis where the afflicted person is prone to commit homicidal attacks. Leo was once stabbed by Lina but fortunately he only suffered minor injuries. Will a Petition for Declaration of Nullity of Marriage filed with the court prosper? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

NO, a Petition for Declaration of Nullity of Marriage under Article 36 of the Family Code will not prosper. Even if taken as true, the grounds alleged are not sufficient to declare the marriage void under "psycho- logical incapacity". In Santos v. CA (240 SCRA 20 [1995J), the Supreme Court explained that psychological incapacity must be char- acterized by (a) gravity, (b) juridical antecedence, and (c) incurability. The illness must be shown as downright incapacity or inability to per- form one's marital obligations, not a mere refusal, neglect, difficulty, or much less, ill will.

While Lina was not examined by a physician, the Supreme Court has ruled in Marcos v. Marcos (343 SCRA 755 12000]) that actual medical examination need not be resorted to where the totality of evidence presented is enough to sustain a finding of psychological incapacity. However, in this case, the pieces of evidence presented are not suffi- cient to conclude that indeed Lina is suffering from psychological inca- pacity existing already before the marriage, incurable and serious enough to prevent her from performing her essential marital obligations.

ALTERNATIVE ANSWER:

No, a Petition for Declaration of Nullity of Marriage under Article 36 of the Family Code will not prosper. However, a Petition for Annulment of Marriage under Article 45 of the Family Code may prosper, on the ground of unsound mind, assuming that Lina's unsound mind existed at the time of the celebration of the marriage.

Brad and Angelina had a secret marriage before a pastor whose office is located in Arroeeros Street, City of Manila. They paid money to the pastor who took care of all the documentation. When Angelina wanted to go to the U.S., she found out that there was no marriage license issued to them before their marriage. Since their marriage was solemnized in 1995 after the effectivity of the Family Code, Angelina tiled a petition for judicial declaration of nullity on the strength of a certification by the Civil Regis- trar of Manila that, after a diligent and exhaustive search, the al- leged marriage license indicated in the marriage certificate does not appear in the records and cannot be found.

[a] Decide the case and explain. (2.5%)

[b] In ease the marriage was solemnized in 1980 before the effectivity of the Family Code, is it required that a judicial petition be tiled to declare the marriage null and void? Explain. (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

[a] I will grant the petition for judicial declaration of nullity of Brad and Angelina's marriage on the ground that there is a lack of a marriage license. Article 3 of the Family Code provides that one of the formal requisites of marriage is a valid marriage license and Article 4 of the same Code states that absence of any of the essential or formal requisites shall render the marriage void ah initio. In Abbas v. Abbas, (689 SCRA 646 12013/), the Supreme Court declared the marriage as void ah initio because there is proof of lack of record of marriage license. The certification by the Civil Registrar of Manila that, after a diligent and exhaustive search, the alleged marriage license indicated in the marriage certificate does not appear in the records and cannot be found proves that the marriage of Brad and Angelina was solemnized
without the requisite marriage license and is therefore void ab initio. The absence of the marriage license was certified to by the local civil registrar who is the official custodian of these documents and who is in the best position to certify as to the existence of these records. Also, there is a presumption of regularity in the performance of official duty (Republic v. CA and Castro, 236 SCRA 257 /1994/).

[b] No, it is not required that a judicial petition be filed to declare the marriage null and void when said marriage was solemnized before the effectivity of the Family Code. As stated in the cases of People v. Men- doza, 95 Phil. 845 (1954/ and People v. Aragon, 100 Phil. 1033 (1957/^ the old rule is that where a marriage is illegal and void from its perfor- mance, no judicial is necessary to establish its invalidity.

ALTERNATIVE ANSWER:

[b] Irrespective of when the marriage took place, other than for purpos- es of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to de- termination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause on the basis of a final judgment declaring such previous marriage void in Article 40 of the Family Code connotes that such final judgment need to be obtained only for purpose of remarriage (Ablaza v. Republic, 628 SCRA 27 120101).

Kardo met Glenda as a young lieutenant and after a whirlwind courtship, they were married. In the early part of his military career, Kardo was assigned to different places all over the country but Glenda refused to accompany him as she preferred to live in her hometown. They did not live together until the 12th year of their

marriage when Kardo had risen up the ranks and was given his own command. They moved to living quarters in Fort Gregorio. One day, while Kardo was away on official business, one of his military aides caught Glenda having sex with the corporal assigned as Kardo's driver. The aide immediately reported the matter to Kardo who rushed home to confront his wife. Glenda readily admitted the affair and Kardo sent her away in anger. Kardo would later come to know the true extent of Glenda's unfaithfulness from his aides, his household staff, and former neighbors who informed him that Glenda has had intimate relations with various men throughout their marriage whenever Kardo was away on assignment.

Kardo filed a petition for declaration of nullity of marriage under Article 36. Based on interviews from Kardo, his aide, and the housekeeper, a psychologist testified that Glenda's habitual infidelity was due to her affliction with Histrionic Personality Disorder, an illness characterized by excessive emotionalism and uncontrollable attention-seeking behavior rooted in Glenda's abandonment as a child by her father. Kardo himself, his aide, and his housekeeper also testified in court. The RTC granted the petition, relying on the liberality espoused by Te v. Te and Azcueta v. Republic. However, the OSG filed an appeal, arguing that sexual infidelity was only a ground for legal separation and that the RTC failed to abide by the guidelines laid down in the Molina case. How would you decide the appeal? (2015 BAR)

SUGGESTED ANSWER:

I will resolve the appeal in favor of the Republic. In the case of *Dedel v. Dedel (G.R. No. 151867, January 29, 2004),* the Supreme Court refused to declare the marriage of the parties void on the ground of sexual infidelity of the wife Sharon. In the case mentioned, the wife committed infidelity with several men up to the extent of siring two illegitimate children with a foreigner. The court, however, said that it was not shown that the sexual infidelity was a product of a disordered personality and that it was rooted in the history of the party alleged to be psychologically incapacitated. Also, the finding of psychological incapacity cannot be based on the interviews conducted by the clinical psychologist on the husband or his witnesses and the person alleged to be psychologically incapacitated must be personally examined to arrive at such declaration *(Marcos v. Marcos, G.R. No. 136490, October 19, 2000; Agraviador v. Agraviador, G.R. No. 170729, December 8, 2010)*.

A petition for declaration of nullity of a void marriage can only be filed by either the husband or the wife? Do you agree? Explain your answer. (2012 BAR)

SUGGESTED ANSWER:

YES, I agree. Under the rules promulgated by the Supreme Court, a direct action for declaration of nullity may only be filed by any of the spouses.

Cipriano and Lady Miros married each other. Lady Miros then left for the US and there, she obtained American citizenship. Cipriano later learned all about this including the fact that Lady Miros has divorced him in America and that she had

remarried there. He then filed a petition for authority to remarry, invoking Par. 2, Art. 26 of the Family Code. Is Cipriano capacitated to re-marry by virtue of the divorce decree obtained by his Filipino spouse who was later naturalized as an American citizen? Explain. (2012 BAR)

SUGGESTED ANSWER:

YES, he is capacitated to re-marry. While the second paragraph of Article 26 of the Family Code is applicable only to a Filipino who married a foreigner at the time of the marriage, the Supreme Court ruled in the case of *Republic v. Orbecido, GR. No. 154380, October 5, 2005*, that the said provision equally applies to a Filipino who married another Filipino, at the time of the marriage, but who was already a foreigner when the divorce was obtained.

The petitioner filed a petition for declaration of nullity of marriage based allegedly on the psychological incapacity of the respondent, but the psychologist was not able to personally examine the respondent and the psychological report was based only on the narration of petitioner. Should the annulment be granted? Explain. (2012 BAR)

SUGGESTED ANSWER:

NO. The annulment cannot be guaranteed solely on the basis of the psychological report. For the report to prove the psychological incapacity of the respondent, it is required that the psychologist should personally examine the respondent and the psychological report should be based on the psychologist's independent assessment of the facts as to whether or not the respondent is psychologically incapacitated.

Since, the psychologist did not personally examine the respondent, and his report is based solely on the story of the petitioner who has an interest in the outcome of the petition, the marriage cannot be annulled on the ground of respondent's psychological incapacity if the said report is the only evidence of respondent's psychological incapacity.

Ariz and Paz were officemates at Perlas ng Silangan Bank (PSB). They fell in love with each other and had a civil and church wedding. Meanwhile, Paz rapidly climbed the corporate ladder of PSB and eventually became its Vice President, while Ariz remained one of its bank supervisors, although he was short of 12 units to finish his Masters of Business Administration (MBA) degree.

Ariz became envious of the success of his wife. He started to drink alcohol until he became a drunkard. He preferred to join his "barkadas"; became a wifebeater; would hurt his children without any reason; and failed to contribute to the needs of the family. Despite rehabilitation and consultation with a psychiatrist, his ways did not change.

After 19 years of marriage, Paz, a devout Catholic, decided to have their marriage annulled by the church. Through the testimony of Paz and a psychiatrist, it was

found that Ariz was a spoiled brat in his youth and was sometimes involved in brawls. In his teens, he was once referred to a psychiatrist for treatment due to his violent tendencies. In due time, the National Appellate Matrimonial Tribunal (NAMT) annulled the union of Ariz and Paz due to the failure of Ariz to perform and fulfill his duties as a husband and as a father to their children. The NAMT concluded that it is for the best interest of Paz, Ariz and their children to have the marriage annulled.

In view of the NAMT decision, Paz decided to file a Petition for Declaration of Nullity of Marriage of their civil wedding before the Regional Trial Court (RTC) of Makati City using the NAMT decision and the same evidence adduced in the church annulment proceedings as basis.

If you are the judge, will you grant the petition? Explain. (2014 BAR)

SUGGESTED ANSWER:

If I were the judge, I will not grant the petition. While the decision of the church tribunal annulling the marriage of the parties may be persuasive, it is not however, binding upon the civil courts. For psychological incapacity to be a ground for nullity, it must be shown that it was rooted in the history of the party alleged to be suffering from it, it must be grave and serious, and incurable such that it renders the person incapacitated to perform the essential marital obligations due to causes psychological in nature. In the case presented, it appears that Ariz fulfilled his marital obligations at the beginning and it was only after feeling envious about the success of Paz that he started exhibiting violent tendencies and refused to comply with marital obligations. Psychological incapacity is not mere refusal but outright incapacity to perform marital obligations which does not appear to be present in the case of Ariz *(Marcos v. Marcos, G.R. No. 136490, October 19, 2000).*

Baldo, a rejected suitor, intimidated Judy into marrying him. While she wanted to question the validity of their marriage two years after the intimidation ceased, Judy decided in the meantime to freely cohabit with Baldo. After more than 5 years following their wedding, Judy wants to file a case for annulment of marriage against Baldo on ground of lack of consent. Will her action prosper? (2011 BAR)

(A) Yes, the action for annulment is imprescriptible.
(B) No, since the marriage was merely voidable and Judy ratified it by freely cohabiting with Baldo after the force and intimidation had ceased .
(C) No, since the action prescribed 5 years from the date of the celebration of the marriage.
(D) Yes, because the marriage was celebrated without Judy's consent freely given.

Conrad and Linda, both 20 years old, applied for a marriage license, making it appear that they were over 25. They married without their parents' knowledge before an unsuspecting judge. After the couple has been in cohabitation for 6 years, Linda's parents filed an action to annul the marriage on ground of lack of parental consent. Will the case prosper? (2011 BAR)

(A) No, since only the couple can question the validity of their marriage after they became 21 of age; their cohabitation also convalidated the marriage.
(B) No, since Linda's parents made no allegations that earnest efforts have been made to come to a compromise with Conrad and Linda and which efforts failed.
(C) Yes, since the marriage is voidable, the couple being below 21 years of age when they married.
(D) Yes, since Linda's parents never gave their consent to the marriage.

Miko and Dinah started to live together as husband and wife without the benefit of marriage in 1984. Ten (10) years after, they separated. In 1996, they decided to live together again, and in 1998, they got married.

On February 17, 2001, Dinah filed a complaint for declaration of nullity of her marriage with Miko on the ground of psychological incapacity under Article 36 of the Family Code. The court rendered the following decision:

1. "Declaring the marriage null and void;
2. Dissolving the regime of absolute community of property; and
3. Declaring that a decree of absolute nullity of marriage shall only be issued after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code."

Dinah filed a motion for partial reconsideration questioning the portion of the decision on the issuance of a decree of nullity of marriage only after the liquidation, partition and distribution of properties under Article 147 of the Code.

If you are the judge, how will you decide petitioner's motion for partial reconsideration? Why? (2014 BAR)

SUGGESTED ANSWER:
I will grant partial reconsideration. If the marriage is declared void under Art. 36, the provisions of the Family Code on liquidation, partition, and distribution of the properties on absolute community or conjugal partnership will not apply but rather Art. 147 or 148 depending on the presence or absence of a legal impediment between them. In *Diño v. Diño (G.R. No. 178044, January 19, 2011)*, the SC ruled that Art. 50 of the FC and Section 19 of the Rules on Declaration of Nullity applies only to marriages which are declared void *ab initio* or annulled by final judgment under Arts. 40 and 45 of the FC. In short, Art. 50 of the FC does not apply to marriages which are declared void *ab initio* under Art. 36 of the FC which should be declared void without waiting for the liquidation of the properties of the parties.

After undergoing sex reassignment in a foreign country, Jose, who is now using the name of "Josie," married his partner Ador. Is the marriage valid? (2014 BAR)

a. Yes, the marriage is valid for as long as it is valid in the place where it is celebrated following Article 17 of the Civil Code.
b. Yes, the marriage is valid if all the essential and formal elements of marriage under the Family Code are present.
c. No, the marriage is not valid because one essential element of marriage is absent.
d. No, the marriage is not valid but is voidable because "Josie" concealed her real identity.

SUGGESTED ANSWER:
C – not valid for lack of one essential requirement *(Silverio v. Republic, G.R. No. 174689, October 22, 2007)*.

You are a Family Court judge and before you is a Petition for the Declaration of Nullity of Marriage (under Article 36 of the Family Code) filed by Maria against Neil. Maria claims that Neil is psychologically incapacitated to comply with the essential obligations of marriage because Neil is a drunkard, a womanizer, a gambler, and a mama's boy- traits that she never knew or saw when Neil was courting her. Although summoned, Neil did not answer Maria's petition and never appeared in court.

To support her petition, Maria presented three witnesses- herself, Dr. Elsie Chan, and Ambrosia. Dr. Chan testified on the psychological report on Neil that she prepared. Since Neil never acknowledged nor responded to her invitation for interviews, her report is solely based on her interviews with Maria and the spouses' minor children. Dr. Chan concluded that Neil is suffering from Narcissistic Personality Disorder, an ailment that she found to be already present since Neil's early adulthood and one that is grave and incurable. Maria testified on the specific instances when she found Neil drunk, with another woman, or squandering the family's resources in a casino. Ambrosia, the spouses' current household help, corroborated Maria's testimony.

On the basis of the evidence presented, will you grant the petition? (1996, 2006, 2012, 2013)

SUGGESTED ANSWER:
NO. The petition should be denied.

The psychological incapacity under Article 36 of the Family Code must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. It is not enough to prove that the parties failed to meet their responsibilities and duties as married persons; it is essential that they must be shown to be incapable of doing so, due to some psychological (not physical) illness *(Republic v. CA and Molina, G.R. No. 108763 February 13, 1997)*. In this case, the pieces of evidence presented are not sufficient to conclude that indeed Niel is suffering from a psychological incapacity [Narcissistic Personality Disorder] existing already before the marriage, incurable and serious enough to prevent Neil from

performing his essential marital obligations. Dr. Chan's report contains mere conclusions. Being a drunkard, a womanizer, a gambler and a mama's boy merely shows Neil's failure to perform his marital obligations. In a number of cases, the Supreme Court did not find the existence of psychological incapacity in cases where the respondents showed habitual drunkenness *(Republic v. Melgar, G.R. No. 139676, March 31, 2006),* blatant display of infidelity and irresponsibility *(Dedel v. CA, G.R. No. 151867, January 29, 2004)*, or being hooked to gambling and drugs *(Republic v. Tanyag-San Jose, G.R. No. 168328, February 28, 2007).*

While engaged to be married, Arnold and Josephine agreed in a public instrument to adopt out the economic regime of absolute community of property. Arnold acknowledged in the same instrument that Josephine's daughter Mary, is his illegitimate child. But Josephine died before the marriage could take place. Does the marriage settlement have any significance? (2011 BAR)

(A) None, since the instrument containing the marriage settlement is essentially void for containing an unrelated matter.
(B) Yes, insofar as Arnold acknowledged Mary as his illegitimate child.
(C) None, since the marriage did not take place.
(D) Yes, if they acquired properties while living together as husband and wife.

Joseph, a 17-year old Filipino, married Jenny, a 21-year old American in Illinois, USA, where the marriage was valid. Their parents gave full consent to the marriage of their children. After three years, Joseph filed a petition in the USA to promptly divorce Jenny and this was granted. When Joseph turned 25 years, he returned to the Philippines and married Leonora. What is the status of this second marriage? (2011 BAR)

(A) Void, because he did not cause the judicial issuance of declaration of the nullity of his first marriage to Jenny before marrying Leonora.
(B) Valid, because Joseph's marriage to Jenny is void, he being only 17 years of age when he married her.
(C) Valid, because his marriage to Leonora has all the elements of a valid marriage.
(D) Void, because Joseph is still considered married to Jenny since the Philippines does not recognize divorce.

Josie, 18, married Dante, 25, without her parents' knowledge and consent, and lived with him. After a year, Josie returned to her parents' home, complained of the unbearable battering she was getting from Dante, and expressed a desire to have her marriage with him annulled. Who may bring the action? (2011 BAR)

(A) Dante.
(B) Her parents.
(C) Josie herself.
(D) The State.

X, a married man, cohabited with Y, an unmarried woman. Their relation bore them BB, a baby boy. Subsequently, after X became a widower, he married Y. Was BB legitimated by that marriage? (2011 BAR)

(A) Yes, since his parents are now lawfully married.
(B) Yes, since he is an innocent party and the marriage rectified the wrong done him.
(C) No, since once illegitimate, a child shall always remain illegitimate.
(D) No, since his parents were not qualified to marry each other when he was conceived.

Lito was a commercial pilot who flew for Pacific-Micronesian Air. In 1998, he was the co-pilot of the airline's Flight MA916 that mysteriously disappeared two hours after take-off from Agana, Guam, presumably over the Pacific Ocean. No trace of the plane and its 105 passengers and crew was ever found despite diligent search; Lito himself was never heard of again. Lito left behind his wife, Lita, and their two children.

In 2008, Lita met and and married Jaime. They now have a child of their own.

While on a tour with her former high school classmates in a remote province of China in 2010, Lita was surprised to see Lito or somebody who looked exactly like him, but she was sure it was Lito because of the extreme surprise that registered in his face when he also saw her. Shocked, she immediately fled to her hotel and post haste returned to the country the next day. Lita now comes to you for legal advice. She asks you the following questions: (2013 BAR)

1) If Lito is alive, what is the status of his marriage to Lita? (1%)

(A) The marriage subsists because the marital bond has not been terminated by death.
(B) The marriage was terminated when Lita married Jaime.
(C) The marriage subsists because Lita's marriage to Jaime is void.
(D) The marriage is terminated because Lito is presumed dead after his plane has been missing for more than 4 years.
(E) The marriage can be formally declared terminated if Lito would not resurface.

SUGGESTED ANSWER:
A – Since Lito is still alive the marital bond has not been severed

2) If Lito is alive, what is the status of Lita's marriage to Jaime? (1%)

(A) The marriage is valid because Lita's marriage to Lito was terminated upon Lito's disappearance for more than seven years.
(B) The marriage is valid. After an absence of more than 10 years, Lito is already presumed dead for all purposes.

(C) The marriage is void. Lito's mere absence, however lengthy, is insufficient to authorize Lita to contract a subsequent marriage.
(D) The marriage is void. If Lito is indeed alive, his marriage to Lita was never dissolved and they can resume their marital relations at any time.

SUGGESTED ANSWER:
C – Lito's absence did not automatically grant Lita the right to remarry without securing a declaration of presumptive death

Rene and Lily got married after a brief courtship. After one month, Lily discovered that while Rene presented himself as a macho man he was actually gay. He would not go to bed with her. He kept obscene magazines of nude men and always sought the company of handsome boys. What legal remedy does Lily have? (2011 BAR)

(A) She can file an action for annulment of marriage on ground of fraud.
(B) She can seek a declaration of nullity of the marriage based on Rene's psychological incapacity.
(C) She can go abroad and file for divorce in a country that can grant it.
(D) She has none since she had the opportunity to examine the goods and freely entered into the marriage.

Manuel came to Manila and married Marianne. Unknown to Marianne, Manuel had been previously convicted in Palawan of theft and served time for it. After Marianne learned of his previous conviction, she stopped living with him. Can Marianne seek the annulment of the marriage based on Manuel's nondisclosure of his previous crime? (2011 BAR)

(A) No, since the assumption is that marriage forgives all past wrongs.
(B) Yes, since the non-disclosure of that crime is the equivalent of fraud, which is a ground for annulment.
(C) No, in case of doubt, the law must be construed to preserve the institution of marriage.
(D) No, since Manuel already served the penalty for his crime.

Arthur and Helen, both Filipinos, got married and had 2 children. Arthur later worked in Rome where he acquired Italian citizenship. He got a divorce from Helen in Rome but, on returning to the Philippines, he realized his mistake, asked forgiveness of his wife, and resumed living with her. They had 2 more children. What is the status of their 4 children? (2011 BAR)

(A) The children born before the divorce are legitimate but those born after it are not since Arthur got the divorce when he had ceased to be a Filipino.
(B) The divorce rendered illegitimate the children born before it since the marriage that begot them had been nullified.
(C) The children born before and after the divorce are all legitimate since Philippine law does not recognize divorce.

(D) All the children are legitimate since they were born of the same father and mother.

When can a missing person who left someone to administer his property be declared an absentee by the court? When he has been missing for (2011 BAR)

(A) 2 years from the receipt of the last news about him.
(B) 7 years from the receipt of the last news about him.
(C) 10 years from the receipt of the last news about him.
(D) 5 years from the receipt of the last news about him.

X and Y, although not suffering from any impediment, cohabited as husband and wife without the benefit of marriage. Following the birth of their child, the couple got married. A year after, however, the court annulled the marriage and issued a decree of annulment. What is the present status of the child? (2011 BAR)

(A) Legitimated.
(B) Illegitimate.
(C) Natural child.
(D) Legitimate.

X and Y agreed verbally before their marriage (a) on the paternity of the illegitimate child of Y and (b) on the economic regime that will govern X and Y's property relations. Is the verbal agreement valid? (2011 BAR)

(A) No, because a marriage settlement to be valid should be in writing.
(B) Yes, since ante-nuptial agreements need not be in writing.
(C) No, because a marriage settlement cannot include an agreement on the paternity of an illegitimate child.
(D) Yes, since even if it is not a valid marriage settlement, it is a valid verbal contract.

Fidel, a Filipino with fair complexion, married Gloria. Before the marriage, Gloria confessed to Fidel that she was two-month pregnant with the child of a black African who had left the country for good. When the child was born, Fidel could not accept it being too black in complexion. What is the status of the child? (2011 BAR)

(A) Illegitimate, because Gloria confessed that the child is not Fidel's.
(B) Illegitimate, because by the color of its skin, the child could not possibly be that of Fidel.
(C) Legitimate, because the child was born within a valid marriage.
(D) Legitimate, because Fidel agreed to treat the child as his own after Gloria told him who the father was.

X insured himself for P5 million, designating Y, his wife, as his sole beneficiary. The designation was irrevocable. A few years later, X had their marriage annulled

in court on the ground that Y had an existing prior marriage. X subsequently died, Is Y entitled to the insurance benefits? (2011 BAR)

(A) Yes, since the insurance was not dependent on the marriage.
(B) Yes, since her designation as beneficiary was irrevocable.
(C) No, X's designation of Y is revoked by operation of law upon the annulment of their marriage based on Y's fault.
(D) Yes, since without judicial revocation, X's designation of Y remains valid and binding.

In gratitude, the groom's parents made a donation of a property in writing to the bride's parents shortly before their children's wedding. The donation was accepted. What is the nature of the donation? (2011 BAR)

(A) It is an ordinary donation since it was not given to the bride or groom.
(B) It is donation propter nuptias since it was given with the marriage in mind.
(C) It is an indirect donation propter nuptias since the bride would eventually inherit the property from her parents.
(D) It is a remunatory donation.

X and Y, both Filipinos, were married and resided in Spain although they intend to return to the Philippines at some future time. They have not executed any marriage settlements. What law governs their property relations? (2011 BAR)

(A) They may choose between Spanish law and Philippine law.
(B) Philippine law since they are both Filipinos.
(C) No regime of property relations will apply to them.
(D) Spanish law since they live in Spain.

QR and TS who had a marriage license requested a newly appointed Judge in Manila to marry them on the beach of Boracay. Since the Judge maintained Boracay as his residence, he agreed. The sponsors were all public officials. What is the status of the marriage. (2011 BAR)

(A) Valid, since the improper venue is merely an irregularity; all the elements of a valid marriage are present.
(B) Void, because the couple did not get local permit for a beach wedding.
(C) Voidable, because the Judge acted beyond his territorial jurisdiction and is administratively liable for the same.
(D) Void, because the Judge did not solemnize the marriage within the premises of his court.

In 1989, Charice (Filipina) and Justine (American), were married in the Philippines. In 1990, they separated and Justine went to Las Vegas where he obtained a divorce in the same year. He then married another Filipina, Lea, in Canada on January 1, 1992. They had two (2) sons, James and John (who were both born in 1992). In 1993, after failing to hear from Justine, Charice married Bugoy (a Filipino), by whom

she had a daughter, Regine. In 2009, Regine married James (son of Justine with Lea) in California, where such marriage is valid. (2012 BAR)

What is the current status of the marriage of Charice and Justine under Philippine laws?
a) Valid
b) Void
c) Voidable
d) Dissolved

What is the status of the marriage between Justine and Lea under Philippine laws?
a) Valid
b) Void
c) Voidable
d) Unenforceable

What is the status of the marriage between Charice and Bugoy under Philippine laws?
a) Valid
b) Void
c) Voidable
d) Unenforceable

What is the status of the marriage between Regine and James under Philippine laws?
a) Valid
b) Void
c) Voidable
d) Unenforceable

Ricky and Princess were sweethearts. Princess became pregnant. Knowing that Ricky is preparing for the examinations, Marforth, a lawyer and cousin of Princess, threatened Ricky with the filing of a complaint for immorality in the Supreme Court, thus preventing him from taking examinations unless he marries Princess. As a consequence of the threat, Ricky married Princess. Can the marriage be annulled on the ground of intimidation under Article 45 of the Family Code? Choose the best answer. (2012 BAR)
a) Yes, because without the threat, Ricky would not have married Princess.
b) Yes, because the threat to enforce the claim of Princess vitiates the consent of Ricky in contracting the marriage.
c) No, because the threat made by Marforth is just and legal.
d) No, because Marforth is not a party to the contract of marriage between Princess and Ricky.

Agay, a Filipino citizen and Topacio, an Australian citizen, got married in the consular office of the Philippines in Australia. According to the laws of Australia, a

marriage solemnized by a consular official is valid, provided that such marriage is celebrated in accordance with the laws of such consular official. Under Philippine law, what is the status of the marriage of Agay and Topacio? Choose the best answer. (2012 BAR)

a) Void, because the consular official only has authority to solemnize marriages between Filipinos.
b) Valid, because according to the laws of Australia, such consular official has authority to celebrate the marriage.
c) Voidable, because there is an irregularity in the authority of the consular official to solemnize marriages.
d) Valid, because such marriage is recognized as valid in the place where it was celebrated.

A marriage is void if: (2012 BAR)

a) solemnized with a marriage license issued without complying with the required 10-day posting.
b) solemnized by a minister whom the parties believe to have the authority.
c) between parties both 23 years of age but without parental advice.
d) none of the above

Which of the following marriages is void for reasons of public policy? (2012 BAR)

a) Between brothers and sisters, whether of the full or half blood.
b) Between step-parents and step children.
c) Between parents-in-law and children-in-law.
d) b and c

The following constitute the different circumstances or case of fraud which will serves as ground for the annulment of a marriage, except? (2012 BAR)

a) Non-disclosure of the previous conviction by final judgment of the other party of a crime involving moral turpitude.
b) Concealment of a sexually-transmissible disease, regardless of its nature, existing at the time of the marriage.
c) Concealment of drug addiction, habitual alcoholism, homosexuality or lesbianism existing at the time of marriage.
d) Concealment by the wife or the husband of the fact of sexual relations prior to the marriage.

True or False.

Under Article 26 of the Family Code, when a foreign spouse divorces his/her Filipino spouse, the latter may re-marry by proving only that the foreign spouse has obtained a divorce against her or him abroad. (1%) (2010 Bar Question)

SUGGESTED ANSWER:

False.

In Garcia v. Recio, 366 SCRA 437 (2001), the SC held that for a Filipino spouse to have capacity to contract a subsequent marriage, it must also be proven that the foreign divorce obtained by the foreigner spouse gives such foreigner spouse capacity to remarry.

ALTERNATIVE ANSWER:

True.

Art. 26 (2) (FC), clearly provides that the decree of divorce obtained abroad by the foreigner spouse is sufficient to capacitate the Filipino spouse to remarry.

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office.' She then gave copies of the marriage contract to the parties, and told Michael and Anna that they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.

Is the marriage of Michael and Anna valid, voidable, or void? Explain your answer. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The marriage is void because the formal requisite of marriage ceremony was absent (Art. 3, F.C. 209, Family Code).

ALTERNATIVE ANSWER:

The marriage is void because an essential requisite was absent: consent of the parties freely given in the presence of the solemnizing officer (Art. 2, FC).

Harry married Wilma, a very wealthy woman. Barely five (5) years into the marriage, Wilma fell in love with Joseph. Thus, Wilma went to a small country in Europe, became a naturalized citizen of that country, divorced j Harry, and married Joseph. A year thereafter, Wilma and Joseph returned and established permanent residence in the Philippines.

Is the divorce obtained by Wilma from Harry-recognized in the Philippines? Explain your answer. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

As to Wilma, the divorce obtained by her is recognized as valid in the Philippines because she is now a foreigner. Philippine personal laws do not apply to a foreigner. However, recognition of the divorce as regards Harry will depend on the applicability to his case of the second paragraph of Article 26 of the Family Code. If it is applicable, divorce is recognized as to him and, therefore, he can remarry. However, if it is not applicable, divorce is not recognized as to him and, consequently, he cannot remarry.

ANOTHER SUGGESTED ANSWER:

Yes, the divorce obtained by Wilma is recognized as valid in the Philippines. At the time she got the divorce, she was already a foreign national having been naturalized as a citizen of that "small country in Europe." Based on precedents established by the Supreme Court (Bayot v. CA, 570SCRA 472 [2008]), divorce obtained by a foreigner is recognized in the Philippines if validly obtained in' accordance with his or her national law.

If Harry hires you as his lawyer, what legal recourse would you advise him to take? Why? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

I will advise Harry to:

1. dissolve and liquidate his property relations with Wilma; and

2. if he will remarry, file a petition for the recognition and enforcement of the foreign judgment of divorce (Rule 39, Rules of Court).

Harry tells you that he has fallen in love with another woman, Elizabeth, and wants to marry her because, after all, Wilma is already married to Joseph. Can Harry legally marry Elizabeth? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, he can validly marry Elizabeth, applying the doctrine laid down by the Supreme Court in *Republic v. Obrecido* (427 SCRA 114 [2005]).

Under the second paragraph of Article 26 of the Family Code, for the Filipino spouse to have capacity to remarry, the law expressly requires the spouse who obtained the divorce to be a foreigner at the time of the marriage. Applying this requirement to the case of Harry, it would seem that he is not given the capacity to remarry. This is because Wilma was a Filipino at the time of her marriage to Harry.

In *Republic v. Obrecido,* however, the Supreme Court ruled that a Filipino spouse is given the capacity to remarry even though the spouse who obtained the divorce was a Filipino at the time of the marriage, if the latter was already a foreigner when the divorce was obtained abroad. According to the Court, to rule otherwise will violate the equal protection clause of the Constitution.

Emmanuel and Margarita, American citizens and employees of the U.S. State Department, got married in the African state of Kenya where sterility is a ground for annulment of marriage. Thereafter, the spouses were assigned to the U.S. Embassy in Manila. On the first year of the spouses' tour of duty in the Philippines, Margarita filed an annulment case against Emmanuel before a Philippine court on the ground of her husband's sterility at the time of the celebration of the marriage.

x x x

Assume Emmanuel and Margarita are both Filipinos. After their wedding in Kenya, they come back and take up residence in the Philippines. Can their marriage be annulled on the ground of Emmanuel's sterility? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, the marriage cannot be annulled under Philippine law. Sterility is not a ground for annulment of marriage under Article 45 of the Family Code.

ANOTHER SUGGESTED ANSWER:

No, the marriage cannot be annulled in the Philippines.

The Philippine court shall have jurisdiction over the action to annul the marriage not only because the parties are residents of the Philippines but because they are Filipino citizens. The Philippine court, however, shall apply the law of the place where the marriage was celebrated in determining its formal validity (Article 26,FC; Article 17, NCC).

Since the marriage was celebrated in Kenya in accordance with Kenyan law, the formal validity of such marriage is governed by Kenyan law and any issue as to the formal validity of that marriage shall be determined by applying Kenyan law and not Philippine law.

However, while Kenyan law governs the formal validity of the marriage, the legal capacity of the Filipino parties to the marriage is governed not by Kenyan law but by Philippine law (Article 15, NCC). Sterility of a party as a ground for the annulment of marriage is not a matter of form but a matter of legal capacity. Hence, the Philippine court must apply Philippine law in determining the status of the marriage on the ground of absence or defect in the legal capacity of the Filipino parties. Since sterility does not constitute absence or defect in the legal capacity of the parties under Philippine law, there is no

ground to avoid or annul the marriage. Hence, the Philippine court has to deny the petition.

When does a declaration of absence of a missing person take effect? (2011 BAR)

(A) Immediately from the issuance of the declaration of absence.
(B) 3 months after the publication of the declaration of absence.
(C) 6 months after the publication of the declaration of absence.
(D) 15 days from the issuance of the declaration of absence.

III. Legal Separation (Family Code)

The wife filed a case of legal separation against her husband on the ground of sexual infidelity without previously exerting earnest efforts to come to a compromise with him. The judge dismissed the case for having been filed without complying with a condition precedent. Is the dismissal proper? (2011 BAR)

(A) No, efforts at a compromise will only deepen the wife's anguish.
(B) No, since legal separation like validity of marriage is not subject to compromise agreement for purposes of filing.
(C) Yes, to avoid a family feud that is hurtful to everyone.
(D) Yes, since the dispute could have been settled with the parties agreeing to legal separation.

No decree of legal separation can be issued (2011 BAR)

(A) unless the children's welfare is attended to first.
(B) without prior efforts at reconciliation shown to be futile.
(C) unless the court first directs mediation of the parties.
(D) without prior investigation conducted by a public prosecutor.

Q: After they got married, Nikki discovered that Christian was having an affair with another woman. But Nikki decided to give it a try and lived with him for two (2) years. After two (2) years, Nikki filed an action for legal separation on the ground of Christian's sexual infidelity. Will the action prosper? Explain. (2012 BAR)

SUGGESTED ANSWER:
Nikki's action will not prosper on account at condonation. Although the action for legal separation has not yet prescribed, the prescriptive period being five years, the decision of Nikki to live with Christian after discovering his affair amounts to condonation of such act. However, if such affair is still continuing, Nikki's action would prosper because the action will surely be within (5) years from the commission of the latest act of sexual infidelity. Every act or sexual liaison is a ground for legal separation.

In legal separation, which is not correct? (2012 BAR)

a) The aggrieved spouse may file the action within five (5) years from the time of the occurrence of the cause.
b) No trial shall be held without the 6-month cooling off period being observed.
c) The spouses will be entitled to live separately upon the start of the trial.
d) <u>The prosecuting attorney has to conduct his own investigation.</u>

X and Y, Filipinos, got married in Los Angeles, USA, using a marriage license issued by the Philippine consul in Los Angeles, acting as Civil Registrar. X and Y did not know that they were first cousins because their mothers, who were sisters, were separated when they were quite young. Since X did not want to continue with the relation when he heard of it, he left Y, came to the Philippines and married Z. Can X be held liable for bigamy? (2011 BAR)

(A) No since X's marriage to Y is void ab initio or did not exist.
(B) No since X acted in good faith, conscious that public policy did not approve of marriage between first cousins.
(C) <u>Yes since he married Z without first securing a judicial declaration of nullity of his marriage to Y.</u>
(D) Yes since his first marriage to Y in Los Angeles is valid.

IV. Rights and Obligations Between Husband and Wife (Family Code)

The husband's acts of forcibly ejecting his wife without just cause from the conjugal dwelling and refusing to take her back constitutes (2011 BAR)

(A) desertion.
(B) recrimination.
(C) <u>constructive abandonment.</u>
(D) de facto separation.

V. Property Relations of the Spouses (Family Code)

Danny and Elsa were married in 2002. in 2012, Elsa left the conjugal home and her two minor children with Danny to live with her paramour. In 2015, Danny sold without Elsa's consent a parcel of land registered in his name that he had purchased prior to the marriage. Danny used the proceeds of the sale to pay for his children's tuition fees.

Is the sale valid, void or voidable'? Explainyour answer. (3%) (2017 BAR)

<u>SUGGESTED ANSWER:</u>

The sale of the parcel of land is void. There is no indication in the facts that Danny and Elsa executed a marriage settlement prior to their marriage. As the marriage was celebrated during the effectivity of the Family Code and absent a marriage settlement, the property regime between the spouses is the Absolute Community of Property (Article 75, FC).

Under the Absolute Community of Property regime, the parcel of land belongs to the community property as the property he had brought into the marriage even if said property were registered in the name of Danny (Article 91, FC). In addition, said property do not fall under any of the exceptions under Article 92. Therefore, the sale of the property is void, because it was executed without the authority of the court or the written consent of the other spouse (Article 96, 100, FC).

Bernard and Dorothy lived together as common-law spouses although they are both capacitated to marry. After one year of co-habitation, Dorothy went abroad to work in Dubai as a hair stylist and regularly sent money to Bernard. With the money, Bernard bought a lot. For a good price, Bernard sold the lot. Dorothy came to know about the acquisition and sale of the lot and filed a suit to nullify the sale because she did not give her consent to the sale.

[a] Will Dorothy's suit prosper? Decide with reasons. (2.5%)

[b] Suppose Dorothy was jobless and did not contribute money to the acquisition of the lot and her efforts consisted mainly in the care and maintenance of the family and household, is her consent to the sale a prerequisite to its validity?

Explain. (2.5%) (2016 BAR)

SUGGESTED ANSWER:

[a] **YES,** Dorothy's suit will prosper, unless the buyer is a buyer in good faith and for value. The rule of co-ownership governs the property relationship in a union without marriage between a man and a woman who are capacitated to marry each other. Article 147 of the Family Code is specifically applicable. Under this article, neither party can encumber or dispose by acts inter vivos of his or her share in the property ac- quired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation, thus, Bernard may not validly dispose of the lot without the consent of Dorothy as the lot was acquired through their work during their cohabi- tation.

[NOTE: It is suggested that some credit be given to examinees who reason that Article 147 does not apply became under the facts given, Dorothy and Bernard were not living together as husband and wife].

[b] **YES**, if Dorothy was jobless and did not contribute money to the acquisition of the lot, her consent is still a prerequisite to the validity of the sale. Under the same article, a party

who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and the household. In this case, although the money used to buy the lot was solely from Bernard, Dorothy's care and maintenance of the family and household are deemed contributions in the acquisition of the lot. Article 147, 2nd paragraph is applicable, as the lot is deemed owned in common by the common-law spouses in equal shares as the same was acquired dur- ing their cohabitation, without prejudice to the rights of a buyer in good faith and for value.

Maria, wife of Pedro, withdrew ₱ 5 Million from their conjugal funds. With this money, she constructed a building on a lot which she inherited from her father. Is the building conjugal or paraphernal? Reasons. (2012 BAR)

SUGGESTED ANSWER:

It depends. If the value of the building is more than the value of the land, the building is conjugal and the land becomes conjugal property under Art. 120 of the FC. This is a case of reverse accession, where the building is considered as the principal and the land, the accessory. If, on the other hand, the value of the land is more than the value of the building, then the ordinary rule of accession applies where the land is the principal and the building, the accessory. In such case, the land remains paraphernal property and the building becomes paraphernal properly. *(Note: The rule on reverse accession is applicable only to the regime of conjugal partnership of gains in both the Family Code and the New Civil Code. The foregoing answer assumes that CPG is the regime of the property relations of the spouses.)*

Before Karen married Karl, she inherited P5 million from her deceased mother which amount she brought into the marriage. She later used part of the money to buy a new Mercedes Benz in her name, which Karen and her husband used as a family car. Is the car a conjugal or Karen's exclusive property? (2011 BAR)

(A) It is conjugal property since the spouses use it as a family car.
(B) It is Karen's exclusive property since it is in her name.
(C) It is conjugal property having been bought during the marriage.
(D) It is Karen's exclusive property since she bought it with her own money.

Jambrich, an Austrian, fell in-love and lived together with Descallar and bought their houses and lots at Agro-Macro Subdivision. In the Contracts to Sell, Jambrich and Descallar were referred to as the buyers. When the Deed of Absolute Sale was presented for registration before the Register of Deeds, it was refused because Jambrich was an alien and could not acquire alienable lands of the public domain. After Jambrich and Descallar separated, Jambrich purchased an engine and some accessories for his boat from Borromeo. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to Borromeo. Borromeo discovered that titles to the three (3) lots have been transferred in the name of Descallar. Who is the rightful owner of the properties? Explain. (2012 BAR)

SUGGESTED ANSWER:

It depends. On the assumption that the Family Code is the applicable law, the ownership of the properties depends on whether or not Jambrich and Descallar are capacitated to marry each other during their cohabitation, and whether or not both have contributed funds for the acquisition of the properties.

If both of them were capacitated to marry each other, Art. 147 will apply to their property relations and the properties in question are owned by them in equal shares even though all the funds used in acquiring the properties came only from the salaries or wages or the income of Jambrich from his business or profession. In such a case, while Jambrich is disqualified to own any part of the properties, his subsequent transfer of all his interest therein to Borromeo, a Filipino, was valid as it removed the disqualification. In such case, the properties are owned by Borromeo and Descallar in equal shares.

If, on the other hand, Jambrich and Descallar were not capacitated to marry each other, Article 153 governs their property relations. Under this regime, Jambrich and Descallar are owners of the properties but only if both of them contributed in their acquisition. If all the funds used in acquiring the properties in question came from Jambrich, the entire property is his even though he is disqualified from owning it. His subsequent transfer to Borromeo, however, is valid as it removed the disqualification. In such case, all of the properties are owned by Borromeo. If, on the other hand, Descallar contributed to their acquisition, the properties are co-owned by Descallar and Borromeo in proportion to the respective contributions of Descallar and Jambrich. *(Note: The facts of the problem are not exactly the same as in the case of Borromeo v. Descallar, G.R. No. 159310, February 24, 2009, hence, the difference in the resulting answer.)*

When does the regime of conjugal partnership of gains begin to exist? (2011 BAR)

(A) At the moment the parties take and declare each other as husband and wife before officiating officer.
(B) At the time the spouses acquire properties through joint efforts.
(C) On the date the future spouses executed their marriage settlements because this is the starting point of their marital relationship.
(D) On the date agreed upon by the future spouses in their marriage settlements since their agreement is the law between them.

