

INSTRUCTIONS

This questionnaire consists of seventeen (17) numbers contained in eight (8) pages. Read each question very carefully. Answer legibly, clearly and concisely. Start each number on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and on the immediately succeeding pages until completed. Do not repeat the question.

You will be given credit for your knowledge of legal doctrine and for the quality of your legal reasoning. 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 **DANTE O. TINGA**
Chairperson
2008 Bar Examinations Committee

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET
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POLITICAL LAW

- I -

- a. The legal yardstick in determining whether usage has become customary international law is expressed in the maxim *opinio juris sive necessitatis* or *opinio juris* for short. What does the maxim mean? (3%)
- b. Under international law, differentiate "hard law" from "soft law". (3%)

- II -

May a treaty violate international law? If your answer is in the affirmative, explain when such may happen. If your answer is in the negative, explain why. (5%)

- III -

The President alone without the concurrence of the Senate abrogated a treaty. Assume that the other country-party to the treaty is agreeable to the abrogation provided it complies with the Philippine Constitution. If a case involving the validity of the treaty abrogation is brought to the Supreme Court, how should it be resolved? (6%)

- IV -

Congress passed a law authorizing the National Housing Authority (NHA) to expropriate or acquire private property for the redevelopment of slum areas, as well as to lease or resell the property to

private developers to carry out the redevelopment plan. Pursuant to the law, the NHA acquired all properties within a targeted badly blighted area in San Nicolas, Manila except a well-maintained drug and convenience store that poses no blight or health problem itself. Thereafter, NHA sold all the properties it has thus far acquired to a private realty company for redevelopment. Thus, the NHA initiated expropriation proceedings against the store owner who protested that his property could not be taken because it is not residential or slum housing. He also contended that his property is being condemned for a private purpose, not a public one, noting the NHA's sale of the entire area except his property to a private party. If you were the judge, how would you decide the case? (6%)

- V -

Having received tips the accused was selling narcotics, two police officers forced open the door of his room. Finding him sitting partly dressed on the side of the bed, the officers spied two capsules on a night stand beside the bed. When asked, " Are these yours?", the accused seized the capsules and put them in his mouth. A struggle ensued, in the course of which the officer pounced on the accused, took him to a hospital where at their direction, a doctor forced an emetic solution through a tube into the accused's stomach against his will. This process induced vomiting. In the vomited matter were found two capsules which proved to contain heroin. In the criminal case, the chief evidence against the accused was the two capsules.

- a. As counsel for the accused, what constitutional rights will you invoke in his defense? (4%)
- b. How should the court decide the case? (3%)

- VI -

The Philippine National Police (PNP) issued a circular to all its members directed at the style and length of male police officers' hair, sideburns and moustaches, as well as the size of their waistlines. It prohibits beards, goatees and waistlines over 38 inches, except for medical reason. Some police officers questioned the validity of the circular, claiming that it violated their right to liberty under the Constitution. Resolve the controversy. (6%)

- VII -

JC, a major in the Armed Forces of the Philippine, is facing prosecution before the Regional Trial Court of Quezon City for the murder of his neighbor whom he suspected to have molested his (JC's) 15-year old daughter.

- a. Is JC entitled to bail? Why or why not? (3%)
- b. Assume that upon being arraigned, JC entered a plea of guilty and was allowed to present evidence to prove mitigating circumstances. JC then testified to the effect that he stabbed the deceased in self-defense because the latter was strangling him and that he voluntarily surrendered to the authorities. Subsequently, the trial court rendered a decision acquittal violate JC's right against double jeopardy? Why or why not? (3%)

- VIII -

ST, a Regional Trial Court judge who falsified his Certificate of Service, was found liable by the Supreme Court for serious misconduct and inefficiency, and meted the penalty of suspension from office for 6 months. Subsequently, ST filed a petition for executive clemency with the Office of the President. The Executive Secretary, acting on said petition issued a resolution granting ST executive clemency. Is the grant of executive clemency valid? Why or why not? (6%)

- IX -

Abdul ran and won in the May 2001, 2004 and 2007 elections for Vice-Governor of Tawi-Tawi. After being proclaimed Vice-Governor in the 2004 elections, his opponent, Khalil, filed an election protest before the Commission on Election. Ruling with finality on the protest, the COMELEC declared Khalil as the duly elected Vice-Governor though the decision was promulgated only in 2007, when Abdul had fully served his 2004-2007 term and was in fact already on his 2007-2010 term as Vice Governor.

