

INSTRUCTIONS

This questionnaire consists of sixteen (16) numbers contained in ten (10) pages. Read each question very carefully. Answer *legibly, clearly, and concisely*. Start each number on a separate page; an answer to a sub-question under the same number may be written continuously on the same page and immediately succeeding pages until completed. Do not repeat the question. A mere "Yes" or "No" answer without any corresponding discussion will not be given any credit.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE

GOOD LUCK!!!

Signed **ANGELINA S. GUTIERREZ**

Chairperson

20006 Bar Examination Committee

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

CIVIL LAW

- I -

Under Article 213 of the Family Code, no child under 7 years of age shall be separated from the mother unless the court finds compelling reasons to order otherwise.

1. Explain the rationale of this provision. 2.5%
2. Give at least 3 examples of "compelling reasons" which justify the taking away from the mother's custody of her child under 7 years of age. 2.5%

- II -

Saul, a married man, had an adulterous relation with Tessie. In one of the trysts, Saul's wife, Cecile, caught them in *flagrante*. Armed with a gun, Cecile shot Saul in a fit of extreme jealousy, nearly killing him. Four (4) years after the incident, Saul filed an action for legal separation against Cecile on the ground that she attempted to kill him.

1. If you were Saul's counsel, how will you argue his case? 2.5%
2. If you were the lawyer of Cecile, what will be your defense? 2.5%
3. If you were the judge, how will you decide the case? 5%

- III -

Ed and Beth have been married for 20 years without children. Desirous to have a baby, they

consulted Dr. Jun Canlas, a prominent medical specialist on human fertility .He advised Beth to undergo artificial insemination. It was found that Ed's sperm count was inadequate to induce pregnancy. Hence, the couple looked for a willing donor. Andy, the brother of Ed, readily consented to donate his sperm. After a series of tests, Andy's sperm was medically introduced into Beth's ovary .She became pregnant and 9 months later, gave birth to a baby boy, named Alvin.

1. Who is the father of Alvin? Explain. 2.5%
2. What are the requirements, if any, in order for Ed to establish his paternity over Alvin. 2.5%

- IV -

Gigi and Ric, Catholics, got married when they were 18 years old. Their marriage was solemnized on August 2, 1989 by Ric's uncle, a Baptist Minister, in Calamba, Laguna. He overlooked the fact that his license to solemnize marriage expired the month before and that the parties do not belong to his congregation. After 5 years of married life and blessed with 2 children, the spouses developed irreconcilable differences, so they parted ways.

While separated, Ric fell in love with Juliet, a 16 year-old sophomore in a local college and a seventh-Day Adventist. They decided to get married with the consent of Juliet's parents. She presented to him a birth certificate showing she is 18 years old. Ric never doubted her age much less the authenticity of her birth certificate. They got married in a Catholic church in Manila. A year after, Juliet gave birth to twins, Aissa and Aretha.

1. What is the status of the marriage between Gigi and Ric - valid, voidable or void? Explain. 2.5 %
2. What is the status of the marriage between Ric and Juliet - valid, voidable or void? Explain. 2..5%
3. Suppose Ric himself procured the falsified birth certificate to persuade Juliet to marry him despite her minority and assured her that everything is in order. He did not divulge to her his prior marriage with Gigi. What action, if any, can Juliet take against him? Explain. 2.5%
4. If you were the counsel for Gigi, what action/s will you take to enforce and protect her interests? Explain. 2.5%

- V -

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, Bernie and Elena, offered a similar house at a lower price of P1.5 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 for 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%

2. Does Ray have any cause of action against Biong and Linda? Can he also recover damages from the spouses? Explain. 2.5%

- VI -

Gemma filed a petition for the declaration of nullity of her marriage with Arnell on the ground of psychological incapacity. She alleged that after 2 months of their marriage, Arnell showed signs of disinterest in her, neglected her and went abroad. He returned to the Philippines after 3 years but did not even get in touch with her. Worse, they met several times in social functions but he snubbed her. When she got sick, he did not visit her even if he knew of her confinement in the hospital. Meanwhile, Arnell met an accident which disabled him from reporting for work and earning a living to support himself.

Will Gemma's suit prosper? Explain. 5%

- VII -

Marvin, a Filipino, and Shelley, an American, both residents of California, decided to get married in their local parish. Two years after their marriage, Shelley obtained a divorce in California. While in Boracay, Marvin met Manel, a Filipina, who was vacationing there. Marvin fell in love with her. After a brief courtship and complying with all the requirements, they got married in Hongkong to avoid publicity, it being Marvin's second marriage. Is his marriage to Manel valid? Explain. 5%

- VIII -

Alberto and Janine migrated to the United States of America, leaving behind their 4 children, one of whom is Manny. They own a duplex apartment and allowed Manny to live in one of the units. While in the United States, Alberto died. His widow and all his children executed an Extrajudicial Settlement of Alberto's estate wherein the 2-door apartment was assigned by all the children to their mother, Janine. Subsequently, she sold the property to George. The latter required Manny to sign a prepared Lease Contract so that he and his family could continue occupying the unit. Manny refused to sign the contract alleging that his parents allowed him and his family to continue occupying the premises.