Venecio and Ester lived as common-law spouses since both have been married to other persons from whom they had been separated in fact for several years. Hardworking and bright, each earned incomes from their respective professions and enterprises. What is the nature of their incomes? (2011 BAR)

(A) Conjugal since they earned the same while living as husband and wife.
(B) Separate since their property relations with their legal spouses are still subsisting.
(C) Co-ownership since they agreed to work for their mutual benefit.

(D) Communal since they earned the same as common-law spouses.

Can common-law spouses donate properties of substantial value to one another? (2011 BAR)

(A) No, they are only allowed to give moderate gifts to each other during family rejoicing.
(B) No, they cannot give anything of value to each other to prevent placing their legitimate relatives at a disadvantage.
(C) Yes, unlike the case of legally married spouses, such donations are not prohibited.
(D) Yes, as long as they leave sufficient property for themselves and for their dependents.

Josie owned a lot worth P5 million prior to her marriage to Rey. Subsequently, their conjugal partnership spent P3 million for the construction of a house on the lot. The construction resulted in an increase in the value of the house and lot to P9 million. Who owns the house and the lot? (2011 BAR)

(A) Josie and the conjugal partnership of gains will own both on a 50-50 basis.
(B) Josie will own both since the value of the house and the increase in the property's value is less than her lot's value; but she is to reimburse conjugal partnership expenses.
(C) Josie still owns the lot, it being her exclusive property, but the house belongs to the conjugal partnership.
(D) The house and lot shall both belong to the conjugal partnership, with Josie entitled to reimbursement for the value of the lot.

Marco and Gina were married in 1989. Ten years later, or in 1999, Gina left Marco and lived with another man, leaving their two children of school age with Marco. When Marco needed money for their children's education he sold a parcel of land registered in his name, without Gina's consent, which he purchased before his marriage. Is the sale by Marco valid, void or voidable? Explain with legal basis. (2015 BAR)

SUGGESTED ANSWER:
The sale made by Marco is considered void. The parties were married in 1989 and no mention was made whether they executed a marriage settlement. In the absence of a marriage settlement, the parties shall be governed by absolute community of property whereby all the properties owned by the spouses at the time of the celebration of the marriage as well as whatever they may acquire during the marriage shall form part of the absolute community. In ACP, neither spouse can sell or encumber property belonging to the ACP without the consent of the other. Any sale or encumbrance made by one spouse without the consent of the other shall be void although it is considered as a continuing offer on the part of the consenting spouse upon authority of the court or written consent of the other spouse *(Art. 96, FC)*.

Solomon sold his coconut plantation to Aragon, Inc. for P100 million, payable in installments of P10 million per month with 6% interest per annum. Solomon married Lorna after 5 months and they chose conjugal partnership of gains to govern their property relations. When they married, Aragon had an unpaid balance of P50 million plus interest in Solomon's favor. To whom will Aragon's monthly payments go after the marriage? (2011 BAR)

(A) The principal shall go to the conjugal partnership but the interests to Solomon.
(B) Both principal and interests shall go to Solomon since they are his exclusive properties.
(C) Both principal and interests shall go to the conjugal partnership since these become due after the marriage.
(D) The principal shall go to Solomon but the interests to the conjugal partnership.

When A and B married, they chose conjugal partnership of gains to govern their property relations. After 3 years, B succeeded in getting her marriage to A annulled on ground of the latter's psychological incapacity. What liquidation procedure will they follow in disposing of their assets? (2011 BAR)

(A) They will follow the rule governing the liquidation of a conjugal partnership of gains where the party who acted in bad faith forfeits his share in the net profits.
(B) Since the marriage has been declared void, the rule for liquidation of absolute community of property shall be followed.
(C) The liquidation of a co-ownership applies since the annulment brought their property relation under the chapter on property regimes without marriage.
(D) The law on liquidation of partnerships applies.

The husband assumed sole administration of the family's mango plantation since his wife worked abroad. Subsequently, without his wife's knowledge, the husband entered into an antichretic transaction with a company, giving it possession and management of the plantation with power to harvest and sell the fruits and to apply the proceeds to the payment of a loan he got. What is the standing of the contract? (2011 BAR)

(A) It is void in the absence of the wife's consent.
(B) It is void absent an authorization from the court.
(C) The transaction is void and can neither be ratified by the wife nor authorized by the court.
(D) It is considered a continuing offer by the parties, perfected only upon the wife's acceptance or the court's authorization.

May a spouse freely donate communal or conjugal property without the consent of the other? (2011 BAR)

(A) Absolutely not, since the spouses co-own such property.
(B) Yes, for properties that the family may spare, regardless of value.

(C) Yes, provided the donation is moderate and intended for charity or family rejoicing.
(D) Yes, in a donation mortis causa that the donor may still revoke in his lifetime.

What happens to the property regimes that were subsisting under the New Civil Code when the Family Code took effect? (2011 BAR)

(A) The original property regimes are immutable and remain effective.
(B) Those enjoying specific regimes under the New Civil Code may adopt the regime of absolute community of property under the Family Code.
(C) Those that married under the New Civil Code but did not choose any of its regimes shall now be governed by the regime of absolute community of property.
(D) They are superseded by the Family Code which has retroactive effect.

In the absence of contrary stipulation in a marriage settlement, property relations of Filipino spouses shall be governed by --- (2012 BAR)

a) Philippines laws
b) Law of the place where the spouses reside
c) Law of the place where the properties are situated
d) Law of the place where they were married.

Audrey, single, bought a parcel of land in Malolos City from Franco for ₱ 1Million. A contract was executed between them which already vested upon Audrey full ownership of the property, although payable in monthly installments for a period of four (4) years. One (1) year after the execution of the contract, Audrey got married to Arnel. They executed a marriage settlement whereby they agreed that their properties shall be governed by the regime of conjugal partnership of gains. Thereafter, subsequent installments were paid from the conjugal partnership funds. Is the land conjugal or paraphernal? (2012 BAR)

a) The land is conjugal because the installments were paid from the conjugal partnership funds.
b) The land is paraphernal because ownership thereof was acquired before the marriage.
c) The land is both conjugal and paraphernal funds of installments were paid from both the personal funds of Audrey and the conjugal partnership funds.
d) The land is paraphernal because it was Audrey who purchased the same.

Separation of property between spouses during the marriage may take place only: (2012 BAR)

a) by agreement of the spouses.
b) If one of the spouses has given ground for legal separation.
c) Upon order of the court.
d) If one spouse has abandoned the other.

A husband by chance discovered hidden treasure on the paraphernal property of his wife. Who owns the discovered treasure? (2012 BAR)

a) The half pertaining to the husband (finder) belongs to the conjugal partnership.
b) The half pertaining to the wife (as owner) belongs to the conjugal partnership.
c) One half shall belong to the husband as finder and the other half shall belong to the wife as owner of the property.
d) a and b

Which of the following is not a requisite for a valid donation propter nuptias? (2012 BAR)

a) The donation must be made before the celebration of the marriage.
b) The donation shall be automatically revoked in case of non-celebration of the marriage.
c) The donation must be made in consideration of the marriage.
d) The donation must be made in favor of one or both of the future spouses.

G filed on July 8, 2000 a petition for declaration of nullity of her marriage to B. During the pendency of the case, the couple entered into a compromise agreement to dissolve their absolute community of property. B ceded his right to their house and lot and all his shares in two business firms to G and their two children, aged 18 and 19.

B also opened a bank account in the amount of P3 million in the name of the two children to answer for their educational expenses until they finish their college degrees.

For her part, G undertook to shoulder the day-to-day living expenses and upkeep of the children. The Court approved the spouses' agreement on September 8, 2000.

a. Suppose the business firms suffered reverses, rendering G unable to support herself and the children. Can G still ask for support *pendente lite* from B? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, G can still ask for support from B because during the pendency of the action, the marriage between them is considered still subsisting *(Article 68, Family Code).* Being considered still married to each other, B and G still have the obligation to support each other. The compromise agreement cannot operate to waive future support when needed *(Article 2035, Civil Code).*

After the compromise agreement was approved by the court and the properties of the marriage were distributed, there remained no more common properties of B and G. While Article 198 of the Family Code appears ' to limit the source of support to the common properties of the said marriage in case of the pendency of an action to declare the nullity of marriage, Article 94 and Article 121 indicate otherwise. Under the said Articles, the

spouses remain personally and solidarily liable with their separate properties for support even though, for whatever reason, there are no more community or partnership properties left.

The judgment based on the compromise dissolving the property relations of B and G does not bar G from asking support *pendente lite.* The dissolution of the property relations of the spouses did not terminate the obligation between them to support each other. The declaration of the nullity of their marriage is what terminates the right of G to be supported by B as his spouse.

G and B were married on July 3, 1989. On March 4, 2001, the marriage, which bore no offspring, was declared void *ab initio* under Article 36 of the Family Code. At the time of the dissolution of the marriage, the couple possessed the following properties:

1. **a house and lot acquired by B on August 3, 1988, one third (1/3) of the purchase price (representing down payment) of which he paid; one third (1/3) was paid by G on February 14, 1990 out of a cash gift given to her by her parents on her graduation on April 6, 1989; and the balance was paid out of the spouses' joint income; and**

2. **an apartment unit donated to B by an uncle on June 19, 1987.**

Who owns the foregoing properties? Explain. (5%) (2010 Bar Question)

***SUGGESTED ANSWER*:**

Since the marriage was declared void *ab initio in 2001,* no Absolute Community or Conjugal Partnership was ever established between B and G. Their property relation is governed by a *"special co-ownership"* under Article 147 of the Family Code because they were capacitated to marry each other. Under that Article 147, wages and salaries of the *"former spouses"* earned during their cohabitation shall be owned by them in equal shares while properties acquired thru their work or industry shall be owned by them in proportion to their respective contributions. Care and maintenance of the family is recognized as a valuable contribution. In the absence of proof as to the value of their respective contributions, they shall share equally.

If ownership over the house and lot was acquired by B on August 3,1988 at the time he bought it on installment before he got married, he shall remain owner of the house and lot but he must reimburse G for all the amounts she advanced to pay the purchase price and for her one-half share in the last payment from their joint income. In such case, the house and lot were not acquired during their cohabitation, hence, are not co-owned by B and G.

But if the ownership of the house and lot was acquired during the cohabitation, the house and lot will be owned as follows:

a. 1/3 of the house and lot is owned by B. He is an undivided co-owner to that extent for his contribution in its acquisition in the form of the down payment he made before the celebration of the marriage. The money he used to pay the down payment was not earned during the cohabitation, hence, it is his exclusive property.

b. 1 / 3 of the house and lot is owned by G. She is an undivided co-owner to the extent for her contribution in its acquisition when she paid 1/ 3 of the purchase price using the gift from her parents. Although the gift was acquired by G during her cohabitation with B, it is her exclusive property. It did not consist of wage or salary or fruit of her work or industry

c. 1/3 of the house is co-owned by B and G because the payment came from their co-owned funds, *i.e.,* their joint income during their cohabitation which is shared by them equally in the absence of any proof to the contrary.

After summing up their respective shares, B and G are undivided co-owners of the house and lot in equal shares.

As to the apartment, it is owned exclusively by B because he acquired it before their cohabitation. Even if he acquired it during their cohabitation it will still be his exclusive property because it did not come from his wage or salary, or from his work or industry. It was acquired gratuitously from his uncle.

If G and B had married on July 3, 1987 and their marriage was dissolved in 2007, who owns the properties? Explain. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

The answer is the same as in letter A. Since the parties to the marriage which was later declared void *ab initio were* capacitated to marry each other, the applicable law under the New Civil Code was Article 144. This Article is substantially the same as Article 147 of the Family Code. Hence, the determination of ownership will remain the same as in question A. And even assuming that the two provisions are not the same, Article 147 of the Family Code is still the law that will govern the property relations of B and G because under Article 256, the Family Code has retroactive effect insofar as it does not prejudice or impair vested or acquired rights under the New Civil Code or other laws. Applying Article 147 retroactively to the case of G and B will not impair any vested right. Until the declaration of nullity of the marriage under the Family Code, B and G have not as yet acquired any vested right over the properties acquired during their cohabitation.

In 1997, B and G started living together without the benefit of marriage. The relationship produced one offspring, Venus. The couple acquired a residential lot in Paranaque. After four (4) years or in 2001, G having completed her 4- year college degree as a fulltime student, she and B contracted marriage without a license.

The marriage of B and G was, two years later, declared null and void due to the absence of a marriage license.

If you were the judge who declared the nullity of the marriage, to whom would you award the lot? Explain briefly. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Since the marriage was null and void, no Absolute Community or Conjugal Partnership was established between B and G. Their properties are governed by the *"special co-ownership*" provision of Article 147 of the Family Code because both B and G were capacitated to marry each other. The said Article provides that when a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage, or under a void marriage: (1) their wages and salaries shall be owned by them in equal shares; and (2) property acquired by both of them through their work or industry shall be governed by the rules on co-ownership. In co-ownership, the parties are co-owners if they contributed something of value in the acquisition of the property. Their share is in proportion to their respective contributions. In an ordinary co- ownership the care and maintenance of the family is not recognized as a valuable contribution for the acquisition of a property. In the Article 147 "*special co-ownerships,* however, care and maintenance is recognized as a valuable contribution which will entitle the contributor to half of the property acquired.

Having been acquired during their cohabitation, the residential lot is presumed acquired through their joint work and industry under Article 147, hence, B and G are co-owners of the said property in equal shares.

Article 147 also provides that when a party to the void marriage was in bad faith, he forfeits his share in the co-ownership in favor of the common children or descendants. In default of children or descendants, the forfeited share shall belong to the innocent party. In the foregoing problem, there is no showing that one party was in bad faith. Hence, both shall be presumed in good faith and no forfeiture shall take place.

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office.' She then gave copies of the marriage contract to the parties, and told Michael and Anna that

they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.

x x x

What property regime governs the properties acquired by the couple? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The marriage being void, the property relationship that governed their union is special co-ownership under Article 147 of the Family Code. This is on the assumption that there was no impediment for them to validly marry each other.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x

If there is no marriage settlement, the salary of a "spouse" in an adulterous marriage belongs to the conjugal partnership of gains. (2009 Bar Question)

SUGGESTED ANSWER:

False. In an adulterous relationship, the salary of a married partner belongs to the absolute community, or conjugal partnership, of such married partner with his or her lawful spouse. Under Article 148 of the Family Code, the property relations between married partner and his/ her paramour is governed by ordinary co-ownership where the partners become co-owners only when they contributed to the acquisition of the property. The paramour is deemed to have not contributed in the earning of the salary of the married partner.

VI. The Family

Spouses A and B leased a piece of land belonging to B's parents for 25 years. The spouses built their house on it worth P300,000.00. Subsequently, in a case that C filed against A and B, the court found the latter liable to C for P200,000.00. When the sheriff was attaching their house for the satisfaction of the judgment, A and B claimed that it was exempt from execution, being a family home. Is this claim correct? (2011 BAR)

(A) Yes, because while B's parents own the land, they agreed to have their daughter build her family home on it.
(B) No, because there is no judicial declaration that it is a family home.
(C) No, since the land does not belong to A and B, it cannot qualify as a family home.
(D) Yes, because the A and B's family actually lives in that house.

VII. Paternity and Filiation (Family Code)

Julie had a relationship with a married man who had legitimate children. A son was born out of that illicit relationship in 1981. Although the putative father did not recognize the child in his certificate of birth, he nevertheless provided the child with all the support he needed and spent time regularly with the child and his mother. When the man died in 2000, the child was already 18 years old so he filed a petition to be recognized as an illegitimate child of the putative father and sought to be given a share in his putative father's estate. The legitimate family opposed, saying that under the Family Code his action cannot prosper because he did not bring the action for recognition during the lifetime of his putative father. (2015 BAR)

a. If you were the judge in this case, would how you rule?

SUGGESTED ANSWER:

If I were the judge, I will not allow the action for recognition filed after the death of the putative father. Under the Family Code, an illegitimate child who has not been recognized by the father in the record of birth, or in a private handwritten instrument, or in a public document and may prove his filiation based on open and continuous possession of the status of an illegitimate child but pursuant to Article 175, he or she must file the action for recognition during the lifetime of the putative father. The provision of Article 285 of the Civil Code allowing the child to file the action for recognition even after the death of the father will not apply because in the case presented, the child was no longer a minor at the time of death of the putative father.

b. Wishing to keep the peace, the child during the pendency of the case decides to compromise with his putative father's family by abandoning his petition in exchange for what he would have received as inheritance if he were recognized as an illegitimate child. As the judge, would you approve such a compromise?

SUGGESTED ANSWER:

NO, I will not approve the compromise agreement because filiation is a matter to be decided by law. It is not for the parties to stipulate whether a person is a legitimate or illegitimate child of another *(De Jesus v. Estate of Dizon, G.R. No. 142877, October 2, 2001).* In all cases of illegitimate children, their filiation must be duly proved *(Art. 887, NCC).*

A left B, his wife, in the Philippines to work in Egypt but died in that country after a year's continuous stay. Two months after A's death, B gave birth to a child, claiming it is A's child. Who can assail the legitimacy of the child? (2011 BAR)

(A) A's other heirs apart from B.
(B) The State which has interest in the welfare of overseas contract workers.
(C) Any one who is outraged by B's claim.
(D) No one since A died.

The husband may impugn the legitimacy of his child but not on the ground that: (2012 BAR)

a) the wife is suspected of infidelity.
b) the husband had a serious illness that prevented him from engaging in sexual intercourse.
c) they were living apart.
d) he is physically incapable of sexual intercourse.

Who are illegitimate children? (2012 BAR)

a) Children conceived or born outside a valid marriage.
b) Children born under a valid marriage, which was later declared void because of the psychological incapacity of either or both of the spouses.
c) Children conceived and born outside a valid marriage.
d) Children born under a valid marriage, but the parents later obtained a legal separation.

An illegitimate child may use the surname of his father when his filiation is established in any of the following instances, except: (2012 BAR)

a) Filiation has been recognized by the father through the record of birth appearing in the civil register
b) Admission of filiation by the father in a public document.
c) Private handwritten instrument is made by the father acknowledging his filiation.
d) Affidavit by the mother stating the name of his true father.

Spouses B and G begot two offsprings. Albeit they had serious personality differences, the spouses continued to live under one roof. B begot a son by another woman. G also begot a daughter by another man.

b. If G gives the surname of B to her daughter by another man, what can B do to protect their legitimate children's interests? Explain. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

B can impugn the status of G's daughter by another man as his legitimate daughter on the ground that for biological reason he could not have been the father of the child, a fact that may be proven by the DNA test. Having been born during the marriage between B and G, G's daughter by another man is presumed as the child of B under Article 164 of the Family Code. In the same action to impugn, B can pray for the correction of the status of the said daughter in her record of birth.

If B acquiesces to the use of his surname by G's daughter by another man, what is/are the consequence/s? Explain. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

If B acquiesces and does not file the action to impugn the legitimacy of the child within the prescriptive period for doing so in Article 170 of the Family Code, G's daughter by another man shall be conclusively presumed as the legitimate daughter of B by G.

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via *in vitro* fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette P2 million and, in return, she would give custody of the baby to him.

After Majorette gives birth and delivers the baby to Gigolo following her receipt of P2 million, she engages your services as her lawyer to regain custody of the baby.

x x x

D. Is the child entitled to support and inheritance from Gigolo? Explain. (2.5%) (2010 Bar Question)

FIRST SUGGESTED ANSWER:

If Gigolo voluntarily recognized the child as his illegitimate child in accordance with Article 175 in relation to Article 172 of the Family Code, the child is entitled to support and inheritance from Gigolo.

SECOND SUGGESTED ANSWER:

Yes, because Gigolo is the natural and biological parent of the baby.

In 1997, B and G started living together without the benefit of marriage. The relationship produced one offspring, Venus. The couple acquired a residential lot in Paranaque. After four (4) years or in 2001, G having completed her 4- year college degree as a fulltime student, she and B contracted marriage without a license.

The marriage of B and G was, two years later, declared null and void due to the absence of a marriage license.

x x x

Is Venus legitimate, illegitimate, or legitimated? Explain briefly. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Venus is illegitimate. She was conceived and born outside a valid marriage. Thus, she is considered illegitimate *(.Article 165, Family Code).* While Venus was legitimated by the subsequent marriage of her parents, such legitimation was rendered ineffective when the said marriage was later on declared null and void due to absence of a marriage license.

Under Article 178 of the Family Code, "legitimation shall take place by a subsequent valid marriage between parents. *The annulment of a voidable marriage shall not affect the* legitimation."

The inclusion of the underscored portion in the Article necessarily implies that the Article's application is limited to voidable marriages. It follows that when the subsequent marriage is null and void, the legitimation must also be null and void. In the present problem, the marriage between B and G was not voidable but void. Hence, Venus has remained an illegitimate child.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x

[e] A dead child can be legitimated. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. To be legitimated, the law does not require a child to be alive at the time of the marriage of his/her parents (Article 177, FC). Furthermore, Art. 181 of the Family Code which states that "[Th]e legitimation of children who died before the celebration of marriage will benefit their descendants," does not preclude instances where such legitimation will benefit no one but the child's ascendants, or other relatives.

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office.' She then gave copies of the marriage contract to the parties, and told Michael and Anna that they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.
x x x

[b] What is the status of the three children of Michael and Anna? Explain your answer. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The children are illegitimate, having been born outside a valid marriage.

Four children, namely: Alberto, Baldomero, Caridad, and Dioscoro, were born to the spouses Conrado and Clarita de la Costa. The children's birth certificates were duly signed by Conrado, showing them to be the couple's legitimate children.

Later, one Edilberto de la Cruz executed a notarial document acknowledging Alberto and Baldomero as his illegitimate children with Clarita. Edilberto died leaving substantial properties. In the settlement of his estate, Alberto and Baldomero intervened claiming shares as the deceased's illegitimate children. The legitimate family of Edilberto opposed the claim.

Are Alberto and Baldomero entitled to share in the estate of Edilberto? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No, Alberto and Baldomero are not entitled to share in Edilberto's estate. They are not related at all to Edilberto. They were born during the marriage of Conrado and Clarita, hence, are considered legitimate children of the said spouses. This status is conferred on them at birth by law.

Under Philippine law, a person cannot have more than one natural filiation. The legitimate filiation of a person can be changed only if the legitimate father will successfully impugn such status.

In the problem, therefore, the filiation of Alberto and Baldomero as the legitimate children of Conrado cannot be changed by their recognition by Edilberto as his illegitimate children. Before they can be conferred the status of Edilberto's illegitimate children, Conrado must first impugn their legitimacy. Since Conrado has not initiated any action to impugn their legitimacy, they continue to be the legitimate children of Conrado. They cannot be the illegitimate children of Edilberto at the same time. Not being the illegitimate children of Edilberto, they have no right to inherit from him.

VIII. Adoption

A. Domestic Adoption Act of 1998 (R.A. No. 8552)

Spouses Esteban and Maria decided to raise their two (2) nieces, Faith and Hope, both minors, as their own children after the parents of the minors died in a vehicular accident.

Ten (10) years after, Esteban died. Maria later on married her boss Daniel, a British national who had been living in the Philippines for two (2) years.

With the permission of Daniel, Maria filed a petition for the adoption of Faith and Hope. She did not include Daniel as her co-petitioner because for Maria, it was her former husband Esteban who raised the kids.

If you are the judge, how will you resolve the petition? (2014 BAR)

SUGGESTED ANSWER:

I will dismiss the petition for adoption. The rule is that the husband and wife must jointly adopt and there are only three recognized exceptions to joint adoption by the husband and wife: 1) if one spouse seeks to adopt the legitimate child of the other; 2) if one spouse seeks to adopt his or her own illegitimate child; 3) if the spouses are legally separated. The case of Maria and Daniel does not appear to fall under any of the recognized exceptions, accordingly the petition filed by the wife alone should be dismissed.

Honorato filed a petition to adopt his minor illegitimate child Stephanie, alleging that Stephanie's mother is Gemma Astorga Garcia; that Stephanie has been using her mother's middle name and surname; and that he is now a widower and qualified to be her adopting parent. He prayed that Stephanie's middle name be changed from "Astorga" to "Garcia," which is her mother's surname and that her surname "Garcia" be changed to "Catindig," which is his surname. This the trial court denied. Was the trial court correct in denying Hororato's request for Stephanie's use of her mother's surname as her middle name? Explain. (1996, 2012)

SUGGESTED ANSWER:

NO, the trial court was not correct. There is no law prohibiting an illegitimate child adopted by his natural father to use as middle name his mother's surname. The law is silent as to what middle name an adoptee may use. In the case of *In re: Adoption of Stephanie Nathy Astorga Garcia (G.R. No, 148311, March 31, 2005),* the Supreme Court ruled that the adopted child may use the surname of the natural mother as his middle name because there is no prohibition in the law against it. Moreover, it will also be for the benefit of the adopted child who shall preserve his lineage on his mother's side and reinforce his right to inherit from his mother and her family. Lastly, it will make the adopted child conform with the time-honored Filipino tradition of carrying the mother's surname as the person's middle name.

Spouses Primo and Monina Lim, childless, were entrusted with the custody of two (2) minor children, the parents of whom were unknown. Eager of having children of their own, the spouses made it appear that they were the children's parents by naming them Michelle P. Lim and Michael Jude Lim. Subsequently, Monina married Angel Olario after Primo's death.

She decided to adopt the children by availing the amnesty given under R.A. 8552 to those individuals who simulated the birth of a child. She filed separate petitions for the adoption of Michelle, then 25 years old and Michael, 18. Both Michelle and

Michael gave consent to the adoption. The trial court dismissed the petition and ruled that Monina should have filed the petition jointly with her new husband. Monina, in a Motion for Reconsideration argues that mere consent of her husband would suffice and that joint adoption is not needed, for the adoptees are already emancipated.

Is the trial court correct in dismissing the petitions for adoption? Explain. (2012 BAR)

SUGGESTED ANSWER:

YES, the trial court was correct. At the time the positions for adoptions were filed, petitioner had already remarried. Under the law, husband and wife shall adopt jointly, except in cases enumerated in the law. The adoption cases of Michelle and James do not fall in any of the exceptions provided in the law where a spouse is permitted to adopt alone. Hence, Monina should adopt jointly with her husband Angel *(Adoption of Michelle P. Lim, G.R. Nos. 168992-93, May 21, 2009)*.

Spouses Rex and Lea bore two children now aged 14 and 8. During the subsistence of their marriage, Rex begot a child by another woman. He is now 10 years of age.

On Lea's discovery of Rex's fathering a child by another woman, she filed a petition for legal separation which was granted.

Rex now wants to adopt his illegitimate child.

Whose consent is needed for Rex's adoption of his illegitimate child? (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

The consent of the 14-year-old legitimate child, of the 10-year-old illegitimate child, and of the biological mother of the illegitimate child are needed for the adoption. *(Section 7 and 9, RA 8552).* The consent of Lea is no longer required because there was already a final decree of legal separation.

If there was no legal separation, can Rex still adopt his illegitimate child? Explain. (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, he can still adopt his illegitimate child but with the consent of his spouse, of his 14-year-old legitimate child, of the illegitimate child, and of the biological mother of the illegitimate child (Section 7 and 9, RA 8552).

Eighteen-year old Filipina Patrice had a daughter out of wedlock whom she named Laurie. At 26, Patrice married American citizen John who brought her to live with him in the United States of America. John at once signified his willingness to adopt Laurie.

Can John file the petition for adoption? If yes, what are the requirements? If no, why? (5%) (2010 Bar Question)

SUGGESTED ANSWER:

No, John cannot file the petition to adopt alone. Philippine law requires husband and wife to adopt jointly except in certain situations enumerated in the law. The case of John does not fall in any of the exceptions. (R.A. 8552).

Rafael, a wealthy bachelor, filed a petition for the adoption of Dolly, a one-year old foundling who had a severe heart ailment. During the pendency of the adoption proceedings, Rafael died of natural causes. The Office of the Solicitor General files a motion to dismiss the petition on the ground that the case can no longer proceed because of the petitioner's death.

Should the case be dismissed? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

It depends on the stage of the proceedings when Rafael died. If he died after all the requirements under the law have been complied with and the case is already submitted for resolution, the court may grant the petition and issue a decree of adoption despite the death of the adopter (Section 13, RA 8552). Otherwise, the death of the petitioner shall have the effect of terminating the proceedings.

Will your answer be the same if it was Dolly who died during the pendency of the adoption proceedings? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

No, if it was Dolly who died, the case should be dismissed. Her death terminates the proceedings (Art. 13, Domestic Adoption Law).

ALTERNATIVE ANSWER:

It depends. If all the requirements under the law have already been complied with and the case is already submitted for resolution, the death of the adoptee should not abate the proceedings. The court should issue the decree of adoption if it will be for the best interest of the adoptee. While RA 8552 provides only for the case where it is the petitioner who

dies before the decree is issued, it is with more compelling reason that the decree should allowed in case it is the adoptee who dies because adoption is primarily for his benefit.

B. Inter-Country Adoption Act of 1995 (R.A. No. 8043)

Under RA 8043, an adopter is required to be at least ____ years old and ____ years older than the child to be adopted at the time of the application *unless* the adopter is the parent by nature of the child. (2012 BAR)
a) 30 and 15
b) 27 and 16
c) 50 and 10
d) 18 and 15

Under RA 8043, a child qualified to be adopted is any person below _____ years old. (2012 BAR)
a) 18
b) 21
c) 15
d) 16

IX. Support (Family Code)

Is the wife who leaves her husband without just cause entitled to support? (2011 BAR)

(A) No, because the wife must always be submissive and respectful to the husband.
(B) Yes. The marriage not having been dissolved, the husband continues to have an obligation to support his wife.
(C) No, because in leaving the conjugal home without just cause, she forfeits her right to support.
(D) Yes, since the right to receive support is not subject to any condition.

Mrs. L was married to a ship captain who worked for an international maritime vessel. For her and her family's support, she would claim monthly allotments from her husband's company. One day, while en route from Hong Kong to Manila, the vessel manned by Captain L encountered a severe typhoon at sea. The captain was able to send radio messages of distress to the head office until all communications were lost. In the weeks that followed, the search operations yielded debris of the lost ship but the bodies of the crew and the passengers were not recovered. The insurance company thereafter paid out the death benefits to all the heirs of the passengers and crew. Mrs. L filed a complaint demanding that her monthly allotments continue for the next four years until her husband may be legally presumed dead because of his absence. If you were the magistrate would how you rule? (3%)

SUGGESTED ANSWER:

I would rule against Mrs. L. There is no merit in her contention that the monthly allotments to her should continue despite the presumptive death of the husband. In case of disappearance where there is danger of death, the person shall be presumed to have died at the beginning of the four (4) year period although his succession will be opened only at the end of the four year period. (Article 391, Civil Code) Since the husband of Mrs. L is presumed to have died at about the time of disappearance, he is no longer entitled to receive his salary from the day the presumption of death arises.

Spouses X and Y have a minor daughter, Z, who needs support for her education. Both X and Y, who are financially distressed, could not give the needed support to Z. As it happens, Z's other relatives are financially capable of giving that support. From whom may Z first rightfully demand support? From her (2011 BAR)

(A) grandfather.
(B) brother.
(C) uncle.
(D) first cousin.

When the donor gives donations without reserving sufficient funds for his support or for the support of his dependents, his donations are

(A) Rescissible, since it results in economic lesion of more than 25% of the value of his properties.
(B) Voidable, since his consent to the donation is vitiated by mindless kindness.
(C) Void, since it amounts to wanton expenditure beyond his means.
(D) Reducible to the extent that the donations impaired the support due to himself and his dependents.

Illegitimate brothers and sisters, whether of full or half-blood, are bound to support each other, EXCEPT when (2011 BAR)

(A) the brother or sister who needs support lives in another place.
(B) such brothers and sisters are not recognized by their father.
(C) the brother or sister in need stops schooling without valid reason.
(D) the need for support of a brother or sister, already of age, is due to the latter's fault.

G filed on July 8, 2000 a petition for declaration of nullity of her marriage to B. During the pendency of the case, the couple entered into a compromise agreement to dissolve their absolute community of property. B ceded his right to their house and lot and all his shares in two business firms to G and their two children, aged 18 and 19.

B also opened a bank account in the amount of P3 million in the name of the two children to answer for their educational expenses until they finish their college degrees.

For her part, G undertook to shoulder the day-to-day living expenses and upkeep of the children. The Court approved the spouses' agreement on September 8, 2000.

Suppose the business firms suffered reverses, rendering G unable to support herself and the children. Can G still ask for support *pendente lite* from B? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, G can still ask for support from B because during the pendency of the action, the marriage between them is considered still subsisting *(Article 68, Family Code).* Being considered still married to each other, B and G still have the obligation to support each other. The compromise agreement cannot operate to waive future support when needed *(Article 2035, Civil Code).*

After the compromise agreement was approved by the court and the properties of the marriage were distributed, there remained no more common properties of B and G. While Article 198 of the Family Code appears ' to limit the source of support to the common properties of the said marriage in case of the pendency of an action to declare the nullity of marriage, Article 94 and Article 121 indicate otherwise. Under the said Articles, the spouses remain personally and solidarily liable with their separate properties for support even though, for whatever reason, there are no more community or partnership properties left.

The judgment based on the compromise dissolving the property relations of B and G does not bar G from asking support *pendente lite.* The dissolution of the property relations of the spouses did not terminate the obligation between them to support each other. The declaration of the nullity of their marriage is what terminates the right of G to be supported by B as his spouse.

Suppose in late 2004 the two children had squandered the P3 million fund for their education before they could obtain their college degrees, can they ask for more support from B? Explain. (3%) (2010 Bar Question)

Yes, the two children can still ask for support for schooling or training for some profession, trade or vocation, even beyond the age of majority until they shall have finished or completed their education (*Article 194*, *Paragraph 2, Family Code; Javier v. Lucero*, 94 Phil. 634 [1954]). Their having squandered the money given to them for their education will not deprive them of their right to complete an education, or to extinguish the obligation of the parents to ensure the future of their children.

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via *in vitro* fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette P2 million and, in return, she would give custody of the baby to him.

After Majorette gives birth and delivers the baby to Gigolo following her receipt of P2 million, she engages your services as her lawyer to regain custody of the baby.

x x x

Is the child entitled to support and inheritance from Gigolo? Explain. (2.5%) (2010 Bar Question)

FIRST SUGGESTED ANSWER:

If Gigolo voluntarily recognized the child as his illegitimate child in accordance with Article 175 in relation to Article 172 of the Family Code, the child is entitled to support and inheritance from Gigolo.

SECOND SUGGESTED ANSWER:

Yes, because Gigolo is the natural and biological parent of the baby.

X. Parental Authority (Family Code)

Which of the following DOES NOT result in permanent termination of parental authority? (2012 BAR)
a) Death of the parents.
b) Death of the child.
c) Emancipation of the child.
d) Conviction of the parents of a crime which carries with it the penalty of civil interdiction.

The court, in an action filed for the purpose, may suspend parental authority if the parent or the person exercising parental authority commits any of the following acts, except: (2012 BAR)
a) Treats the child with excessive harshness or cruelty.
b) Gives the child corrupting orders, counsel or example.
c) Compels the child to take up a course in college against his/her will.
d) Subjects the child or allows him to be subjected to acts of lasciviousness.

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via *in vitro* fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette P2 million and, in return, she would give custody of the baby to him.

After Majorette gives birth and delivers the baby to Gigolo following her receipt of P2 million, she engages your services as her lawyer to regain custody of the baby.

What legal action can you file on behalf of Majorette? Explain. (2.5%) (2010 Bar Question)

FIRST SUGGESTED ANSWER:

As her lawyer, I can file a petition for *habeas corpus* on behalf of Majorette to recover custody of her child. Since she is the mother of the child that was born out of wedlock, she has exclusive parental authority and custody over the child. Gigolo, therefore, has no right to have custody of the child and his refusal to give up custody will constitute illegal detention for which *habeas corpus* is the proper remedy.

SUGGESTED ANSWER:

The action to regain custody will not prosper. In the first place Majorette cannot regain custody of the baby. As surrogate mother she merely carries the child in her womb for its development. The child is the child of the natural parents - Gigolo and his partner. The agreement between Gigolo and Majorette is a valid agreement.

x x x

Who of the two can exercise parental authority over the child? Explain. (2.5%) (2010 Bar Question)

FIRST SUGGESTED ANSWER:

Majorette, the mother, can exercise parental authority. Since the child was born out of wedlock, the child is illegitimate and the mother has the exclusive parental authority and custody over the child.

SECOND SUGGESTED ANSWER:

Gigolo can exercise parental authority over the child. Majorette has no blood relation to the child. She is just a "carrier" of the child.

On May 5, 1989, 16-year old Rozanno, who was issued a student permit, drove to school a car, a gift from his parents. On even date, as his class was scheduled to go on a field trip, his teacher requested him to accommodate in his car, as he did, four (4) of his classmates because the van rented by the school was too crowded. On the way to a museum which the students were scheduled to visit, Rozanno made a wrong maneuver, causing a collision with a jeepney. One of his classmates died. He and the three (3) others were badly injured.

Who is liable for the death of Rozanno's classmate and the injuries suffered by Rozanno and his 3 other classmates? Explain. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

At the time the incident occurred in May 1989, Rozanno was still a minor. Being a minor, Article 218 of the Family Code applies. Pursuant to Article 218, the school, its administrators and teachers shall be liable for the acts of the minor Rozanno because of

the special parental authority and responsibility that they exercise over him. This authority applies to all authorized activities, whether inside or outside the premises of the school, entity or institution. The field trip, on which occasion Rozanno drove the car, was an authorized activity, and, thus, covered by the provision. Furthermore, the parents of Rozanno are subsidiarily liable pursuant to Article 219 (FC), and principally liable under Article 221 (FC), if they were negligent.

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by I caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

x x x

When Rona reaches seven (7) years old, she tells Rodolfo that she prefers to live with him, because he is better off financially than Nanette. If Rodolfo files an action for the custody of Rona, alleging that he is Rona's choice as custodial parent, will the court grant Rodolfo's petition? Why or why not? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

No, because Rodolfo has no parental authority over Rona. He who has the parental authority has the right to custody. Under the Family Code, the mother alone has parental authority over the illegitimate child. This is true even if the illegitimate father has recognized the child and even though he is giving support for the child. To acquire custody over Rona, Rodolfo should first deprive Nanette of parental authority if there is a ground under the law, and in a proper court proceeding. In the same action, the court may award custody of Rona to Rodolfo if it is for her best interest.

The authority that school administrators exercise over school children under their supervision, instruction, or custody is called (2011 BAR)

(A) legal parental authority.
(B) substitute parental authority.
(C) ordinary parental authority.
(D) special parental authority.

Include: Child Abuse Law (R.A. No. 7610)

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via *in vitro* fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette P2 million and, in return, she would give custody of the baby to him.

After Majorette gives birth and delivers the baby to Gigolo following her receipt of P2 million, she engages your services as her lawyer to regain custody of the baby.

x x x

Can Gigolo demand from Majorette the return of the P2 million if he returns the baby? Explain. (2.5%) (2010 Bar Question)

FIRST SUGGESTED ANSWER:

No, he cannot. Both he and Majorette are guilty of violating the provision of the Anti-Child Abuse Law (RA7610) on child trafficking. Being in *pari delicto,* the parties shall be left where they are and Gigolo cannot demand the return of what he paid.

SECOND SUGGESTED ANSWER:

Yes. The agreement between Gigolo and Majorette is a valid agreement.

XI. Emancipation (Arts. 234 and 236, Family Code, as amended by R.A. No. 6809 which lowered the age of majority)

XII. Summary Judicial Proceedings in Family Law Cases

XIII. Retroactivity of the Family Code (Art. 256)

XIV. Funerals (Arts. 305-310, Civil Code)

XV. Use of Surnames

Illegitimate children, those not recognized by their biological fathers, shall use the surname of their (2011 BAR)

(A) biological father subject to no condition.
(B) mother or biological father, at the mother's discretion.
(C) mother.
(D) biological father unless he judicially opposes it.

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by I caesarean section; moral, claiming that Rodolfo promised to j marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

x x x

Suppose Rodolfo later on acknowledges Rona and gives her regular support, can he compel her to use his surname? Why or why not? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

No, he has no right to compel Rona to use his surname. The law does not give him that right simply because he gave her support (RA 9255).

Under the Family Code, an illegitimate child was required to use only the surname of the mother. Under RA 9255, otherwise known as the Revilla law, however, the illegitimate child is given the option to use the surname of the illegitimate father when the latter has recognized the former in accordance with law. Since the choice belongs to the illegitimate child, Rodolfo cannot compel Rona, if already of age, to use his surname against her will. If Rona is still a minor, to use the surname of Rodolfo will require the consent of Rona's mother who has sole parental authority over her.

XVI. Absence (Art. 43, Civil Code; Art. 41, Family Code)

XVII. Civil Registrar

PROPERTY

I. Characteristics

TRUE or FALSE — Explain your answers.

(a) All rights are considered as property. (2%) (2017 BAR)

SUGGESTED ANSWER:

(a) False. Only right which are patrimonial in character can be considered property. Rights which are not patrimonial, such as the right to liberty, the right to honor, family rights, and political rights cannot be considered property.

(b) A lessee cannot bring a case for quieting of title respecting the property that he leases. (2%) (2017 BAR)

SUGGESTED ANSWER:

(b) True. The plaintiff must have a legal or equitable title to the real property in question or some interest therein, (or must be possession thereof, so that the action may be in prescriptible (Article 476-477, Civil Code)

SUGGESTED ALTERNATIVE ANSWER:

b) False. If the property lease is a movable property, like a car, an airplane or a ship, the lessee cannot bring the action to quiet title. The property - subject matter of the action to quiet title should be real property only (Art 477, NCC).

(c) Only the city or municipal mayor can file a civil action to abate a public nuisance. (2%) (2017 BAR)

SUGGESTED ANSWER:

(c) False. Article 703 of the New Civil Code provides that a private person may file an action on account of a public nuisance, if it is especially injurious to himself. Thus, a private person may file a civil action to abate a public nuisance that is especially injurious to him.

(d) Possession of a movable property is lost when the location of the said movable is unknown to the owner. (2%) (2017 BAR)

SUGGESTED ANSWER:

d) False. Article 556 of the Civil Code provides that the possession of movables is not deemed lost so long as they remain under the control of the possessor, even though for the time being he may not know their whereabouts. Possession of a movable, therefore, is lost only when possessor loses control over it.

(e) Continuous non-apparent easements can be acquired either through title or by prescription. (2%) (2017 BAR)

SUGGESTED ANSWER:

(e) False. Article 620 of the Civil Code provides that continuous and apparent easement is acquired either by virtue of a title or by prescription of ten years. Continuous non-apparent easements and discontinuous ones, whether apparent or not, maybe acquired only by virtue of a title (Art. 622, NCC). An easement must be both continuous and apparent in Order to be subject to acquisition by prescription.