- a. Abdul now consults you if he can still run for Vice-Governor of Tawi-Tawi in the forthcoming May 2010 election on the premise that he could not be considered as having served as Vice-Governor from 2004-2007 because he was not duly elected to the post, as he assumed office merely as a presumptive winner and that presumption was later overturned when COMELEC decided with finality that he had lost in the May 2004 elections. What will be your advice? (3%)
- b. Abdul also consults you whether his political party can validly nominate his wife as substitute candidate for Vice-Mayor of Tawi-Tawi in May 2010 elections in case the COMELEC disqualifies him and denies due course to or cancels his certificate of candidacy in view of a false material representation therein. What will be your advice? (3%)

- X -

The 1st Legislative District of South Cotabato is composed of General Santos and three municipalities including Polomolok. During the canvassing proceedings before the District Board of Canvassers in connection with the 2007 congressional election, candidate MP objected to the certificate of canvass for Polomolok on the ground that it was obviously manufactured, submitting as evidence the affidavit of a mayoralty candidate of Polomolok. The certificate of canvass for General Santos was likewise objected to by MP on the basis of the confirmed report of the local NAMFREL that 10 election returns from non-existent precincts were included in the certificate. MP moved that the certificate of canvass for General Santos be corrected to exclude the result from the non-existent precincts. The District Board of Canvassers denied both objections and ruled to include the certificate of canvass. May MP appeal the rulings to the COMELEC? Explain. (6%)

- XI -

On August 8, 2008 the Governor of Bohol died and Vice-Governor Cesar succeeded him by operation of law. Accordingly, Benito, the highest ranking member of the Sangguniang Panlalawigan was elevated to the position of Vice-Governor. By the elevation of Benito to the office of Vice-Governor, a vacancy in the Sangguniang Panlalawigan was created.

How should the vacancy be filled? (3%)

- XII -

The Mayor of San Jose City appointed his wife, Amelia, as City Treasurer from among three (3) employees of the city considered for the said position. Prior to said promotion, Amelia had been an Assistant City Treasurer for ten (10) years, that is, even before she married the City Mayor. Should the Civil Service Commission approve the promotional appointment of Amelia? Why or why not? (6%)

- XIII -

Congress enacted a law establishing the right to trial by jury of an accused charged with a felony or offense punishable with reclusion perpetua or life imprisonment. The law provides for the qualification of prospective jury member, the guidelines to be observed by the judge and the lawyers in jury selection including the grounds for challenging the selection of jury member, and the methodology for jury deliberations. Is the law constitutional? Explain fully. (7%)

- XIV -

In 1963, congress passed a law creating a government-owned corporation named Manila War Memorial Commission (MWMC), with the primary function of overseeing the construction of a massive memorial in the heart of Manila to commemorate victim of the 1945 Battle of Manila

The MWMC charter provided an initial appropriation of P1,000,000, empowered the corporation to raise funds in its own name, and set aside a parcel of land in Malate for the memorial site. The charter set the corporate life of MWMC at 50 years with a proviso that Congress may not abolish MWMC until after the completion of the memorial.

Forty-five (45) years later, the memorial was only 1/3 complete and the memorial site itself had long been overrun by quatters. Congress enacted a law abolishing the MWMC and requiring that the funds raised by it be remitted to the National Treasury. The MWMC challenged the validity of the law, arguing that under its charter its mandate is to complete the memorial no matter how long it takes. Decide with reason. (6%)

- XV -

The principal of Jaena High School, a public school wrote a letter to the parents and guardians of all the school's pupils, informing them that the school was willing to provide religious instruction to its Catholic students during class hours, through a Catholic priest. However, students who wished to avail of such religious instruction needed to secure the consent of their parents and guardians in writing.

- a. Does the offer violate the constitutional prohibition against the establishment of religion? (3%)
- b. the parents of evangelical Christian students, upon learning of the offer, demanded that they too be entitled to have their children instructed in their own religious faith during class hours. The principal, a devout Catholic, rejected the request. As counsel for the parents of the evangelical students, how would you argue in support of their position? (3%)

- XVI -

Nationwide protest have erupted over rising gas prices, including disruptive demonstrations in many

universities throughout the country. The Metro Manila State University, a public university, adopted a university-wide circular prohibiting public mass demonstrations and rallies within the campus. Offended by the circular, militant students spread word that on the following Friday, all students were to wear black T-shirt as a symbols of their protest both against high gas prices and the university ban on demonstrations. The effort was only moderately successful, with around 30% of the students heeding the call. Nonetheless, university officials were outraged and compelled the students leaders to explain why they should not be expelled for violating the circular against demonstrations.

The student leaders approached you for legal advice. They contended that they should not be expelled since they did not violate the circular, their protest action being neither a demonstrator nor a rally since all they did was wear black T-shirts. What would you advise the students? (6%)

- XVII -

As a reaction to the rice shortage and the dearth of mining engineers. Congress passed a law requiring graduates of public science high school henceforth to take up agriculture or mining engineering as their college course. Several students protested, invoking their freedom to choose their profession. Is the law constitutional? (6%)

NOTHING FOLLOWS.