If you were George's counsel, what legal steps will you take? Explain. 5%

- IX -

A drug lord and his family reside in a small bungalow where they sell shabu and other prohibited drugs. When the police found the illegal trade, they immediately demolished the house because according to them, it was a nuisance per se that should be abated. Can this demolition be sustained? Explain. 5%

- X -

Don died after executing a Last Will and Testament leaving his estate valued at P12 Million to his common-law wife Roshelle. He is survived by his brother Ronie and his half-sister Michelle.

1. Was Don's testamentary disposition of his estate in accordance with the law on succession? Whether you agree or not, explain your answer. 2.5%
2. If Don failed to execute a will during his lifetime, as his lawyer, how will you distribute his estate? Explain. 2.5%
3. Assuming he died intestate survived by his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you. distribute his estate? Explain. 2.5%
4. Assuming further he died intestate, survived by his father Juan, his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain. 2.5%

- XI -

Spouses Alfredo and Racquel were active members of a religious congregation. They donated a parcel of land in favor to that congregation in a duly notarized Deed of Donation, subject to the condition that the Minister shall construct thereon a place of worship within 1 year from the acceptance of the donation. In an affidavit he executed in behalf of the congregation, the Minister accepted the donation. The Deed of Donation was not registered with the Registry of Deeds.

However, instead of constructing a place of worship, the Minister constructed a bungalow on the property he used as his residence. Disappointed with the Minister, the spouses revoked the donation and demanded that he vacate the premises immediately. But the Minister refused to leave, claiming that aside from using the bungalow as his residence, he is also using it as a place of worship on special occasions. Under the circumstances, can Alfredo and Racquel evict the Minister and recover possession of the property?

If you were the couple's counsel, what action will you take to protect the interests of your clients? 5%

- XII -

Tony bought a Ford Expedition from a car dealer in Muntinlupa City. As payment, Tony issued a check drawn against his current account with Premium Bank. Since he has a good reputation the car dealer allowed him to immediately drive home the vehicle merely on his assurance that his check is sufficiently funded. When the car dealer deposited the check, it was dishonored on the ground of "Account Closed". After an investigation, it was found that an employee of the bank misplaced Tony's account ledger. Thus, the bank erroneously assumed that his account no longer exists. Later, it turned out that Tony's account has more than sufficient funds to cover the check. The dealer however, immediately filed an action for recovery of possession of the vehicle against Tony for which he was terribly humiliated and embarrassed. Does Tony have a cause of action against Premium Bank? Explain. 5%

- XIII -

Arturo sold his Pajero to Benjamin for P1 Million. Benjamin took the vehicle but did not register the sale with the Land Transportation Office. He allowed his son Carlos, a minor who did not have a driver's license, to drive the car to buy *pan de sal* in a bakery .On the way, Carlos, driving in a reckless manner, sideswiped Dennis, then riding a bicycle. As a result, he suffered serious physical

injuries. Dennis filed a criminal complaint against Carlos for reckless imprudence resulting in serious physical injuries.

1. Can Dennis file an independent civil action against Carlos and his father Benjamin for damages based on quasi-delict? Explain. 2.5%
2. Assuming Dennis' action is tenable, can Benjamin raise the defense he is not liable because the vehicle is not registered in his name? Explain. 2.5%

- XIV -

Zirxthoussous delos Santos filed a petition for change of name with the Office of the Civil Registrar of Mandaluyong City under the administrative proceeding provided in Republic Act No.9048. He alleged that his first name sounds ridiculous and is extremely difficult to spell and pronounce. After complying with the requirements of the law, the Civil Registrar granted his petition and changed his first name Zirxthoussous to "Jesus." His full name now reads "Jesus delos santos."

Jesus delos santos moved to General santos City to work in a multi-national company. There, he fell in love and married Mary Grace delos santos. She requested him to have his first name changed because his new name "Jesus delos santos" is the same as that of her father who abandoned her family and became a notorious drug lord. She wanted to forget him. Hence, Jesus filed another petition with the Office of the Local Civil Registrar to change his first name to "Roberto." He claimed that the change is warranted because it will eradicate all vestiges of the infamy of Mary Grace's father.

Will the petition for change of name of Jesus delos Santos to Roberto delos santos under Republic Act No.9048 prosper? Explain. 10%

- XV -

1. What entries in the Civil Registry may be changed or corrected without a judicial order? 2.5%
2. Mayan illegitimate child, upon adoption by her natural father, use the surname of her natural mother as her middle name? 2.5%

- XVI -

1. Under Article 2219 of the Civil Code, moral damages may be recovered in the cases specified therein, several of which are enumerated below.

Choose the case wherein you cannot recover moral damages. Explain. 2.5%

- a. A criminal offense resulting in physical injuries
- b. Quasi-delicts causing physical injuries
- c. Immorality or dishonesty

- d. Illegal search
 - e. Malicious prosecution
2. Article 36 of the Family Code provides that a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall be void.

Choose the spouse listed below who is psychologically incapacitated. Explain. 2.5%

- a. Nagger
- b. Gay or lesbian
- c. Congenital sexual pervert
- d. Gambler
- e. Alcoholic

NOTHING FOLLOWS.