II. Classification

In 1960, Rigor and Mike occupied two separate but adjacent tracts of land-in Mindoro. Rigor's tract was classified as timber land while Mike's was classified as agricultural land. Each of them fenced and cultivated his own tract continuously for 30 years. In 1991, the Government declared the land occupied by Mike as alienable and disposable, and the one cultivated by Rigor as no longer intended for public.use or public service.

Rigor and Mike now come to you today for legal advice in asserting their right of ownership of their respective lands based on their long possession and occupation since 1960.

(a) What are the legal consequences of the 1991 declarations of the Government respecting the lands? Explain your answer. (2%) (2017 BAR)

SUGGESTED ANSWER:

(a) As to the land occupied by Mike, the same remains a property of the public dominion. According to jurisprudence, the classification of the property as alienable and disposable land of the public domain does not change its status as property of the public dominion. There must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property, has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion (Heirs of Mario Malabanan v. Republic,G.R. No. 179987, April 29, 2009 and September 3,2013).

As to the land occupied by Rigor, the declaration that it is no longer intended for public use or public service converted the same into patrimonial property provided that such express declaration was in the form of a law duly enacted by Congress or in a Presidential Proclamation in cases where the President was duly authorized by law. According to jurisprudence, when public land is no longer intended for public use, public service or for the development of the national wealth it is thereby effectively removed from the ambit of public dominion and converted into patrimonial provided that the declaration of such conversion must be made in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect (Heirs of Mario Malabanan v. Republic, G.R. No. 179987, April 29, 2009 and September 3, 2013).

b) Given that, according to Section 48(b) of Commonwealth Act No. 141, M relation to Section 14(1) of Presidential Decree No. 1529, the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain as basis for judicial confirmation of imperfect title must be from June 12, 1945, or earlier, may Mike nevertheless validly base his assertion of the right of ownership on prescription under the Civil Code? Explain your answer. (4%)

SUGGESTED ANSWER:

(b) No, because the land remains property of public dominion and, therefore, not susceptible to acquisition by prescription. According to jurisprudence, the classification of the subject property as alienable and disposable land of the public domain does not change its status as property of the public dominion. In order to convert the property into patrimonial, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, and thus incapable of acquisition by prescription (Heirs of Mario Malabanan v. Republic, G.R. No. 179987, April 29, 2009 and September 3,2013).

Here, the declaration of the property into alienable and disposable land of the public domain in 1991 did not convert the property into patrimonial in the absence of an express declaration of such conversion into patrimonial in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect.

(f) Does Rigor have legal basis for his application for judicial confirmation of imperfect title based on prescription as defined by the Civil Code given that, like Mike, his open, continuous, exclusive, and notorious possession and occupation was not since June 12, 1945, or earlier, and his tract of land was timber land until the declaration in 1991. Explain your answer. (4%)

SUGGESTED ANSWER:

(b) None, because Rigor's possession was short of the period required by the Civil Code for purposes of acquisitive prescription which requires ten (10) years of continuous possession, if possession was in good faith and with a just title, or thirty years, in any event. While property may be considered converted into patrimonial because of the 1991 declaration that it is no longer intended for public use or public service (provided that the declaration be in the form of a law duly enacted by Congress or by a Presidential proclamation in cases where the President is duly authorized by law to that effect), Rigor failed to complete the 30-year period required by law in case of extraordinary prescription. Since the property was converted into patrimonial only in 1991, the period of prescription commenced to run beginning that year only. Rigor's possession prior to the conversion of the property into patrimonial cannot be counted for the purpose of completing the prescriptive period because prescription did not operate against the State at that time, the property then being public dominion property (Heirs of Mark Malabonan v. Republic, G.R. No.179987 April 29, 2009 and September 3,2013). Rigor may not likewise acquire ownership by virtue of the shorter 10-year ordinary prescription because his possession was not in good faith and without just title.

Joven and Juliana are the owners of a 30-hectare plantation in Cotabato, covered by a title. One day, a group of armed men forcibly entered their house and, at gun point, forced them to sign a Deed of Absolute Sale in favor of Romeo.
Romeo got the title from them and they were ejected from the house and threatened not to come back or else they will be killed. The spouses went to Manila and resided there for more than 35 years. They never went back to Cotabato for fear of their lives. Word came to them that peace and order have been restored in their former place of residence and they decided to reclaim their land for the benefit of their grandchildren. Joven and Juliana filed a suit for reconveyance of their property. This was opposed by the grandson of Romeo to whom the title was eventually trans- ferred, on the ground of laches and prescription. Decide the case and rule on the defenses of laches and prescription. Explain your answer. (5%) (2016 BAR)

SUGGESTED ANSWER:

The right of the registered owners, Joven and Juliana, to file suit to recover their property, is not barred by prescription. Under Section 47 of P.D. No. 1529, no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.

Proof of possession by the owner in an action for reconveyance is immaterial and inconsequential. The right to recover possession is equally imprescriptible since possession is a mere consequence of ownership (Republic v. Mendoza, 627 SCRA 443 [2010]). The right of Joven and Juliana to recover is not barred by laches, either. Laches deals with unreasonable delay in filing the action. The owners' delay, if any, cannot be construed as deliberate and intentional. They were simply coerced out of Cotabato and threatened with death if they re- turned, and, thus, could not have filed the action.

III. Ownership

A congregation for religious women, by way of commodatum, is using the real property owned and registered in the name of Spouses Manuel as a retreat house. Maria, a helper of the congregation discovered a chest in the backyard. When she opened the chest, it contained several pieces of jewelry and money.

a. Can the chest containing the pieces of jewelry and money be considered as hidden treasure?

A: NO, for property to be considered hidden treasure it must consist of money, jewelry or other precious objects, the lawful ownership of which does not appear. In the case at bar, the chest was just lay in the backyard and the real property where it was found belongs to the Spouses Manuel. They are thus presumed the owner of the chest where the jewelry was found.

b. Who has the right to claim ownership of it? (2014 BAR)

A: Since it does not come within the purview of hidden treasure, the spouses Manuel have the right to claim ownership over the chest as well as its contents.

Multiple choice.

O, owner of Lot A, learning that Japanese soldiers may have buried gold and other treasures at the adjoining vacant Lot B belonging to spouses X & Y, excavated in Lot B where she succeeded in unearthing gold and precious stones. How will the treasures found by O be divided? (1%) (2010 Bar Question)

A. 100% to O as finder
B. 50% to O and 50% to the spouses X and Y
C. 50% to O and 50% to the state
D. None of the above

SUGGESTED ANSWER:

D. None of the above.

The general rule is that the treasure shall belong to the spouses X and Y, the owners of Lot B. Under Article 438 (NCC), the exception is that when the discovery of a hidden treasure is made on the property of another and by chance, one-half thereof shall belong to the owner of the land and the other one-half is allowed to the finder. In the problem, the finding of the treasure was not by chance because O knew that the treasure was in Lot B. While a trespasser is also not entitled to any share, and there is no indication in the problem whether or not O was a trespasser, O is not entitled to a share because the finding was not "by chance".

The owner of a thing cannot use it in a way that will injure the right of a third person. Thus, every building or land is subject to the easement which prohibits its proprietor or possessor from committing nuisance like noise, jarring, offensive odor, and smoke. This principle is known as (2011 BAR)

(A) Jus vindicandi.
(B) Sic utere tuo ut alienum non laedas.
(C) Jus dispondendi.
(D) Jus abutendi.

IV. Accession

Josef owns a piece of land in Pampanga. The National Housing Authority (NHA) sought to expropriate the property for its socialized housing project. The trial court fixed the just compensation for the property at P50 million. The NHA immediately deposited the same at the authorized depository bank and filed a motion for the

issuance of a writ of possession with the trial court. Unfortunately, there was delay in the resolution of the motion. Meanwhile, the amount deposited earned interest.

When Josef sought the release of the amount deposited NHA argued that Josef should only be entitled to P50 million. Who owns the interest earned? (3%) (2017 Bar)

SUGGESTED ANSWER:

Josef owns the interest earned. In Republic v. Holy Trinity Realty Development Corp., (CR. No. 172410, April 14, 2008), the Supreme Court has declared that upon deposit by the appropriator of the amount fixed for just compensation, the owner whose property is sought to be expropriated becomes the owner of the deposited amount. Any interest, therefore, that accrues to such deposit belongs to the owner by right of accession. In the case at bar, Josef became the owner of the amount deposited by NHA; thus, any interest that accrues therefrom pertains to Josef by right of accession.

Note: In the case of NPC v. Heirs of Ramoran, OR. No. 193455, June 13, 2016, the Supreme Court ruled that the imposable rate of interest is 12% per annum from the time of the taking until June 30, 2013, and 6% per' annum from July 1, 2013 until full payment].

Plutarco owned land that borders on a river. After several years the action of the water of the river caused the deposit of soil, and increased the area of Plutarco's property by 200 square meters.

(a) If Plutarco wants to own the increase in area, what will be his legal basis for doing so? Explain your answer. (2%) (2017 BAR)

SUGGESTED ANSWER:

(a) Plutarco's legal basis for owning the increase in area would be by accretion under Article 457 of the New Civil Code, which says that the accretion of soil which is gradually received from the effects of the current of the waters belongs to the owners of land adjoining the banks of the river. The requisites in order that the reparian owner will own the alluvion deposited through the process of accretion are as follows: the deposit should be gradual and imperceptible, the cause of the accretion is the current of the river and is not artificial or man-made, and the land where the accretion takes place is adjacent to the river bank.

In Plutarco's case, all three requisites are met, as the accretion took place over several years, was caused by the action of the river, and the land he owned borders a riven therefore, he owns the increase In area by virtue of accretion.

(b) On the other hand, if the river dries up, may Plutarco validly claim a right of ownership of the dried-up river bed? Explain your answer. (2%) (2017 BAR)

SUGGESTED ANSWER:

(b) Rivers and their natural beds, being of public dominion (Article 502(1) Civil Code), are not subject to appropriation or accretion. The dried-up riverbed remains to be of public dominion and Plutarco cannot validly claim a right ownership over it (Republic v. Santos, G.R. No. 160453, November 12,2012).

Benjamin is the owner of a titled lot which is bounded on the north by the Maragondon River. An alluvial deposit of two (2) hectares was added to the registered area. Daniel took posses- sion of the portion formed by accretion and claims that he has been in open, continuous and undisturbed possession of said portion since 1923 as shown by a tax declaration. In 1958, Ben- jamin filed a Complaint for Quieting of Title and contends that the alluvium belongs to him as the riparian owner and that since the alluvium is, by law, part and parcel of the registered property, the same may be considered as registered property. Decide the case and explain. (5%) (2016 BAR)

I will decide in favor of Daniel and dismiss the action to quiet title filed by Benjamin. Under Article 457 of the Civil Code, the owner of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters. The accretion however, does not automatically become registered land. It must be brought under the Torrens system of registration by Benjamin, the reparian owner. Since he did not, the then increment, not being regis- tered land, was open to acquisition through prescription by third per- sons, like Daniel (Grande v. Court of Appeals, 5 SCRA 524 [1962]; Cureg v. Intermediate Appellate Court, 177 SCRA 313 [1989]).

Pedro bought a parcel of land described as Cadastral Lot No. 123 and the title was issued to his name. Juan also bought a lot in the same place, which is described as Cadastral Lot No. 124. Pedro hired a geodetic engineer to determine the actual location of Lot No. 123 but for some reason, the engineer pointed to Lot No. 124 by mistake.

Pedro hired a contractor to construct his house and the latter put up a sign stating the name of the owner of the project and the construction permit number. It took more than a year before the house was constructed. When Pedro was already residing in his house, Juan told him to remove his house because it was built on his (Juan's) lot.

Juan filed a Complaint for Recovery of Possession and prayed that the house be removed because Pedro is a builder in bad faith. Pedro filed his Answer with Counterclaim that he is entitled to the payment of the value of the house plus damages because he is a builder in good faith and that Juan is guiltyof estoppel and laches.

[a] If Pedro is a builder in good faith, what are the rights given to Juan under the law? Explain. (2.5%)
[b] If Pedro is a builder in bad faith, what are the rights given to Juan under the law? Explain. (2.5%) (2016 BAR)

SUGGESTED ANSWER:

[a] If Pedro is a builder in good faith and Juan is am owner in good faith, Juan has the right to appropriate as his own the house after payment of indemnity provided for in Articles 546 and 548 of the Civil Code, which are the necessary and useful expenses. As to useful ex- penses, Juan has the option to either refund the amount of the ex- penses, or pay the increase in value which the land may have acquired by reason thereof. Alternatively, under Article 448 of the Civil Code, Juan has the right to oblige Pedro to pay the price of the land. Howev- er, Pedro cannot be obliged to buy the land if its value is considerably more than that of the house. In such case, he shall pay reasonable rent, if Juan does not choose to appropriate the house after proper indemnity. It is the owner of the land who is authorized to exercise the options under Article 448 because his right is older and by principle of accession, he is entitled to the ownership of the accessory thing.

If Pedro is a builder in good faith and Juan is an owner in bad faith because Juan knew that Pedro was building on his lot and did not oppose it (Article 453 par. 2), and Article 454 in relation to Article 447 of the Civil Code applies. Juan shall pay the value of the house and is also liable for reparation of damages; however, Pedro also has the right to remove or demolish the house and ask for damages.

[b]If Pedro is a builder in bad faith and Juan is an owner in good faith, Juan has three options. He may appropriate the improvements without indemnity under Article 449 of the Civil Code, or demand the demoli- tion of the house in order to replace things to their former condition at Pedro's expense under Article 450, or compel Pedro to pay the price of the land. In addition to these options, Juan is also entitled to damages from Pedro.

If Pedro is a builder in bad faith and Juan is an owner in bad faith, it shall be as if both of them were in good faith (Article 453, New Civil Code).

Mr. and Mrs. X migrated to the US with all their children. As they had no intention of coming back, they offered their house and lot for sale to their neighbors, Mr. and Mrs. A (the buyers) who agreed to buy the property for 128 Million. Because Mr. and Mrs. A needed to obtain a loan from a bank first, and since the sellers were in a hurry to migrate, the latter told the buyers that they could already occupy the house, renovate it as it was already in a state of disrepair, and pay only when their loan is approved and released. While waiting for the loan approval, the buyers spent .Pl Million in repairing the house. A month later, a person carrying an authenticated special power of attorney from the sellers demanded that the buyers either immediately pay for the property in full now or vacate it and pay damages

for having made improvements on the property without a sale having been perfected.

a. What are the buyers' options or legal rights with respect to the they expenses incurred in improving the property under circumstances? (2015 BAR)

A: The buyers here may be deemed possessors or builders in good faith because they were made to believe that they were allowed to make repairs or renovation by the sellers themselves. As builders in good faith, they have the right to seek reimbursement for the value of the improvements in case the owner decides to appropriate them. They cannot be asked to remove the improvements because that is not one of the options given by law to the landowner in case the builder is in good faith.

A delayed accession is: (2014 BAR)
A. formation of an island
B. avulsion
C. alluvium
D. change in the course of the riverbed

Answer:
B *(Art. 459)*

Ciriaco Realty Corporation (CRC) sold to the spouses Del a Cruz a 500-square meter land (Lot A) in Paranaque. The land now has a fair market value of Pl,200,000. CRC likewise sold to the spouses Rodriguez, a 700-square meter land (Lot B) which is adjacent to Lot A. Lot B has a present fair market value of ₱1,500,000. The spouses Dela Cruz constructed a house on Lot B, relying on there presentation of the CRC sales agent that it is the property they purchased. Only upon the completion of their house did the spouses Dela Cruz discover that they had built on Lot B owned by the spouses Rodriguez, not on Lot A that they purchased. They spent P 1 000,000 for the house. As their lawyer, advise the spouses Dela Cruz on their rights and obligations under the given circumstances, and the recourses and options open to them to protect their interests. (1992, 2001, 2013)

Answer:

Based on the facts as stated, the spouses Dela Cruz as builders and the spouses Rodriguez as landowners, are both in good faith. The spouses Dela Cruz are builders in good faith because before constructing the house they exercised due diligence by asking the agent of CRC the location of Lot A. and they relied on the information given by the agent who is presumed to know the identity of the lot purchased by the Dela Cruz spouses *(Pleasantville v. CA, G.R. No. 79688, February 1, 1996)*. On the other hand, there is no showing that the landowners, spouses Rodriguez, acted in bad faith. The facts do not show that the building was done with their knowledge and without opposition on their part *(Art. 453)*. Good faith is always presumed *(Art. 527)*. The owner of the land on which anything has been built, sown or planted in good faith shall have the right:

1. to appropriate as his own the works after payment of the indemnity provided for in Articles 546 and 548, or
2. to oblige the one who built to pay the price of the land.

However, the builder cannot be obliged to buy the land if its value is considerably more than that of the building. In such case, he shall pay reasonable rent if the owner of the land does not choose to appropriate the building or trees after proper indemnity *(Art. 448)*.

The house constructed by the spouses Dela Cruz is considered as a useful expense, since it increased the value of the lot. As such, should the spouses Rodriguez decide to appropriate the house, the spouses Dela Cruz are entitled to the right of retention pending reimbursement of the expenses they incurred or the increase in value which the thing may have acquired by reason of the improvement *(Art. 546)*. Thus, the spouses Dela Cruz may demand P1,000,000 as payment of the expenses in building the house or increase in value of the land because of the house as a useful improvement, as may be determined by the court front the evidence presented during the trial *(Depra Dumlao, G.R. No. L 57348, May 16, 1985; Technogas Phils. v. CA, G.R. No. 108894, February 10, 1997).*

Marciano is the owner of a parcel of land through which a river runs out into the sea. The land had been brought under the Torrens System, and is cultivated by Ulpiano and his family as farmworkers therein. Over the years, the river brought silt and sediment from its source up in the mountains and forests so that gradually the land owned by Marciano increased in area by three hectares. Ulpiano built three huts on this additional area, where he and his two married children live. On this same area, Ulpiano and his family planted peanuts, mongo, beans and vegetables. Ulpiano also regular paid taxes on the land, as shown by tax declarations, for over thirty years.

When Marciano learned of the increase in the size of the land he ordered Ulpiano to demolish the huts, and demanded that he be paid his share in the proceeds of the harvest. Marciano claims that under the civil code, the alluvium belongs to him as a registered riparian owner to whose land the accretion attaches, and that his right is enforceable against the whole world.

Is Marciano correct? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Marciano's contention is correct. Since the accretion was deposited on his land by the action of the waters of the river and he did not construct any structure to increase the deposition of soil ad silt, Marciano automatically owns the accretion. His real right of ownership is enforceable against the whole word including Ulpiano and his two married children. Although Marciano's land is registered the 3 hectares land deposited through accretion was not automatically registered. As unregistered land, it is subject to acquisitive prescription by third persons.

Although Ulpiano and his children live in the 3 hectare unregistered land owned by Marciano, they are farmworkers; therefore they are possessors not in the concept of owners but in the concept of more holders. Even if they possessed the land for more than 30 years, they cannot become the owners thereof through extraordinary acquisitive prescription, because the law requires possession in the concept of owner. Payment of taxes and tax declaration are not enough to make their possession one in the concept of owner. They must repudiate the possession in the concept of holder by executing unequivocal acts of repudiation amounting to custer of Marciano, known to Marciano and must be proven by clear and convincing evidence. Only then would his possession become adverse.

What rights, if any, does Ulpiano have against Marciano? Explain (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Although Ulpiano is a possessor in bad faith, because he knew he does not own the land, he will lose the three huts he built in bad faith and make an accounting of the fruits he has gathered, he has the right to deduct from the value of the fruits the expenses for production, gathering and preservation of the fruits (Article 443, NCC).

He may also ask for reimbursement of the taxes he has paid, as these are charges on the land owned by Marciano. This obligation is based on a quasi-contract (Article 2175, NCC).

V. Quieting of Title to or Interest in and Removal or Prevention of Cloud over Title to or Interest in Real Property

Krystal owns a parcel of land covered by TCT No. 12345 in Angeles City, Due to severe financial constraints, Krystal was forced to sell the property to RBP Corporation, a foreign corporation based in South Korea. Subsequently, RBP Corporation sold the property to Gloria, one of its most valued clients. Wanting her property back, Krystal, learning of the transfer of the property froth REP Corporation to Gloria, sued both of them in the Regional Trial Court (RTC) for annulment of sale and for reconveyance. She alleged that the sale by REP Corporation to Gloria was void because ADP Corporation was a foreign corporation prohibited by the Constitution from acquiring and owning lands in the Philippines.

Will Krystal's suit for annulment of sate and reconveyance prosper? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

Krystal's suit will not prosper. The Supreme Court, in Borromeo v. Descallar (G.R. No. 159310, February 24, 2009, 580 SCRA 175), reiterated the consistent ruling that if land is invalidly transferred to an alien who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid. In this case, RBP, being a foreign corporation is prohibited from acquiring private land, making the sale of Krystal to RBP void ab However, the subsequent transfer to a Filipino citizen cured the defect, making Gloria's title valid and defeating Krystal's action for annulment and reconveyance.

Which of the following is an indispensable requirement in an action for "quieting of title" involving real property? The plaintiff must (2011 BAR)

(A) be in actual possession of the property.
(B) be the registered owner of the property.
(C) have legal or equitable title to the property.
(D) be the beneficial owner of the property.

VI. Co-ownership

Butch got a loan from Hagibis Corporation (Hagibis) but he de- faulted in the payment. A case for collection of a sum of money was filed against him. As a defense, Butch claims that there was already an arrangement with Hagibis on the payment of the loan. To implement the same, Butch already surrendered five (5) ser- vice utility vehicles (SUVs) to the company for it to sell arid the proceeds to be credited to the loan as payment. Was the obliga- tion of Butch extinguished by reason of dacion en pago upon the surrender of the SUVs? Decide and explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

No, the obligation of Butch to Hagibis was not extinguished by the mere surrender of the SUV's to the latter. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales. (Article 1245). In dacion en pago, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. The undertaking really partakes in one sense of the nature of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. In dacion en pago there is in reality an objective novation of the obligation where the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale, while the debt is considered as the purchase price. In any case, common con- sent is an essential prerequisite, be it sale or innovation to have the effect of totally extinguishing the debt or obligation (Fiiinvest Credit Corporation vs. Philippine Acetylene Company, Inc. G.R. No. L-50449 January 30, 1982). There being no mention

in the facts that Hagibis has given its consent to accept the SUVs as equivalent payment, the obligation of Butch is not thereby extinguished by mere delivery of the SUVs.

X, Y, Z are siblings who inherited a 10-storey building from their parents. They agreed in writing to maintain it as a co-owned property for leasing out and to divide the net profits among themselves equally for a period of 20 years. On the 8th year, X wanted to get out of the co-ownership so he could get his 1/3 share in the property. Y and Z refused, saying X is bound by their agreement to keep the co-ownership for 20 years. Are Y and Z correct? Explain. (2015 BAR)

SUGGESTED ANSWER:

Y and Z are partly correct. The law provides that none of the co-owners shall be obliged to remain in the co-ownership and it is the right of a co-owner to ask for partition of the co-ownership anytime. One exception to the rule is if the co-owners agree to keep the thing undivided which period shall not exceed ten years. In this case, the agreement to keep the thing undivided shall be valid at the most for ten years *(Art. 494)*.

Raul, Ester, and Rufus inherited a 10-hectare land from their father. Before the land could be partitioned, however, Raul sold his hereditary right to Raffy, a stranger to the family, for P5 million. Do Ester and Rufus have a remedy for keeping the land within their family? (2011 BAR)

(A) Yes, they may be subrogated to Raffy's right by reimbursing to him within the required time what he paid Raul.
(B) Yes, they may be subrogated to Raffy's right provided they buy him out before he registers the sale.
(C) No, they can be subrogated to Raffy's right only with his conformity.
(D) No, since there was no impediment to Raul selling his inheritance to a stranger.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x

[d] The renunciation by a co-owner of his undivided share in the co-owned property in lieu of the performance of his obligation to contribute to taxes and expenses for the preservation of the property constitutes *dacion en pago.* (2009 Bar Question)

SUGGESTED ANSWER:

True. Under the Civil Code, a co-owner may renounce his share in the co-owned property in lieu of paying for his share in the taxes and expenses for the preservation of the co-owned property. In effect, there is *dacion en pago* because the co-owner is discharging

his monetary obligation by paying it with his non-monetary interest in the co-owned property. The fact the he is giving up his entire interest simply means that he is accepting the value of his interest as equivalent to his share in the taxes and expenses of preservation.

VII. Possession

What remedies are available to Jacob to recover possession of his property under the circumstances? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

The remedy available to Jacob is acclon publiclana, or an action for the recovery pf the better right of possession or possession as a real right. It also refers to an ejectment suit filed after the expiration of one year from accrual of the cause of action or from the unlawful withholding of possession of the realty. Since the entry made by Liz is through stealth, Jacob could have filed an action for forcible entry. Ordinarily, the one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when the entry is through stealth, the one-year period is counted from the time the plaintiff learned thereof. Here, since more than one year had elapsed since Jacob learned of the entry made by Liz through stealth, the action that maybe Wed by Jacob is no longer forcible entry, but an accion publiciana (Conks v. Tubil, G.R. No. 184285, September 25, 2009; Valdez v. CA, G.R. No. 132424, May 4, 2006).

ALTERNATIVE ANSWER:

Jacob can file an action for unlawful detainer against Liz to regain possession of the property. An action for unlawful detainer is proper when the defendant's Initial right to possession of the property has terminated but he unlawfully withholds possession thereof. It has to be filed within one year from the termination of his right to possession. Although Liz surreptitiously entered in 2012, her possession became lawful when Jacob discovered it and allowed her to continue possession by tolerance in 2014. Liz' right to possession terminated in December 2016 when Jacob demanded her to vacate the property. Since today is November 2017, it is still within one year from the termination of Liz' right to possession. Therefore, Jacob can file an action for unlawful detainer.

Betty entrusted to her agent, Aida, several pieces of jewelry to be sold on commission with the express obligation to turn over to Betty the proceeds of the sale, or to return the jewelries if not sold in a month's time. Instead of selling the jewelries, Aida pawned them with the Tambunting Pawnshop, and used the money for herself. Aida failed to redeem the pawned jewelries and after a month, Betty discovered what Aida had done. Betty brought criminal charges which resulted in Aida's conviction for estafa.

Betty thereafter filed an action against Tambunting Pawnshop for the recovery of the jewelries. Tambunting raised the defense of ownership, additionally arguing that it is duly licensed to engage in the pawnshop and lending business, and that it accepted the mortgage of the jewelry in good faith and in the regular course of its business.

If you were the judge, how will you decide the case? (1%) (2013 BAR)

(A) I will rule in favor of Betty. My ruling is based on the Civil Code provision that one who has lost any movable or has been unlawfully deprived thereof may recover it from the person in possession of the same. Tam bunting's claim of good faith is inconsequential.
(B) I will rule in favor of Betty. Tambunting's claim of good faith pales into insignificance in light of the unlawful deprivation of the jewelries. However, equity dictates that Tambunting must be reimbursed for the pawn value of the jewelries.
(C) I will rule in favor of Tambunting. Its good faith takes precedence over the right of Betty to recover the jewelries.
(D) I will rule in favor of Tambunting. Good faith is always presumed. Tambunting's lawful acquisition in the ordinary course of business coupled with good faith gives it legal right over the jewelries.

SUGGESTED ANSWER:

A- Article 559 of the Civil Code applies (See Dizon vs. Suntay 47 SCRA 160)

VIII. Usufruct

Distinguish antichresis from usufruct. (3%) (2017 BAR)

SUGGESTED ANSWER:

(1) Antichre,sis is a real security transaction wherein the creditor acquires the right to receive the fruits of an immovable of his debtor, and the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit (Ankle 2132, NCC). On the other hand, a usufruct is a real right which authorizes its holder to enjoy the property of another with the obligation of preserving its form and substance, unless otherwise provided.
(2) Antichresis is always created by contract, while usufruct need not arise from contract, because it may also be constituted by law or by other acts inter vivos, such as donation, or in a last will and testament, or by prescription.
(3) The subject matter of antichresis is always a real property while the subject matter of usufruct may either be real property or personal property.
(4) Both create real rights, but antichresis is an accessory contract, while usufruct when created by contract is a principal contract.
(5) During the usufruct, the fruits belong to the usufructury not the naked owner, while the antichretic creditor has the right to receive the fruits with the obligation to apply the fruits to the interest, if owing, and thereafter to the principal of the credit (Art.

2132, NCC).

(6) In antichresis the amount of the principal and the interest charge must be in writing in order to be valid (Article 2134, NCC) while there is no particular form required to constitute a valid usufruct.

An easement that can be acquired by prescription: (2014 BAR)

A. Right of way
B. Watering of an animal
C. Lateral and subjacent support
D. Light and view

SUGGESTED ANSWER:

D – only continuous and apparent easements may be acquired by prescription.

X, the owner, constituted a 10-year usufruct on his land as well as on the building standing on it in Y's favor. After flood totally destroyed the building 5 years later, X told Y that an act of God terminated the usufruct and that he should vacate the land. Is X, the owner of the land, correct? (2011 BAR)

(A) No, since the building was destroyed through no fault of Y.
(B) No, since Y still has the right to use the land and the materials left on it.
(C) Yes, since Y cannot use the land without the building.
(D) Yes, since the destruction of the building without the X's fault terminated the usufruct.

IX. Easements

Tyler owns a lot that is enclosed by the lots of Riley to the North and East, of Dylan to the South, and of Reece to the West. The current route to the public highway is a kilometer's walk through the northern lot of Riley, but the route is a rough road that gets muddy during the rainy season, and is inconvenient because it is only 2.5 meters wide. Tyler's nearest access to the public highway would be through the southern lot of Dylan.

May Dylan be legally required to afford to Tyler a right of way through his property? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

Dylan may not be legally required to afford Tyler a right of way through his property, because Tyler already has an adequate outlet to the public highway through his Riley's lot. One of the requisites for a compulsory grant of right of way is that the estate of the claimant of a right of way must be isolated and without adequate outlet to a public highway. The true standard for the grant of compulsory right of way is "adequacy" of outlet going to a public highway and not the convenience of the dominant estate. In the case at

bar, there is already an existing adequate outlet from the dominant estate to a public highway. Even if said outlet be inconvenient, the need to open up another legal easement or servitude is entirely unjustified (Article 649, NCC; Dichosa Jr. V. Marcos, G.R. No. 180282, April II, 2011; Coslabella Corp. v. CA, G.R. No. 80511, January 25, 1991)

In 2005, Andres built a residential house on a lot whose only access to the national highway was a pathway crossing Brando's property. Andres and others have been using this pathway (pathway A) since 1980. In 2006, Brando fenced off his property, thereby blocking Andres' access to the national highway. Andres demanded that part of the fence be removed to maintain his old access route to the highway (pathway A), but Brando refused, claiming that there was another available pathway (pathway B) for ingress and egress to the highway. Andres countered that pathway B has defects, is circuitous, and is extremely inconvenient to use. To settle their dispute, Andres and Brando hired Damian, a geodetic and civil engineer, to survey and examine the two pathways and the surrounding areas, and to determine the shortest and the least prejudicial way through the servient estates. After the survey, the engineer concluded that pathway B is the longer route and will need improvements and repairs, but will not significantly affect the use of Brando's property. On the other hand, pathway A that had long been in place, is the shorter route but would significantly affect the use of Brando's property. In light of the engineer's findings and the circumstances of the case, resolve the parties' right of way dispute. (1996, 2013)

SUGGESTED ANSWER:

Andres is not entitled to the easement of right of way for Pathway A. Pathway B must be used.

The owner of a dominant estate may validly obtain a compulsory right of way only after he has established the existence of four requisites, to wit:

1. the (dominant) estate is surrounded by other immovables and is without adequate outlet to a public highway;
2. after payment of the proper indemnity;
3. the isolation was not due to the proprietor's own acts; and
4. the right of way claimed is at a point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance from the dominant estate to the public highway may be the shortest *(Art. 650)*.

However, the Supreme Court has consistently ruled that in case both criteria cannot be complied with, the right of way shall be established at the point least prejudicial to the servient estate.

The first and fourth requisites are not complied with. First, there is another available outlet to the national highway (Pathway B). Second, the right of way obtained (Pathway A) is not the least prejudicial to Brando's property as evidenced by the reports of the geodetic and civil engineer.

When there is already an existing adequate outlet from the dominant estate to a public highway, even if the said outlet, for one reason or another, be inconvenient, the need to open up another servitude is entirely unjustified *(Costabella Corp. v. CA, G.R. No. 80511, January 25, 1991).* The rule that the easement of right of way shall be established at the point least prejudicial to the servient estate is controlling *(Quimen v. CA, G.R. No. 112331, May 29, 1996).*

Franz was the owner of Lot E which was surrounded by four (4) lots one of which - Lot C - he also owned. He promised Ava that if she bought Lot E, he would give her a right of way in Lot C.

Convinced, Ava bought Lot E and, as promised, Franz gave her a right of way in Lot C.

Ava cultivated Lot E and used the right of way granted by Franz.

Ava later found gainful employment abroad. On her return after more than 10 years, the right of way was no longer available to her because Franz had in the meantime sold Lot C to Julia who had it fenced.

Does Ava have a right to demand from Julia the activation of her right of way? Explain. (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes. Ava has the right to demand from Julia the activation of the right of way, for the following reasons:

1. An easement of right of way is a real right which attaches to, and is inseparable from, the estate to which it belongs.

2. The sale of the property includes the easement or servitude, even if the deed of sale is silent on the matter.

3. The vendee of the property in which a servitude or easement exists cannot close or put up obstructions thereon to prevent the dominant estate from using it.

4. Ava's working abroad for more than ten (10) years should not be construed as non-user, because it cannot be implied from the facts that she or those whom she left behind to cultivate the lot no longer use the right of way.

Note: Since a right of way is a discontinuous easement, the period of 10 years of non-user shall be computed from the day it ceased to be used under Art. 6341(2) CC.

5. Renunciation or waiver of an easement must be specific, clear, express and made in a public instrument in accordance with Article 1358 of the New Civil Code.

ANOTHER SUGGESTED ANSWER:

Yes. Ava has the right to demand from Julia the activation of her right of way. A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate. Also, like in any other contract, an easement is generally effective between parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law *(Unisource Commercial v. Chung,* 593 SCRA 530 [2009]).

Assuming Ava opts to demand a right of way from any of the owners of Lots A, B, and D, can she do that? Explain. (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes. Ava has the option to demand a right of way on any of the remaining lots of Franz more so after Franz sold Lot C to Julia. The essential elements of a legal right of way under Article 649 and 650 of the New Civil Code are complied with.

ANOTHER SUGGESTED ANSWER:

Yes. Ava has the option to demand a right of way from the other lots. The law provides that whenever a piece of land acquired by sale, exchange or partition is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity
(Art. 652, NCC).

ALTERNATIVE ANSWER:

No. There was merely a promise to Ava that a right of way shall be granted to her in Lot C if Ava purchased Lot E. The promise was not reduced into writing *(Obra v. Baldria,* 529 SCRA 621 [2007]). Hence, it was not or could not have been registered as to warn buyers of Lot C about the existence of the easement on the property. Not having been annotated on the TCT to Lot C, the buyer acquired Lot C free from such right of way granted to Ava.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

xx

c. Acquisitive prescription of a negative easement runs from the time the owner of the dominant estate forbids, in a notarized document, the owner of the servient

estate from executing an act which would be lawful without the easement. (2009 Bar Question)

SUGGESTED ANSWER:

True. In negative easements, acquisitive prescription runs from the moment the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate from executing an act which would be lawful without the easement (Art. 621, NCC).

X. Nuisance

XI. Modes of Acquiring Ownership

The following are the limitations on the right of ownership imposed by the owner himself, except: (2012 BAR)

a) Will/Succession
b) Mortgage
c) Pledge
d) Lease

The following cannot ask for the reduction of inofficious donation, except: (2012 BAR)

a) Creditors of the deceased
b) Devisees or legatees
c) Compulsory heirs of the donor
d) The surviving spouse of the donee.

Donation is perfected from the moment --- (2012 BAR)

a) the donee accepts the donation.
b) the donor executes the deed of donation.
c) the donor knows of the donee's acceptance even if the latter has not received the copy of the deed of donation.
d) the donee confirms that the donor has learned the former's acceptance.

Ernesto donated a mobile phone worth ₱ 32,000 to Hubert orally and delivered the unit to Hubert who accepted. Which statement is most accurate? (2012 BAR)

a) The donation is void and Ernesto may get mobile phone back.
b) The donation is void but Ernesto cannot get the mobile phone back.
c) The donation is voidable and may be anulled.
d) The donation is valid.

Jose, single, donated a house and lot to his only niece, Maria, who was of legal age and who accepted the donation. The donation and Maria's acceptance thereof were evidenced by a Deed of Donation. Maria then lived in the house and lot donated to her, religiously paying real estate taxes thereon. Twelve years later, when Jose had

already passed away, a woman claiming to be an illegitimate daughter of Jose filed a complaint against Maria. Claiming rights as an heir, the woman prayed that Maria be ordered to reconvey the house and lot to Jose's estate. In her complaint she alleged that the notary public who notarized the Deed of Donation had an expired notarial commission when the Deed of Donation was executed by Jose. Can Maria be made to reconvey the property? What can she put up as a defense? (2015 BAR)

SUGGESTED ANSWER:

NO. Maria cannot be compelled to reconvey the property. The Deed of Donation was void because it was not considered a public document. However, a void donation can trigger acquisitive prescription *(Solis v. CA, G.R. No. L-46753-54, August 25, 1989; Doliendo v. Biarnesa, G.R. No. L-2765, December 27, 1906).* The void donation has a quality of titulo colorado enough for acquisitive prescription especially since 12 years had lapsed from the deed of donation.

The Roman Catholic Church accepted a donation of a real property located in Lipa City. A deed of donation was executed, signed by the donor, Don Mariano, and the donee, the Church, as represented by Fr. Damian. Before the deed could be notarized, Don Mariano died. Is the donation valid? (2014 BAR)

SUGGESTED ANSWER:

The donation is void. The donation of an immovable property must be in a public instrument in order for it to be valid. In this case, the donor died even before the notarization of the deed of donation. Hence, it does not satisfy the requirement of being in a public instrument for the donation to be valid.

Josefa executed a deed of donation covering a one-hectare rice land in favor of her daughter, Jennifer. The deed specifically provides that:

"For and in consideration of the love and service Jennifer has shown and given to me, I hereby freely, voluntarily and irrevocably donate to her my one-hectare rice land covered by TCT No. 11550, located in San Fernando, Pampanga. This donation shall take effect upon my death."

The deed also contained Jennifer's signed acceptance, and an attached notarized declaration by Josefa and Jennifer that the land will remain in Josefa's possession and cannot be alienated, encumbered, sold or disposed of while Josefa is still alive. Advise Jennifer on whether the deed is a donation inter vivos or mortis causa and explain the reasons supporting your advice. (2013 BAR)

SUGGESTED ANSWER:

The donation is a donation *inter vivos*.

When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos (Art. 729)*. The Civil Code prefers *inter vivos* transmissions. Moreover, *mortis causa* donations should follow the formalities of a will *(Art. 728)*. Here there is no showing that such formalities were followed. Thus, it is favorable to Jennifer that the deed is a donation *inter vivos.*

Furthermore, what is most significant in determining the type of donation is the absence of stipulation that the donor could revoke the donation; on the contrary, the deeds expressly declare them to be "irrevocable," a quality absolutely incompatible with the idea of conveyances *mortis causa* where revocability is the essence of the act, to the extent that a testator cannot lawfully waive or restrict his right of revocation. The provisions of the deed of donation which state that the same will only take effect upon the death of the donor and that there is a prohibition to alienate, encumber, dispose, or sell the same should be harmonized with its express irrevocability *(Austria-Magat v. CA, G.R. No. 106755, February 1, 2002).*

X and Y were to marry in 3 months. Meantime, to express his affection, X donated a house and lot to Y, which donation X wrote in a letter to Y. Y wrote back, accepting the donation and took possession of the property. Before the wedding, however, Y suddenly died of heart attack. Can Y's heirs get the property? (2011 BAR)

(A) No, since the marriage did not take place.
(B) Yes, since all the requisites of a donation of an immovable are present.
(C) No, since the donation and its acceptance are not in a public instrument.
(D) Yes, since X freely donated the property to Y who became its owner.

Lucio executed a simple deed of donation of P50 million on time deposit with a bank in favor of A, B, C, D, and E, without indicating the share of each donee. All the donees accepted the donation in writing. A, one of the donees, died. Will B, C, D, and E get A's share in the money? (2011 BAR)

(A) Yes, accretion will automatically apply to the joint-donees in equal shares.
(B) Yes, since the donor's intention is to give the whole of P50 million to the jointdonees in equal shares.
(C) No, A"s share will revert to the donor because accretion applies only if the joint-donees are spouses.
(D) No, A's share goes to his heirs since the donation did not provide for reversion to donor.

Who can make a donation? (2011 BAR)

(A) All persons who can enter into contracts and dispose of their property.
(B) All persons who are of legal age and suffer from no civil interdiction.
(C) All persons who can make a last will and testament.

(D) All persons, whether natural or artificial, who own property.

Rex, a philanthropist, donated a valuable lot to the municipality on the condition that it will build a public school on such lot within 2 years from its acceptance of the donation. The municipality properly accepted the donation but did not yet build the public school after 2 years. Can Rex revoke the donation? (2011 BAR)

(A) Yes, since the donation is subject to a resolutory condition which was not fulfilled.
(B) No, but Rex is entitled to recover the value of the land from the municipality.
(C) No, the transfer of ownership has been completed.
(D) Yes, the donation is not deemed made until the suspensive condition has been fulfilled.

The residents of a subdivision have been using an open strip of land as passage to the highway for over 30 years. The owner of that land decided, however, to close it in preparation for building his house on it. The residents protested, claiming that they became owners of the land through acquisitive prescription, having been in possession of the same in the concept of owners, publicly, peacefully, and continuously for more than 30 years. Is this claim correct?

(A) No, the residents have not been in continuous possession of the land since they merely passed through it in going to the highway.
(B) No, the owner did not abandon his right to the property; he merely tolerated his neighbors' use of it for passage.
(C) Yes, residents of the subdivision have become owners by acquisitive prescription.
(D) Yes, community ownership by prescription prevails over private claims.

Multiple choice.

A executed a Deed of Donation in favor of B, a bachelor, covering a parcel of land valued at P1million. B was, however, out of the country at the time. For the donation to be valid, (1%) (2010 Bar Question)

1. B may e-mail A accepting the donation.

2. The donation may be accepted by B's father with whom he lives.

3. B can accept the donation anytime convenient to him.

4. B's mother who has a general power of attorney may accept the donation for him.

5. None of the above is sufficient to make B's acceptance valid.

SUGGESTED ANSWER:

No. 5. None of the above is sufficient to make B's acceptance valid.

Since the donation covered an immovable property, the donation and the acceptance must be in a public document. An e-mail is not a public document. Hence, No. 1 is false.

No. 2 and No. 4 are both false. The acceptance by the donee's father alone or mother alone, even though in a public document, is not sufficient because the father and the mother did not have a special power of attorney for the purpose. Under Article 745 (NCC), the done must accept the donation personally, or through an authorized person with a special power of attorney for the purpose; otherwise, the donation shall be void.

