

## INSTRUCTIONS

This questionnaire consists of twenty-one (21) questions 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 Examination Committee*

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET  
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<b>REMEDIAL LAW</b>
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I

Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the publication of the summons for three weeks in a local tabloid, *Bulgar*. Linda, an OFW vacationing in the Philippines, saw the summons in *Bulgar* and brought a copy of the tabloid when she returned to Singapore. Linda showed the tabloid and the page containing the summons to Mary Rose, who said, "Yes I know, my *kumare* Anita scanned and e-mailed that page of *Bulgar* to me!"

Did the court acquire jurisdiction over Mary Rose? (4%)

II

Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

- a. Does the RTC have jurisdiction over Ramon's counterclaims, and if so, does he have to pay docket fees therefor? (3%)
- b. Suppose Ramon's counterclaim for the unpaid balance is P310,000, what will happen to his counterclaims if the court dismisses the complaint after holding a preliminary hearing on Ramon's affirmative defenses? (3%)

- c. Under the same premise as paragraph (b) above, suppose that instead of alleging payment as a defense in his answer, Ramon filed a motion to dismiss on that ground, at the same time setting up his counterclaims, and the court grants his motion. What will happen to his counterclaims? **(3%)**

### III

- a. Angela, a resident of Quezon City, sued Antonio, a resident of Makati City before the RTC of Quezon City for the reconveyance of two parcels of land situated in Tarlac and Nueva Ecija, respectively. May her action prosper? **(3%)**
- b. Assuming that the action was for foreclosure on the mortgage of the same parcels of land, what is the proper venue for the action? **(3%)**

### IV

Filomeno brought an action in the Metropolitan Trial Court (MeTC) of Pasay City against Marcelino pleading two causes of action. The first was a demand for the recovery of physical possession of a parcel of land situated in Pasay City with an assessed value of P40,000; the second was a claim for damages of P500,000 for Marcelino's unlawful retention of the property. Marcelino filed a motion to dismiss on the ground that the total amount involved, which is P540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct? **(4%)**

### V

Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

- a. Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion? **(3%)**
- b. If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? **(3%)**

### VI

After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio's favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Porfirio moved to charge the plaintiff's attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff's attachment bond from all liability for the damages. Rule on Porfirio's motion. **(4%)**

### VII

- a. The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you are the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)
- b. If the bank denies holding the deposit in the name of the judgment obligor but your client's informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit? (3%)

## VIII

Bembol was charged with rape. Bembol's father, Ramil, approached Artemon, the victim's father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

- a. During trial, the prosecution presented Artemon to testify on Ramil's offer and thereby establish an implied admission of guilt. Is Ramil's offer to settle admissible in evidence? (3%)
- b. During the pre-trial, Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol's offer a judicial admission of his guilt? (3%)

## IX

The search warrant authorized the seizure of "undetermined quantity of shabu." During the service of the search warrant, the raiding team also recovered a kilo of dried marijuana leaves wrapped in newsprint. The accused moved to suppress the marijuana leaves as evidence for the violation of Section 11 of the Comprehensive Dangerous Drugs Act of 2002 since they were not covered by the search warrant. The State justified the seizure of the marijuana leaves under the "plain view" doctrine. There was no indication of whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If you are the judge, how would you rule on the motion to suppress? (4%)

## X

Jose, Alberto and Romeo were charged with murder. Upon filing of the information, the RTC judge issued the warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motion for reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of the accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly? (4%)

## XI

Arturo lent P1 Million to his friend Robert on the condition that Robert execute a promissory note for the loan and a real estate mortgage over his property located in Tagaytay City. Robert complied. In his promissory note dated September 20, 2006, Robert undertook to pay the loan within a year from its date at 12% per annum interest. In June 2007, Arturo requested Robert to pay ahead of time but

the latter refused and insisted on the agreement. Arturo issued a demand letter and when Robert did not comply, Arturo filed an action to foreclose the mortgage. Robert moved to dismiss the complaint for lack of cause of action as the debt was not yet due. The resolution of the motion to dismiss was delayed because of the retirement of the judge.

- a. On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that Robert's debt had in the meantime become due but that Robert still refused to pay. Should the amended complaint be allowed considering that no answer has been filed? **(3%)**
- b. Would your answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint? **(2%)**

## **XII**

After receiving the adverse decision rendered against his client, the defendant, Atty. Sikat duly filed a notice of appeal. For his part, the plaintiff timely filed a motion for partial new trial to seek an increase in the monetary damages awarded. The RTC instead rendered an amended decision further reducing the monetary awards. Is it necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision? **(3%)**

## **XIII**

An heir/oppositor in a probate proceeding filed a motion to remove the administrator on the grounds of neglect of duties as administrator and absence from the country. On his part the heir/oppositor served written interrogatories to the administrator preparatory to presenting the latter as a witness. The administrator objected, insisting that the modes of discovery apply only to ordinary civil actions, not special proceedings. Rule on the matter. **(4%)**

## **XIV**

On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008 and the second on August 16, 2008; and that both visits concerned the swindling of Petronilo. During the trial of Edgardo, the RTC issued a *subpoena ad testificandum* to Edgardo's lawyer for him to testify on the conversations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. **(4%)**

## **XV**

Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for the reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

After trial, the court rendered judgment ordering Roscoe to reconvey the entire southern half to Salvio. The judgment became final and executory. A writ of execution having been issued, the Sheriff required Roscoe, Carlo and Nina to vacate the southern half and yield possession thereof to Salvio as the prevailing party. Carlo and Nina refused, contending that they are not bound by the judgment as they are not parties to the case. Is the contention tenable? Explain fully. (4%)

#### XVI

The mutilated cadaver of a woman was discovered near a creek. Due to witnesses attesting that he was the last person seen with the woman when she was still alive, Carlito was arrested within five hours after the discovery of the cadaver and brought to the police station. The crime laboratory determined that the woman had been raped. While in police custody, Carlito broke down in the presence of an assisting counsel and orally confessed to the investigator that he had raped and killed the woman, detailing the acts he had performed up to his dumping of the body near the creek. He was genuinely remorseful. During the trial, the State presented the investigator to testify on the oral confession of Carlito. Is the oral confession admissible as evidence of guilt? (4%)

#### XVII

Ben sold a parcel of land to Del with right to repurchase within one (1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Del had never been in possession of the property. Is Ben correct? (4%)

#### XVIII

Domenico and Gen lived without benefit of marriage for twenty years, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico's siblings opposed the same on the ground that Gen has no legal personality. Decide. (4%)

#### XIX

After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22 (BP 22), she filed a petition for writ of habeas corpus, citing Vaca vs. CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec.14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct -

- a. Under Rule 102? (2%)
- b. Under the Rules of Criminal Procedure? (2%)

## XX

A tugboat owned by Speedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five (5) of the crew in the resulting shipwreck. At the maritime board inquiry, the four (4) survivors testified. SPS engaged Atty. Ely to defend it against potential claims and to sue the company owning the other vessel for damages to the tug. Ely obtained signed statements from the survivors. He also interviewed other persons, in some instance making memoranda. The heirs of the five (5) victims filed an action for damages against SPS.

Plaintiffs' counsel sent written interrogatories to Ely, asking whether statements of witnesses were obtained; if written, copies were to be furnished; if oral, the exact provisions were to be set forth in detail. Ely refused to comply, arguing that the documents and information asked are privileged communication. Is the contention tenable? Explain. (4%)

## XXI

- a. Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure. (4%)
- b. Give at least three instances where the Court of Appeals may act as a trial court. (3%)

*NOTHING FOLLOWS.*