No. 3 is also false. B cannot accept the donation anytime at his convenience. Under Article 749 NCC, the done may accept the donation only during the lifetime of the donor.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x

[e] A person can dispose of his corpse through an act *inter vivos.* (2009 Bar Question)

SUGGESTED ANSWER:

False. A person cannot dispose of his corpse through an act *inter vivos, i.e.,* an act to take effect during his lifetime. Before his death there is no corpse to dispose. But he is allowed to do so through an act *mortis causa, i.e.,* an act to take effect upon his death.

PRESCRIPTION

I. Definition

II. No prescription applicable

III. Prescription or limitation of actions

X bought a land from Y, paying him cash. Since they were friends, they did not execute any document of sale. After 7 years, the heirs of X asked Y to execute a deed of absolute sale to formalize the verbal sale to their father. Unwilling to do so, X's heirs filed an action for specific performance against Y. Will their action prosper? (2011 BAR)

(A) No, after more than 6 years, the action to enforce the verbal agreement has already elapsed.
(B) No, since the sale cannot under the Statute of Frauds be enforced.
(C) Yes, since X bought the land and paid Y for it.

(D) Yes, after full payment, the action became imprescriptible.

An action for reconveyance of a registered piece of land may be brought against the owner appearing on the title based on a claim that the latter merely holds such title in trust for the plaintiff. The action prescribes, however, within 10 years from the registration of the deed or the date of the issuance of the certificate of title of the property as long as the trust had not been repudiated. What is the exception to this 10-year prescriptive period? (2011 BAR)

(A) When the plaintiff had no notice of the deed or the issuance of the certificate of title.
(B) When the title holder concealed the matter from the plaintiff.
(C) When fortuitous circumstances prevented the plaintiff from filing the case sooner.
(D) When the plaintiff is in possession of the property.

What is the prescriptive period for filing an action for revocation of a donation based on acts of ingratitude of the donee? (2011 BAR)

(A) 5 years from the perfection of the donation.
(B) 1 year from the perfection of the donation.
(C) 4 years from the perfection of the donation.
(D) Such action does not prescribe.

OBLIGATIONS

I. Definition

II. Elements of an Obligation

The following are the elements of an obligation, except: (2012 BAR)
a) Juridical/Legal Tie
b) Active subject
c) Passive subject
d) Consideration

It is a conduct that may consist of giving, doing, or not doing something. (2012 BAR)
a) Obligation
b) Juridical necessity
c) Prestation
d) Contract

III. Different Kinds of Prestations

IV. Classification of Obligations

Zeny and Nolan were best friends for a long time already. Zeny borrowed 310,000.00 from Nolan, evidenced by a promissory note whereby Zeny promised to pay the loan "once his means permit." Two months later, they had a quarrel that broke their long-standing friendship. Nolan seeks your advice on how to collect from Zeny despite the tenor of the promissory note. What will your advice be? Explain your answer. (3%) (2017 BAR)

SUGGESTED ANSWER:

The remedy of Nolan is to go to court and ask that a period be fixed for the payment of the debt. Article 1180 of the New Civil Code provides that when a debtorbinds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period (suspensive). Article 1197 provides that the Courts may fix a period if such was intended from the nature of the obligation and may also fix the duration of the period when such depends on the will of the debtor.

A. **Sara borrowed PS0,000.00 from Julia and orally promised to pay it within six months. When Sara tried to pay her debt on the gth month, Julia demanded the payment of interest of 12o/o per annum because of Sara's delay in payment. Sara paid her debt and the interest claimed by Julia. After rethinking, Sara demanded back from Julia the amount she had paid as interest. Julia claims she has no obligation to return the interest paid by Sara because it was a natural obligation which Sara voluntarily performed and can no longer recover. Do you agree? Explain. (4%)**

B. **Distinguish civil and natural obligations. (2%) (2015 BAR)**

SUGGESTED ANSWER:

a) No, the case is not one of a natural obligation because even if the contract of loan is verbal, the delay of Julia made her liable for interest upon demand by Sara. This is not a case of a natural obligation but a civil obligation to pay interest by way of damages by reason of delay. (Article 1956; Article 1169; Article 2209 Civil Code)

b) A civil obligation is based on positive law which gives a right of action to compel their performance in case of breach. A natural obligation is based on equity and natural law and cannot be enforced by court action but after voluntary fulfilment by the obligor, they authorize the retention of what may have been delivered or rendered by reason thereof. (Article 1423, Civil Code)

V. Sources of Obligations

It is a juridical relation arising from *lawful, voluntary and unilateral* acts based on the principle that no one should unjustly enrich himself at the expense of another. (2012 BAR)
a) Quasi-contract
b) Quasi-delict
c) Cotract
d) Delict

The following are the elements of quasi-delict, except: (2012 BAR)
a) Act or omission
b) Fault/negligence
c) Damage/injury
d) Pre-existing contract

VI. Nature and Effect of Obligations

The creditor has the right to the fruits of the thing from the time: (2012 BAR)
a) the thing is delivered.
b) the obligation to deliver the things arises.
c) the contract is perfected.
d) the fruits are delivered.

A debtor is liable for damages in case of delay if he is guilty of any of the following, except: (2012 BAR)
a) default (mora)
b) mistake
c) negligence (culpa)
d) breach through contravention of the tenor thereof

This term refers to a delay on the part of both the debtor and creditor in reciprocal obligations. (2012 BAR)
a) Mora accipiendi
b) Mora solvendi
c) Compensation morae
d) Solution indibiti

The following are the requisites of mora solvendi, except: (2012 BAR)
a) Obligation pertains to the debtor and is determinate, due, demandable, and liquidated.
b) Obligation was performed on its maturity date.
c) There is judicial or extrajudicial demand by the creditor.
d) Failure of the debtor to comply with such demand.

It is an international evasion of the faithful performance of the obligation. (2012 BAR)

a) Negligence
b) Fraud
c) Delay
d) Mistake

The following are the requisites of fortuitous event, except: (2012 BAR)

a) Cause is independent of the will of the debtor.
b) The event is *unforeseeable/unavoidable.*
c) Occurrence renders it *absolutely impossible* for the debtor to fulfill his obligation in a normal manner; impossibility must be *absolute* not partial, otherwise not force majeure.
d) Debtor contributed to the aggravation of the injury to the creditor.

A debtor may still be held liable for loss or damages even if it was caused by a fortuitous event in any of the following instances, except: (2012 BAR)

a) The debtor is guilty of *dolo,* malice or bad faith, has promised the same thing to two or more persons who do not have the same interest.
b) The debtor contributed to the loss.
c) The thing to be delivered is generic.
d) The creditor is guilty of fraud, negligence or delay or if he contravened the tenor of the obligation.

Gary is a tobacco trader and also a lending investor. He sold tobacco leaves to Homer for delivery within a month, although the period for delivery was not guaranteed. Despite Gary's efforts to deliver on time, transportation problems and government red tape hindered his efforts and he could only deliver after 30 days. Homer refused to accept the late delivery and to pay on the ground that the agreed term had not been complied with.

As lending investor, Gary granted a Pl,000,000 loan to Isaac to be paid within two years from execution of the contract. As security for the loan, Isaac promised to deliver to Gary his Toyota Innova within seven (7) days, but Isaac failed to do so. Gary was thus compelled to demand payment for the loan before the end of the agreed two-year term. (2013 BAR)

1) Was Homer justified in refusing to accept the tobacco leaves? (1%) (2012 BAR)

(A) Yes. Homer was justified in refusing to accept the tobacco leaves. The delivery was to be made within a month. Gary's promise of delivery on a "best effort" basis made the delivery uncertain. The term, therefore, was ambiguous.

(B) No. Homer was not justified in refusing to accept the tobacco leaves. He consented to the terms and conditions of the sale and must abide by it. Obligations arising from contract have the force of law between the contracting parties.

(C) Yes. Homer was justified in his refusal to accept the delivery. The contract contemplates an obligation with a term. Since the delivery was made after 30 days, contrary to the terms agreed upon, Gary could not insist that Homer accept the tobacco leaves.

(D) No. Homer was not justified in refusing to accept the tobacco leaves. There was no term in the contract but a mixed condition. The fulfillment of the condition did not depend purely on Gary's will but on other factors, e.g., the shipping company and the government. Homer should comply with his obligation.

SUGGESTED ANSWER:

B (obligations arising from contracts have the force of law) or D (the obligation is not with the term but with a mixed condition –although the facts are not clear enough if it was stated in the contract that the other factors like transportation or government regulations would be a factor)

2) Can Gary compel Isaac to pay his loan even before the end of the two-year period? (1%) (2012 BAR)

(A) Yes, Gary can compel Isaac to immediately pay the loan. Non-compliance with the promised guaranty or security renders the obligation immediately demandable. Isaac lost his right to make use of the period.

(B) Yes, Gary can compel Isaac to immediately pay the loan. The delivery of the Toyota Innova is a condition for the loan. Isaac's failure to deliver the car violated the condition upon which the loan was granted. It is but fair for Gary to demand immediate payment.

(C) No, Gary cannot compel Isaac to immediately pay the loan. The delivery of the car as security for the loan is an accessory contract; the principal contract is still the P 1,000,000 loan. Thus, Isaac can still make use of the period.

(D) No, Gary cannot compel Isaac to immediately pay the loan. Equity dictates that Gary should have granted a reasonable extension of time for Isaac to deliver his Toyota Innova. It would be unfair and burdensome for Isaac to pay the P1,000,000 simply because the promised security was not delivered.

SUGGESTED ANSWER:

A – Article 1198 Isaac lost his right to make use of the period because he failed to furnish the guaranty or security in consideration of which Gary agreed to the period

VII. Kinds of Civil Obligations

A natural obligation under the New Civil Code of the Philippines is one which (2011 BAR)

(A) the obligor has a moral obligation to do, otherwise entitling the obligee to damages.
(B) refers to an obligation in writing to do or not to do.
(C) the obligee may enforce through the court if violated by the obligor.
(D) cannot be judicially enforced but authorizes the obligee to retain the obligor's payment or performance.

VIII. Joint and Solidary Obligation

Buko, Fermin and Toti bound themselves solidarily to pay Ayee the amount of ₱ 5,000.00. Suppose Buko paid the obligation, what is his right as against his co-debtors? (2012 BAR)

a) Buko cas ask for reimbursement from Fermin and Toti.
b) Buko can sue Fermin and Toti for damages.
c) Buko can sue for rescission.
d) Buko can claim a refund from Ayee.

Buko, Fermin and Toti bound themselves solidarily to pay Ayee the sum of ₱ 10,000.00. When the obligation became due and demandable, Ayee sued Buko for the payment of the ₱ 10,000.00. Buko moved to dismiss on the ground that there was failure to implead Fermin and Toti who are indispensable parties. Will the motion to dismiss prosper? Why? (2012 BAR)

a) Yes, because Fermin and Toti should have been impleaded as their obligation is solidary.
b) No, because the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously.
c) No, because a motion to dismiss is a prohibited pleading.
d) Yes, because Fermin and Toti should also pay their share of the obligation.

Buko, Fermin and Toti are solidarily debtors of Ayee. Twelve (12) years after the obligation became due and demandable, Buko paid Ayee and later on asked for reimbursement of Fermin's and Toti's shares. Is Buko correct? Why? (2012 BAR)

a) No, because the obligation has already prescribed.
b) Yes, because the obligation is solidary.
c) No, because in solidary obligation any one of the solidary debtors can pay the entire debt.
d) Yes, because Fermin and Toti will be unduly enriched at the expense of Buko.

Buko, Fermin and Toti are solidary debtors under a loan obligation of ₱ 300,000.00 which has fallen due. The creditor has, however, condoned Fermin's entire share in the debt. Since Toti has become insolvent, the creditor makes a demand on Buko to pay the debt. How much, if any, may Buko be compelled to pay? (2012 BAR)

a) ₱ 200.000.00

b) ₱ 300,000.00
c) ₱ 100,000.00
d) ₱ 150,000.00

a. Iya and Betty owed Jun P500,000.00 for advancing their equity in a corporation they joined as incorporators. Iya and Betty bound themselves solidarily liable for the debt. Later, Iya and Jun became sweethearts so Jun condoned the debt of P500,000.00. May Iya demand from Betty P250,000.00 as her share in the debt? Explain with legal basis.

SUGGESTED ANSWER:

NO, Iya may not demand the 250,000 from Betty because the entire obligation has been condoned by the creditor Jun. In a solidary obligation the remission of the whole obligation obtained by one of the solidary debtors does not entitle him to reimbursement from his co-debtors *(Art. 1220).*

b. Juancho, Don and Pedro borrowed P150,000.00 from their friend Cita to put up an internet cafe orally promising to pay her the full amount after one year. Because of their lack of business know-how, their business collapsed. Juancho and Don ended up penniless but Pedro was able to borrow money and put up a restaurant which did well. Can Cita demand that Pedro pay the entire obligation since he, together with the two others, promised to pay the amount in full after one year? Defend your answer. (2015 BAR)

SUGGESTED ANSWER:

NO, Cita cannot demand that Pedro pay the entire obligation because the obligation in this case is presumed to be joint. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation *(Art. 1207).* In a joint obligation, there is no mutual agency among the joint debtors such that if one of them is insolvent the others shall not be liable for his share.

A, B, C and D are the solidary debtors of X for P40,000. X released D from the payment of his share of Pl 0,000. When the obligation became due and demandable, C turned out to be insolvent.

Should the share of insolvent debtor C be divided only between the two other remaining debtors, A and B? (1%) (2013 BAR)

(A) Yes. Remission of D's share carries with it total extinguishment of his obligation to the benefit of the solidary debtors.

(B) Yes. The Civil Code recognizes remission as a mode of extinguishing an obligation. This clearly applies to D.

(C) No. The rule is that gratuitous acts should be restrictively construed, allowing only the least transmission of rights.

(D) No, as the release of the share of one debtor would then increase the burden of the other debtors without their consent.

SUGGESTED ANSWER:
C – Under Art. 1217 when one of the solidary debtors cannot because of his insolvency reimburse his share to the debtor paying, such share shall be borne by all his co-debtors in proportion to the debt of each

Rudolf borrowed P1 million from Rodrigo and Fernando who acted as solidary creditors. When the loan matured, Rodrigo wrote a letter to Rudolf, demanding payment of the loan directly to him. Before Rudolf could comply, Fernando went to see him personally to collect and he paid him. Did Rudolf make a valid payment? (2011 BAR)

(A) No, since Rudolf should have split the payment between Rodrigo and Fernando.
(B) No, since Rodrigo, the other solidary creditor, already made a prior demand for payment from Rudolf.
(C) Yes, since the payment covers the whole obligation.
(D) Yes, since Fernando was a solidary creditor, payment to him extinguished the obligation.

Roy and Carlos both undertook a contract to deliver to Sam in Manila a boat docked in Subic. Before they could deliver it, however, the boat sank in a storm. The contract provides that fortuitous event shall not exempt Roy and Carlos from their obligation. Owing to the loss of the motor boat, such obligation is deemed converted into one of indemnity for damages. Is the liability of Roy and Carlos joint or solidary? (2011 BAR)

(A) Neither solidary nor joint since they cannot waive the defense of fortuitous event to which they are entitled.
(B) Solidary or joint upon the discretion of Sam.
(C) Solidary since Roy and Carlos failed to perform their obligation to deliver the motor boat.
(D) Joint since the conversion of their liability to one of indemnity for damages made it joint.

IX. Extinguishment of Obligations

Jerico, the project owner, entered into a Construction Contract with Ivan for the latter to construct his house. Jojo executed a Surety undertaking to guarantee the

performance of the work by Ivan. Jerico and Ivan later entered into a Memorandum of Agree- ment (MOA) revising the work schedule of Ivan and the subcontractors. The MOA stated that all the stipulations of the original contract not in conflict with said agreement shall remain valid and legally effective. Jojo filed a suit to declare him relieved of his undertaking as a result of the MOA because of the change in the work schedule. Jerico claims there is no novation of the Con- struction Contract. Decide the case and explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

I will decide in favor of Jerico as there is no novation of the Construc- tion Contract. Novation is never presumed, and may only take place when the following are present: (1) a previous valid obligation; (2) the agreement of all the parties to the new contract; (3) the extinguishment of the old contract; and (4) validity of the new one. There must be consent of all the parties to the substitution, resulting in the extinction of the old obligation and the creation of a new valid one. In this case, the revision of the work schedule of Ivan and the subcontractors is not shown to be so substantial as to extinguish the old contract, and there was also no irreconcilable incompatibility between the old and new obligations. It has also been held in jurisprudence that a surety may only be relieved of his undertaking if there is a material change in the principal contract and such would make the obligation of the surety onerous. The principal contract subject of the surety agreement still exists, and Jojo is still bound as a surety.

ALTERNATIVE ANSWER:

I will decide against Jerico. The provisions of the Civil Code on Guar- antee, other than the benefit of excussion (Article 2059 (2CC), are applicable and available to the surety because a surety is a guarantor who binds himself solidarity (Article 2047 2nd par. CC). The Supreme Court has held that there is no reason why the provisions of Article 2079 would not apply to a surety (Autocorp Group v. Infra Strata As- surance Corporation, 556 SCRA 250 [2008]). Article 2079 of the Civil Code provides that an extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The changes in the work schedule amount to an extension granted to the debtor without the consent of the surety. Hence, Jojo's obligation as a surety is extinguished. If the change of work schedule, on the other hand, shortens the time of completion of the project, it will amount to a novation. The old obligation, where Jojo was obligated as a surety is extinguished relatively as to him, leaving Ivan as still bound.

Dina bought a car from Jai and delivered a check in payment of the same. Has Dina paid the obligation? Why? (2012 BAR)

a) No, not yet. The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

b) Yes, because a check is a valid legal tender of payment.

c) It depends. If the check is a manager's check or cashier's check it will produce the effect of payment. If it's an ordinary check, no payment.
d) Yes, because a check is as good as cash.

The following are the requisites of legal compensation, except: (2012 BAR)
a) That each of the obligors is bound principally and that he be the same time a principal creditor of the other.
b) That both debts consist in a sum of money, or if the things due are consumable, they be the same kind, and also of the same quality if the latter has been stated.
c) That the two (2) debts are not yet due.
d) That they be liquidated and demandable.

X, a dressmaker, accepted clothing materials from Karla to make two dresses for her day. On the X was supposed to deliver Karla's dresses, X called up Karla to say that she had an urgent matter to attend to and will deliver them the next day. That night, however, a robber broke into her shop and took everything including Karla's two dresses. X claims she is not liable to deliver Karla's dresses or to pay for the clothing materials considering she herself was a victim of the robbery which was a fortuitous event and over which she had no control. Do you agree? Why? (2015 BAR)

SUGGESTED ANSWER:

NO, I do not agree with the contention of X. The law provides that except when it is otherwise declared by stipulation or when the law provides or the nature of the obligation requires the assumption of risk, no person shall be liable for those events which could not be foreseen or which though foreseen were inevitable *(Art. 1174)*. In the case presented, X cannot invoke fortuitous event as a defense because she had already incurred in delay at the time of the occurrence of the loss *(Art. 1165).*

a. X and Y are partners in a shop offering portrait painting. Y provided the capital and the marketing while X was the portrait artist. They accepted the PS0,000.00 payment of Kyla to do her portrait but X passed away without being able to do it. Can Kyla demand that Y deliver the portrait she had paid for because she was dealing the with business establishment and not with the artist personally? Why or why not?

SUGGESTED ANSWER:

NO, Kyla cannot demand that Y deliver the portrait. The death of X has the effect of dissolving the partnership *(Art. 1830)*. Also, while the obligation was contracted by the partnership, it was X who was supposed to create the portrait for Kyla. Since X died before creating the portrait, the obligation can no longer be complied because of impossibility of performance *(Art. 1266).* In obligations to do, the debtor shall be released when the prestation becomes legally or physically impossible without the debtor's fault.

b. In this jurisdiction, is a joint venture (i.e., a group of corporations contributing resources for a specific project and sharing the profits therefrom) considered a partnership? (2015 BAR)

SUGGESTED ANSWER:

YES, under Philippine law, a joint venture is understood to mean an organization formed for some temporary purpose and is hardly distinguishable form a partnership since its elements are similar which are: community of interest in business, sharing of profits, and losses, and a mutual right of control *(Primelink Properties v. Lazatin, G.R. No. 167379, June 27, 2006 citing Blackner v. Mcdermott, 176 F. 2d 498[1949]).*

J.C. Construction (J.C.) bought steel bars from Matibay Steel Industries (MSI) which is owned by Buddy Batungbacal. J.C. failed to pay the purchased materials worth P500,000.00 on due date. J.C. persuaded its client Amoroso with whom it had receivables to pay its obligation to MSI. Amoroso agreed and paid MSI the amount of P50,000.00. After two (2) other payments, Amoroso stopped making further payments.

Buddy filed a complaint for collection of the balance of the obligation and damages against J.C. J.C. denied any liability claiming that its obligation was extinguished by reason of novation which took place when MSI accepted partial payments from Amoroso on its behalf.

Was the obligation of J.C. Construction to MSI extinguished by novation? Why? (2014 BAR)

SUGGESTED ANSWER:

NO, the obligation of JC was not extinguished by novation. Novation may either be objective or subjective. Subjective novation takes place by the substitution of debtor or subrogation of a third person to the rights of the creditor. Novation by substituting a new debtor may take place even without the knowledge or against the will of the original debtor but not without the consent of the creditor. Moreover, novation must be expressed and it cannot be implied and there must be an agreement that the old obligation is extinguished. In the case of JC, it does not appear that MSI had agreed to release JC from the obligation. Hence, the obligation of JC was not extinguished.

Upon the proposal of a third person, a new debtor substituted the original debtor without the latter's consent. The creditor accepted the substitution. Later, however, the new debtor became insolvent and defaulted in his obligation. What is the effect of the new debtor's default upon the original debtor? (2011 BAR)

(A) The original debtor is freed of liability since novation took place and this relieved him of his obligation.

(B) The original debtor shall pay or perform the obligation with recourse to the new debtor.
(C) The original debtor remains liable since he gave no consent to the substitution.
(D) The original debtor shall pay or perform 50% of the obligation to avoid unjust enrichment on his part.

Allan bought Billy's property through Carlos, an agent empowered with a special power of attorney (SPA) to sell the same. When Allan was ready to pay as scheduled, Billy called, directing Allan to pay directly to him. On learning of this, Carlos, Billy's agent, told Allan to pay through him as his SPA provided and to protect his commission. Faced with two claimants, Allan consigned the payment in court. Billy protested, contending that the consignation is ineffective since no tender of payment was made to him. Is he correct? (2011 BAR)

(A) No, since consignation without tender of payment is allowed in the face of the conflicting claims on the plaintiff.
(B) Yes, as owner of the property sold, Billy can demand payment directly to himself.
(C) Yes, since Allan made no announcement of the tender.
(D) Yes, a tender of payment is required for a valid consignation.

Anne owed Bessy P1 million due on October 1, 2011 but failed to pay her on due date. Bessy sent a demand letter to Anne giving her 5 days from receipt within which to pay. Two days after receipt of the letter, Anne personally offered to pay Bessy in manager's check but the latter refused to accept the same. The 5 days lapsed. May Anne's obligation be considered extinguished? (2011 BAR)

(A) Yes, since Bessy's refusal of the manager's check, which is presumed funded, amounts to a satisfaction of the obligation.
(B) No, since tender of payment even in cash, if refused, will not discharge the obligation without proper consignation in court.
(C) Yes, since Anne tendered payment of the full amount due.
(D) No, since a manager's check is not considered legal tender in the Philippines.

X borrowed money from a bank, secured by a mortgage on the land of Y, his close friend. When the loan matured, Y offered to pay the bank but it refused since Y was not the borrower. Is the bank's action correct? (2011 BAR)

(A) Yes, since X, the true borrower, did not give his consent to Y's offer to pay.
(B) No, since anybody can discharge X's obligation to his benefit.
(C) No, since Y, the owner of the collateral, has an interest in the payment of the obligation.
(D) Yes, since it was X who has an obligation to the bank.

Sarah had a deposit in a savings account with Filipino Universal Bank in the amount of five Million pesos (P5,000,000.00). To buy a new car, she obtained a loan from the same bank in the amount of P1,200,000.00, payable in twelve monthly

installments. Sarah issued in favor of the bank in post-dated checks, each in the amount of P100,000.00 to cover the twelve monthly installment payments. On the third, fourth and fifth months, the corresponding checks bounced.

The bank then declared the whole obligation due, and proceed to deduct the amount of one million pesos (P1,000,000.00) from Sarah's deposit after notice to her that this is a form of compensation allowed by law. Is the bank correct? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No the bank is not correct, while the Bank is correct about the applicability of compensation, it was not correct as to the amount compensated.

A bank deposit is a contract of loan, where the depositor is the creditor and the bank the debtor. Since Sarah is also the debtor of the bank with respect to the loan, both are mutually principal debtors and creditors of each other. Both obligations are due, demandable and liquidated but only up to the extent of P300,000 (covering the unpaid third, fourth and fifth monthly installments). The entire one million was not yet due because the loan has no acceleration clause in case of default. And since there is no retention or controversy commenced by third persons and communicated in due time to the debtor, then all the requisites of legal compensation are present but only up to the amount of P300,000. The bank, therefore, may deduct P300,000 pesos from Sarah's bank deposit by way of compensation.

CONTRACTS

It is a principle which holds that contracts must be binding to both parties and its validity and effectivity can never be left to the will of one of the parties. (2012 BAR)

a) Obligatory force of contracts
b) Mutuality of contracts
c) Autonomy of contracts
d) Relativity of contracts

It refers to the rule that a contract is *binding not only* between parties *but* extends to the heirs, successors in interest, and assignees of the parties, *provided* that the contract involved transmissible rights by their nature, or by stipulation or by law. (2012 BAR)

a) Obligatory force of contracts
b) Mutuality of contracts
c) Autonomy of contracts
d) Relativity of contracts

It is rule which holds that the freedom of the parties to contract includes the freedom to stipulate, provided the stipulations are not contrary to law, morals, good customs, public order or public policy. (2012 BAR)

a) Obligatory force of contracts
b) Mutuality of contracts
c) Autonomy of contracts
d) Relativity of contracts

Contracts take effect only between the parties or their assigns and heirs, except where the rights and obligations arising from the contract are not transmissible by their nature, by stipulation, or by provision of law. In the latter case, the assigns or the heirs are not bound by the contracts. This is known as the principle of (2011 BAR)
(A) Relativity of contracts.
(B) Freedom to stipulate.
(C) Mutuality of contracts.
(D) Obligatory force of contracts.

I. Essential Requisites

An offer becomes ineffective on any of the following grounds, except: (2012 BAR)
a) Death, civil interdiction, insanity/insolvency of either party before acceptance is conveyed.
b) Acceptance of the offer by the offeree.
c) Qualified/conditional acceptance of the offer, which becomes counter-offer.
d) Subject matter becomes illegal/impossible before acceptance is communicated.

Which of the following statements is correct? (2012 BAR)
a) Offers in interrelated contracts are perfected upon consent.
b) Offers in interrelated contracts require a single acceptance.
c) *Business advertisements are* definite offers that require specific acceptance.
d) *Advertisements for Bidders are* only invitations to make proposals and the advertiser is not bound to accept the highest/lowest bidder, unless it appears otherwise.

II. Kinds of Contracts

Briefly explain whether the following contracts are valid, rescissible, unenforceable, or void:

(a) A contract of sale between Lana and Andy wherein I6-year old Lana agreed to sell her grand piano for 25,000.00. (2%) (2017 BAR)

SUGGESTED ANSWER:

(a) The contract of sale is voidable, because Lana is a minor, and is thus incapable of giving consent to a contract.

(b) A contract of lease of the Philippine Sea entered by and between Mitoy and Elsa. (2%) (2017 BAR)

SUGGESTED ANSWER:

(b) The contract of sale's void, because its object, the Philippine Sea, Is outside the commerce of men.

ALTERNATIVE ANSWER:

(b) The contract of sale is void under Article 1306 of the Civil Code because it is against public policy.

ANOTHER ALTERNATIVE ANSWER:

(b) The contract of sale is void as it is prohibited by a treaty, which is considered binding law hi the Philippines.
[Note: Under Article 137 of the UNCLOS, the Philippine Seals governed by the following mandates:
xxx
No State or natural or juridical person shall appropriate any part thereof. xxx].

(c) A barter of toys executed by I2-year old Clarence and 10-year old Czar (2%) (2017 BAR)

SUGGESTED ANSWER:

(e) The contract Is unenforceable, because both parties, being minors, are incapable of giving consent.

(d) A sale entered by Bind and Garri, both minors, which their parents later ratified. (2%) (2017 BAR)

SUGGESTED ANSWER:

(d) The contract is valid and may not be annulled by either party due to the ratification by the parents of Barni and Garri, if done while both were still minors. Ratification extinguishes the action to annul a voidable contract, or an unenforceable contract, as in this case were both parties were minors and may be done by the parents, as guardians of the minor children (Article 1407, NCC).

(e) Jenny's sale of her car to Celestine in order to evade attachment by Jenny's creditors. (2%) (2017 BAR)

SUGGESTED ANSWER:

(e) The contract is rescissible because it is In fraud of creditors (Article 1381, NCC).

The following are the ways by which innominate contracts are regulated, except: (2012 BAR)

a) By the *stipulation* of the parties.
b) By the general *principles* of quasi-contracts and delicts
c) By the *rules* governing the most analogous nominate contracts.
d) By the *customs* of the place.

An obligation which is based on equity and natural law is known as: (2012 BAR)

a) pure
b) quasi-contract
c) civil
d) natural

Mr. A, a businessman, put several real estate properties under the name of his eldest son X because at that time, X was the only one of legal age among his four children. He told his son he was to hold those assets for his siblings until they become adults themselves. X then got married. After 5 years, Mr. A asked X to transfer the titles over three properties to his three siblings, leaving two properties for himself. To A's surprise, X said that he can no longer be made to transfer the properties to his siblings because more than 5 years have passed since the titles were registered in his name. Do you agree? Explain. (2015 BAR)

SUGGESTED ANSWER:

NO, the transfer of the properties in the name of X was without cause or consideration and it was made for the purpose of holding these properties in trust for the siblings of X. If the transfer was by virtue of a sale, the same is void for lack of cause or consideration. Hence, the action to declare the sale void is imprescriptible *(Heirs of Ureta vs. Ureta, G.R. No. 165748 September 14, 2011).*

Marvin offered to construct the house of Carlos for a very reasonable price of P900,000.00, giving the latter 10 days within which to accept or reject the offer. On the fifth day, before Carlos could make up his mind, Marvin withdrew his offer.

What is the effect of the withdrawal of Marvin's offer? (2%) (2005 Bar Question)

SUGGESTED ANSWER:

The withdrawal of Marvin's offer is valid because there was no consideration paid for the option. An option is a separate contract from the contract which is the subject of the offer, and if not supported by ajpty consideration, the option contract is not deemed perfected. Thus, Marvin may withdraw the offer at any time before acceptance of the offer.

d. Will your answer be the same if Carlos paid Marvin P10,000.00 as consideration for that option? Explain. (2%) (2005 Bar Question)

SUGGESTED ANSWER:

If Carlos paid P10,000.00 as consideration for that option, Marvin cannot withdraw the offer prior to expiration of the option period. The option is a separate contract and if founded on consideration is a perfected option contract and must be respected by Marvin.

Supposing that Carlos accepted the offer before Marvin could communicate his withdrawal thereof? Discuss the legal consequences. (2%) (2005 Bar Question)

SUGGESTED ANSWER:

If Carlos has already accepted the offer and such acceptance has been communicated to Marvin before Marvin communicates the withdrawal, the acceptance creates a perfected construction contract, even if no consideration was as yet paid for the option. If Marvin does not perform his obligations under the perfected contract of construction, he shall be liable for all consequences arising from the breach thereof based on any of the available remedies which may be instituted by Carlos, such as specific performance, or rescission with damages in both cases.

Distinguish briefly but clearly between:

Inexistent contracts and annullable contracts. (2004 Bar Question)

SUGGESTED ANSWER:

In inexistent contracts, one or more requisites of a valid contract are absent. In anullable contracts, all the elements of a contract are present except that the consent of one of the contracting parties was vitiated or one of them has no capacity to give consent.

Inexistent contracts are considered as not having been entered into and, therefore, void *ab initio.* They do not create any obligation and cannot be ratified or validated, as there is no agreement to ratify or validate. On the other hand, annullable or voidable contracts are valid until invalidated by the court but may be ratified.

Jo-Ann asked her close friend, Aissa, to buy some groceries for her in the supermarket. Was there a nominate contract entered into between Jo-Ann and Aissa? In the affirmative, what was it? Explain. (2003 Bar Question)

SUGGESTED ANSWER:

Yes, there was a nominate contract. On the assumption that Aissa accepted the request of her close friend Jo-Ann to buy some groceries for her in the supermarket, what they entered into was the nominate contract of Agency. Article 1868 of the New Civil code provides that by the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

ALTERNATIVE ANSWER:

Yes, they entered into a nominate contract of lease of service in the absence of a relation of principal and agent between them (Article 1644, New Civil Code).

Distinguish consensual from real contracts and name at least four (4) kinds of real contracts under the present law. (3%) (1998 Bar Question)

SUGGESTED ANSWER:

Consensual contracts are those which are perfected by mere consent (Art. 1315, Civil Code). Real contracts are those which are perfected by the delivery of the object of the obligation. (Art. 1316, Civil Code)

Examples of real contracts are deposit, pledge, commodatum and simple loan (mutuum).

III. Formality

Which of the following contracts of sale is void? (2012 BAR)

a) Sale of EGM's car by KRP, EGM's agent, whose authority is not reduced into writing.

b) Sale of EGM's piece of land by KRP, EGM's agent, whose authority is not reduced into writing.

c) Sale of EGM's car by KRP, a person stranger to EGM, without EGM's consent or authority.

d) Sale of EGM's piece of land by KRP, a person stranger to EGM, without EGM's consent or authority.

The following are *solemn contracts* (Contracts which must appear in writing), except: (2012 BAR)

a) Donations of real estate or of movables if the value exceeds ₱ 5,000.00.

b) Stipulation to pay interest in loans.

c) Sale of land through an agent (authority must be in writing).

d) Construction contract of a building.

Suppose that in an oral contract, which by its terms is not to be performed within one year from the execution thereof, one of the contracting parties has already complied within the year with the obligations imposed upon him by said contract, can the other party avoid fulfillment of those incumbent upon him by invoking the Statute of Frauds? (1988 Bar Question)

SUGGESTED ANSWER:

No, he cannot. This is so, because the Statute of Frauds aims to prevent and not to protect fraud. It is well- settled that when the law declares that an agreement which by its terms is not to be performed within a year from the making thereof is unenforceable by action, unless the same* or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent, it refers only to an agreement which by its terms is not to be performed on either side within a year from the execution thereof. Hence, one which has already been fully performed on one side within a year is taken out of the operation of the statute. (Phil. Nat. Bank vs. Phil. Vegetable Oil Co., 49 Phil. 857; Shoemaker vs. La Tondena, 68 Phil. 24.)

Which of the following actions or defenses are meritorious: (1%) (2013 BAR)

(A) An action for recovery of downpayment paid under a rescinded oral sale of real property.

(B) A defense in an action for ejectment that the lessor verbally promised to extend or renew the lease.

(C) An action for payment of sum of money filed against one who orally promised to answer another's debt in case the latter defaults.

(D) A defense in an action for damages that the debtor has sufficient, but unliquidated assets to satisfy the credit acquired when it becomes due.

(E) None of the above.

SUGGESTED ANSWER:

A - In Asia Productions v. Pano (205 SCRA 458) the SC allowed recovery of the partial payment made by the buyer of a building under a verbal contract of sale because the buyer is not seeking the enforcement of the contract and at any rate it is not covered by the statute of frauds.

Arlene owns a row of apartment houses in Kamuning, Quezon City. She agreed to lease Apartment No. 1 to Janet for a period of 18 months at the rate of P10,000 per month. The lease was not covered by any contract. Janet promptly gave Arlene two

(2) months deposit and 18 checks covering the rental payment for 18 months. This show of good faith prompted Arlene to promise Janet that should Arlene decide to sell the property, she would give Janet the right of first refusal. (2013 BAR)

(1) Not long after Janet moved in, she received news that her application for a Master of Laws scholarship at King's College in London had been approved. Since her acceptance of the scholarship entailed a transfer of residence, Janet asked Arlene to return the advance rental payments she made. Arlene refused, prompting Janet to file an action to recover the payments. Arlene filed a motion to dismiss, claiming that the lease on which the action is based, is unenforceable.

If you were the judge, would you grant Arlene's motion? (1%)

(A) Yes, I will grant the motion because the lease contract between Arlene and Janet was not in writing, hence, Janet may not enforce any right arising from the same contract.
(B) No, I will not grant the motion because to allow Arlene to retain the advance payments would amount to unjust enrichment.
(C) Yes, I will grant the motion because the action for recovery is premature; Janet should first secure a judicial rescission of the contract of lease.
(D) No. I will not grant the motion because the cause of action does not seek to enforce any right under the contract of lease.

SUGGESTED ANSWER:
D – recovery of advance rental payments made is not covered by the statute of frauds because its purpose it not to perpetrate fraud but to prevent fraud

(2) Assume that Janet decided not to accept the scholarship and continued leasing Apartment No. 1. Midway through the lease period, Arlene decided to sell Apartment No. 1 to Jun in breach of her promise to Janet to grant her the right of first refusal. Thus, Janet filed an action seeking the recognition of her right of first refusal, the payment of damages for the violation of this right, and the rescission of the sale between Arlene and Jun.

Is Janet's action meritorious? (1%)

(A) Yes, under the Civil Code, a promise to buy and sell a determinate thing is reciprocally demandable.
(B) No, the promise to buy and sell a determinate thing was not supported by a consideration.
(C) Yes, Janet's right of first refusal was clearly violated when the property was not offered for sale to her before it was sold to Jun.
(D) No, a right of first refusal involves an interest over real property that must be embodied in a written contract to be enforceable.
(E) None of the above.

SUGGESTED ANSWER:
D – although the lease itself is valid even if verbal, the right of first refusal is a different matter because a verbal promise to grant a right of first refusal which in essence is a promise to sell is unenforceable under the Statute of Frauds

IV. Defective Contracts

If one of the parties to the contract is without juridical capacity, the contract is: (2012 BAR)

a) voidable
b) rescissible
c) void
d) unenforceable

When both parties to the contract are minors, the contract is: (2012 BAR)

a) voidable
b) rescissible
c) void
d) unenforceable

When the consent of one of the parties was vitiated, the contract is: (2012 BAR)

a) voidable
b) rescissible
c) void
d) unenforceable

Consent was given by one in representation of another but without authority. The contract is: (2012 BAR)

a) voidable
b) rescissible
c) void
d) unenforceable

The following are rescissible contracts, except: (2012 BAR)

a) Entered into by guardian whenever ward suffers damage more than ¼ of value of property.
b) Agreed upon in representation of absentees, if absentee suffers lesion by more than ¼ of value of property.
c) Contracts where fraud is committed on creditor (accion pauliana).
d) Contracts entered into by minors.

The following are the requisites before a contract entered into in fraud of creditors may be rescinded, except: (2012 BAR)

a) There must be credited existing prior to the celebration of the contract.
b) There must be fraud, or at least, the intent to commit fraud to the prejudice of the creditor seeking rescission.

c) The creditor cannot in any legal manner collect his credit (subsidiary character of rescission)
d) The object of the contract must be legally in the possession of a 3rd person in good faith.

The following are the characteristics of a voidable contract, except: (2012 BAR)
a) Effective until set aside.
b) May be assailed/attacked only in an action for that purpose.
c) Can be confirmed or ratified.
d) Can be assailed only by either party.

The following are void contracts, except: (2012 BAR)
a) Pactum commissorium
b) Pactum de non alienando
c) Pactum leonina
d) Pacto de retro

When bilateral contracts are vitiated with vices of consent, they are rendered (2011 BAR)

(A) rescissible.
(B) void.
(C) unenforceable.
(D) voidable.

The presence of a vice of consent vitiates the consent of a party in a contract and this renders the contract (2011 BAR)

(A) Rescissible.
(B) Unenforceable.
(C) Voidable.
(D) Void.

Which of the following expresses a correct principle of law? Choose the best answer. (2012 BAR)
a) Failure to disclose facts when there is a duty to reveal them, does not constitute fraud.
b) Violence or intimidation does not render a contract annullable if employed not by a contracting party but by a third person.
c) A threat to enforce one's claim through competent authority, if the claim is legal or just, does not vitiate consent.
d) Absolute simulation of a contract always results in a void contract.

V. Effect of Contracts

Which of the following statements is wrong? (2012 BAR)

a) Creditors are protected in cases of contracts intended to defraud them.
b) Contracts take effect only between the parties, their assign and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.
c) If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation.
d) In contracts creating real rights, third persons who come into possession of the object of the contract are not bound thereby.

Which phrase most accurately completes the statement – Any third person who induces another to violate his contract: (2012 BAR)

a) shall be liable for damages only if he is a party to the same contract.
b) shall be liable for damages to the other contracting party.
c) shall not be liable for damages to the other contracting party.
d) shall not be liable for damages if the parties are in pari delicto.

X sold Y 100 sacks of rice that Y was to pick up from X's rice mill on a particular date. Y did not, however, appear on the agreed date to take delivery of the rice. After one week, X automatically rescinded the sale without notarial notice to Y. Is the rescission valid? (2011 BAR)

a) Yes, automatic rescission is allowed since, having the character of movables and consumables, rice can easily deteriorate.
b) No, the buyer is entitled to a customary 30-day extension of his obligation to take delivery of the goods.
c) No, since there was no express agreement regarding automatic rescission.
d) No, the seller should first determine that Y was not justified in failing to appear.

SALES

I. Definition and Essential Requisites of a Contract of Sale

Alice agreed to sell a parcel of land with an area of 500 square meters registered in her name and covered by her TCT No. 12345 in favor of Bernadette for the amount of P900,000.00. Their agreement dated October 15, 2015 reads as follows:

I, Bernadette, agree to buy the lot owned by Alice covered by TCTNo. 12345 for the amount of P900000.00 subject to the following schedule of payment:

Upon signing of agreement P100,000.00
November 15, 2015 P200,000.00
December 15, 2015 P200,000.00
January IS, 2016 P200,000.00
February 15, 2016 P200,000.00

Title to the property shall be transferred upon full payment of P900,000.00 on or before February 15, 2016.

After making the initial payment of P100,000.00 on October 15, 2015, and the second installment of P200,000.00 on November 15, 2015, Bernadette defaulted despite repeated demands from Alice. In December 2016, Bernadette offered to pay her balance but Alice refused and told her that the land was no longer for sale. Due to the refusal, Bernadette caused the annotation of her adverse claim upon TCT No. 12145 on December 19, 2016. Later on, Bernadette discovered that Alice had sold the property to Chona on February 5,2016. and that TCT No. 12345 had been cancelled and another one issued (TCT No. 67891) in favor of Chona as the new owner.

Bernadette sued Alice and Chona for specific performance, annulment of sale and cancellation of TCT No. 67891. Bernadette insisted that she, had entered into a contract of sale with Alice; and that because Alice had engaged in double sale, TCT No. 67891 should be cancelled and another title be issued in Bemadette'S favor.

a) Did Alice and Bernadette enter into a contract of sale of the lot covered by TCT No. 12345? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

(a) Yes, they entered into a contract of sale which is a conditional sale. Article 1458(2) provides that a contract of sale may be absolute or conditional. In a contract of conditional sale, the buyer automatically acquires title to the property upon full payment of the purchase price. This transfer of title is "by operation of law without any further act having to be performed by the seller. In a contract to sell, transfer of title to the prospective buyer is not automatic, The prospective seller [must] convey title to the property (through a deed of conditional sale" (Olivarez Realty Corporation v. Castillo, G.R. No. 196251, July 9,2014).

In this case, it was stipulated that "Title to the property shall be transferred upon full payment of P900,00000 or before February 15, 2016." Thus, they entered into a conditional sale.

ANOTHER SUGGESTED ANSWER:

(a) No, because in the agreement between Alice and Bernadette, the ownership is reserved in the vendor and is not .to pass to the vendee until full payment of the purchase price, which makes the contract one of contract to sell and not a contract of sale. Distinctions between a contract to sell and a contract of sale are well-established in jurisprudence. In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved

in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which 'snot a breach but an event that prevents the obligation of the vendor to convey title from becoming effective (Saberon v. Ventanilla, Jr., G.R. No. 192669, April 21, 2014).

In this case, the contract entered between the parties is a contract to sell because ownership is retained by the vendor and is not to pass to the vendee until full payment of the purchase price.

(b) Did Alice engage in double sale of the property? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

(b) No, Alice did not engage in double sale. Article 1544 of the Civil Code contemplates contracts of sale which are absolute sales. The sale to Bernadette, however, is a conditional sale wherein the condition was not fulfilled. In a conditional sale, the non-fulfillment of the condition prevents the obligation to sell from arising and, thus, the prospective seller retains ownership without further remedies by the buyer. Since title is reserved to Alice until Bernadette pays the full price for the lot, the contract in this case is a conditional sale.

ANOTHER SUGGESTED ANSWER:

(b) No, because there was no previous sale of the same property prior to its sale to Chona. Despite the earlier transaction of Alice with Bernadette, the former is not guilty of double sale because the previous transaction with Bernadette is characterized as a contract to sell. In a contract to sell, there being no previous sale of the property, a third person buying such property despite the fulfillment of the suspensive condition such as the full payment of the purchase price, for instance, cannot be deemed a buyer in bad faith and the prospective buyer cannot seek the relief of reconveyance of the property. There is no double sale in such case. Title to the property will transfer to the buyer after registration because there is no defect in the owner-sellers title per se, but the latter, of course, may be sued for damages by the intending buyer (Coronel c CA, G.R. No. 103577, October 7, 1996).

Jackie, 16, inherited a townhouse. Because she wanted to study in an exclusive school, she sold her townhouse by signing a Deed of Sale and turning over possession of the same to the buyer. When the buyer discovered she was still a minor, she promised to execute another Deed of Sale when she turns 18. When Jackie turned 25 and was already working, she wanted to annul the sale and return the buyer's money to recover her townhouse. Was the sale contract void, voidable

or valid? Can Jackie still recover the property? Explain. (2015 BAR)

ANSWER:

The contract of sale was voidable on the ground that Jackie is incapable of giving consent at the time of the execution of the sale*(Art. 1390 and Art. 1327)*. Jackie can no longer recover the townhouse unit because if a contract is voidable on the ground of minority, the action to annul it must be filed within four (4) years from attainment of the age of majority. Since Jackie was already 25 years old, the action has clearly prescribed because she should have filed it before she reached the age of 22 *(Art. 1391)*.

Z, a gambler, wagered and lost P2 Million in baccarat, a card game. He was pressured into signing a Deed of Absolute Sale in favor of the winner covering a parcel of land with improvements worth P20 Million. One month later, the supposed vendee of the property demanded that he and his family vacate the property subject of the deed of sale. Was the deed of sale valid? What can Z do? (2015 BAR)

ANSWER:

The sale is valid. Being pressured to sign the deed of sale is not equivalent to vitiation of consent under *Art. 1390(2)*. Mere pressure cannot constitute intimidation because for intimidation to arise, the party must be compelled by a reasonable or well- grounded fear of an imminent & grave danger upon person & property of himself, spouse, ascendants or descendants. It also cannot constitute undue influence or when a person takes improper advantage of his power over will of another depriving latter of reasonable freedom of choice because there was no indication that the winner has moral ascendency or power over Z. However, Z can recover his losses from the winner because the law provides that no action can be maintained by the winner for the collection of what he has won in any game of chance. But any loser in a game of chance may recover his loss from the winner, with legal interests from the time he paid the amount lost *(Art. 2014).*

Tess leased her 1,500 sq. m. lot in Antipolo City to Ruth for a period of three (3) years, from January 2010 to February 2013. On March 19, 2011, Tess sent a letter to Ruth, part of which reads as follows:

"I am offering you to buy the property you are presently leasing at P5,000.00 per sq. m. or for a total of P7,500,000.00. You can pay the contract price by installment for two (2) years without interest. I will give you a period of one (1) year from receipt of this letter to decide whether you will buy the property."

After the expiration of the lease contract, Tess sold the property to her niece for a total consideration of P4 million. Ruth filed a complaint for the annulment of the sale, reconveyance and damages against Tess and her niece. Ruth alleged that the sale of the leased property violated her right to buy under the principle of right of first refusal. Is the allegation of Ruth tenable? (2014 BAR)

ANSWER:

NO, the allegation of Ruth is not tenable. The letter written by Tess did not grant a right of first refusal to Ruth. At most, it is to be construed as an option contract whereby Ruth was given the right to buy or not to buy the leased property. An option is itself not a purchase but it merely secures the privilege to buy. However, the option is not valid because it was not supported by a cause or consideration distinct from the price of the property *(Art. 1479).* Also, Ruth does not appear to have exercised her option before the offer was withdrawn by the subsequent sale of the property to the niece of Tess.

Lino entered into a contract to sell with Ramon, undertaking to convey to the latter one of the five lots he owns, without specifying which lot it was, for the price of P1 million. Later, the parties could not agree which of five lots he owned Lino undertook to sell to Ramon. What is the standing of the contract? (2011 BAR)

(A) Unenforceable.
(B) Voidable.
(C) Rescissible.
(D) Void.

Spouses Biong and Linda wanted to sell their house. They found a prospective buyer, Ray. Linda negotiated with Ray for the sale of the property. They agreed on a fair price of P2 Million. Ray sent Linda a letter confirming his intention to buy the property. Later, another couple, Bemie and Elena, offered a similar house at a lower price of PI.5 Million. But Ray insisted on buying the house of Biong and Linda for sentimental reason. Ray prepared a deed of sale to be signed by the couple and a manager's check of P2 Million.

After receiving the P2 Million, Biong signed the deed of sale. However, Linda was not able to sign it because she was abroad. On her return she refused to sign the document saying she changed her mind. Linda filed suit for nullification of the deed of sale and for moral and exemplary damages against Ray.

(1) Will the suit prosper? Explain. 2.5% (2006 Bar Question)

SUGGESTED ANSWER:

The suit will prosper. The sale was void because Linda did not give her written consent to the sale. In *Jader-Manalo v. Camaisa, 374 SCRA 498 (2002),* the Supreme Court has ruled that the sale of conjugal property is void if both spouses have not given their written consent to it and even if the spouse who did not sign the Deed of Sale participated in the negotiation of the contract. In *Abalos v. Macatangay, 439 SCRA 649 (2004),* the Supreme Court even held that for the sale to be valid, the signatures of the spouses to signify their written consent must be on the same document. In this case, Linda, although she was the one who negotiated the sale, did not give her written consent to the sale. Hence, the

sale is void. However, Linda will not be entitled to damages because Ray is not in any way in bad faith.

***ANOTHER SUGGESTED ANSWER*:**

The suit will not prosper because the contract of sale has already been perfected and partly consummated. The contract of sale is perfected upon the meeting of the minds of the buyer and seller on to the thing to be sold and on the price thereof. In this case, Linda had a meeting of minds with Ray when they agreed that the property will be sold for 2 million pesos at the conclusion of her negotiations with him, while Biong had a meeting of minds with Ray when he signed the Deed of Sale and accepted the 2 million-peso payment by Ray. Linda is estopped from questioning the validity of the contract she herself negotiated with Ray.

(2) Does Ray have any cause of action against Biong and Linda? Can he also recover damages from the spouses? Explain. 2.5% (2006 Bar Question)

***SUGGESTED ANSWER*:**

Yes, Ray has a cause of action against Linda and Biong for the return of the 2 million pesos he paid for the property. He may recover damages from the spouses, if it can be proven that they were in bad faith in backing out from the contract, as this is an act contrary to morals and good customs under Articles 19 and 21 of the Civil Code.

ANOTHER SUGGESTED ANSWER:

Assuming that the contract of sale has been perfected, Ray may file a counterclaim against Linda and Biong for specific performance or rescission, with damages in either case. Linda has breached the obligation created by the contract when she filed an action for nullification of sale.

On account of Linda's bad faith or fraud, Ray may ask for damages under Article 1170 of the Civil Code.

II. Parties to a Contract of Sale

Nante, a registered owner of a parcel of land in Quezon City, sold the property to Monica under a deed of sale which reads as follows:

"That for and in consideration of the sum of P500,000.00, value to be paid and delivered to me, and receipt of which shall be acknowledged by me to the full satisfaction of Monica, referred to as Vendee, I hereby sell, transfer, cede, convey, and assign, as by these presents, I do have sold, transferred, ceded, conveyed and assigned a parcel of land covered by TCT No. 2468 in favor of the Vendee."

After delivery of the initial payment of P100,000.00, Monica immediately took possession of the property. Five (5) months after, Monica failed to pay the remaining balance of the purchase price. Nante filed an action for the recovery of possession of the property. Nante alleged that the agreement was one to sell, which was not consummated as the full contract price was not paid.

Is the contention of Nante tenable? (2014 BAR)

ANSWER:

NO, the contention of Nante is not tenable. The deed itself states that for consideration received, he sells, transfers, and conveys the land to Monica and there was delivery of the property to the latter. The contract is clearly one of sale as there was no reservation of ownership on the part of the seller Nante. The non-payment of the price in a contract of sale would only entitle the seller to rescind the contract but it does not thereby prevent the transfer of ownership particularly so as in this case, where there was already delivery to the buyer.

Rica petitioned for the annulment of her ten-year old marriage to Richard. Richard hired Atty. Cruz to represent him in the proceedings. In payment for Atty. Cruz's acceptance and legal fees, Richard conveyed to Atty. Cruz a parcel of land in Taguig that he recently purchased with his lotto winnings. The transfer documents were duly signed and Atty. Cruz immediately took possession by fencing off the property's entire perimeter. Desperately needing money to pay for his mounting legal fees and his other needs and despite the transfer to Atty. Cruz, Richard offered the same parcel of land for sale to the spouses Garcia. After inspection of the land, the spouses considered it a good investment and purchased it from Richard. Immediately after the sale, the spouses Garcia commenced the construction of a three-story building over the land, but they were prevented from doing this by Atty. Cruz who claimed he has a better right in light of the prior conveyance in his favor.

Is Atty. Cruz's claim correct? (2013 BAR)

ANSWER:

NO, Atty. Cruz is not correct. At first glance, it may appear that Atty. Cruz is the one who has a better right because he first took possession of the property. However, a lawyer is prohibited under Art. 1491 of the Civil Code from acquiring the property and rights which may be the object of any litigation in which they may take part by virtue of their profession. While the suit is for annulment of marriage and it may be argued that the land itself is not the object of the litigation, the annulment of marriage, if granted, will carry with it the liquidation of the absolute community or conjugal partnership of the spouses as the case may be *(Art. 50 in relation to Art. 43, FC).* Richard purchased the land with his lotto winnings during the pendency of the suit for annulment and on the assumption that the parties are governed by the regime of absolute community or conjugal partnership,

winnings from gambling or betting will form part thereof. Also, since the land is part of the absolute community or conjugal partnership of Richard and Rica, it may not be sold or alienated without the consent of the latter and any disposition or encumbrance of the property of the community or conjugal property without the consent of the other spouse is void *(Art. 96 and Art. 124, FC).*

III. Subject Matter

Which phrase most accurately completes the statement – If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost: (2012 BAR)

a) the buyer bears the risk of loss.
b) the contract shall be without any effect.
c) the seller bears the risk of loss.
d) the buyer may withdraw from the contract.

Can future inheritance be the subject of a contract of sale?(2011 BAR)

(A) No, since it will put the predecessor at the risk of harm from a tempted buyer, contrary to public policy.
(B) Yes, since the death of the decedent is certain to occur.
(C) No, since the seller owns no inheritance while his predecessor lives.
(D) Yes, but on the condition that the amount of the inheritance can only be ascertained after the obligations of the estate have been paid.

IV. Obligations of the Seller to Transfer Ownership

JV, owner of a parcel of land, sold it to PP. But the deed of sale was not registered. One year later, JV sold the parcel again to RR, who succeeded to register the deed and to obtain a transfer certificate of title over the property in his own name.

Who has a better right over the parcel of land, RR or PP? Why? Explain the legal basis for your answer. (5%) (2004 Bar Question)

SUGGESTED ANSWER:

It depends on whether or not RR is an innocent purchaser for value.

Under the Torrens System, a deed or instrument operated only as a contract between the parties and as evidence of authority to the Register of Deeds to make the registration. It is the registration of the deed or the instrument that is the operative act that conveys or affects the land. (Sec. 51, P.D. No. 1529).

In cases of double sale of titled land, it is a well-settled rule that the buyer who first registers the sale in good faith acquires a better right to the land. (Art. 1544, Civil Code).

Persons dealing with property covered by Torrens title are not required to go beyond what appears on its face. *(Orquiola v.* CA386, SCRA301, [2002]; *Domingo v. Roces* 401 SCRA 197, [2003]). Thus, absent any showing that RR knew about, or ought to have known the prior sale of the land to PP or that he acted in bad faith, and being first to register the sale, RR acquired a good and a clean title to the property as against PP.

On June 15, 1995, Jesus sold a parcel of registered land to Jaime. On June 30. 1995, he sold the same land to Jose. Who has a better right if:

a. **the first sale is registered ahead of the second sale, with knowledge of the latter. Why? (3%)**

b. **the second sale is registered ahead of the first sale, with knowledge of the latter? Why? (5%)** (2001 Bar Question)

SUGGESTED ANSWER:

a. The first buyer has the better right if his sale was first to be registered, even though the first buyer knew of the second sale. The fact that he knew of the second sale at the time of his registration does not make him as acting in bad faith because the sale to him was ahead in time, hence, has a priority in right. What creates bad faith in the case of double sale of land is knowledge of a *previous* sale.

b. The first buyer is still to be preferred, where the second sale is registered ahead of the first sale but with knowledge of the latter. This is because the second buyer, who at the time he registered his sale knew that the property had already been sold to someone else, acted in bad faith. (Article 1544, C.C.)

V. Price

Sergio is the registered owner of a 500-square meter land. His friend, Marcelo, who has long been interested in the property, succeeded in persuading Sergio to sell it to him. On June 2, 2012, they agreed on the purchase price of ₱600,000 and that Sergio would give Marcelo up to June 30, 2012 within which to raise the amount. Marcelo, in a light tone usual between them, said that they should seal their agreement through a case of Jack Daniels Black and ₱5,000 "pulutan" money which he immediately handed to Sergio and which the latter accepted. The friends then sat down and drank the first bottle from the case of bourbon. On June 15, 2013, Sergio learned of another buyer, Roberto, who was offering ₱800,000 in ready cash for the land. When Roberto confirmed that he could pay in cash as soon as Sergio could get the documentation ready, Sergio decided to withdraw his offer to Marcelo, hoping to just explain matters to his friend. Marcelo, however, objected when the withdrawal was communicated to him, taking the position that they have a firm and binding agreement that Sergio cannot simply walk away from because he has an option to buy that is duly supported by a duly accepted valuable consideration. (2013 BAR)

a. Does Marcelo have a cause of action against Sergio?

ANSWER:

YES. Marcelo has a cause of action against Sergio. Under *Art. 1324*, when the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price *(Art. 1479).* Consideration in an option contract may be anything of value, unlike in sale where it must be the price certain in money or its *equivalent (San Miguel Properties Inc v. Spouse: Huang, G.R. No. 137290, July 31, 2000*). Here, the ease of Jack Daniels Black and the 5,000 "pulutan" money was a consideration to "seal their agreement", an agreement that Marcelo is given until June 30, 2012 to buy the parcel of land. There is also no showing that such consideration will be considered part of the purchase price. Thus, Sergio's unilateral withdrawal of the offer violated the Option Contract between him and Marcelo.

b. Can Sergio claim that whatever they might have agreed upon cannot be enforced because any agreement relating to the sale of real property must be supported by evidence in writing and they never reduced their agreement to writing?

ANSWER:

NO. Sergio's claim has no legal basis. The contract at issue in the present case is the option contract, not the contract of sale for the real property. Therefore, *Art. I403* does not apply. The Statute of Frauds covers an agreement for the sale of real property or of an interest therein. Such agreement is unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing *(Art. 1403 [e]).* Here, Marcelo and Sergio merely entered into an Option Contract, which refers to a unilateral promise to buy or sell, which need not be in writing to be enforceable. *(Sanchez v. Rigos, G.R. No. L-25494, June 14, I972, citing Atkins, Kroll and Co., Inc. v. Cua Hian Tek and Southwestern Sugar & Molasses Co. v. Atlantic Gulf & Pacific Co.).*

A contract granting a privilege to a person, for which he has paid a consideration, which gives him the right to buy certain merchandise or specified property, from another person, at anytime within the agreed period, at a fixed price. What contract is being referred to? (2012 BAR)

a) Option Contract
b) Contract to Sell
c) Contract of Sale
d) Lease

VI. Formation of Contract of Sale

On March 13, 2008, Ariel entered into a Deed of Absolute Sale (DAS) with Noel where the former sold his titled lot in Quezon City with an area of three hundred (300) square meters to the latter for the price of P300, 000.00. The prevailing market value of the lot was P3, 000.00 per square meter. On March 20, 2008, they executed another ''Agreement to Buy Back/Redeem Property" where Ariel was given an option to repurchase the property on or before March 20, 2010 for the same price. Ariel, however, remained in actual possession of the lot. Since Noel did not pay the taxes, Ariel paid the real property taxes to avoid a delinquency sale.

On March 21, 2010, Ariel sent a letter to Noel, attaching thereto a manager's check for P300, 000.00 manifesting that he is redeeming the property. Noel rejected the redemption claiming that the DAS was a true and valid sale representing the true intent of the parties. Ariel filed a suit for the nullification of the DAS or the reformation of said agreement to that of a Loan with Real Estate Mortgage. He claims the DAS and the redemption agreement constitute an equitable mortgage; Noel however claims it is a valid sale with pacto de retro and Ariel clearly failed to redeem the property.
As the RTC judge, decide the case with reasons. (5%) (2016 BAR)

I will decide in favor of Ariel and allow the reformation of the agreement. The DAS and the redemption agreement constitute an equitable mortgage and Ariel may ask for the reformation of the agreement to that of a Loan with Real Estate Mortgage as allowed by Article 1605 of the Civil Code. The circumstances dearly show that that the agreement is an equitable mortgage, such as the: a), price of the lot was inade- quate since it was only sold at P300, 000 when the prevailing market value of such was P900, 000; b). the vendor, Ariel, remained in actual possession of the property after the purported sale; and c). Ariel was the one who paid the real property taxes. Under the circumstances, a presumption arises under Article 1602 NCC that what was really executed was an equitable mortgage.

Moreover, Article 1603 NCC provides that in case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

Michael Fermin, without the authority of Pascual Lacas, owner of a car, sold the same car in the name of Mr. Lacas to Atty. Buko. The contract between Atty. Buko and Mr. Lacas is --- (2012 BAR)

a) void because of the absence of consent from the owner, Mr. Lacas.
b) valid because all of the essential requisites of a contract are present.
c) unenforceable because Michael Fermin had no authority but he sold the car in the name of Mr. Lacas, the owner.
d) rescissible because the contract caused lesion to Atty. Buko.

Which of the following contracts is void? (2012 BAR)

a) An oral sale of a parcel of land.

b) A sale of land by an agent in a public instrument where his authority from the principal is oral.

c) A donation of a wrist watch worth ₱ 4,500.00.

d) A relatively simulated contract.

Aligada orally offered to sell his two-hectare rice land to Balane for ₱ 10Million. The offer was orally accepted. By agreement, the land was to be delivered (through execution of a notarized Deed of Sale) and the price was to be paid exactly one-month from their oral agreement. Which statement is most accurate? (2012 BAR)

a) If Aligada refuses to deliver the land on the agreed date despite payment by Balane, the latter may not successfully sue Aligada because the contract is oral.

b) If Aligada refused to deliver the land, Balane may successfully sue for fulfillment of the obligation even if he has not tendered payment of the purchase price.

c) The contract between the parties is rescissible.

d) The contract between the parties is subject to ratification by the parties.

A contract to sell is the same as a conditional contract of sale. Do you agree? Explain your answer. (2012 BAR)

ANSWER:

NO. A contract to sell is specie of conditional sale. The contract to sell does not sell a thing or property; it sells the right to buy the property. A conditional sale is a sale subject to the happening or performance of a condition, such as payment of the full purchase price, or the performance of other prestation to give, to do, or not to do. Compliance with the condition automatically gives the right to the vendee to demand the delivery of the object of the sale. In a contract to sell, however, the compliance with the condition does not automatically sell the property to the vendee. It merely gives the vendee the right to compel the vendor to execute the deed of absolute sale.

On July 14, 2004, Pedro executed in favor of Juan a Deed of Absolute Sale over a parcel of land covered by TCT No. 6245. It appears in the Deed of Sale that Pedro received from Juan P120,000.00 as purchase price. However, Pedro retained the owner's duplicate of said title. Thereafter, Juan, as lessor, and Pedro, as lessee, executed a contract of lease over the property for a period of one (1) year with a monthly rental of P1,000.00. Pedro, as lessee, was also obligated to pay the realty taxes on the property during the period of lease. Subsequently, Pedro filed a complaint against Juan for the reformation of the Deed of Absolute Sale, alleging that the transaction covered by the deed was an equitable mortgage. In his verified answer to the complaint, Juan alleged that the property was sold to him under the Deed of Absolute Sale, and interposed counterclaims to recover possession of the property and to compel Pedro to turn over to him the owner's duplicate of title.

Resolve the case with reasons. (6%) (2005 Bar Question)

SUGGESTED ANSWER:

An equitable mortgage arises from a transaction, regardless of its form, which results into a security, or an offer or attempt to pledge land as security for a debt or liability. Its essence is the intent of the parties to create a mortgage, lien or charge on the property sufficiently described or identified to secure an obligation, which intent must be clearly established in order that such a mortgage may exist.

Defendant's defense that he acquired the land through an Absolute Deed of Sale and not through pacto de retro is untenable. The presumption of equitable mortgage under Article 1602 of the Civil Code, equally applies to a contract purporting to be an absolute sale (Article 1604, NCC). The facts and circumstances that Pedro retained possession of the Owner's Duplicate Copy of the Certificate of Title; that he remained in possession of the land as lessee; that he bound himself to pay the realty taxes during the period of lease, are matters collectively and strongly indicating that the Deed of Absolute Sale is an equitable mortgage. In case of doubt, the Deed of Sale should be considered as a loan with mortgage, because this juridical relation involves a lesser transmission of rights and interests.

If the transaction is proven to be an equitable mortgage, Pedro's prayer for reformation of the instrument should be granted in accordance with Article 1605 of the Civil Code. Thus, in case of non-payment, he may foreclose the mortgage and consolidate his ownership of the land. In that event, Juan's counterclaim to recover possession of the land and to compel Pedro to surrender the Owner's Duplicate Copy of the title becomes a consequential right.

In a true pacto de retro sale, the title and ownership of the property sold are immediately vested in the vendee a retro subject only to the resolutory condition of repurchase by the vendor a retro within the stipulated period. This is known as (2011 BAR)

(A) equitable mortgage.
(B) conventional redemption.
(C) legal redemption.
(D) equity of redemption.

Arturo gave Richard a receipt which states:

"Receipt

Received from Richard as down payment

For my 1995 Toyota Corolla with plate No. XYZ-1 23	**P50.000.00**
Balance payable: 12/30/01	**P50 000.00**

September 15, 2001.

(Sgd.) Arturo

Does this receipt evidence a contract to sell? Why? (5%) (2001 Bar Question)

SUGGESTED ANSWER:

It is a contract of sale because the seller did not reserve ownership until he was fully paid.

Eulalia was engaged in the business of buying and selling large cattle. In order to secure the financial capital, she advanced for her employees (biyaheros). She required them to surrender TCT of their properties and to execute the corresponding Deeds of Sale in her favor. Domeng Bandong was not required to post any security but when Eulalia discovered that he incurred shortage in cattle procurement operation, he was required to execute a Deed of Sale over a parcel of land in favor of Eulalia. She sold the property to her grand neice Jocelyn who thereafter instituted an action for ejectment against the Spouses Bandong.

To assert their right, Spouses Bandong filed an action for annulment of sale against Eulalia and Jocelyn alleging that there was no sale intended but only equitable mortgage for the purpose of securing the shortage incurred by Domeng in the amount of ₱ 70, 000.00 while employed as "biyahero" by Eulalia. Was the Deed of Sale between Domeng and Eulalia a contract of sale or an equitable mortgage? Explain. (2012 BAR)

ANSWER:

The contract between Domeng Bandong and Eulalia was an equitable mortgage rather than a contract of sale. The purported deed of sale was actually intended to merely secure the payment of the shortage incurred by Domeng in the conduct of the cattle-buying operations. Under *Art. 1602*, the contract shall be presumed to be an equitable mortgage when it may be fairly inferred that the real intention of the parties is simply to secure the payment of a debt or the performance of any other obligation. The present transaction was clearly intended to just secure the shortage incurred by Eulalia because Bandong remained in possession of the property in spite of the execution of the sale.

VII. Transfer of Ownership

VIII. Risk of Loss

D sold a second-hand car to E for P150,000.00 The agreement between D and E was that half of the purchase price, or P75,000.00, shall be paid upon delivery of the car to E and the balance of P75,000.00 shall be paid in five equal monthly installments of P15,000.00 each. The car was delivered to E, and E paid the amount of P75,000.00 to D. Less than one month thereafter, the car was stolen from E's garage with no

fault on E's part and was never recovered. Is E legally bound to pay the said unpaid balance of P75,000.00? Explain your answer. (1990 Bar Question)

SUGGESTED ANSWER:

Yes, E is legally bound to pay the balance of P75,000.00. The ownership of the car sold was acquired by E from the moment it was delivered to him. Having acquired ownership, E bears the risk of the loss of the thing under the doctrine of *res perit domino.* (Articles 1496, 1497, Civil Code).

IX. Documents of Title

X. Remedies of an Unpaid Seller

Spouses Macario and Bonifacia Dakila entered into a contract to sell with Honorio Cruz over a parcel of industrial land in Valenzuela, Bulacan for a price of Three Million Five Hundred Thousand Pesos (P3,500,000.00). The spouses would give a downpayment of Five Hundred Thousand Pesos (P500,000.00) upon the signing of the contract, while the balance would be paid for the next three (3) consecutive months in the amount of One Million Pesos (P1,000,000.00) per month. The spouses paid the first two (2) installments but not the last installment. After one (1) year, the spouses offered to pay the unpaid balance which Honorio refused to accept. The spouses filed a complaint for specific performance against Honorio invoking the application of the Maceda Law.

If you are the judge, how will you decide the case? (2014 BAR)

ANSWER:

I will rule in favor of Honorio. The invocation of the Maceda Law is misplaced. The law applies only to sale or financing of realty on installment payments including residential units or residential condominium apartments and does not apply to sales of industrial units or industrial lands like in the case presented. Another reason why the Maceda law will not apply is that, the sale in the case at bar is not the sale on installment as contemplated by the law. The sale on installment covered by the Maceda Law is one where the price is paid or amortized over a certain period in equal installments. The sale to the Spouses Dakila is not a sale on installment but more of a straight sale where a down payment is to be made and the balance to be paid in a relatively short period of three months.

XI. Performance of Contract

A buyer ordered 5,000 apples from the seller at P20 per apple. The seller delivered 6,000 apples. What are the rights and obligations of the buyer? (2011 BAR)

(A) He can accept all 6,000 apples and pay the seller at P20 per apple.

(B) He can accept all 6,000 apples and pay a lesser price for the 1,000 excess apples.
(C) He can keep the 6,000 apples without paying for the 1,000 excess since the seller delivered them anyway.
(D) He can cancel the whole transaction since the seller violated the terms of their agreement.

X sold a parcel of land to Y on 01 January 2002, payment and delivery to be made on 01 February 2002. It was stipulated that if payment were not to be made by Y on 01 February 2002, the sale between the parties would automatically be rescinded. Y failed to pay on 01 February 2002, but offered to pay three days later, which payment X refused to accept, claiming that their contract of sale had already been rescinded. Is X's contention correct? Why? (2003 Bar Question)

SUGGESTED ANSWER:

No, X is not correct. In the sale of immovable property, even though it may have been stipulated, as in this case, that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act (Article 1592, New Civil Code). Since no demand for rescission was made on Y, either judicially or by a notarial act, X cannot refuse to accept the payment offered by Y three (3) days after the expiration of the period.

***ANOTHER SUGGESTED ANSWER*:**

This is a contract to sell and not a contract of absolute sale, since as there has been no delivery of the land. Article 1592 of the New Civil Code is not applicable. Instead, Article 1595 of the New Civil Code applies. The seller has two alternative remedies: (1) specific performance, or (2) rescission or resolution under Article 1191 of the New Civil Code. In both remedies, damages are due because of default.

ALTERNATIVE ANSWER:

Yes, the contract was automatically rescinded upon Y's failure to pay on 01 February 2002.

By the express terms of the contract, there is no need for X to make a demand in order for rescission to take place. (Article 1191, *New Civil Code; Suria v. IAC, 151 SCRA 661 [1987]; U.P. v. de los Angeles, 35 SCRA 102 [1970]).*

XII. Warranties

Knowing that the car had a hidden crack in the engine, X sold it to Y without informing the latter about it. In any event, the deed of sale expressly stipulated that X was not liable for hidden defects. Does Y have the right to demand from X a reimbursement of what he spent to repair the engine plus damages? (2011 BAR)

(A) Yes. X is liable whether or not he was aware of the hidden defect.
(B) Yes, since the defect was not hidden; X knew of it but he acted in bad faith in not disclosing the fact to Y.
(C) No, because Y is in estoppel, having changed engine without prior demand.
(D) No, because Y waived the warranty against hidden defects.

Acme Cannery produced sardines in cans known as "Sards." Mylene bought a can of Sards from a store, ate it, and suffered from poisoning caused by a noxious substance found in the sardines. Mylene filed a case for damages against Acme. Which of the following defenses will hold? (2011 BAR)

(A) The expiry date of the "Sards" was clearly printed on its can, still the store sold and Mylene bought it.
(B) Mylene must have detected the noxious substance in the sardines by smell, yet she still ate it.
(C) Acme had no transaction with Mylene; she bought the "Sards" from a store, not directly from Acme.
(D) Acme enjoys the presumption of safeness of its canning procedure and Mylene has not overcome such presumption.

A warranty inherent in a contract of sale, whether or not mentioned in it, is known as the (2011 BAR)

(A) warranty on quality.
(B) warranty against hidden defects.
(C) warranty against eviction.
(D) warranty in merchantability.

XIII. Breach of Contract

XIV. Extinguishment of the Sale

XV. The Subdivision and Condominium Buyers' Protective Decree (P.D. 957)

XVI. The Condominium Act (R.A. No. 4726)

The Ifugao Arms is a condominium project in Baguio City. A strong earthquake occurred which left huge cracks in the outer walls of the building. As a result, a number of condominium units were rendered unfit for use. May Edwin, owner of one of the condominium units affected, legally sue for partition by sale of the whole project? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, Edwin may legally sue for partition by sale of the whole condominium project under the following conditions: (a) the damage or destruction caused by the earthquake has rendered one-half (½) or more of the units therein untenantable, and (b) that the condominium owners holding an aggregate of more than thirty (30%) percent interest of the common areas are opposed to the restoration of the condominium project (Section 8[b], Republic Act No. 4726 "Condominium Act").

SUCCESSION

I. General Provisions

The requisites of succession are as follows, except: (2012 BAR)

a) Death of decedent
b) Transmissible estate
c) Existence and capacity of successor, designated by decedent or law
d) Payment of Taxes

The characteristics of succession are as follows, except: (2012 BAR)

a) It is a legal contract.
b) Only property, rights and obligations to the extent of the value of the inheritance are transmitted.
c) The transmission takes place only at the time of death.
d) The transmission takes place either by will or by operation of law.

The following rights are extinguished by death, except: (2012 BAR)

a) Legal support
b) Parental authority
c) Right to inherit
d) Agency

II. Testamentary Succession

Don Ricardo had 2 legitimate children - Tomas and Tristan. Tristan has 3 children. Meanwhile, Tomas had a relationship with Nancy, who was also single and had the legal capacity to marry. Nancy became pregnant and gave birth to Tomas, Jr. After the birth of Tomas, Jr., his father, Tomas, died. Later, Don Ricardo died with- out a will and Tristan opposed the motion of Tomas, Jr. to be de- clared an heir of the deceased since he is an illegitimate child. Tomas, Jr. countered that Article 992 of the Civil Code is unconsti- tutional for violation of the equal protection of the laws. He ex- plained that an illegitimate child of an illegitimate parent is al- lowed to inherit under Articles 902, 982 and 990 of the Civil Code while he - an illegitimate child of a legitimate father - cannot. Civil Law commentator Arturo Tolentino opined that Article 992 created an absurdity and committed an injustice because while the illegit- imate descendant of an illegitimate child can represent, the illegit- imate descendant of a legitimate child cannot. Decide the case and explain. (5%) (2016 BAR)

I will deny the motion of Tomas, Jr. to be declared as an heir of the deceased. Tomas Jr., being an illegitimate child of the deceased legiti- mate son, Tomas, cannot inherit ab intestate from the deceased, Don Ricardo, because of the iron curtain rule under Article 992 of the Civil Code.
Tomas cannot argue that Article 992 is violative of the equal protection clause because equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights con- ferred and responsibilities imposed (Ichong v. Hernandez 101 Phil. 1155 [May 31, 1957]). It, however, does not require the universal appli- cation of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification.

The attestation clause contains the following, except: (2012 BAR)

a) the number of pages used;
b) that the testator signed or caused another to sign the will and every page thereof in the presence of the instrumental witnesses;
c) notary public;
d) the instrumental witnesses witnessed and signed the will and all the pages thereof in the presence of the testator and one another.

The following are the formalities required in the execution of holographic will, except: (2012 BAR)

a) Entirely written;
b) Dated;
c) Signed by testator *himself*
d) Notarized by a notary public.

The following are the grounds for disallowance of wills, except: (2012 BAR)

a) The formalities required by law have not been complied with.
b) The testator was insane or mentally incapable of making will.
c) The will was executed through force or under duress, or influence of fear or threats.
d) The will contains an attestation clause.

It is the omission in the testator's will of one, some or all of the compulsory heirs in direct line, whether living at the time of execution of the will or born after the death of the testator. What principle is being referred to? (2012 BAR)

a) reserva troncal
b) preterition
c) fideicommissary
d) disposicion captatoria

Any disposition made upon the condition that the heir shall make some provision in his will in favor of the testator or of any other person shall be void. Here, both

the condition and the disposition are void. What principle is being referred to? (2012 BAR)

a) reserva troncal
b) preterition
c) fideicommissary
d) disposicion captatoria

Natividad's holographic will, which had only one (1) substantial provision, as first written, named Rosa as her sole heir. However, when Gregorio presented it for probate, it already contained an alteration, naming Gregorio, instead of Rosa, as sole heir, but without authentication by Natividad's signature. Rosa opposes the probate alleging such lack of proper authentication. She claims that the unaltered form of the will should be given effect. Whose claim should be granted? Explain. (1996, 2012)

ANSWER:

It depends. If the cancellation of Rosa's name in the will was done by the testator himself, Rosa's claim that the holographic will in its original tenor should be given effect must be denied. The said cancellation has revoked the entire will as nothing remains of the will after the name of Rosa was cancelled. Such cancellation is valid revocation of the will and does not require authentication by the full signature of the testator to be effective. However, if the cancellation of Rosa's name was not done by the testator himself, such cancellation shall not be effective and the will in its original tenor shall remain valid. The efficacy of a holographic will cannot be left to the mercy of unscrupulous third parties. The writing of Gregorio's name as sole heir was ineffective, even though written by the testator himself, because such is an alteration that requires the authentication by the full signature of the testator to be valid and effective. Not having been authenticated. The designation of Gregorio as an heir was ineffective. *(Kalaw v. Relova, G.R. No. L-40207, September 28, 1984).*

Crispin died testate and was survived by Alex and Josine, his children from his first wife; Rene and Ruby, his children from his second wife; and Allan, Bea, and Cheska, his children from his third wife. One important provision in his will reads as follows:

"Ang lupa at bahay sa Lungsod ng Maynila ay ililipat at ilalagay sa pangalan nila Alex at Rene hindi bilang pamana ko sa kanila kundi upang pamahalaan at pangalagaan lamang nila at nang ang sinuman sa aking mga anak, sampu ng aking mga apo at kaapuapuhan ko sa habang panahon, ay may tutuluyan kung magnanais na mag-aral sa Maynila o sa kalapit na mga lungsod."

Is the provision valid? (2014 BAR)

ANSWER:

NO. The provision imposing the division of the property "habang panahon" is invalid. In *Santiago v. Santiago (G.R. No. 179859, August 9, 2010),* a similar provision appears in the will. However, *Art. 1083* provides that the period of indivision imposed by the testator shall not exceed 20 years. Hence, the provision leaving the administration of the house and lot to Alex and Rene is valid but the provision "habang buhay" is invalid as to the excess beyond 20 years.

What is the effect of preterition ? (1%) (2014 BAR)

(A) It annuls the devise and legacy
(B) It annuls the institution of heir
(C) It reduces the devise and legacy
(D) It partially annuls the institution of heir

ANSWER:
Letter B (preterition annuls the institution of heirs)

Which of the following is NOT a basis for rendering a disinheritance defective or imperfect? (2011 BAR)

(A) Its cause comes from the guilt of a spouse in a legal separation case, the innocent-spouse having died.
(B) The truth of its cause is denied and not sufficiently proved by evidence.
(C) Its cause is not authorized by the law.
(D) Its cause is not specified.

Pepito executed a will that he and 3 attesting witnesses signed following the formalities of law, except that the Notary Public failed to come. Two days later, the Notary Public notarized the will in his law office where all signatories to the will acknowledged that the testator signed the will in the presence of the witnesses and that the latter themselves signed the will in the presence of the testator and of one another. Was the will validly notarized? (2011 BAR)

(A) No, since it was not notarized on the occasion when the signatories affixed their signatures on the will.
(B) Yes, since the Notary Public has to be present only when the signatories acknowledged the acts required of them in relation to the will.
(C) Yes, but the defect in the mere notarization of the will is not fatal to its execution.
(D) No, since the notary public did not require the signatories to sign their respective attestations again.

In his will, the testator designated X as a legatee to receive P2 million for the purpose of buying an ambulance that the residents of his Barangay can use. What kind of institution is this? (2011 BAR)

(A) a fideicomissary institution.

(B) a modal institution.
(C) a conditional institution.
(D) a collective institution.

X owed Y P1.5 million. In his will, X gave Y legacy of P1 million but the will provided that this legacy is to be set off against the P1.5 million X owed Y. After the set off, X still owed Y P500,000. Can Y still collect this amount? (2011 BAR)

(A) Yes, because the designation of Y as legatee created a new and separate juridical relationship between them, that of testator-legatee.
(B) It depends upon the discretion of the probate court if a claim is filed in the testate proceedings.
(C) No, because the intention of the testator in giving the legacy is to abrogate his entire obligation to Y.
(D) No, because X had no instruction in his will to deliver more than the legacy of P1 million to Y.

Fernando executed a will, prohibiting his wife Marina from remarrying after his death, at the pain of the legacy of P100 Million in her favor becoming a nullity. But a year after Fernando's death, Marina was so overwhelmed with love that she married another man. Is she entitled to the legacy, the amount of which is well within the capacity of the disposable free portion of Fernando's estate?

(A) Yes, since the prohibition against remarrying is absolute, it is deemed not written.
(B) Yes, because the prohibition is inhuman and oppressive and violates Marina's rights as a free woman.
(C) No, because the nullity of the prohibition also nullifies the legacy.
(D) No, since such prohibition is authorized by law and is not repressive; she could remarry but must give up the money.

The testator executed a will following the formalities required by the law on succession without designating any heir. The only testamentary disposition in the will is the recognition of the testator's illegitimate child with a popular actress. Is the will valid? (2011 BAR)

(A) Yes, since in recognizing his illegitimate child, the testator has made him his heir.
(B) No, because the non-designation of heirs defeats the purpose of a will.
(C) No, the will comes to life only when the proper heirs are instituted.
(D) Yes, the recognition of an illegitimate heir is an ample reason for a will.

Ric and Josie, Filipinos, have been sweethearts for 5 years. While working in a European country where the execution of joint wills are allowed, the two of them executed a joint holographic will where they named each other as sole heir of the other in case either of them dies. Unfortunately, Ric died a year later. Can Josie have the joint will successfully probated in the Philippines? (2011 BAR)

(A) Yes, in the highest interest of comity of nations and to honor the wishes of the deceased.
(B) No, since Philippine law prohibits the execution of joint wills and such law is binding on Ric and Josie even abroad.
(C) Yes, since they executed their joint will out of mutual love and care, values that the generally accepted principles of international law accepts.
(D) Yes, since it is valid in the country where it was executed, applying the principle of "lex loci celebrationis."

John Sagun and Maria Carla Camua, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage, the couple acquired substantial landholdings in London and in Makati. Maria begot three (3) children, Jorge, Luisito, and Joshur. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them, the entire estate would go to Jorge and Luisito only but the two (2) could not dispose of nor divide the London estate as long as they live. John and Maria died tragically in the London subway terrorist attack in 2005. Jorge and Luisito filed a petition for probate of their parents' will before a Makati RTC. Joshur vehemently objected because he was preterited. (2000, 2008, 2012)

a. Should the will be admitted to probate? Explain.

ANSWER:

NO, the will should not be admitted to probate since the couple are both Filipino citizens. *Arts. 818 and 819* shall apply. Said Articles prohibit the execution of joint wills and make them void, even though authorized by the laws of the country where they were executed.

b. Are the testamentary dispositions valid? Explain.

ANSWER:

NO. Since the joint will is void, all the testamentary dispositions written therein are also void. However, if the will is valid, the institutions of heirs shall be annulled because Joshur was preterited. He was preterited because he will receive nothing from the will, will receive nothing by intestacy, and the facts do not show that he received anything as an advance on his inheritance. He was totally excluded from the inheritance of his parents.

c. Is the testamentary prohibition against the division of the London estate valid? Explain.

ANSWER:

Assuming the will of John and Maria is valid, the testamentary prohibition on the division of the London estate shall be valid but only for 20 years. A testamentary disposition of the

testator cannot forbid the partition of all or part of his estate for a period longer than twenty (20) years *(Arts. 1083 and 494)*.

Mario executed his last will and testament where he acknowledges the child being conceived by his live-in partner Josie as his own child; and that his house and lot in Baguio City be given to his unborn conceived child. Are the acknowledgment and the donation mortis causa valid? Why? (2014 BAR)

ANSWER:

YES, the acknowledgment is considered valid because a will (although not required to be filed by the notary public) may still constitute a document, which contains an admission of illegitimate filiation. The recognition of an illegitimate child does not lose its legal effect even though the will wherein it was made should be revoked *(Art. 834)*. This provision by itself warrants a conclusion that a will may be considered as proof of filiation. The donation mortis causa may be considered valid because although unborn, a fetus has a presumptive personality for all purposes favorable to it provided it be born under the conditions specified in *Art. 41*.

Ricky and Arlene are married. They begot Franco during their marriage. Franco had an illicit relationship with Audrey and out of which, they begot Arnel. Franco predeceased Ricky, Arlene and Arnel. Before Ricky died, he executed a will which when submitted to probate was opposed by Arnel on the ground that he should be given the share of his father, Franco. Is the opposition of Arnel correct? Why? (2012 BAR)

ANSWER:

NO, his opposition is not correct. Arnel cannot inherit from Ricky in representation of his father, Franco. The representative must not only be a legal heir of the person he is representing but he must also be a legal heir of the decedent he seeks to inherit from.

While Arnel is a legal heir of Franco, he is not a legal heir of Ricky because an illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother *(Art. 992)*. Arnel is disqualified to Inherit from Ricky because Arnel is an illegitimate child of Franco and Ricky is a legitimate relative of Franco.

How can RJP distribute his estate by will, if his heirs are JCP, his wife; HBR and RVC, his parents; and an illegitimate child, SGO? (2012 BAR)

ANSWER:

A testator may dispose of by will the free portion of his estate. Since the legitime of JCP is 1/8 of the estate, SGO is 1⁄4 of the estate and that of HBR and RVC is 1⁄2 of the hereditary estate under *Art. 889 of the Civil Code*, the remaining 1/8 of the estate is the free portion which the testator may dispose of by will.

The capacity of an heir to succeed shall be governed by the: (2012 BAR)
a) national law of the decedent's heirs
b) law of the country where the decedent was a resident at the time of his death
c) national law of the person who died
d) law of the country where the properties of the decedent are located.

Ramon, a Filipino, executed a will in Manila, where he left his house and located in BP Homes Parañaque in favor of his Filipino son, Ramgen. Ramon's other children RJ and Ramona, both Turkish nationals, are disputing the bequest to Ramgen. They plotted to kill Ramgen. Ramon learned of the plot, so he tore his will in two pieces out of anger. Which statement is most accurate? (2012 BAR)
a) The mere act of Ramon Sr. is immaterial because the will is still readable.
b) The mere act of tearing the will amounts to revocation.
c) The tearing of the will may amount to revocation if coupled with intent of revoking it.
d) The act of tearing the will is material.

The will of a Filipino executed in a foreign country --- (2012 BAR)
a) cannot be probated in the Philippines;
b) may be probated in the Philippines provided that properties in the estate are located in the Philippines;
c) cannot be probated before the death of the testator;
d) may be probated in the Philippines provided it was executed in accordance with the laws of the place where the will was executed.

Multiple choice.

A executed a 5-page notarial will before a notary public and three witnesses. All of them signed each and every page of the will.

One of the witnesses was B, the father of one of the legatees to the will. What is the effect of B being a witness to the will? (1%) (2010 Bar Question)

1. **The will is invalidated**

2. **The will is valid and effective**

3. **The legacy given to B's child is not valid**

SUGGESTED ANSWER:

No. 3. The legacy given to B's child is not valid.

The validity of the will is not affected by the legacy in favor of the son of an attesting witness to the will. However, the said legacy is void under Article 823 NCC.

ALTERNATIVE ANSWER:

No. 2. The will is valid and effective.

Under Article 823 (NCC), the legacy given in favor of the son of an instrumental witness to a will has no effect on the validity of the will. Hence, the will is valid and effective.

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

xx

In *reserva troncal,* all *reservatarios* (reservees) inherit as a class and in equal shares regardless pf their proximity in degree to the *prepositus* (2009 Bar Question)

***SUGGESTED ANSWER*:**

FALSE. Not all of the relatives within the third degree will inherit as *reservatario,* and not all of those who are entitled to inherit will inherit in equal shares. The applicable laws of intestate succession will determine who among the relatives will inherit as *reservatarios* and what shares they will take, i.e., the direct line excludes the collateral, the descending direct line excludes the ascending, the nearer excludes the more remote, the nephews and nieces exclude the uncles and the aunts, and half blood relatives inherit half the share of full- blood relatives.

Alden and Stela were both former Filipino citizens. They were married in the Philippines but they later migrated to the United States where they were naturalized as American citizens. In their union they were able to accumulate several real properties both in the US and in the Philippines. Unfortunately, they were not blessed with children. In the US, they executed a joint will instituting as their common heirs to divide their combined estate in equal shares, the five siblings of Alden and the seven siblings of Stela. Alden passed away in 2013 and a year later, Stela also died. The siblings of Alden who were all citizens of the US instituted probate proceedings in a US court impleading the siblings of Stela who were all in the Philippines. (2015 BAR)

a. Was the joint will executed by Alden and Stela who were both former Filipinos valid? Explain with legal basis.

ANSWER:

YES, the joint will of Alden and Stela is valid. Being no longer Filipino citizens at the time they executed their joint will, the prohibition under our Civil Code on joint wills will no longer apply to Alden and Stela. For as long as their will was executed in accordance with the law of the place where they reside, or the law of the country of which they are citizens

or even in accordance with the Civil Code, a will executed by an alien is considered valid in the Philippines. *(Art. 816)*

b. Can the joint will produce legal effect in the Philippines with respect to the properties of Alden and Stela found here? If so, how?

ANSWER:

YES, the joint will of Alden and Stela can take effect even with respect to the properties located in the Philippines because what governs the distribution of their estate is no longer Philippine law but their national law at the time of their demise. Hence, the joint will produces legal effect even with respect to the properties situated in the Philippines.

c. Is the situation presented in Item I an example of dépeçage?

ANSWER:

NO, because dépeçage is a process of applying rules of different states on the basis of the precise issue involved. It is a conflict of laws where different issues within a case may be governed by the laws of different states. In the situation in letter (a) no conflict of laws will arise because Alden and Stela are no longer Filipino citizens at the time of the execution of their joint will and the place of execution is not the Philippines.

On December 1, 2000, Dr. Juanito Fuentes executed a holographic will, wherein he gave nothing to his recognized illegitimate son, Jay. Dr. Fuentes left for the United States, passed the New York medical licensure examinations, resided therein, and became a naturalized American citizen. He died in New York in 2007. The laws of New York do not recognize holographic wills or compulsory heirs.

[a] Can the holographic will of Dr. Fuentes be admitted to probate in the Philippines? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, the holographic will of Dr. Fuentes may be admitted to probate in the Philippines because there is no public policy violated by such probate. The only issue at probate is the due execution of the will which includes the formal validity of the will. As regards formal validity, the only issue the court will resolve at probate is whether or not the will was executed in accordance with the form prescribed by the law observed by the testator in the execution of his will. For purposes of probate in the Philippines, an alien testator may observe the law of the place where the will was executed (Article 17, NCC), or the formalities of the law of the place where he resides, or according to the formalities of the law of his own country, or in accordance with the Philippine Civil Code (Art. 816, NCC).Since Dr. Fuentes executed his will in accordance with Philippine law, the Philippine court shall apply the New Civil Code in determining the formal validity of the holographic will. The subsequent change in the citizenship of Dr. Fuentes did not affect

the law governing the validity of his will. Under the New Civil Code, which was the law used by Dr. Fuentes, the law in force at the time of execution of the will shall govern the formal validity of the will (Article 795, NCC).

Assuming that the will is probated in the Philippines, can Jay validly insist that he be given his legitime? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, Jay cannot insist because under New York law he is not a compulsory heir entitled to a legitime.

The national law of the testator determines who his heirs are, the order that they succeed, how much their successional rights are, and whether or not a testamentary disposition in his will is valid (Article 16, NCC). Since, Dr. Fuentes was a US citizen, the laws of New York determines who his heirs are. And since New York law does not recognize the concept of compulsory heirs, Jay is not a compulsory heir of Dr. Fuentes entitled to a legitime.

III. Legal or Intestate Succession

Pedro had worked for 1$ years in Saudi Arabia when he finally decided to engage in farming in his home province where his 10-hectare farmland valued at P2,000,000 was located. He had already P3,000,000 savings from his long stint in Saudi Arabia. Eagerly awaiting Pedro's arrival at the NAIA were his aging parents Modesto and Jacinta, his common-law spouse Veneranda, their three children, and Alex, his child by Carol, his departed legal wife. Sadly for all of them, Pedro suffered a stroke because of his over-excitement just as the plane was about to land, and died without seeing any of them. The farmland and the savings were all the properties he left.

(a) State who are Pedro's legal heirs, and the shares of each legal heir to the estate? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

Pedro's legal heirs areAlex, who is his legitimate child by his deceased wife (Article 979, NCC), and his three children by Veneranda, who are his illegitimate children (Article 873, NCC). Modesto and Jacinta, his parents, are excluded by Alex, his legitimate child. Veneranda, as a common-law spouse, is not among Pedro's legal heirs. Assuming that the farmland and savings are the exclusive properties of Pedro, Pedro's estate amounts to P5,000,000. Alex is entitled to one-half of Pedro's estate, amounting to P2,500,000, while three illegitimate children divide the remaining one-half equally, such that each will receive P833,333.33.

(b) Assuming that Pedro's will is discovered soon after his funeral. In the will, he disposed of half of his estate in favor of Veneranda, and the other half in favor of his children and his parents in equal shares. Assuming also that the will is admitted to probate by the proper court. Are the testamentary dispositions valid and effective under the law on succession? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

(b) The testamentary dispositions are invalid insofar as they impair the legitimes of Pedro's compulsory heirs. Pedro's compulsory heirs are Alex and his three illegitimate children (Article 887, NCC). Alex, as Pedro's sole legitimate child, is entitled to a legitime to one-half of his father's estate, amounting to P2,500,000 (Article 888, NCC). The three illegitimate children of Pedro are theoretically entitled to a legitime equal to one-half of the legitime of Alex, amounting to P1,250,000 each or P3,750,000 total, but as this exceeds the balance of the estate amounting to P2,500,000, the latter amount must be divided equally among the three, amounting to P833,333.33 each. The other testamentary dispositions to Veneranda and Pedro's parents, may not be given effect, as there is nothing le(t of the estate to distribute.

[Note: If the farmland and the NM savings were acquired during the cohabitation of Pedro and Veneranda, these are owned in common by both of them (Art. 147, Family Code). One-half of the P5M belongs to Veneranda as her share in the co-ownership]

Princess married Roberto and bore a son, Onofre. Roberto died in a plane crash. Princess later married Mark and they also had a son - Pepito. Onofre donated to Pepito, his half-brother, a lot in Makati City worth P3, 000,000.00. Pepito succumbed to an illness and died intestate. The lot given to Pepito by Onofre was inherited by his father, Mark. Mark also died intestate. Lonely, Princess followed Mark to the life beyond. The claimants to the subject lot emerged - Jojo, the father of Princess; Victor, the father of Mark; and Jerico, the father of Roberto.
Who among the three (3) ascendants is entitled to the lot? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

Jojo, Princess's father, is entitled to the lot.

This is a clear case of reserva troncaL The Origin is Onofre. The Prepositus is Pepito. The mode of transmission from Onofre to Pepito is donation (hence, by gratuitous title). The Reservista is Mark, who acquired it from his descendant (son) Pepito by legitime and intestacy (hence, by operation of law).

The Reservatario is Princess, a relative of the Prepositus Pepito within the third degree and who belonged to the line of origin (the maternal line). Line of origin is the maternal line because Onofre (the Origin) and Pepito (the Prepositus) are maternal half-blood siblings.

When Mark (Reservista) died, the property passed to Princess as sole reservatario^ thus extinguishing the reserva troncaL Upon Princess's death, the property was transmitted ah intestato to her father Jojo. Transmission to Jojo is by the ordinary rules of compulsory and intes- tate succession, not by reserva troncaL because the reserva was ex- tinguished upon the transmission of the property to Princess, this mak- ing Princess the absolute owner subject to no reserva.

In the order of intestate succession where the decedent is legitimate, who is the last intestate heirs or heir who will inherit if all heirs in the higher level are disqualified or unable to inherit? (2011 BAR)

(A) Nephews and nieces.
(B) Brothers and sisters.
(C) State.
(D) Other collateral relatives up to the 5th degree of consanguinity.

Bert and Joe, both male and single, lived together as common law spouses and agreed to raise a son of Bert's living brother as their child without legally adopting him. Bert worked while Joe took care of their home and the boy. In their 20 years of cohabitation they were able to acquire real estate assets registered in their names as co-owners. Unfortunately, Bert died of cardiac arrest, leaving no will. Bert was survived by his biological siblings, Joe, and the boy.

a. Can Article 147 on co-ownership apply to Bert and Joe, whereby all properties they acquired will be presumed to have been acquired by their joint industry and shall be owned by them in equal shares?

ANSWER:

No, Article 147 cannot apply to Bert and Joe because the law only applies to a man and a woman who are capacitated to marry each other who live together as husband and wife without the benefit of marriage or under a void marriage. In the case of Bert and Joe, they are both men so the law does not apply.

b. What are the successional rights of the boy Bert and Joe raised as their son? (2015 BAR)

ANSWER:

The boy has no successional rights. Since Bert died without a will, intestate succession shall apply. While the boy is the son of Bert's living brother, and hence is Bert's nephew, he cannot inherit from Bert as a legal heir since he is excluded by his father under the proximity rule *(Art. 962).* He cannot invoke the rights of an adopted child to inherit from Bert since the boy was not legally adopted. A mere ward or "ampon" has no right to inherit from the adopting parents *(Manuel v. Ferrer, G.R. No. 117246, August 21, 1995).*

c. If Bert and Joe had decided in the early years of their cohabitation to jointly adopt the boy, would they have been legally allowed to do so? Explain with legal basis.

ANSWER:

NO, Bert and Joe could not have jointly adopted the boy. Under the Domestic Adoption Act, joint adoption is permitted, and in certain cases mandated, for spouses. Here, Bert and Joe are not spouses.

Esteban and Martha had four (4) children: Rolando, Jun, Mark, and Hector. Rolando had a daughter, Edith, while Mark had a son, Philip. After the death of Esteban and Martha, their three (3) parcels of land were adjudicated to Jun. After the death of Jun, the properties passed to his surviving spouse Anita, and son Cesar. When Anita died, her share went to her son Cesar. Ten (10) years after, Cesar died intestate without any issue. Peachy, Anita's sister, adjudicated to herself the properties as the only surviving heir of Anita and Cesar. Edith and Philip would like to recover the properties claiming that they should have been reserved by Peachy in their behalf and must now revert back to them.
Is the contention of Edith and Philip valid? (2014 BAR)

ANSWER:

NO, the contention is not valid. The property adjudicated to Jun from the estate of his parents which he in turn left to Anita and Cesar is not subject to reservation in favor of Edith and Philip. In *Mendoza et. al. v. Policarpio, et. al. (G.R. No. 176422, March 20 2013)* the court ruled that lineal character of the reservable property is reckoned from the ascendant from whom the propositus received the property by gratuitous title. The ownership should be reckoned only from Jun, as he is the ascendant from where the first transmission occurred or from whom Cesar inherited the properties. Moreover, *Art. 891* provides that the person obliged to reserve the property should be an ascendant. Peachy is not Cesar's ascendant but a mere collateral relative. On the assumption that the property is reservable, Edith and Philip being first cousins of Cesar who is the propositus are disqualified to be reservatarios as they are not third degree relatives of Cesar.

On March 30, 2000, Mariano died intestate and was survived by his wife, Leonora, and children, Danilo and Carlito. One of the properties he left was a piece of land in Alabang where he built his residential house.

After his burial, Leonora and Mariano's children extrajudicially settled his estate. Thereafter, Leonora and Danilo advised Carlito of their intention to partition the property. Carlito opposed invoking Article 159 of the Family Code. Carlito alleged that since his minor child Lucas still resides in the premises, the family home continues until that minor beneficiary becomes of age.

Is the contention of Carlito tenable? (2014 BAR)

ANSWER:

NO, the contention of Carlito is not tenable. To qualify as beneficiary of the family home, the person must be among those mentioned in *Art. 154*, he/she must be actually living in the family home and must be dependent for legal support upon the head of the family *(Patricio v. Dario, G.R. No. 170829, November 20, 2006)*. While Lucas, the son of Carlito satisfies the first and second requisites, he cannot however, directly claim legal support from his grandmother, Leonora because the person primarily obliged to give support to Lucas is his father, Carlito. Thus, partition may be successfully claimed by Leonora and Danilo.

Armand died intestate. His full-blood brothers, Bobby and Conrad, and half-blood brothers, Danny, Edward and Floro, all predeceased him. The following are the surviving relatives: (2013 BAR)

1. **Benny and Bonnie, legitimate children of Bobby;**
2. **Cesar, legitimate child of Conrad;**
3. **Dante, illegitimate child of Danny;**
4. **Ernie, adopted child of Edward; and**
5. **Felix, grandson of Floro.**

The net value of Armand's estate is P 1,200,000. (2012 BAR)

1) How much do Benny and Bonnie stand to inherit by right of representation? (1%)

(A) P200,000
(B) P300,000
(C) P400,000
(D) P150,000
(E) None of the above.

ANSWER:

E - In intestate succession if all the brothers and sisters of the decedent predeceased the latter, the nephews and nieces inherit in their own right or per capita and not by right of representation. (See Article 975)

2) How much is Dante's share in the net estate? (1%)

(A) P150,000.
(B) P200,000.
(C) P300,000.
(D) P400,000.
(E) None of the above.

ANSWER:

E- Dante will not inherit because his is an illegitimate child of a legitimate half-brother of Armand thus the barrier applies.

3) How much is Ernie's share in the net estate. (1%)

(A) P 0.
(B) P400,000.
(C) P150,000.
(D) P200,000.
(E) None of the above.

ANSWER:

A - Ernie will not inherit because being an adopted child of Edward, he cannot inherit from the relatives of the latter as the adoption creates only a relationship between adopter and adopted. (Sayson v. CA 205 SCRA 321)

4) How much is Felix's share in the net estate? (1%)

(A) P400,000.
(B) P150,000.
(C) P300,000.
(D) P0.
(E) None of the above.

ANSWER:
D – Felix is not entitled to inherit because the right of representation in the collateral line is only available to nephews and nieces of the decedent and not to grandnephews or grandnieces.

The decedent died intestate leaving an estate of P10 million. He left the following heirs: a) Marlon, a legitimate child and b) Cecilia, the legal spouse. Divide the estate. (2011 BAR)

(A) Marlon gets 1/4 and Cecilia gets 3/4.
(B) Marlon gets 2/3 and Cecilia 1/3.
(C) Marlon gets 1/2 and Cecilia gets 1/2.
(D) Marlon gets 3/4 and Cecilia 1/4.

A court declared Ricardo, an old bachelor, an absentee and appointed Cicero administrator of his property. After a year, it was discovered that Ricardo had died abroad. What is the effect of the fact of his death on the administration of his property? (2011 BAR)

(A) With Ricardo no longer an absentee but a deceased person, Cicero will cease to be administrator of his properties.
(B) The administration shall be given by the court having jurisdiction over the intestate proceedings to a new administrator whom it will appoint.
(C) Cicero automatically becomes administrator of Ricardo's estate until judicially relieved.
(D) Cicero's alienations of Ricardo's property will be set aside.

The spouses Peter and Paula had three (3) children. Paula later obtained a judgment of nullity of marriage. Their absolute community of property having been dissolved, they delivered PI million to each of their 3 children as their presumptive legitimes.

Peter later re-married and had two (2) children by his second wife Marie. Peter and Marie, having successfully engaged in business, acquired real properties. Peter later died intestate.

Who are Peter's legal heirs and how will his estate be divided among them? (5%) (2010 Bar Question)

SUGGESTED ANSWER:

The legal heirs of Peter are his children by the first and second marriages and his surviving second wife.

Their shares in the estate of Peter will depend, however, on the cause of the nullity of the first marriage. If the nullity of the first marriage was psychological incapacity of one or both spouses, the three children of that void marriage are legitimate and all of the legal heirs shall share the estate of Peter in equal shares. If the judgment of nullity was for other causes, the three children are illegitimate and the estate shall be distributed such that an illegitimate child of the first marriage shall receive half the share of a legitimate child of the second marriage, and the second wife will inherit a share equal to that of a legitimate child. In no case may the two legitimate children of the second marriage receive a share less than one-half of the estate which is their legitime. When the estate is not sufficient to pay all the legitimes of the compulsory heirs, the legitime of the spouse is preferred and the illegitimate children will suffer the reduction.

Computation:

A. If the ground of nullity is psychological incapacity:

3 children by first marriage ---------- 1/6th of the estate for each
2 children by second marriage ---------- 1/6th of the estate for each
Surviving second spouse ---------- 1/6th of the estate

B. If the ground of nullity is not psychological incapacity

2 legitimate children ---------- 1/4 of the estate for each of second marriage
Surviving second spouse ----------1/4 of the estate
3 illegitimate children ---------- 1/12 of estate for each of first marriage

Note: The legitime of an illegitimate child is supposed to be *Yu* the legitime of a legitimate child or 1/ 8th of the estate. But the estate will not be sufficient to pay the said legitimes of the 3 illegitimate children, because only *Y** of the estate is left after paying the legitime of the surviving spouse which is preferred. Hence, the remaining *Y** of the estate shall be divided among the 3 illegitimate children.

What is the effect of the receipt by Peter's 3 children by his first marriage of their presumptive legitimes on their right to inherit following Peter's death? (5%) (2010 Bar Question)

SUGGESTED ANSWER:

In the distribution of Peter's estate, one-half of the presumptive legitime received by the three children of the first marriage shall be collated to Peter's estate and shall be imputed as an advance on their respective inheritance from Peter. Only half of the presumptive legitime is collated to the estate of Peter because the other half shall be collated to the estate of his first wife.

Dr. Lopez, a 70-year old widower, and his son Roberto both died in a fire that gutted their home while they were sleeping in their air-conditioned rooms. Roberto's wife, Marilyn, and their two children were spared because they were in the province at the time. Dr. Lopez left an estate worth P20M and a life insurance policy in the amount of P1M with his three children --- one of whom is Roberto --- as beneficiaries.

Marilyn is now claiming for herself and her children her husband's share in the estate left by Dr. Lopez, and her husband's share in the proceeds of Dr. Lopez's life insurance policy. Rule on the validity of Marilyn's claims with reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

As to the Estate of Dr. Lopez:

Marilyn is not entitled to a share in the estate of Dr. Lopez. For purposes of succession, Dr. Lopez and his son Roberto are presumed to have died at the same time, there being no evidence to prove otherwise, and there shall be no transmission of rights from one to the other (Article 43, NCC). Hence, Roberto inherited nothing from his father that Marilyn would in turn inherit from Roberto. The children of Roberto, however, will succeed their grandfather, Dr. Lopez, in representation of their father Roberto and together will receive

1/3 of the estate of Dr. Lopez since their father Roberto was one of the three children of Dr. Lopez. Marilyn cannot represent her husband Roberto because the right is not given by law to a surviving spouse.

As to the proceeds of the insurance on the life of Dr. Lopez:

Since succession is not involved as regards the insurance is not involved as regular the insurance contract, the provisions of the Rules of Court (Rule 131, Sec. 3, [jj] [5]) on survivorship shall apply. Under Rules, Dr. Lopez, who was 70 years old, is presumed to have died ahead of Roberto, who is presumably between the ages of 15 and 60. Having survived the insured, Roberto's right as a beneficiary became vested upon the death of Dr. Lopez. When Roberto died after Dr. upon the death of Dr. Lopez. When Roberto died after Dr. Lopez, his right to receive the insurance proceeds became part of his hereditary estate, which in turn was inherited in equal shares by his legal heirs, namely, his spouse and children. Therefore,

Roberto's children and his spouse are entitled to Roberto's one-third share in the insurance proceeds.

Ramon Mayaman died intestate, leaving a net estate of P10,000,000.00. Determine how much each heir will receive : from the estate:

If Ramon is survived by his wife, three full-blood brothers, two half-brothers, and one nephew (the son of a deceased full-blood brother)? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Having died intestate, the estate of Ramon shall be inherited by his wife and his full and half-blood siblings or their respective representatives. In intestacy, if the wife concurs with no one but the siblings of the husband, all of them are the intestate heirs of the deceased husband. The wife will receive half of the intestate estate, while the siblings or their respective representatives, will inherit the other half to be divided among them equally. If some siblings are of the full-blood and the others of the half blood, a half blood sibling will receive half the share of full-blood sibling.

1. The wife of Ramon will, therefore, receive one half of the estate or the amount of P5,000.000.00,
2. The three (3) full-blood brothers, will, therefore, receive PI,000,000.00 each.
3. The nephew will receive PI,000,000.00 by right of representation.
4. The two (2) half-brothers will receive P500,000.00 each.

If Ramon is survived by his wife, a half-sister, and three nephews (sons of a deceased full-blood brother)? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The wife will receive one half of the estate or P5,000,000.00. The other half shall be inherited by (1) the full-blood brother, represented by his 3 children, and (2) the half-sister. They will divide that other half between them such that the share of the half -sister is just half the share of the full-blood brother. The share of the full-blood brother shall in turn be inherited by the three (3) nephews in equal shares by right of representation.

Therefore, the three (3) nephews will receive P1,111,111.10 each and the half-sister will receive the sum of PI,666,666.60.

IV. Provisions Common to Testate and Intestate Succession

Joanne married James, a person with no known relatives. Through James' hard work, he and his wife Joane prospered. When James died, his estate alone amounted to P100 million. If, in his will, James designates Joanne as his only heir, what will be the free portion of his estate. (2011 BAR)

(A) Joanne gets all; estate has no free portion left.
(B) Joanne gets 1/2; the other half is free portion.
(C) Joanne gets 1/3; the remaining 2/3 is free portion.
(D) Joanne gets 1/4; the remaining 3/4 is free portion.

T died intestate, leaving an estate of P9,000,000. He left as heirs three legitimate children, namely, A, B, and C. A has two children, D and E. Before he died, A irrevocably repudiated his inheritance from T in a public instrument filed with the court. How much, if any, will D and E, as A's children, get from T's estate? (2011 BAR)

(A) Each of D and E will get P1,500,000 by right of representation since their father repudiated his inheritance.
(B) Each of D and E will get P2,225,000 because they will inherit from the estate equally with B and C.
(C) D and E will get none because of the repudiation; "B" and "C" will get A's share by right of accretion.
(D) Each of D and E will get P2,000,000 because the law gives them some advantage due to the demise of "A".

ML inherited from his father P5 million in legitime but he waived it in a public instrument in favor of his sister QY who accepted the waiver in writing. But as it happened, ML borrowed P6 million from PF before the waiver. PF objected to the waiver and filed an action for its rescission on the ground that he had the right to ML's P5 million legitime as partial settlement of what ML owed him since ML has proved to be insolvent. Does PF, as creditor, have the right to rescind the waiver? (2011 BAR)

(A) No, because the waiver in favor of his sister QY amounts to a donation and she already accepted it.
(B) Yes, because the waiver is prejudicial to the interest of a third person whose interest is recognized by law.
(C) No, PF must wait for ML to become solvent and, thereafter, sue him for the unpaid loan.
(D) Yes, because a legitime cannot be waived in favor of a specific heir; it must be divided among all the other heirs.

True or False.

X, a widower, died leaving a will stating that the house and lot where he lived cannot be partitioned for as long as the youngest of his four children desires to stay there. As coheirs and co-owners, the other three may demand partition anytime. (1%) (2010 Bar Question)

SUGGESTED ANSWER:

FALSE.

The other three co- heirs may not at any time demand the partition of the house and lot since it was expressly provided by the decedent in his will that the same cannot be partitioned while his youngest child desires to stay there. Article 1083of the New Civil Code allows a decedent to prohibit, by will, the partition of a property in his estate for a period not longer than 20 years no matter what his reason may be. Hence, the three co-heirs cannot' demand its partition at anytime but only after 20 years from the death of their father. Even if the deceased parent did not leave a will, if the house and lot constituted their family home, Article 159 of the Family Code prohibits its partition for a period often (10) yeans, or for long as there is a minor beneficiary living in the family home.

Four children, namely: Alberto, Baldomero, Caridad, and Dioscoro, were born to the spouses Conrado and Clarita de la Costa. The children's birth certificates were duly signed by Conrado, showing them to be the couple's legitimate children.

Later, one Edilberto de la Cruz executed a notarial document acknowledging Alberto and Baldomero as his illegitimate children with Clarita. Edilberto died leaving substantial properties. In the settlement of his estate, Alberto and Baldomero intervened claiming shares as the deceased's illegitimate children. The legitimate family of Edilberto opposed the claim.

Are Alberto and Baldomero entitled to share in the estate of Edilberto? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No, Alberto and Baldomero are not entitled to share in Edilberto's estate. They are not related at all to Edilberto. They were born during the marriage of Conrado and Clarita, hence, are considered legitimate children of the said spouses. This status is conferred on them at birth by law.

Under Philippine law, a person cannot have more than one natural filiation. The legitimate filiation of a person can be changed only if the legitimate father will successfully impugn such status.

In the problem, therefore, the filiation of Alberto and Baldomero as the legitimate children of Conrado cannot be changed by their recognition by Edilberto as his illegitimate children. Before they can be conferred the status of Edilberto's illegitimate children, Conrado must first impugn their legitimacy. Since Conrado has not initiated any action to impugn their legitimacy, they continue to be the legitimate children of Conrado. They cannot be the illegitimate children of Edilberto at the same time. Not being the illegitimate children of Edilberto, they have no right to inherit from him.

PARTNERSHIP

I. Contract of Partnership

Timothy executed a Memorandum of Agreement (MOA) with Kristopher setting up a business venture covering three (3) fastfood stores known as "Hungry Toppings" that will be established at Mall Uno, Mall Dos, and Mall Tres.

The pertinent provisions of the MOA provides:

1. **Timothy shall be considered a partner with thirty percent (30%) share in all of the stores to be set up by Kristopher;**
2. **The proceeds of the business, after deducting expenses, shall be used to pay the principal amount of P500,000.00 and the interest therein which is to be computed based on the bank rate, representing the bank loan secured by Timothy;**
3. **The net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided as follows: seventy percent (70%) for Kristopher and thirty percent (30%) for Timothy;**
4. **Kristopher shall have a free hand in running the business without any interference from Timothy, his agents, representatives, or assigns , and should such interference happen, Kristopher has the right to buy back the share of Timothy less the amounts already paid on the principal and to dissolve the MOA; and**
5. **Kristopher shall submit his monthly sales report in connection with the business to Timothy.**

What is the contractual relationship between Timothy and Kristopher? (2014 BAR)

ANSWER:

The contractual relationship between Timothy and Kristopher is a contract of partnership *(Art. 1767)* since they have bound themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits of the partnership among themselves. With a seed money of P500, 000.00 obtained by Timothy through a bank loan, they agreed to divide the profits, 70% for Kristopher and 30% for Timothy.

However, to be more specific, theirs is a limited partnership *(Art. 1843)* because Timothy does not take part in the control of the business pursuant to *Art. 1848*. Nevertheless, Timothy is entitled to monthly sales reports in connection with the business, a right enshrined *in Art. 1851 of the Civil Code.*

In 2005, L, M, N, 0 and P formed a partnership. L, M and N were capitalist partners who contributed P500,000 each, while 0, a limited partner, contributed P1 ,000,000. P joined as an industrial partner, contributing only his services. The Articles of Partnership, registered with the Securities and Exchange Commission, designated L and 0 as managing partners; L was liable only to the extent of his capital contribution; and P was not liable for losses.

In 2006, the partnership earned a net profit of P800,000. In the same year, P engaged in a different business with the consent of all the partners. However, in 2007, the partnership incurred a net loss of P500,000. In 2008,the partners dissolved the partnership. The proceeds of the sale of partnership assets were insufficient to settle its obligation. After liquidation, the partnership had an unpaid liability ofP300,000. (2013 BAR)

1) Assuming that the just and equitable share of the industrial partner, P, in the profit in 2006 amounted to P1 00,000, how much is the share of 0, a limited partner, in the P800,000 net profit? (1%) (2012 BAR)

(A) P160,000.
(B) P175,000.
(C) P280,000.
(D) P200,000.
(E) None of the above.

ANSWER:

C – P280,000. Since after deducting the P100k share of P there remains P700k, the three partners L, M, N will each have 1 share and O will have two shares (2:1) three shares plus two shares, the balance of P700k will be divided by 5 which will yield the result of P140k multiplied by 2 (for O)

2) In 2007, how much is the share of 0, a limited partner, in the net loss of P500,000? (1%) (2012 BAR)

(A) P 0.
(B) P1 00,000.
(C) P125,000.
(D) P200,000.
(E) None of the above.

ANSWER:

D - Article 1797 share in profits and losses is proportionate to contribution

3) Can the partnership creditors hold L, 0 and Pliable after all the assets of the partnership are exhausted? (1%) (2012 BAR)

(A) Yes. The stipulation exempting P from losses is valid only among the partners. L is liable because the agreement limiting his liability to his capital contribution is not valid insofar as the creditors are concerned. Having taken part in the management of the partnership, 0 is liable as capitalist partner.

(B) No. P is not liable because there is a valid stipulation exempting him from losses. Since the other partners allowed him to engage in an outside business activity, the stipulation absolving P from liability is valid. For 0, it is basic that a limited partner is liable only up to the extent of his capital contribution.

(C) Yes. The stipulations exempting P and L from losses are not binding upon the creditors. 0 is likewise liable because the partnership was not formed in accordance with the requirements of a limited partnership.

(D) No. The Civil Code allows the partners to stipulate that a partner shall not be liable for losses. The registration of the Articles of Partnership embodying such stipulations serves as constructive notice to the partnership creditors.(E) None of the above is completely accurate.

ANSWER:

A – Article 1799 a stipulation which excludes one or more partners from any share in profits and losses is void. P, industrial partner may be exempt but that is only with respect to the partners but not the creditors. O, by taking part in the management even if he is a limited partner becomes liable as a general partner (Article 1848)

A partner cannot demand the return of his share (contribution) during the existence of a partnership. Do you agree? Explain your answer. (2012 BAR)

ANSWER:

YES I agree, he is not entitled to the return of his contribution to the capital of the partnership, but only to the net profits from the partnership business during the life of the partnership period. If he is a limited partner, however, he may ask for the return of his contributions as provided in *Arts. 1856 and 1857.*

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x [c] An oral partnership is valid. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing.

ANOTHER SUGGESTED ANSWER:

TRUE. An oral contract of partnership is valid even though not in writing. However, if it involves contribution of an immovable property or a real right, an oral contract of partnership is void. In such a case, the contract of partnership to be valid, must be in a public instrument (Art. 1771, NCC), and the inventory of said property signed by the parties must be attached to said public instrument (Art. 1773, NCC.).

ANOTHER SUGGESTED ANSWER:

TRUE. Partnership is a consensual contract, hence, it is valid even though not in writing. The oral contract of partnership is also valid even if an immovable property or real right is contributed thereto. While the law in such a case, requires the partnership to be in a public document, the law does not expressly declare the contract void if not executed in the required form (Article 1409[7], NCC). And there being nothing in the law from which it can be inferred that the said requirement is prohibitory or mandatory (Article 5, NCC), the said oral contract of partnership must also be valid. The interested party may simply require the contract to be made into a public document in order to comply with the required form (Article 1357, NCC). The purpose of the law in requiring a public document is simply to notify the public about the contribution.

II. Rights and Obligations of Partnership

III. Rights and Obligations of Partners Among Themselves

A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

Who are liable for the settlement of the partnership's obligations? Explain? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The two remaining partners, A and B, are liable. When any partner dies and the business is continued without any settlement of accounts as between him or his estate, the surviving partners are held liable for continuing the business despite the death of C *(Articles 1841, 1785, par. 2, and 1833 of the New Civil Code).*

IV. Obligations of Partnership/Partners to Third Persons

The liability of the partners, including industrial partners for partnership contracts entered into in its name and for its account, when all partnership assets have been exhausted is (2011 BAR)

(A) Pro-rata.
(B) Joint.
(C) Solidary.
(D) Voluntary.

A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

x x x

B. What are the creditors' recourse/s? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Creditors can file the appropriate actions, for instance, an action for the collection of sum of money against the "partnership at will" and if there are no sufficient funds, the creditors may go after the private properties of Aand B *(Article 1816,New Civil Code).* Creditors may also sue the estate of C. The estate is not excused from the liabilities of the partnership even if C is dead already but only up to the time that he remained a partner (Article 1829, 1835, par. 2; NCC, *Testate Estate of Mota v. Serra,* 47 Phil. 464 [1925]). However, the liability of C's individual property shall be subject first to the payment of his separate debts *(Article 1835,New Civil* Code).

V. Dissolution

A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to gamer considerable profits, C died. A and B continued the business without dissolving the partnership.

They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

Who are liable for the settlement of the partnership's obligations? Explain? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The two remaining partners, A and B, are liable. When any partner dies and the business is continued without any settlement of accounts as between him or his estate, the surviving partners are held liable for continuing the business despite the death of C *(Articles 1841, 1785, par. 2, and 1833 of the New Civil Code).*

What are the creditors' recourse/s? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Creditors can file the appropriate actions, for instance, an action for the collection of sum of money against the "partnership at will" and if there are no sufficient funds, the creditors may go after the private properties of A and B *(Article 1816, New Civil Code).* Creditors may also sue the estate of C. The estate is not excused from the liabilities of the partnership even if C is dead already but only up to the time that he remained a partner (Article 1829, 1835, par. 2; NCC, *Testate Estate of Mota v. Serra,* 47 Phil. 464 [1925]). However, the liability of C's individual property shall be subject first to the payment of his separate debts *(Article 1835, New Civil* Code).

VI. Limited Partnership

AGENCY

I. Definition of Agency

II. Powers

An agent, authorized by a special power of attorney to sell a land belonging to the principal succeeded in selling the same to a buyer according to the instructions given the agent. The agent executed the deed of absolute sale on behalf of his principal two days after the principal died, an event that neither the agent nor the buyer knew at the time of the sale. What is the standing of the sale? (2011 BAR)

(A) Voidable.
(B) Valid.
(C) Void.
(D) Unenforceable.

III. Express vs. Implied Agency

IV. Agency by Estoppel

V. General vs. Special Agency

VI. Agency Couched in General Terms

VII. Agency Requiring Special Power of Attorney

Fe, Esperanza, and Caridad inherited from their parents a 500 sq. m. lot which they leased to Maria for three (3) years. One year after, Fe, claiming to have the authority to represent her siblings Esperanza and Caridad, offered to sell the leased property to Maria which the latter accepted. The sale was not reduced into writing, but Maria started to make partial payments to Fe, which the latter received and acknowledged. After giving the full payment, Maria demanded for the execution of a deed of absolute sale which Esperanza and Caridad refused to do. Worst, Maria learned that the siblings sold the same property to Manuel. This compelled Maria to file a complaint for the annulment of the sale with specific performance and damages.

If you are the judge, how will you decide the case? (2014 BAR)

ANSWER:

I will dismiss the case for annulment of the sale and specific performance filed by Maria with respect to the shares pertaining to Esperanza and Caridad. Since the object of the sale is a co-owned property, a co-owner may sell his undivided share or interest in the property owned in common but the sale will be subject to the result of the partition among the co-owners. In a co-ownership there is no mutual agency except as provided under *Art. 487*. Thus, Fe cannot sell the shares of Esperanza and Caridad without a special power of attorney from them and the sale with respect to the shares of the latter without their written authority is void under *Art.1874*. Hence, the sale of the property to Manuel is not valid with respect to the shares of Esperanza and Caridad. Maria can only assail the portion pertaining to Fe as the same has been validly sold to her by Fe.

X, who was abroad, phoned his brother, Y, authorizing him to sell X's parcel of land in Pasay. X sent the title to Y by courier service. Acting for his brother, Y executed a notarized deed of absolute sale of the land to Z after receiving payment. What is the status of the sale? (2011 BAR)

(A) Valid, since a notarized deed of absolute sale covered the transaction and full payment was made.
(B) Void, since X should have authorized agent Y in writing to sell the land.
(C) Valid, since Y was truly his brother X's agent and entrusted with the title needed to effect the sale.
(D) Valid, since the buyer could file an action to compel X to execute a deed of sale.

X was the owner of an unregistered parcel of land in Cabanatuan City. As she was abroad, she advised her sister Y via overseas call to sell the land and sign a contract of sale on her behalf.

Y thus sold the land to B1 on March 31, 2001 and executed a deed of absolute sale on behalf of X. B1 fully paid the purchase price.

B2, unaware of the sale of the land to B1, signified to Y his interest to buy it but asked Y for her authority from X. Without informing X that she had sold the land to B1, Y sought X for a written authority to sell.

X e-mailed Y an authority to sell the land. Y thereafter sold the land on May 1, 2001 to B2 on monthly installment basis for two years, the first installment to be paid at the end of May 2001. Who between B1 and B2 has a better right over the land? Explain. (5%)
(2010 Bar Question)

SUGGESTED ANSWER:

B-2 has a better title. This is not a case of double sale since the first sale was void. The law provides that when a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void *(Article 1874,New Civil Code).* The property was sold by Y to B1 without any written authority from the owner X. Hence, the sale to B1 was void.

ALTERNATIVE ANSWER:

Under the facts, B-1 has a better right to the land. Given the fact that the Deed of Sale in favor of B-1 and B- 2 are not inscribed in the Registry of Deeds, the case is governed by Article 1544 of the New Civil Code which provides that in case of double sales of an immovable property, the ownership shall pertain to the person who in good faith was first in possession and in the absence thereof to the person who presents the oldest title, provided there is good faith.

In a case, the Supreme Court has held that in a sale of real estate the execution of a notarial document of sale is tantamount to delivery of the possession of the property sold. Ownership of the land therefore pertains to the I^{mt} buyer. It may also be mentioned that under Act 3344 no instruments or deed establishing, transmitting, acknowledging, modifying, or extinguishing right to real property not registered under Act 496 shall be valid between the parties. Thus, the Deed of Sale of B-2 has no binding effect on B-1.

VIII. Agency by Operation of Law

IX. Rights and Obligations of Principal

X. Irrevocable Agency

A lawyer was given an authority by means of a Special Power of Attorney by his client to sell a parcel of land for the amount of P3 Million. Since the client owed the lawyer Pl Million in attorney's fees in a prior case he handled, the client agreed that if the property is sold, the lawyer was entitled to get 5% agent's fee plus Pl Million as payment for his unpaid attorney's fees. The client, however, subsequently found a buyer of his own who was willing to buy the property for a higher amount. Can the client unilaterally rescind the authority he gave in favor of his lawyer? Why or why not? (2015 BAR)

ANSWER:

NO, the agency in the case presented is one which is coupled with an interest. As a rule, agency is revocable at will except if it was established for the common benefit of the agent and the principal. In this case, the interest of the lawyer is not merely limited to his commission for the sale of the property but extends to his right to collect his unpaid professional fees. Hence, it is not revocable at will *(Art.1927).*

Joe Miguel, a well-known treasure hunter in Mindanao, executed a Special Power of Attorney (SPA) appointing his nephew, John Paul, as his attorney-in-fact. John Paul was given the power to deal with treasure-hunting activities on Joe Miguel's land and to file charges against those who may enter it without the latter's authority. Joe Miguel agreed to give John Paul forty percent (40%) of the treasure that may be found on the land. Thereafter, John Paul filed a case for damages and injunction against Lilo for illegally entering Joe Miguel's land. Subsequently, he hired the legal services of Atty. Audrey agreeing to give the latter thirty percent (30%) of Joe Miguel's share in whatever treasure that may be found in the land. Dissatisfied however with the strategies implemented by John Paul, Joe Miguel unilaterally revoked the SPA granted to John Paul. Is the revocation proper? (2014 BAR)

ANSWER:

NO, the revocation was not proper. As a rule, a contract of agency may be revoked by the principal at will. However, an agency ceases to be revocable at will if it is coupled with an interest or if it is a means of fulfilling an obligation already contracted *(Art. 1927)*. In the case at bar, the agency may be deemed an agency coupled with an interest not only because of the fact that John Paul expects to receive 40% of whatever treasure may be found but also because he also contracted the services of a lawyer pursuant to his mandate under the contract of agency and he therefore stands to be liable to the lawyer whose services he has contracted. *(Sevilla v. Tourist World Service, G.R. No. L-41182-3 April 16, 1988)*

XI. Modes of Extinguishment

COMPROMISE

I. Definition

II. Void Compromise

I. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

a. **x x x**
b. **A clause in an arbitration contract granting one of the parties the power to choose more arbitrators than the other renders the arbitration contract void.** (2009 Bar Question)

SUGGESTED ANSWER:

True. The Civil Code provides that "Any clause giving one of the parties power to choose more arbitrators than the other is void and of no effect" (Art. 2045, NCC).

III. Effect

CREDIT TRANSACTIONS

I. Loan

Distinguish commodatutn from mutuum. (3%) (2017 BAR)

SUGGESTED ANSWER:

(1) In commodalum, the creditor or bailor delivers to the debtor or bailee consumable or non-consumable property so that the latter may use the same for a certain time and must return the same thing (Article 1933, NCC).
(2) Inmutuum, the creditor delivers to the debtor money or other consumable thing upon the condition that the same amount of the same kind and quality is paid (Article 1933, NCC).
(3) The subject matter of commodalum maybe a movableor immovable thing, which is ordinarily non-consumable (if the thing borrowed is consumable, it is merely for display or exhibition), while the subject matter of mutuum is either money or consumable.
(4) Commodatum is essentially gratuitous, while nuctuum may be gratuitous or with a stipulation to pay interest.
(5) In commodatum, there is no transmission of ownership of the thing borrowed then while in mutuum, the borrower acquires ownership of the thing loaned.
(6) In commodatum, the same thing borrowed is required to be returned while in mutuum, the borrower discharges his obligation not by returning the identical thing

loaned, but by paying its equivalent in kind, quality, and quantity.

[Note: It is suggested that any three (3) of the above should merit full points].

The borrower in a contract of loan or mutuum must pay interest to the lender.

a) If there is an agreement in writing to the effect. (2012 BAR)
b) As a matter of course.
c) If the amount borrowed is very large.
d) If the lender so demands at the maturity date.

Siga-an granted a loan to Villanueva in the amount of ₱ 540, 000.00. Such agreement was not reduced to writing. Siga-an demanded interest which was paid by Villanueva in cash and checks. The total amount Villanueva paid accumulated to ₱ 1, 200, 000.00. Upon advice of her lawyer, Villanueva demanded for the return of the excess amount of ₱ 660, 000.00 which was ignored by Siga-an. (2012 BAR)

a. Is the payment of interest valid? Explain.

ANSWER:

NO. *Art. 1956*, provides that "no interest shall be due unless it has been expressly stipulated in writing".

b. Is solutio indebiti applicable? Explain.

ANSWER:

YES. Under *Art. 1960*, if the borrower pays interest when there has been no stipulation thereof, the provisions of the Civil Code concerning solutio indebiti shall be applied. Villanueva paid in excess of P660.000 representing interest payment which is not due. Therefore, he can demand its return.

Sarah had a deposit in a savings account with Filipino Universal Bank in the amount of five Million pesos (P5,000,000.00). To buy a new car, she obtained a loan from the same bank in the amount of P1,200,000.00, payable in twelve monthly installments. Sarah issued in favor of the bank in post-dated checks, each in the amount of P100,000.00 to cover the twelve monthly installment payments. On the third, fourth and fifth months, the corresponding checks bounced.

The bank then declared the whole obligation due, and proceed to deduct the amount of one million pesos (P1,000,000.00) from Sarah's deposit after notice to her that this is a form of compensation allowed by law. Is the bank correct? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No the bank is not correct, while the Bank is correct about the applicability of compensation, it was not correct as to the amount compensated.

A bank deposit is a contract of loan, where the depositor is the creditor and the bank the debtor. Since Sarah is also the debtor of the bank with respect to the loan, both are mutually principal debtors and creditors of each other. Both obligations are due, demandable and liquidated but only up to the extent of P300,000 (covering the unpaid third, fourth and fifth monthly installments). The entire one million was not yet due because the loan has no acceleration clause in case of default. And since there is no retention or controversy commenced by third persons and communicated in due time to the debtor, then all the requisites of legal compensation are present but only up to the amount of P300,000. The bank, therefore, may deduct P300,000 pesos from Sarah's bank deposit by way of compensation.

Cruz lent Jose his car until Jose finished his Bar exams. Soon after Cruz delivered the car, Jose brought it to Mitsubishi Cubao for maintenance check up and incurred costs of P8,000. Seeing the car's peeling and faded paint, Jose also had the car repainted for P10,000. Answer the two questions below based on these common facts. (2013 BAR)

1) After the bar exams, Cruz asked for the return of his car. Jose said he would return it as soon as Cruz has reimbursed him for the car maintenance and repainting costs of P 18,000.

Is Jose's refusal justified? (1%)

(A) No, Jose's refusal is not justified. In this kind of contract, Jose is obliged to pay for all the expenses incurred for the preservation of the thing loaned.
(B) Yes, Jose's refusal is justified. He is obliged to pay forall the ordinary and extraordinary expenses, but subject to reimbursement from Cruz.
(C) Yes, Jose's refusal is justified. The principle of unjust enrichment warrants the reimbursement of Jose's expenses.
(D) No, Jose's refusal is not justified. The expenses he incurred are useful for the preservation of the thing loaned. It is Jose's obligation to shoulder these useful expenses.

ANSWER:

NO CORRECT CHOICE – in commodatum, the bailee has no right of retention Article 1944 the bailee (Jose) has no right of retention even if it may be by reason of expenses, Article 1951 he can only retain if he suffers damage by reason of a flaw or defect in the thing

2) During the bar exam month, Jose lent the car to his girlfriend, Jolie, who parked the car at the Mall of Asia's open parking lot, with the ignition key inside the car. Car thieves broke into and took the car.

Is Jose liable to Cruz for the loss of the car due to Jolie's negligence? (1%) (2012 BAR)

(A) No, Jose is not liable to Cruz as the loss was not due to his fault or negligence.
(B) No, Jose is not liable to Cruz. In the absence of any prohibition, Jose could lend the car to Jolie. Since the loss was due to force majeure, neither Jose nor Jolie is liable.
(C) Yes, Jose is liable to Cruz. Since Jose lent the car to Jolie without Cruz's consent, Jose must bear the consequent loss of the car.
(D) Yes, Jose is liable to Cruz. The contract between them is personal in nature. Jose can neither lend nor lease the car to a third person.

ANSWER:

D – Commodatum is purely personal in nature (Article 1939) the bailee can neither lend nor lease the object of the contract to a third person.

II. Deposit

Due to the continuous heavy rainfall, the major streets in Manila became flooded. This compelled Cris to check-in at Square One Hotel. As soon as Crisgot off from his Toyota Altis, the Hotel's parking attendant got the key of his car and gave him a valet parking customer's claim stub. The attendant parked his car at the basement of the hotel. Early in the morning, Cris was informed by the hotel manager that his car was carnapped. (2014 BAR)

a. What contract, if any, was perfected between Cris and the Hotel when Cris surrendered the key of his car to the Hotel's parking attendant?

ANSWER:

The contract between Cris and Square One Hotel is one of necessary deposit. Deposit of effects made by travelers or guests in hotels or inns is considered a necessary deposit *(Art. 1998)*. This includes not only the personal effects brought inside the hotel premises but also vehicles or animals and articles which have been introduced or placed in the annexes of the hotel.

b. What is the liability, if any, of the Hotel for the loss of Cris' car?

ANSWER:

In the case of *Durban Apartments v. Pioneer Insurance (G.R. No. 179419 January 12, 2011)*, the Supreme Court held the hotel liable for the loss of the vehicle of the guest after its valet parking attendant parked the vehicle in front of a bank near the hotel premises. The court ruled that the bank's parking area became an annex of the hotel when the management of the bank allowed the hotel to park vehicles there on the night in question. The contract of deposit was perfected when the guest surrendered the keys to his vehicle to the parking attendant and the hotel is under obligation of safely keeping and returning it. Ultimately, Square One Hotel is liable for the loss of the vehicle.

Who enjoys the Right of Retention? (1%)
(A) Depositary until full payment of what may be due him in deposit.
(B) Lessee if he advances the expenses for the repair of the leased premises.
(C) Bailee if bailor owes him something.
(D) Builder in bad faith for the recovery of necessary and useful expenses.

ANSWER:

Letter A – depositary (Article 1994)

III. Guaranty and Suretyship

Kevin signed a loan agreement with ABC Bank. To secure payment, Kevin requested his girlfriend Roselle to execute a document entitled "Continuing Guaranty Agreement" whereby she expressly agreed to be solidarily liable for the obligation of Kevin. Can ABC Bank proceed directly against Rosetta upon Kevin's default even without proceeding against Kevin first? Explain your answer. (3%) (2017 BAR)

SUGGESTED ANSWER:

Yes. Despite the designation of the contract as a "Continuing Guaranty Agreement," the terms of the document prevail. Rosella expressly agreed to be solidarily liable for obligation of Kevin. According to par. 2, Article 2047 of the New Civil Code, if a person binds himself solidarity with the principal debtor, the contract is called a suretyship. A surety is under a direct and primary obligation to the creditor and may be proceeded against in case the principal debtor does not pay as he is an insurer of the debt. Only a guarantor, an insurer of the principal debtor's solvency, enjoys the benefit of exeussion.

[Note: It is the panel's recommendation that due credit should also be given to examinees who answered that suretyship being an accessory contract, the principal debtor should be an indispensable party to the action against the surety].

Define, Enumerate or Explain. (2% each)

What is the difference between "guaranty" and "suretyship"? (2010 Bar Question)

SUGGESTED ANSWER:

Guaranty and Suretyship distinguished:

a. The obligation in guaranty is secondary; whereas, in suretyship, it is primary.
b. In guaranty, the undertaking is to pay if the principal debtor *cannot pay;* whereas, in suretyship, the undertaking is to pay if the principal debtor *does not* pay.
c. In guaranty, the guarantor is entitled to the benefit of excussion; whereas, in suretyship the surety is not so entitled.
d. Liability in guaranty depends upon an independent agreement to pay the obligations of the principal if he fails to do so; whereas, in suretyship, the surety assumes liability as a regular party.
e. The Guarantor insures the *solvency* of the principal debtor; whereas, the surety insures the *debt.*
f. In a guaranty, the guarantor is subsidiarily liable; whereas, in a Suretyship, the surety binds himself solidarily with the principal debtor. (Art. 2047, Civil Code)

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

x x x
[d] An oral promise of guaranty is valid and binding. (2009 Bar Question)

SUGGESTED ANSWER:

FALSE. An oral contract of guaranty, being a special promise to answer for the debt of another, is unenforceable unless in writing (Article 1403 [2] b, NCC).

ANOTHER SUGGESTED ANSWER:

TRUE. An oral promise of guaranty is valid and binding. While the contract is valid, however, it is unenforceable because it is not in writing. Being a special promise to answer for the debt, default, or miscarriage of another, the Statute of Frauds requires it to be in writing to be enforceable (Article 1403 [2] b, NCC). The validity of a contract should be distinguished from its enforceability.

IV. Pledge

Donna pledged a set of diamond ring and earrings to Jane for P200,000.00 She was made to sign an agreement that if she cannot pay her debt within six months, Jane could immediately appropriate the jewelry for herself. After six months, Donna failed to pay. Jane then displayed the earrings and ring set in her jewelry shop located in a mall. A buyer, Juana, bought the jewelry set for P300,000.00. (2015 BAR)

a. Was the agreement which Donna signed with Jane valid? Explain with legal basis.

ANSWER:

NO, the agreement to appropriate the jewelry upon default of Donna is considered pactum commissorium and it is considered void by law *(Art. 2088).*

b. Can Donna redeem the jewelry set from Juana by paying the amount she owed Jane to Juana? Explain with legal basis.

ANSWER:

NO, Donna cannot redeem it from Juana because the pledge contract is between her and Jane. Juana is not a party to the pledge contract *(Art. 1311)*

c. Give an example of a pledge created by operation of law.

ANSWER:

One example of a pledge created by operation of law is the right of the depositary to retain the thing deposited until the depositor shall have paid him whatever may be due to the depositary by reason of the deposit *(Art. 1994).* Another is the right of the agent to retain the thing which is the object of the agency until the principal reimburses him the expenses incurred in the execution of the agency. *(Art. 1914)*

Ozamis Paper Corporation secured loans from ABC Universal Bank in the aggregate principal amount of P100 M, evidenced by several promissory notes, and secured by a continuing guaranty of its principal stockholder Menandro Marquez; a pledge of Marquez's shares in the corporation valued at P45 M; and a real estate mortgage over certain parcels of land owned by Marquez.

The corporation defaulted and the bank extra-judicially foreclosed on the real estate mortgage. The bank, which was the sole bidder for P75 M, won the award.

x x x
Can the bank foreclose on the pledged shares of Marquez and recover the deficiency from the corporation? (2010 Bar Question)

SUGGESTED ANSWER:

If the bank forecloses the pledge, it cannot recover the deficiency because the foreclosure extinguishes the principal obligation, whether or not the proceeds from the foreclosure are equal to the amount of the principal obligation.

Rosario obtained a loan of P100,000.00 from Jennifer, and pledge her diamond ring. The contract signed by the parties stipulated and if Rosario is unable to redeem the ring on due date, she will execute a document in favor of Jennifer providing that the ring shall automatically be considered full payment of the loan.

Is the contract valid? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The contract is valid because Rosario has to execute a document in favor of Jennifer to transfer the ownership of the pledged ring to the latter. The contract does not amount to a pactum commissorium because it does not provide for the automatic appropriation by the pledge of the thing pledged in case of default by the pledgor.

Will your answer to [a] be the same if the contract stipulates that upon failure of Rosario to redeem the ring on due date, Jennifer may immediately sell the ring and appropriate the entire proceeds thereof for herself as full payment of the? Reasons. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, my answer will be different. While the contract of pledge is valid, the stipulation authorizing the pledge to immediately sell the thing pledged is void under Article 2088 of the new

Civil Code which provides that: "the creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them x xx". Jennifer cannot immediately sell by herself the thing pledge.

It must be foreclosed by selling it at a public auction in accordance with the procedure under Article 2112 of the New Civil Code.

V. Real Mortgage

Ellen entrusted her title over the lot where she is residing to Patrick, her nephew, for safekeeping because of her poor eyesight. Patrick, a gambler, prepared a Special Power of Attorney empowering him to mortgage the lot. Ellen's signature was forged. With the help of Julia who represented herself as Ellen, Mega Bank granted a loan to Patrick secured by a mortgage on Ellen's lot. Due to non-payment, Mega Bank foreclosed the mortgage and was declared the highest bidder. Title was later regis- tered in the name of the bank. When Ellen was notified that she should vacate the premises, she filed a complaint to nullify the loan with mortgage, the auction sale and the title of Mega Bank on the ground that the bank is not a mortgagee in good faith. Decide the case with reasons. (5%)
(2016 BAR)

SUGGESTED ANSWER:

I will decide in favor of Ellen. Banks, their business being impressed with public interest, are expected to exercise more care and prudence than private individuals in their dealings, even those involv- ing registered lands. The highest degree of diligence is expected, and high standards of integrity and performance are even required of it.

A mortgagee - usually, can rely on what appears on the cer- tificate of title presented by the mortgagor and an innocent mortgagee is not expected to conduct an exhaustive investigation on the history of the mortgagor's title. This rule is, however, strictly applied against banking institutions. Mega Bank cannot be considered a mortgagee in good faith as it failed to inspect the disputed property when offered to it as security for the loan, which could have led it to discover the forged Special Power of Attorney.

Mr. Bong owns several properties in Pasig City. He decided to build a condominium named Flores de Manila in one of his lots. To fund the project, he obtained a loan from the National Bank (NB) secured by a real estate mortgage over the adjoining property which he also owned. During construction, he built three (3) pumps on the mortgaged property to supply water to the condominium. After one (1) year, the project was completed and the condominium was turned over to the buyers. However, Mr. Bong failed to pay his loan obligation to NB. Thus, NB foreclosed the mortgaged property where the pumps were installed. During the sale on public auction of the mortgaged property, Mr. Simon won in the bidding. When Mr. Simon attempted to take possession of the property, the condominium owners, who in the meantime constituted themselves into Flores de Manila Inc. (FMI), claimed that they have earlier filed a case for the declaration of the existence of an easement before the Regional Trial Court (RTC) of Pasig City and prayed that the easement be annotated in the title of the property foreclosed by NB. FMI further claimed that when Mr. Bong installed the pumps in his adjoining property, a voluntary easement was constituted in favor of FMI.

Will the action prosper? (2014 BAR)

ANSWER:

NO, the action will not prosper. The essence of a mortgage is that it immediately subjects the property upon which it is imposed, and whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted (Art. 2126). There was no voluntary easement in this case because at the time the water pumps were constructed, the subject lot where the water pumps were constructed and the condominium belong to the same person. No one can have an easement over his own property *(Bogo- Medellin v. CA G.R. 124699, July 31, 2003).* Even of the assumption that an easement was created in favor of FMI, that alone will not defeat the right of the mortgagee to enforce the security if the debtor defaults.

Lito obtained a loan of ₱1,000,000 from Ferdie, payable within one year. To secure payment, Lito executed a chattel mortgage on a Toyota Avanza and a real estate mortgage on a 200-square meter piece of property. (2013 BAR)

a. Would it be legally significant - from the point of view of validity and enforceability - if the loan and the mortgages were in public or private instruments?

ANSWER:

From the point of view of validity and enforceability, there would be legal significance if the mortgage was in public or private instrument. As for the loan, there is no legal significance except if interest were charged on the loan, in which case the charging of interest must be in writing. A contract of loan is a real contract and is perfected upon the delivery of the object of the obligation (Art. 1914). Thus, a contract of loan is valid and enforceable even if it is neither in a private nor in a public document. As a rule, contracts shall he obligatory in whatever form they may have been entered into provided all the essential requisites for their validity are present. With regard to its enforceability, a contract of loan is not among those enumerated under Art. 1403 (2), which are covered by the Statute of Frauds. It is important to note that under Art. 1358, all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. However, the requirement is not for the validity of the contract, but only for its greater efficacy. With regard the chattel mortgage, Act No. 1508, the Chattel Mortgage Law, requires an affidavit of good faith stating that the chattel mortgage is supposed to stand as security for the loan; thus, for validity of the chattel mortgage, it must be in a public document and recorded in the Chattel Mortgage Register in the Registry of Deeds. A real estate mortgage under the provisions of Art. 2125 requires that in order that a mortgage may be validly constituted the document in which it appears be recorded. If the instrument is not recorded, the mortgage is nevertheless valid and binding between the parties. Hence, for validity of both chattel and real estate mortgages, they must appear in a public instrument. But for purposes of enforceability, it is submitted that the form of the contract, whether in a public or private document, would be immaterial *(Mobil Oil v. Diocares, G.R. No. L-26371, September 30, 1969).* Also, under Art. 1358, acts and contracts which have for their object the creation or transmission of real rights over immovable property must be in a public document fur greater efficacy, and a real estate mortgage is a real right over immovable property.

b. Lito's failure to pay led to the extra-judicial foreclosure of the mortgaged real property. Within a year from foreclosure, Lito tendered a manager's check to Ferdie to redeem the property. Ferdie refused to accept payment on the ground that he wanted payment in cash: the check does not qualify as legal tender and does not include the interest payment. Is Ferdie's refusal justified?

ANSWER:

Ferdie’s refusal is justified. A check, whether a manager’s check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender if payment

and may be refused receipt by the obligee or creditors *(Philippine Airlines v. CA and Amelia Tan, GR. No. L-49188, January 30, 1990).* Mere delivery of checks does not discharge the obligation under a judgment. A check shall produce the effect of payment only when they have been cashed or when through the fault of the creditor, they have been impaired (Art. 1249). However, it is not necessary that the right of redemption be exercised by delivery of legal tender. A check may be used for the exercise of right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price *(Bianca v. Gimenez, G.R. No. 132768, September 9, 2005, citing Fortunado v. CA)***.** Redemption within the period allowed by law is not a matter of intent but a question of payment of valid tender of full redemption price within the said period. Whether the redemption is being made under Act 3135 or under the General Banking Law, the mortgagor or his assignee is required to tender payment to make said redemption valid *(Heirs of Quisumbing v. PNB and SLDC, GR. No. 178242, January 20, 2009).* Moreover, Ferdie's refusal was justified on the ground that the amount tendered does not include interest. In order to effect the redemption of the foreclosed property, the payment to the purchaser must include the following sums: (a) the bid price; (b) the interest on the bid price, computed at one per centum (1%) per month; and (c) the assessments or taxes, if any, paid by the purchaser, with the same rate of interest (Sec. 28, Rules of Court). Unless there is an express stipulation to that effect, the creditor cannot be compelled to receive partial payment of the prestation (Art. 1248).

Amador obtained a loan of P300,000 from Basilio payable on March25, 2012. As security for the payment of his loan, Amador constituted a mortgage on his residential house and lot in Basilio's favor. Cacho, a good friend of Amador, guaranteed and obligated himself to pay Basilio, in case Amador fails to pay his loan at maturity. (2013 BAR)

1) If Amador fails to pay Basilio his loan on March 25, 2012, can Basilio compel Cacho to pay? (1%)

(A) No, Basilio cannot compel Cacho to pay because as guarantor, Cacho can invoke the principle of excussion, i.e., all the assets of Basilio must first be exhausted.

(B) No, Basilio cannot compel Cacho to pay because Basilio has not exhausted the available remedies against Amador.

(C) Yes, Basilio can compel Cacho to pay because the nature of Cacho's undertaking indicates that he has bound himself solidarily with Amador.

(D) Yes, Basilio can compel Cacho who bound himself to unconditionally pay in case Amador fails to pay; thus the benefit of excussion will not apply.

ANSWER:

B – Basilio has in his favor a REM and he should exhaust his legal remedies against Amador. (Art. 2058)

2) If Amador sells his residential house and lot to Diego, can Basilio foreclose the real estate mortgage? (1%)

(A) Yes, Basilio can foreclose the real estate mortgage because real estate mortgage creates a real right that attaches to the property.

(B) Yes, Basilio can foreclose the real estate mortgage. It is binding upon Diego as the mortgage is embodied in a public instrument.

(C) No, Basilio cannot foreclose the real estate mortgage. The sale confers ownership on the buyer, Diego, who must therefore consent.

(D) No, Basilio cannot foreclose the real estate mortgage. To deprive the new owner of ownership and possession is unjustand inequitable.

ANSWER:

A- Art. 2126 The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be to the fulfillment of the obligation for whose security it was constituted.

Asiong borrowed P1 million from a bank, secured by a mortgage on his land. Without his consent, his friend Boyong paid the whole loan. Since Asiong benefited from the payment, can Boyong compel the bank to subrogate him in its right as mortgagee of Asiong's land? (2011 BAR)

(A) No, but the bank can foreclose and pay Boyong back.
(B) No, since Boyong paid for Asiong's loan without his approval.
(C) Yes, since a change of creditor took place by novation with the bank's consent.
(D) Yes, since it is but right that Boyong be able to get back his money and, if not, to foreclose the mortgage in the manner of the bank.

The right of a mortgagor in a judicial foreclosure to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but before the sale of the mortgaged property or confirmation of the sale by the court, is known as (2011 BAR)

(A) accion publiciana.
(B) equity of redemption.
(C) pacto de retro.
(D) right of redemption.

Does the right to request for the issuance of a writ of possession over a foreclosed real property prescribe in five (5) years? (2012 BAR)

ANSWER:

NO, the purchaser's right to request for the issuance of the writ of possession of the land never prescribes. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof *(Spouses Edralin v. Philippine Veteran's Bank, G.R. No. 168523, March 9, 2011*).

X obtained a P10 M loan from BBB Banking Corporation. The loan is secured by REM on his vacation house in Tagaytay City. The original Deed of REM for the P10 M was duly registered. The Deed of REM also provides that "The mortgagor also agrees that this mortgage will secure the payment of additional loans or credit accommodations that may be granted by the mortgagee…" Subsequently, because he needed more funds, he obtained another P5 M loan. On due dates of both loans, X failed to pay the P5 M but fully paid the P10 M. BBB Banking Corporation instituted extrajudicial foreclosure proceedings.

a. **Will the extrajudicial foreclosure prosper considering that the additional P5 M was not covered by the registration?**

b. **What is the meaning of a "dragnet clause" in a Deed of Real Estate Mortgage? Under what circumstances will be "dragnet clause" applicable? (2012 Bar Question)**

SUGGESTED ANSWER:

a. Yes. X executed a REM containing a "blanket mortgage clause". Mortgages given to secure future advancements are valid and legal contracts, and the amounts names as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness.

b. Generally, a dragnet clause is a clause in a deed of REM stating that the mortgage secures all the loans and advances that the mortgagor may at any time owe to the mortgagee. The word "dragnet" is a reference to a net drawn through a river or across ground to trap fish or game. It is also known in American jurisprudence as a "blanket mortgage clause" or an "anaconda clause". A mortgage with a dragnet clause enables the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. It operates as a convenience and accommodation to the borrower as it makes available additional funds to him without his having to execute additional security documents, thereby saving time, travel, costs of extra legal services, recording fees, etc.

The “dragnet clause” may not apply to other loans extended by the mortgagee to the mortgagor for which other securities were given. In the case of Prudential Bank v. Alviar, the Supreme Court adopted the “reliance on the security test” to the effect that “when the mortgagor takes another loan [from the mortgagee] for which another security was given, it could not be inferred that such loan was made in reliance solely on the original security with the “dragnet clause”, but rather, on the new security given”. This means that the existence of the new security must be respected and the foreclosure of the old security should only be for the other loans not separately collateralized and for any amount not covered by the new security for the new loan.

X, at Y’s request, executed a Real Estate Mortgage (REM) on his (X’s) land to secure Y’s loan from Z. Z successfully foreclosed the REM when Y defaulted on the loan but half of Y’s obligation remained unpaid. May Z sue X to enforce his right to the deficiency? (2011 Bar Question)

a. **Yes, but solidarily with Y.**
b. **Yes, since X’s is deemed to warrant that his land would cover the whole obligation.**
c. **No, since it is the buyer at the auction sale who should answer for the deficiency.**
d. **No, because X is not Z’s debtor.**

SUGGESTED ANSWER:

d. No, because X is not Z’s debtor.

Include: Act 3135, as amended by R.A. No. 4118

DMP Corporation (DMP) obtained a loan of P20 M from National Bank (NB) secured by a real estate mortgage over a 63,380-square meter land situated in Cabanatuan City. Due to the Asian Economic Crisis, DMP experienced liquidity problems disenabling it from paying its loan on time. For that reason, NB sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on June 30, 2003. On September 4, 2003, the mortgaged property was sold at public auction, which was eventually awarded to NB as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of NB.

On October 21, 2003, DMP filed a Petition for Rehabilitation before the RTC. Pursuant to this, a Stay Order was issued by the RTC on October 27, 2003.

On the other hand, NB caused the recording of the Sheriff’s certificate of Sale on

December 3, 2003 with the Register of Deeds of Cabanatuan City. NB executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of DMP.

Consequently, the Register of Deeds cancelled DMP's title and issued a new title in the name of NB on December 10, 2003.

NB also filed on March 17, 2004 an Ex-Parte Petition for Issuance of Writ of Possession before the RTC of Cabanatuan City. After hearing, the RTC issued on September 6, 2004 an Order directing the Issuance of the Writ of Possession, which was issued on October 4, 2004.

DMP claims that all subsequent actions pertaining to the Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court. Is DMP correct? (2014 Bar Question)

SUGGESTED ANSWER:

No. DMP is not correct. Since the foreclosure of the mortgage and the issuance of the certificate of sale in favor of the mortgagee were done prior to the appointment of a Rehabilitation Receiver and the issuance of the Stay Order, all the actions taken with respect to the foreclosed mortgaged property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, after the redemption period expired without the mortgagor redeeming the foreclosed property, the mortgagee becomes the absolute owner of the property and it was within its right to ask for consolidation of title and the issuance of new title in its favor. The writ of possession procured by the mortgagee despite the subsequent issuance of Stay Order in the rehabilitation proceeding instituted is also valid.

X defaulted in his loan with Y. Y instituted extra-judicial foreclosure of the property subject to a real estate mortgage that secured the loan. X has 1 year within which to redeem the property. After the foreclosure, X filed an action questioning the validity of the extra-judicial foreclosure sale. Which statement is most accurate? (2012 Bar Question)

a. **The 1 year period within which to redeem will be interrupted by the filing of an action questioning the validity of the foreclosure;**
b. **The 1 year period will not be interrupted by the filing of the action;**
c. **The 1 year period will be extended for another year because of the filing of an action questioning the validity of the foreclosure sale;**
d. **If the action which questions the validity of the foreclosure prospers, the period will be interrupted.**

SUGGESTED ANSWER:

b. The 1 year period will not be interrupted by the filing of the action.

What is the effect if the proceeds in an extra-judicial foreclosure sale is not sufficient to pay for the obligation? (2012 Bar Question)

a. **The mortgagee can claim for deficiency judgment from the debtor;**
b. **The mortgagee can claim for deficiency judgment from the mortgagor even though it is a third party mortgage;**
c. **The mortgagee has no more recourse or claim against the debtor;**
d. **The mortgagee cannot claim for deficiency judgment from the debtor because it's an extrajudicial foreclosure.**

SUGGESTED ANSWER:

a) The mortgagee can claim for deficiency judgment from the debtor.

X mortgaged her residential house and lot in favor of ABC Bank. X defaulted in her loan and so the bank foreclosed the real estate mortgage on the residential house. Y then bought the residential house and lot before the expiration of the redemption period. Can Y now take possession of the property? (2012 Bar Question)

a. No, because it is still covered by the redemption period and the purchaser is not yet entitled as a matter of right to take possession of the property;
b. Yes, the purchaser is now entitled to the possession of the house;
c. No, because there is a need to talk to X to leave the house;
d. No, because Y was not the one who foreclosed the mortgage on the property.

SUGGESTED ANSWER:

a) No, because it is still covered by the redemption period and the purchaser is not yet entitled as a matter of right to take possession of the property

Which phrase best completes the statement—When a debt is secured by a real estate mortgage, upon default of the debtor: (2012 Bar Question)

a. **The only remedy of the creditor is to foreclose the real estate mortgage;**
b. **Another remedy is filing an action for collection and then foreclose if collection is not enough;**
c. **The creditor can foreclose the mortgage and demand collection for any deficiency;**
d. **None of the above.**

SUGGESTED ANSWER:

c) The creditor can foreclose the mortgage and demand collection for any deficiency.

X obtained a loan for P50 M from SSS Bank. The collateral is his vacation house in Baguio City under a real estate mortgage. X needed more funds for his business so he again borrowed another P10 M, this time from BBB Bank, another bank, using the same collateral. The loan secured from SSS Bank fell due and X defaulted.

a. If SSS Bank forecloses the real estate mortgage, what rights, if any, are left with BBB Bank as mortgagee also?
b. If the value of the Baguio property is less than the amount of loan, what would be the recourse of SSS bank? BBB Bank?
c. If the value of the property is more that the amount of the loan, who will benefit from the excess value of the property?
d. If X defaulted with its loan in favor of BBB Bank but fully paid his loan with SSS Bank, can BBB foreclose the real mortgage executed in its favor?
e. Does X have any legal remedy after the foreclosure in the event that later on he has the money to pay for the loan?
f. If SSS Bank and BBB Bank abandoned their rights under the real estate mortgage, is there any legal recourse available to them? (2012 Bar Question)

SUGGESTED ANSWER:

a. BBB Bank, as junior mortgagee, would have a right to redeem the foreclosed property, together with X, his successors in interest, any judicial or judgment creditor of X, or any other person or entity having a lien on the vacation house subsequent to the real estate mortgage in favor of SSS Bank.

b. In case of a deficiency, SSS Bank could file suit to claim for the deficiency. BBB Bank could file an ordinary action to collect its loan from X. if it does so, it would be deemed to have waived it mortgage lien. If the judgment in the action to collect is favorable to BBB Bank, and it becomes final and executor, BBB Bank could enforce the said judgment by execution. It could even levy execution on the same mortgaged property, but it would not have priority over the latter.

c. If the value of the property is more than the amount of the loan, the excess could benefit and be claimed by BBB Bank, any judicial or judgment creditor of X, any other junior mortgagee, and X.

d. If X defaulted in respect of his loan from BBB Bank but fully paid his loan from SSS Bank, BBB Bank could now foreclose the mortgaged property as it would be the only remaining mortgagee of the same.

e. Yes, X could redeem the property within 1 year from the date of registration of the sheriff's certificate of foreclosure sale.

f. SSS Bank and BBB Bank could each file an ordinary action to collect its loan from X.

On X's failure to pay his loan to ABC Bank, the latter foreclosed the Real Estate Mortgage he executed in its favor. The auction sale was set for Dec. 1, 2010 with the notices of sale published as the law required. The sale was, however, cancelled when Dec. 1, 2010 was declared a holiday and rescheduled to Jan. 10, 2011 without

republication of notice. The auction sale then proceeded on the new date. Under the circumstance, the auction sale is (2011 Bar Question)

a. Rescissible.
b. Unenforceable.
c. Void.
d. Voidable.

SUGGESTED ANSWER:

c. Void.

Ozamis Paper Corporation secured loans from ABC Universal Bank in the aggregate principal amount of P100 M, evidenced by several promissory notes, and secured by a continuing guaranty of its principal stockholder Menandro Marquez; a pledge of Marquez's shares in the corporation valued at P45 M; and a real estate mortgage over certain parcels of land owned by Marquez.

The corporation defaulted and the bank extra-judicially foreclosed on the real estate mortgage. The bank, which was the sole bidder for P75 M, won the award.

1. Can the bank sue Marquez for the deficiency of P25 M? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Yes, the bank can sue Marquez for the deficiency of P25 M. in extrajudicial foreclosure of a real estate mortgage, if the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to sue for the deficiency.

2. If the bank opts to file an action for collection against the corporation, can it afterwards institute a real action to foreclose the mortgage? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, the bank can no longer file an action to foreclose the real estate mortgage. When it filed a collection case, it was deemed to have abandoned the real estate mortgage.

3. Can the bank foreclose on the pledged shares of Marquez and recover the deficiency from the corporation? (2010 Bar Question)

SUGGESTED ANSWER:

If the bank forecloses the pledge, it cannot recover the deficiency because the foreclosure extinguishes the principal obligation, whether or not the proceeds from the foreclosure are equal to the amount of the principal obligation.

VI. Antichresis

Multiple choice: Choose the right answer. (2% each)

A contract of antichresis is always:

a. **a written contract;**
b. **a contract with a stipulation that the debt will be paid through receipt of the fruits of an immovable;**
c. **involves the payment of interests, if owing;**
d. **all of the above;**
e. **letters a and b.**

SUGGESTED ANSWER:

d (all of the above)

VII. Chattel Mortgage

Which phrase best completes the statement—A chattel mortgage can be constituted to secure: (2012 Bar Question)

a. **Obligation both past and future;**
b. **Obligation existing at the time the mortgage is constituted;**
c. **Future obligations only;**
d. **Past obligations only.**

SUGGESTED ANSWER:

b. Obligation existing at the time the mortgage is constituted.

X constituted a chattel mortgage on a car (valued at P1 M) to secure a P500,000 loan. For the mortgage to be valid, X should have (2011 Bar Question)

a. **The right to mortgage the car to the extent of half its value.**
b. **Ownership of the car.**
c. **Unqualified free disposal of his car.**
d. **Registered the car in his name.**

SUGGESTED ANSWER:

c. Unqualified free disposal of his car.

Include: Act 1508

Which phrase best completes the statement—The Deed of Chattel mortgage, if not registered with the Register of Deeds where debtor resides: (2012 Bar Question)

a. **Is not valid, hence not binding between the mortgagor and the mortgagee;**
b. **Is binding between the mortgagor and the mortgagee but will not affect third party;**
c. **To be valid between the mortgagor and the mortgagee, it must be coupled with the delivery of the subject matter of the chattel mortgage;**
d. **Is as if a non-existent chattel mortgage.**

SUGGESTED ANSWER:

b. Is binding between the mortgagor and the mortgagee but will not affect third party.

Which phrase best completes the statement—A chattel mortgage can cover: (2012 Bar Question)

a. **Only property described in the deed without exception;**
b. **Can also cover substituted property;**
c. **Properties described in the deed except in case of stock in trade being a substitute;**
d. **After acquired property.**

SUGGESTED ANSWER:

c. Properties described in the deed except in case of stock in trade being a substitute.

Which phrase best completes the statement—To bind third parties, a chattel mortgage of shares of stock must be registered: (2012 Bar Question)

a) **With the Register of Deeds where the debtor resides;**
b) **With the Register of Deeds where the principal office of the corporation is;**
c) **In the Stock and Transfer Book of the corporation with the Corporate Secretary;**
d) **With the Register of Deeds where the debtor resides and the principal office of the corporation.**

SUGGESTED ANSWER:

d) With the Register of Deeds where the debtor resides and the principal office of the corporation.

Which phrase best completes the statement—The affidavit of good faith in a Deed of Chattel Mortgage is: (2012 Bar Question)

a) An oath where the parties swear that the mortgage is made for the purpose of securing the obligations specified and that the obligation is just and valid;
b) An affidavit, the absence of which will vitiate the mortgage between the parties;
c) Necessary only if the chattel being mortgaged are growing crops;
d) A certification from the mortgagor that he is the mortgagor of the chattel.

SUGGESTED ANSWER:

b) An oath where the parties swear that the mortgage is made for the purpose of securing the obligations specified and that the obligation is just and valid.

Armando, a resident of Manila, borrowed P3 M from Bernardo, offering as security his 500 shares of stock worth P1.5 M in Xerxes Corporation, and his 2007 BMW sedan, valued at P2 M. the mortgage on the shares of stock was registered in the Office of the Register of Deeds of Makati City where Xerxes Corporation has its principal office. The mortgage on the car was registered in the Office of the Register of Deeds of Manila. Armando executed a single Affidavit of Good Faith, covering both mortgages.

Armando defaulted on the payment of his obligation; thus, Bernardo foreclosed on the two chattel mortgages. Armando filed suit to nullify the foreclosure and the mortgages, raising the following issues:

The execution of only one Affidavit of Good Faith for both mortgages invalidated the two mortgages; and (2009 Bar Question)

SUGGESTED ANSWER:

The execution of only one Affidavit of Good Faith for both mortgages is not a ground to nullify the said mortgages and the foreclosure thereof. Said mortgages are valid as between immediate parties, although they cannot bind third parties.

The mortgage on the shares of stocks should have been registered in the Office of the Register Deeds of Manila where he resides, as well as in the stock and transfer book of Xerxes Corporation.

Rule on the foregoing issues with reasons. (2009 Bar Question)

SUGGESTED ANSWER:

The mortgage on the shares of stock should be registered in the chattel mortgage registry in the register of Deeds of Makati City where the corporation has its principal office and

also in the Register of Deeds of Manila where the mortgagor resides. Registration of chattel mortgage in the stock and transfer book is not required to make the chattel mortgage valid. Registration of dealings in the stock and transfer book under Section 63 of the Corporation Code applies only to sale or disposition of shares, and has no application to mortgages and other forms of encumbrances.

Assume that Bernardo extrajudicially foreclosed on the mortgages, and both the car and the shared of stock were sold at public auction. If the proceeds from such public sale should be 1-million short of Armando's total obligation, can Bernardo recover the deficiency? Why or why not? (2009 Bar Question)

SUGGESTED ANSWER:

Yes. Bernardo can recover the deficiency. Chattels are given as mere security, and not as payment or pledge.

VIII. Quasi-contracts

IX. Concurrence and Preference of Credits

LEASE

I. Lease of Things

II. Lease of Work or Services

Jovencio operated a school bus to ferry his two sons and five of their schoolmates from their houses to their school, and back. The parents of the five schoolmates paid for the service. One morning, Porfirio, the driver, took a short cut on the way to school because he was running late, and drove across an unmanned railway crossing. At the time, Porfirio was wearing earphones because he loved to hear loud music while driving. As he crossed the railway tracks, a speeding PNR train loudly blared its horn to warn Porfirio, but the latter did not hear the horn because of the loud music. The train inevitably rammed into the school bus. The strong impact of the collision between the school bus and the train resulted in the instant death of one of the classmates of Jovencio's younger son. The parents of the fatality sued Jovencio for damages based on culpa contractual alleging that Jovencio was a common carrier; Porfirio for being negligent; and the PNR for damages based on culpa aquiliana. Jovencio denied being a common carrier. He insisted that he had exercised the diligence of a good father of a family in supervising Porfirio, claiming that the latter had had no history of negligence or recklessness before the fatal accident.

(a) Did his operation of the school bus service for a limited clientele render Jovencio a common carrier? Explain your answer. (3%) (2017 Bar)

SUGGESTED ANSWER:

(a) Yes. Jovencio is a common carrier. The true test for a common carrier is not the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the activity, but whether the undertaking is a part of the activity engaged in by the carrier that he has held out to the general public as his business or occupation (Spouses Pereira v. Spouses Zarale, G.R. No. 157917, August 29, 2012, 679 SCRA 208, 234).

Jovencio operated the school bus as a business and not just as a casual occupation; he undertook to carry the students in established routes to and from the school; and he transported the students for a fee, Joveneio was a common carrier notwithstanding the limited clientele.

(b) In accordance with your answer to the preceding question, state the degree of diligence to be observed by Jovencio, and the consequences thereof. Explain your answer. (3%) (2017 BAR)

SUGGESTED ANSWER:

Jovencio, as a common carrier, must observe extraordinary diligence In the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. A common carrier should "carry the passengers safely as far as human car and foresight can provide, using the utmost diligence of very cautious person with due regard for all the circumstances.

(c) Assuming that the fatality was a minor of only 15 years of age who had no earning capacity at the time of his death because he was still a student in high school, and the trial court is minded to award indemnity, what may possibly be the legal and factual justifications for the award of loss of earning capacity? Explain your answer. (4%) (2017 BAR)

SUGGESTED ANSWER:

(c) If it can be shown that the deceased student was enrolled in a reputable institution and was able-bodied prior to his death, the basis for award of loss of earning capacity is the prevailing minimum wage at the time of the child's death. The computation of the child's life expectancy must be reckoned from the age of 21 years, which is the age when the child would have graduated from college and would have begun to work (Spouses Perena v. Spouses Zarate, G.R. No. 157917, August 29, 2012).

III. Lease of Rural and Urban Lands

IV. Rights and Obligations of Lessor and Lessee

Dorotea leased portions of her 2,000 sq. m. lot to Monet, Kathy, Celia, and Ruth for five (5) years. Two (2) years before the expiration of the lease contract, Dorotea sold the property to PM Realty and Development Corporation. The following month, Dorotea and PM Realty stopped accepting rental payments from all the lessees because they wanted to terminate the lease contracts. Due to the refusal of Dorotea to accept rental payments, the lessees , Ruth, et al., filed a complaint for consignation of the rentals before the Regional Trial Court (RTC) of Manila without notifying Dorotea.

Is the consignation valid? (2014 BAR)

ANSWER:

NO, the consignation is not valid. For consignation of the thing or sum due to be proper, there must be prior notice to the creditor that the debtor is going to consign the payment in court *(Art.1257)*. This notice is intended to give the creditor the opportunity to accept payment and thus avoid liability for costs in case it is found that the act of consignation was properly made. Even on the assumption that Dorotea was no longer the creditor as she had already sold the property to DM Realty, the facts do not state that the realty corporation was also given notice before filing the case for consignation.

Isaac leased the apartment of Dorotea for two (2) years. Six (6) months after, Isaac subleased a portion of the apartment due to financial difficulty. Is the sublease contract valid? (2014 BAR)

ANSWER:

YES, it is valid if there is no express prohibition for subleasing in the lease contract.

Anselmo is the registered owner of a land and a house that his friend Boboy occupied for a nominal rental and on the condition that Boboy would vacate the property on demand. With Anselmo's knowledge, Boboy introduced renovations consisting of an additional bedroom, a covered veranda, and a concrete block fence, at his own expense. Subsequently, Anselmo needed the property as his residence and thus asked Boboy to vacate and turn it over to him. Boboy, despite an extension, failed to vacate the property, forcing Anselmo to send him a written demand to vacate. In his own written reply, Boboy signified that he was ready to leave but Anselmo must first reimburse him the value of the improvements he introduced on the property as he is a builder in good faith. Anselmo refused, insisting that Boboy cannot ask for reimbursement as he is a mere lessee. Boboy responded by removing the improvements and leaving the building in its original state. (2013 BAR)

a. Resolve Boboy's claim that as a builder in good faith, he should be reimbursed the value of the improvements he introduced.

ANSWER:

Boboy's claim that he is a builder in good faith has no basis. A builder in good faith is someone who occupies the property in the concept of an owner. The provisions on builder-planter-sower under the Civil Code cover cases in which the builder, planter and sower believe themselves to be owners of the land, or at least, to have a claim of title thereto.

As Boboy is a lessee of the property, even if he was paying nominal rental, *Art. 1678*, is applicable. Under this provision, if the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease, shall pay the lessee one-half of the value of improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby.

b. Can Boboy be held liable for damages for removing the improvements over Anselmo's objection?

ANSWER:

NO. Boboy cannot be held liable for damages. The lessor, Anselmo, refused to reimburse one-half of the value of the improvements, so the lessee, Boboy, may remove the same, even though the principal thing may suffer damage thereby. If in removing the useful improvements Boboy caused more impairment in the property leased than is necessary, he will be liable for damages *(Art. 1678).*

The term of a 5-year lease contract between X the lessor and Y the lessee, where rents were paid from month to month, came to an end. Still, Y continued using the property with X's consent. In such a case, it is understood that they impliedly renewed the lease (2011 BAR)

(A) from month to month under the same conditions as to the rest.
(B) under the same terms and conditions as before.
(C) under the same terms except the rent which they or the court must fix.
(D) for only a year, with the rent raised by 10% pursuant to the rental control law.

Multiple choice.

A had a 4-storey building which was constructed by Engineer B. After five years, the building developed cracks and its stairway eventually gave way and collapsed, resulting to injuries to some lessees. Who should the lessees sue for damages? (1%) (2010 Bar Question)

A. A, the owner

B. B, the engineer
C. both A & B

SUGGESTED ANSWER:

C. Both A & B.

The lessee may proceed against A for breach of contract, and against B for tort or statutory liability.

Under Article 1654 (2, of the) New Civil Code, the lessor is obliged to make all the necessary repairs in order to keep the leased property suitable for the use to which it has been devoted. Consequently, under Article 1659 NCC, the proprietor of a building or structure is responsible for the damages resulting from its total or partial collapse, if it is due to the lack of necessary repairs.

Under Article 1723 NCC, the engineer or architect who drew up the plans and specifications for a building is liable for damages if within 15 years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. This liability may be enforced against the architect or engineer even by a third party who has no privity of contract with the architect or engineer under Article 2192 NCC.

ALTERNATIVE ANSWER:

A -. A, the owner.

The lessee can sue only the lessor for breach of contract under Article 1659 in relation to Article 1654 NCC. The lessee cannot sue the architect or the engineer because there was no privity of contract between them. When sued, however, the lessor may file a third party claim against the architect or the engineer.

ANOTHER ALTERNATIVE ANSWER:

B - B, the Engineer.

Under Article 1723 (NCC), the engineer or architect who drew up the plans and specifications for a building is liable for damages if within 15 years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. Under Article 2192 (NCC), however, if the damages should be the result of any of the defect in the construction mentioned in Article 1723 (NCC), the third person suffering damages may proceed only against the engineer or architect or contractor within the period fixed therein. The damages suffered by the lessee in the problem are clearly those resulting from defects in the construction plans or specifications.

Jude owned a building which he had leased to several tenants. Without informing his tenants, Jude sold the building to Ildefonso. Thereafter, the latter notified all the tenants that he is the new owner of the building. Ildefonso ordered the tenants to vacate the premises within thirty (30) days from notice because he had other plans for the building. The tenants refused to vacate, insisting that they will only do so when the term of their lease shall have expired. Is Ildefonso bound to respect the lease contracts between Jude and his tenants? Explain your answer. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, Ildefonso must respect the lease contracts between Jude and his tenants. While it is true that the said lease contracts were not registered and annotated on the title to the property, Ildefonso is still not an innocent purchaser for value. He ought to know the existence of the lease because the building was already occupied by the tenants at the time he bought it. Applying the principle of *caveat emptor,* he should have checked and known the status of the occupants or their right to occupy the building before buying it.

V. Special Rules for Lease of Rural/Urban Lands

LAND TITLES AND DEEDS

I. Torrens System

Before migrating to Canada in 1992, the spouses Teodoro and Anita entrusted all their legal papers and documents to their nephew, Atty. Tan. Taking advantage of the situation, Atty. Tan forged a deed of sale, making it appear that he had bought the couple's property in Quezon City. In 2000, he succeeded in obtaining a TCT over the property in his name. Subsequently, Atty. Tan sold the same property to Luis, who built an auto repair shop on the property. In 2004, Luis registered the deed of conveyance, and title over the property was transferred in his name.

In 2006, the spouses Teodoro and Anita came to the Philippines for a visit and discovered what had happened to their property. They immediately hire you as lawyer. What action or actions will you institute in order to vindicate their rights? Explain fully. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

I will institute the following actions against Atty. Tan:

1. A civil action for damages for the fraudulent transfer of the title in his name and to recover the value of the property;

2. An action against the National Treasurer for compensation from the State Assurance Fund which is set aside by law to pay those who lose their land or suffer damages as a consequence of the operation of the Torrens system;
3. A criminal action for forgery or falsification of public document;
4. A complaint with the Supreme Court/Integrated Bar of the Philippines to disbar or suspend him or other disciplinary action for violation or the Code of Professional Ethics.

Any action against Luis will not prosper because he is an innocent purchaser for value. The Title to the land he bought was already in the name of the person who sold the property to him and there is nothing on the title which will make him suspect about the fraud committed by Atty. Tan.

II. Regalian Doctrine

III. Citizenship Requirement

In 1972, Luciano de la Cruz sold to Chua Chung Chun, a Chinese citizen, a parcel of land in Binondo, Chua died in1990 leaving behind his wife and three children, one of whom, Julian is a naturalized Filipino citizen. Six years after Chua's death, the heirs executed an extrajudicial settlement of estate, and the parcel of land was allocated to Julian. In 2007, Luciano filed suit to recover the land he sold to Chua, alleging that the sale was void because it contravened the Constitution which prohibits the sale of private lands to aliens, Julian moved to dismiss the suit on grounds of pari delicto, laches and acquisitive prescription. Decide the case with reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The case must be dismissed. Julian, who is a naturalized Filipino citizen and to whom the property was allocated in an extra-judicial partition of the estate, is now the new owner of the property. The defect in ownership of the property of Julian's alien father has already been cured by its transfer to Julian. It has been validated by the transfer of the property to a Filipino citizen. Hence, there is no more violation of the constitution because the subject real property is now owned by a Filipino citizen (Halili v. CA 287 SCRA 465 [1998]). Further, after the lapse of 35 years, laches has set in and the motion to dismiss may be granted, for the failure of Luciano to question the ownership of Chua before its transfer to Julian.

IV. Original Registration

On February 28, S998, Arthur filed an application for registration of title of a lot in Ternate, Cavite before the Regional Trial Court of Naic, Cavite under Section 48(b) of Commonwealth Act No. 141 (CA 141) for judicial confirmation of imperfect title. Section 48(b) of CA 141 requires possession counted from June 12, 1945. Arthur presented testimonial and documentary evidence that his possession and that of

his predecessors-in- interest started in 1936. The lot was declared alienable and disposable (A and D) in 1993 based on a PENRO certification and a certified true copy of the original classification made by the DENR Secretary.

The government opposed the application on the ground that the lot was certified A and D only in 1993 while the application was instituted only in 1998. Arthur's possession of five (5) years from the date of declaration does not comply with the 30-year period required under CA 141. Should the possession of Arthur be reckoned from the date when the lot was declared A and D or from the date of actual possession of the applicant? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

Arthur's possession should be reckoned from the date of his actual possession, by himself and his predecessors-in-interest, since 1936. Under Section 48(b) of CA 141, as amended by PD No. 1973, the length of the requisite possession was changed from possession for "thirty (30) years immediately preceding the filing of the application" to possession "since June 12, 1945 or earlier". But possession is different from classification. As held in Maiabanan v. Republic, 587 SCRA 172 [2009/, it is only necessary that the land be already classified as A and D "at the time the application for registration is filed" to make public the release of the property for alienation or disposition. But the possession of Arthur even prior to the classification of the land as A and D shall be counted in determining the period of possession.

ALTERNATIVE ANSWER:

Arthur's possession should be reckoned from the date the Ternate lot was declared alienable and disposable land of the public domain.

In Zarate v. Director of Lands, (G.R. No. 131501, July 14, 2004), the Supreme Court, citing the case of Bracewell v. CA, (G.R. No. 107427, Jan. 25, 2000) ruled that "possession of the property prior to the classi- fication thereof as alienable or disposable, cannot be credited as part of the thirty (30)-year required under Section 48(b) of CA No. 141, as amended.

In Heirs of Malabanan v. Republic (G.R. No. 179987, September 3, 2010), the Supreme Court explained that the possession of Arthur should be reckoned only from the date lots A and D were declared as alienable and disposable by the State and not from the date of actual possession. Section 48(b) of the Public Land Act used the words "lands of the public domain" or "alienable and disposable lands of the public domain" to clearly signify that lands otherwise classified, i.e., mineral, forest or timber, or national parks, and lands of patrimonial or private ownership, are outside the coverage of the Public Land Act. What the law does not include, it excludes. The use of the descriptive phrase "alienable and disposable" further limits the coverage of Sec- tion 48(b) to only the agricultural lands of the public domain. Section 48(b) of the Public Land Act, in relation to Section 14(1) of the Property Registration Decree, presupposes that the land subject of the applica- tion for

registration must have been already classified as agricultural land of the public domain in order for the provision to apply. Thus, ab- sent proof that the land is already classified as agricultural land of the public domain, the Regalian Doctrine applies, and overcomes the pre- sumption that the land is alienable and disposable as laid down in Section 48(b) of the Public Land Act. (Heirs of Malabanan v. Republic, G.R. No. 179987,September 3, 2013)

The basis of the 30 year open continuous and notorious possession in the concept of owner of A and D land is extraordinary acquisitive pre- scription of immovable property. Lands classified as forest, mineral, and national parks are properties of public dominion which cannot be acquired by acquisitive prescription.

Macario bought a titled lot from Ramon, got the title and took possession of the lot. Since Macario did not have the money to pay the taxes, fees and registration expenses, he was not able to register the Deed of Absolute Sale. Upon advice, he merely exe- cuted an Affidavit of Adverse Claim and had it annotated at the back of the title. A few years after, he received a Notice of Levy on Attachment and Writ of Execution in favor of Alex. The notice, writ and certificate of sale were annotated at the back of the title still in Ramon's name. Alex contends that since the Affidavit of Ad- verse Claim is effective only for 30 days from the date of its regis- tration, then its validity has expired. Macario posits that the anno- tation of his adverse claim is notice to the whole world of his pur- chase of the lot in question. Who has the superior right over the disputed property - Macario or Alex? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

Macario is preferred since the registration of his adverse claim was made ahead of the notice of levy and writ of execution in favor of Alex. Macario's adverse claim, coupled with the fact that he was in posses- sion of the disputed property, are circumstances which should have put Alex on constructive notice that the property being offered to him had already been sold to another (Citing v Enrile, G.R. No. 156076 12008]). The contention that the adverse claim is effective only for 30 years is puerile. In Sajonas v. Court of Appeals, 258 (SCRA 79]1996])y the Court held that the adverse claim does not ipso facto lose its validity since an independent action is still necessary to render it ineffective. Until then, the adverse claim shall continue as a prior lien on the property.

On March 27, 1980, Cornelio filed an application for land registration involving a parcel of agricultural land that he had bought from Isaac identified as Lot No. 2716 with an area of one (1) hectare. During the trial, Cornelio claimed that he and his predecessors-in-interest had been in open, continuous, uninterrupted, public and adverse possession and occupation of the land for more than thirty (30) years. He likewise introduced in evidence a certification dated February 12, 1981 citing a presidential declaration to the effect that on June 14, 1980, agricultural lands of the public domain, including the subject matter of the application, were declared alienable and disposable agricultural land.

a. If you are the judge, will you grant the application for land registration of Cornelio?

ANSWER:

NO, I will not grant the application. To be entitled to registration of the parcel of land, the applicant must show that the land being applied for is alienable land. At the time of the filing of the application, the land has not yet been declared alienable by the state *(Republic v. CA, G.R. No. 144057, January 17, 2005).*

b. Can Cornelio acquire said agricultural land through acquisitive prescription, whether ordinary or extraordinary? (2014 BAR)

ANSWER:

Cornelio can acquire the land by acquisitive prescription only after it was declared part of alienable land by the state by possession for the required number of years for ordinary prescription, ten years possession in good faith with just title or extraordinary prescription by possession for thirty years without need of any other condition *(Art. 1134).*

Manuel was born on 12 March 1940 in a 1000-square meter property where he grew up helping his father, Michael, cultivate the land. Michael has lived on the property since the land was opened for settlement at about the time of the Commonwealth government in 193 5, but for some reason never secured any title to the property other than a tax declaration in his name. He has held the property through the years in the concept of an owner and his stay was uncontested by others. He has also conscientiously and continuously paid the realty taxes on the land. Michael died in 2000 and Manuel - as Michael's only son and heir -now wants to secure and register title to the land in his own name. He consults you for legal advice as he wants to perfect his title to the land and secure its registration in his name.

a. What are the laws that you need to consider in advising Manuel on how he can perfect his title and register the land in his name? Explain the relevance of these laws to your projected course of action. (2013 BAR)

SUGGESTED ANSWER:

I would advise Manuel to file an application for registration under Sec. 14 of Pres. Decree No. 1529, or the Property Registration Decree (PRD), specifically Sec. 14 (1) which requires (a) that the land applied for forms part of the alienable and disposable (A & D) portion of the public domain, and (b) that the applicant has been in open, continuous and notorious possession and occupation thereof under a bona fide claim of ownership since June 12, 1945, or earlier. However, it is only necessary that the land is already declared A & D land "at the time the application for registration is filed" *(Malabanan v. Republic, G.R. No. 180067, June 30, 2009).*

Manuel could also invoke Sec. 14 (2) of the same Decree, which allows registration through ordinary acquisitive prescription for thirty years, provided, however, that the land is "patrimonial" in character, i.e., already declared by the government (a) as A & D land, and (b) no longer needed for public use or public service *(Id)*.

Manuel could also file an application for "confirmation of imperfect or incomplete title" through "judicial legalization under Sec. 48 (b) of CA No. 141 or the Public Land Act (PLA). But, as held in Malabanan, there is no substantial difference between this provision and Sec. 14 (1), PRD. Both refer to agricultural lands already classified us alienable and disposable at the time the application is filed, and require possession and occupation since June 12, 1945. The only difference is that under the PRD, there already exists a title which is to he confirmed, whereas under the *PLA*, the presumption is that land is still public land *(Republic v. Aquino, G.R. No. L-33983, January 27, 1983)*.

Manuel may also invoke "vested rights" acquired under R.A. No. 1942 dated June 2, 1957, which amended Sec. 48 (b), PLA by providing for a prescriptive period of thirty years or judicial confirmation of imperfect title. It must only be demonstrated that possession and occupation commenced on January 24, 1947 and the 30-year period was completed prior to the effectivity of PD No. 1073 on January 25, 1977. PD No. 1073 now requires possession and occupation since June 12, 1945 *(Republic v. Espinosa, G.R. No. 171514, July 18, 2012).*

Another alternative is for Manuel to secure title through administrative proceedings under the homestead or free patent provisions of the *PLA*. The title issued has the same efficacy and validity as a title issued through judicial proceedings, but with the limitation that the land cannot be sold or disposed of within five years from the issuance of patent *(Sec. 118, CA No. 141, as amended).*

b. What do you have to prove to secure Manuel's objectives and what documentation is necessary? (2013 BAR)

SUGGESTED ANSWER:

Manuel has the burden to overcome the presumption of State ownership by "well-nigh incontrovertible" evidence *(Ong v. Republic, G.R. No. 175746, March 12, 2008).* Accordingly, he must show that the land is already classified as A & D "at the time the application for registration is filed" and that he has been in "possession and occupation thereof" in the manner required by law since June 12, 1945, or earlier.

Manuel may tack his possession to that of his predecessor-in-interest (Michael) by the testimony of disinterested and knowledgeable eyewitnesses. Overt acts of possession may consist in introducing valuable improvements like fencing the land, constructing a residential house thereon, cultivating the land and planting fruit hearing trees, declaring the land for taxation purposes and paying realty taxes, all of which are corroborative proof of possession.

To identify the land, he must submit the tracing cloth plan or a duly-certified blueprint or whiteprint copy thereof *(Director of Lands v. Reyes, G.R. No. L-27594, November 28, 1975; Director of Lands v. CA and Iglesia ni Cristo, GR No. L-56613, March 14, 1988).*

To show the classification of the land as A & D, the application must be accompanied by (1) a CENRO or PENRO certification; and (2) a certified true copy of the original classification approved by the DENR Secretary *(Republic v. Bantigue, G.R. No. 162322, March 14, 2012)*. A presidential or legislative act may also be considered.

V. Subsequent Registration

Mr. and Mrs. Roman and Mr. and Mrs. Cruz filed an application for registration of a parcel of land which after due proceedings was granted by the RTC acting registration as land court. However, before the decree of registration could be issued, the spouses Roman and the spouses Cruz sold the lot to Juan. In the notarized deed of sale, the sellers expressly undertook to submit the deed of sale to the land registration court so that the title to the property would be directly issued in Juan's name. (2015 BAR)

a) Is such a stipulation valid?

ANSWER:

YES, because when one who is not the owner of the property sells or alienates it and later the seller or grantor acquires title, such title passes by operation of law to the buyer or grantee *(Art. 1434).*

b) Distinguish a direct attack from a collateral attack on a title.

ANSWER:

A direct attack on a title is one where the action filed is precisely for the purpose of pointing out the defects in the title with a prayer that it be declared void. A collateral attack is one where the action is not instituted for the purpose of attacking the title but the nullity of the title is raised as a defense in a different action.

c) If the title in Item XX.A is issued in the names of the original sellers, would a motion filed by Juan in the same case to correct or amend the title in order to reflect his name as owner considered be collateral attack?

ANSWER:

NO, because Juan is not attacking the title but merely invoking his right as transferee. Hence, it does not involve a collateral attack on the title.

VI. Non-registrable Properties

VII. Dealings with Unregistered Lands

Marciano is the owner of a parcel of land through which a river runs out into the sea. The land had been brought under the Torrens System, and is cultivated by Ulpiano and his family as farmworkers therein. Over the years, the river brought silt and sediment from its source up in the mountains and forests so that gradually the land owned by Marciano increased in area by three hectares. Ulpiano built three huts on this additional area, where he and his two married children live. On this same area. Ulpiano and his family planted peanuts, mongo, beans and vegetables. Ulpiano also regular paid taxes on the land, as shown by tax declarations, for over thirty years.

When Marciano learned of the increase in the size of the land he ordered Ulpiano to demolish the huts, and demanded that he be paid his share in the proceeds of the harvest. Marciano claims that under the civil code, the alluvium belongs to him as a registered riparian owner to whose land the accretion attaches, and that his right is enforceable against the whole world.

Is Marciano correct? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Marciano's contention is correct. Since the accretion was deposited on his land by the action of the waters of the river and he did not construct any structure to increase the deposition of soil ad silt, Marciano automatically owns the accretion. His real right of ownership is enforceable against the whole word including Ulpiano and his two married children. Although Marciano's land is registered the 3 hectares land deposited through accretion was not automatically registered. As unregistered land, it is subject to acquisitive prescription by third persons.

Although Ulpiano and his children live in the 3 hectare unregistered land owned by Marciano, they are farmworkers; therefore they are possessors not in the concept of owners but in the concept of more holders. Even if they possessed the land for more than 30 years, they cannot become the owners thereof through extraordinary acquisitive prescription, because the law requires possession in the concept of owner. Payment of taxes and tax declaration are not enough to make their possession one in the concept of owner. They must repudiate the possession in the concept of holder by executing unequivocal acts of repudiation amounting to custer of Marciano, known to Marciano and must be proven by clear and convincing evidence. Only then would his possession become adverse.

TORTS AND DAMAGES

Book I—Torts

I. Principles

The liability of the school, its administrators and teachers, or the individual, entity or institution engaged in child care over the minor child or damage caused by the acts or omissions of the unemancipated minor while under their supervision, instruction or custody shall be: (2012 BAR)

a) Joint and subsidiary
b) Principal and solidary
c) Principal and joint
d) Subsidiary and solidary.

A driver of a bus owned by company Z ran over a boy who died instantly. A criminal case for reckless imprudence resulting in homicide was filed against the driver. He was convicted and was ordered to pay P2 Million in actual and moral damages to the parents of the boy who was an honor student and had a bright future. Without even trying to find out if the driver had assets or means to pay the award of damages, the parents of the boy filed a civil action against the bus company to make it directly liable for the damages.

a) Will their action prosper?

ANSWER:

YES, the action will prosper. The liability of the employer in this case may be based on quasi-delict and is included within the coverage of independent civil action. It is not necessary to enforce the civil liability based on culpa aquiliana that the driver or employee be proven to be insolvent since the liability of the employer for the quasi- delicts committed by their employees is direct and primary subject to the defense of due diligence on their part *(Art. 2176; Art. 2180).*

b) If the parents of the boy do not wish to file a separate civil action against the bus company, can they still make the bus company liable if the driver cannot' pay the award for damages? If so, what is the nature of the employer's liability and how may civil damages be satisfied? (2015 BAR)

ANSWER:

YES, the parents of the boy can enforce the subsidiary liability of the employer in the criminal case against the driver. The conviction of the driver is a condition sine qua non for the subsidiary liability of the employer to attach. Proof must be shown that the driver is insolvent *(Art. 103, RPC).*

A collision occurred at an intersection involving a bicycle and a taxicab. Both the bicycle rider (a businessman then doing his morning exercise) and the taxi driver claimed that the other was at fault. Based on the police report, the bicycle crossed

the intersection first but the taxicab, crossing at a fast clip from the bicycle's left, could not brake in time and hit the bicycle's rear wheel, toppling it and throwing the bicycle rider into the sidewalk 5 meters away.

The bicycle rider suffered a fractured right knee, sustained when he fell on his right side on the concrete side walk. He was hospitalized and was subsequently operated on, rendering him immobile for 3 weeks and requiring physical rehabilitation for another 3 months. In his complaint for damages, the rider prayed for the award of ₱1,000,000 actual damages, ₱200,000 moral damages, ₱200,000 exemplary damages, ₱100,000 nominal damages and ₱50,000 attorney's fees.

Assuming the police report to be correct and as the lawyer for the bicycle rider, what evidence (documentary and testimonial) and legal arguments will you present in court to justify the damages that your client claims? (1994, 2002, 2013)

ANSWER:

I will base the claim of my client on quasi-delict under *Art. 2176.*

The requisites for a claim under quasi-delict to prosper are as follows:
1. Act or omission, there being fault or negligence;
2. Damage or injury; and
3. Causal connection between the damage and the act or omission.

The case clearly involves a quasi-delict where my client, the bicycle rider, suffered injury as a result of the negligence of the over-speeding taxi driver, without fault on my client's part.

To prove actual damages, aside from the testimony of my client, I will present his hospital and medical bills. Receipts of the fees paid on the rehabilitation will also be presented. Furthermore, I will present income tax returns, contracts and other documents to prove unrealized profits as a result of this temporary injury. I will also call the attending physician to testify as to the extent of the injuries suffered by my client, and to corroborate the contents of the medical documents.

Based on *Art. 2202*, in quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have been foreseen by the dfendant.

Unlike actual damages, no proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment is left to the discretion of the Court *(Art. 2216).* There must still be proof of pecuniary estimation, however.

Moral damages can be recovered by my client under *Arts. 2219 and 2200*. Moral damages may be recovered in case of a quasi-delict causing physical injuries. Additionally, it must be proved that such damages were the proximate result of the act complained of. Medical certificates will be presented, along with the testimony from my client and other eyewitness accounts, in order to support the award for moral damages.

Exemplary damages may be granted if the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. While the amount of exemplary damages need not be proved, the plaintiff must show that he is entitled to moral or compensatory damages. In support of this, I will present the police report showing the circumstances under which the accident took place, taking into account the actions of the parties. I will ask the officials who responded to the accident to testify as to the conduct of the parties at the time of the accident in order to determine whether defendant was guilty of gross negligence.

Finally, attorney's fees may be recovered when exemplary damages are awarded *(Art. 2208).*

Lennie bought a business class ticket from Alta Airlines. As she checked in, the manager downgraded her to economy on the ground that a Congressman had to be accommodated in the business class. Lennie suffered the discomfort and embarrassment of the downgrade. She sued the airlines for quasi-delict but Alta Airlines countered that, since her travel was governed by a contract between them, no quasi-delict could arise. Is the airline correct? (2011 BAR)

(A) No, the breach of contract may in fact be tortious as when it is tainted as in this case with arbitrariness, gross bad faith, and malice.
(B) No, denying Lennie the comfort and amenities of the business class as provided in the ticket is a tortious act.
(C) Yes, since the facts show a breach of contract, not a quasi-delict.
(D) Yes, since quasi-delict presupposes the absence of a pre-existing contractual relation between the parties.

(E) No, the breach of contract may in fact be tortious as when it is tainted as in this case with arbitrariness, gross bad faith, and malice.
(F) No, denying Lennie the comfort and amenities of the business class as provided in the ticket is a tortious act.
(G) Yes, since the facts show a breach of contract, not a quasi-delict.
(H) Yes, since quasi-delict presupposes the absence of a pre-existing contractual relation between the parties.

Virgilio owned a bare and simple swimming pool in his garden. MB, a 7-year old child, surreptitiously entered the garden and merrily romped around the ledges of the pool. He accidentally tripped, fell into the pool, and drowned. MB's parents sued Virgilio for damages arising from their child's death, premised on the principle of "attractive nuisance". Is Virgilio liable for the death of MB? (2011 BAR)

(A) No, the child was 7 years old and knew the dangers that the pool offered.
(B) Yes, being an attractive nuisance, Virgilio had the duty to prevent children from coming near it.
(C) No, since the pool was bare and had no enticing or alluring gadgets, floats, or devices in it that would attract a 7-year old child.
(D) Yes, since Virgilio did not cover the swimming pool while not in use to prevent children from falling into it.

Define *quasi tort.* Who are the persons liable under *quasi torts* and what are the defenses available to them? (2010 Bar Question)

NOTE: It is recommended that the examiner exercise leniency and liberality in grading the answers given to this question. The term quasi-tort is not a part of legal developments in civil law. In Philippine legal tradition, quasi-delict has been treated as the closest civil law equivalent of the common law tort. In fact, in a number of Supreme Court decisions, the two terms have been considered synonymous. In reality, however, the common law tort is much broader in scope than the civil law quasi-delict.

In recent developments in common law, the concept of "quasi-torts" can be considered as the closest common law equivalent of the civil law concept of quasi-delict. This is because it is argued that the growing recognition of quasi-torts as a source of obligation is hinged on the acceptance at common law of the civil law principles of quasi-delict.

***FIRST SUGGESTED ANSWER*:**

Quasi-tort is a legal concept upholding the doctrine that some legal duty exists that can not be classified strictly as a personal duty (that is, resulting in a tort), nor as a contractual duty (thus resulting in a breach of contract) but rather some other kind of duty recognizable by the law. "Tort" or "Quasi-Tort" is an Anglo American or Common Law concept, while "Delict" or "Quasi-Delict" is a
Civil Law concept. (Wikipedia Encyclopedia)

SECOND SUGGESTED ANSWER:

Quasi-tort is considered as the equivalent of quasi-delict. Hence the rules of the latter pertaining to persons who can be held liable and their defenses would also apply.

Those liable for quasi-delict include:

1. The tortfeasor or the person causing damage to another through fault or negligence (Article 2176 NCC); and
2. Persons vicariously liable under Article 2180 (NCC).

The defenses available include:

1. That the defendant was not negligent or that he exercised due diligence (Article 2176 NCC).
2. That although the defendant is negligent, his negligence is not the proximate cause of the injury. (Article 2179 NCC).
3. That the plaintiffs own negligence was the immediate and proximate cause of his injury (Article 2179 NCC).
4. That the person vicariously liable has observed all the diligence of a good father of a family to prevent damage (2180 NCC).
5. That the cause of action has prescribed after the lapse of 4 years (Article 1146 NCC).
6. The fact that the plaintiff had committed contributory negligence is a partial defense (Article 2179 NCC).

II. Classification of Torts

III. The Tortfeasor

IV. Act or Omission and its Modalities

Mabuhay Elementary School organized a field trip for its Grade VI students in Fort Santiago, Manila Zoo, and Star City. To be able to join, the parents of the students had to sign a piece of paper that reads as follows:

"I allow my child (name of student), Grade – Section, to join the school's field trip on February 14, 2014.

I will not file any claim against the school, administrator or teacher in case something happens to my child during the trip."

Joey, a 7-year-old student of Mabuhay Elementary School was bitten by a snake while the group was touring Manila Zoo. The parents of Joey sued the school for damages. The school, as a defense, presented the waiver signed by Joey's parents.

Was there a valid waiver of right to sue the school? Why? (2014 BAR)

ANSWER:

NO, there was no valid waiver of the right to sue the school. A waiver to be valid must have three requisites 1) existence of the right; 2) legal capacity of the person waiving the right and 3) the waiver must not be contrary to law, morals, good customs, public order or public policy or prejudicial to a third person with a right recognized by law. In the case presented, the waiver may be considered contrary to public policy as it exonerates the school from liability for future negligence. The waiver in effect allows the school to not exercise even ordinary diligence.

Liwayway Vinzons-Chato was then the Commissioner of Internal Revenue while Fortune Tobacco Corporation is an entity engaged in the manufacture of different brands of cigarettes, among which are "Champion," "Hope," and "More" cigarettes.

Fortune filed a complaint against Vinzons-Chato to recover damages for the alleged violation of its constitutional rights arising from Vinzons-Chato's issuance of *Revenue Memorandum Circular No. 37-934 (which re-classified Fortune cigarettes as locally manufactured with foreign brands and thereby imposed higher taxes)*, which the Supreme Court later declared invalid.

Vinzons-Chato filed a Motion to dismiss arguing that she cannot be held liable for damages for acts she performed while in the discharge of her duties as BIR Commissioner. Is she correct? Explain (2012 BAR)

ANSWER:

YES. As a general rule, a public officer is not liable for acts performed in the discharge of his duties. The exceptions are when he acted with malice, bad faith, or gross negligence in the performance of his duty, or when his act is in violation of the constitutionally guaranteed rights and liberties of a person under *Art. 32.*

The public officer is not automatically considered to have violated the rights or liberties of a person simply because the rule the public officer issued was declared invalid by the Court. The complainant must still allege and prove the particular injury or prejudice he has suffered from the violation of his constitutional right by the issuance of the invalidated rule.

The problem does not state any fact from which any malice, bad faith or gross negligence on the part of Vinzons-Chato may be inferred, or the particular injury or prejudice the complainant may have suffered as a result of the violation of his constitutional rights. Hence, she cannot be held liable. The facts presented are similar to the facts of the case of *Vinzons-Chato v. Fortune, (G.R. No. 141309, December 23, 2008).*

V. Proximate Cause

VI. Legal Injury

VII. Intentional Torts

VIII. Negligence

On May 5, 1989, 16-year old Rozanno, who was issued a student permit, drove to school a car, a gift from his parents. On even date, as his class was scheduled to go on a field trip, his teacher requested him to accommodate in his car, as he did, four (4) of his classmates because the van rented by the school was too crowded. On the way to a museum which the students were scheduled to visit, Rozanno

made a wrong maneuver, causing a collision with a jeepney. One of his classmates died. He and the three (3) others were badly injured.

x x x

B. [Who is liable for] the damage to the jeepney? Explain. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

With respect to the damages caused to the jeepney, only Rozanno should be held liable because his negligence or tortious act was the sole, proximate, and immediate cause thereof.

Under the same facts, except the date of occurrence of the incident, this time in mid-1994, what would be your answer? Explain. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

Since Rozanno was 16 years old in 1989, if the incident happened sometime in the middle of 1994, Rozanno would have been 21 years old at that time. Hence, he was already of legal age. The law reducing the age of majority to 18 years took effect in December 1989.

Being of legal age, Articles 218, 219, and 221 of the Family Code are no longer applicable. In such case, only Rozanno will be personally responsible for all the consequences of his act unless the school or his parents were themselves also negligent and such negligence contributed to the happening of the incident. In that event, the school or his parents are not liable under Article 218, 219 or 221 of the Family Code, but will be liable under the general provisions of the Civil Code on *quasi-delict.*

IX. Special Liability in Particular Activities

X. Strict Liability

Primo owns a pet iguana which he keeps in a man- made pond enclosed by a fence situated in his residential lot. A typhoon knocked down the fence of the pond and the iguana crawled out of the gate of Primo's residence. N, a neighbor who was passing by, started throwing stones at the iguana, drawing the iguana to move toward him. N panicked and ran but tripped on something and suffered a broken leg.

Is anyone liable for N's injuries? Explain. (4%) (2010 Bar Question)

SUGGESTED ANSWER:

No one is liable. The possessor of an animal or whoever may make use of the same is responsible for the damage which it may cause, although it may escape or be lost. This

responsibility shall cease only in case the damage should come from force majeure or from the fault of the person who has suffered damage *(Art. 2183, New Civil Code).*

Rommel's private car, while being driven by the regular family driver, Amado, hits a pedestrian causing the latter's death. Rommel is not in the car when the incident happened.

Is Rommel liable for damages to the heirs of the deceased? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, Rommel may be held liable for damages if he fails to prove that he exercised the diligence of a good father of a family (Art. 2180, par. 5, NCC) in selecting and supervising his family driver. The owner is presumed liable unless he proves the defense of diligence. If the driver was performing his assigned task when the incident happened, Rommel shall be solidarily liable with the driver.

In case the driver is convicted of reckless imprudence and cannot pay the civil liability, Rommel is subsidiarily liable for the damages awarded against the driver and the defense of diligence is not available.

Would your answer be the same if Rommel was in the car at the time of the accident? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, my answer would be the same. Rommel, who was in the car, shall be liable for damages if he could have prevented the misfortune by the use of due diligence in supervising his driver but failed to exercise it (Art. 2184, NCC). In such a case, his liability is solidary with his driver.

ALTERNATIVE ANSWER:

Yes, my answer will be the same except that in such a case the liability of the owner is not presumed. When the owner is inside the vehicle, he becomes liable only when it is shown that he could have prevented the misfortune by the use of due diligence (Article 2184, NCC). For the owner to be held liable, the burden of proving that he could have prevented the misfortune rests on the shoulder of the victim.

Book II—Damages

I. General Considerations

Roberto was in Nikko Hotel when he bumped into a friend who was then on her way to a wedding reception being held in said hotel. Roberto alleged that he was then

invited by his friend to join her at the wedding reception and carried the basket full of fruits which she was bringing to the affair. At the reception, the wedding coordinator of the hotel noticed him and asked him, allegedly in a loud voice, to leave as he was not in the guest list. He retorted that he had been invited to the affair by his friend, who however denied doing so. Deeply embarrassed by the incident, Roberto then sued the hotel for damages under Articles 19 and 21 of the Civil Code. Will Roberto's action prosper? Explain. (5%) (2012 BAR)

ANSWER:

It depends. While the hotel has the right to exclude an uninvited guest from the wedding reception, that does not give the hotel the license to humiliate Roberto. If the wedding coordinator of the hotel acted wrongfully e.g. with abuse of right, unfairly, or in a manner that exposed Roberto to unnecessary ridicule or shame, his action will proper. Otherwise, Roberto's action will prosper. The hotel is liable for the wrongful acts of its employees.

NO. Roberto's action will not prosper. From the facts given in the problem, the wedding coordinator did not abuse her right when she asked him to leave the wedding reception because he was not in the guest list. Hotel Nikko could not be held liable for damages as its liable spring from the liability of its employee (Nikko Hotel Manila Garden v. Reyes, G.R. No. 154259, February 28, 2005).

b) Ricky donated ₱ 1 Million to the unborn child of his pregnant girlfriend, which she accepted. After six (6) months of pregnancy, the fetus was born and baptized as Angela. However, Angela died 20 hours after birth. Ricky sought to recover the ₱ 1 Million. Is Ricky entitled to recover? Explain. (5%) (2012 BAR)

ANSWER:

YES, Ricky is entitled to recover the P1,000,000.00. The NCC considers a fetus is considered a person for purposes favorable to it provided it is born later in accordance with the provision of the NCC. While the donation is favorable to the fetus, the donation did not take effect because the fetus was not born in accordance with the NCC.

To be considered born, the fetus that had an intrauterine life of less than seven (7) months should live for 24 hours from its complete delivery from the mother's womb. Since Angela had an intrauterine life of less than seven (7) months but did not live for 24 hours, she was not considered born and, therefore, did not become a person (Art. 41). Not being a person, she has no juridical capacity to be a donee, hence, the donation to her did not take effect. The donation not being effective, the amount donated may be recovered. To retain it will be unjust enrichment.

II. Actual and Compensatory Damages

With regard to an award of interest in the concept of actual and compensatory damages, please state the guidelines regarding the manner of computing legal interest in the following situations:
[a] when the obligation is breached and it consists in the payment of a sum of money like a loan or forbearance of money; (2.5%)
[bj when the obligation does not constitute a loan or forbearance of money. (2.5%)
Consider the issuance of BSP-MB Circular No. 799, which became effective on July 1, 2013. (2016 BAR)

[a| When the obligation is breached and it consists in the payment of a sum of money like a loan or forbearance of money, in the absence of stipulation, the rate of interest shall be the legal rate of 6% per annum (Article 2209 CC), which was increased to 12% per NB Circular No. 905, Series of 1982) to be computed from default. The twelve percent 12% per annum legal interest shall apply only until June 30, 2013. From July 1, 2013, the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable (Nacar v. Gallery Frames, 703 SCRA 439 12013}, applying BSP -MB Circular No. 799).

[NOTE: It is suggested that credit also be given in the event that the examinees cite Tahada v. Tuvera to support the conclusion that publi- cation is unnecessary in the case of interpretative regulations and those merely internal in nature, as the language of the problem may be interpreted by the examinees to refer only to mere guidelines or direc- tory matters}. The examinee should be given credit if he mentions that the actual base for computing the interest due on the loan or forbear- ance of money, goods or credit is the amount of the loans, forbear- ance, plus whatever interest is stimulated in writing; otherwise no in- terest may be charge for using the money (Art. 1956 CC)

[b] The interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certain- ty, the interest shall begin to run from the time the claim is made judi- cially or extra-judicially, but when such certainty cannot be so reason- ably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged (Nacar v. Gallery Frames, 703 SCRA 439 [2013]).

III. Moral Damages

Peter, a resident of Cebu City, sent through Reliable Pera Padala (RPP) the amount of P20, 000.00 to his daughter, Paula, for the payment of her tuition fee. Paula went to an RPP branch but was informed that there was no money remitted to her name. Peter inquired from RPP and was informed that there was a computer glitch and the money was credited to another person. Peter and Paula sued RPP for actual damages, moral damages and exem- plary damages. The trial court ruled that there

was no proof of pecuniary loss to the plaintiffs but awarded moral damages of P20, 000.00 and exemplary damages of P5, 000.00. On appeal, RPP questioned the award of moral and exemplary damages. Is the trial court correct in awarding moral and exemplary damages? Explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

No, the trial court is not correct in awarding moral and exemplary dam- ages. The damages in this case are prayed for based on the breach of contract committed by RPP in failing to deliver the sum of money to Paula. Under the provisions of the Civil Code, in breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation. In the same fashion, to warrant the award of exemplary damages, the wrongful act must be accomplished by bad faith, and an award of damages would be al- lowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner (Article 2232 of the Civil Code).

Bad faith does not simply connote bad judgment or negligence. It im- ports a dishonest purpose or some moral obliquity and conscious do- ing of a wrong, a breach of known duty through some motive or inter- est or ill will that partakes of the nature of fraud. In this case, however, RPP's breach was due to a computer glitch which at most can be con- sidered as negligence on its part, but definitely does not constitute bad faith or fraud as would warrant the award of moral and exemplary damages.

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

If you were the judge, would you award all the claims of Nanette? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

If Rodolfo's marriage could not have been possibly known to Nanette or there is no gross negligence on the part of Nanette, Rodolfo could be held liable for moral damages.

If there is gross negligence in a suit for quasi-delict, exemplary damages could be awarded.

IV. Nominal Damages

V. Temperate or Moderate Damages

VI. Liquidated Damages

VII. Exemplary or Corrective Damages

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by I caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

x x x
If you were the judge, would you award all the claims of Nanette? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

If Rodolfo's marriage could not have been possibly known to Nanette or there is no gross negligence on the part of Nanette, Rodolfo could be held liable for moral damages.

If there is gross negligence in a suit for quasi-delict, exemplary damages could be awarded.

VIII. Damages in Case of Death

IX. Graduation of Damages

X. Miscellaneous Rules