

Set A

**MULTIPLE CHOICE QUESTIONS (MCQs)
INSTRUCTIONS**

The following questionnaire consists of one hundred (100) MCQs numbered 1 up to 100 contained in TWENTY TWO (22) pages.

Answer each question on the MCQ Answer Sheet by shading completely the appropriate circle corresponding to the letter you have chosen. (Read the Marking Instructions on the Answer Sheet)

Avoid erasures on the Answer Sheet. If you need to make corrections, erase completely the answer you want to change.

Keep the Answer Sheet clean. Do not make unnecessary marks on it. Do not fold, roll, scratch, crumple or tear it.

You may write on the on the questionnaire and use it as scratch paper but make sure to transfer your answer to the Answer Sheet. Provide ample time to transfer the answers if you choose to do this.

Answer first the MCQs completely before going to the essay-type questions.

HAND IN YOUR ANSWER SHEET. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOODLUCK!!!

MARTIN S. VILLARAMA, JR.

Chairperson

2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS TWENTY THREE (23) PAGES (INCLUDING THIS PAGE).

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CIVIL LAW

1. Which of the following is NOT included in the attributes of juridical capacity?

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.

2. Which of the following is NOT a restriction on ones capacity to act?

- a) Minority
- b) Marriage
- c) Deaf-mute
- d) Civil Interdiction

3. This attribute or incident of a case determine whether it is a conflict-of-laws case or one covered by domestic law.

- a) Cause of action
- b) Foreign element
- c) Jurisdiction
- d) Forum non conveniens

4. The capacity of an heir to succeed shall be governed by the:

- a) national law of the decedents 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.

5. Atty. BUKO, a Filipino, executed a will while he was in Spain. The attestation clause of the said will does not contain Bukos 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 BUKOs signature. Is the opposition correct? Choose the best answer..

- 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.

6. Ramon, a Filipino, executed a will in Manila, where he left his house and located in BP Homes Paraaque in favor of his Filipino son, Ramgen. Ramons 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?

- 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.

7. Even if the applicable law is a foreign law, a court in the Philippines may be constrained to apply Philippine law under any of the following instances, **except**:

- 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.

8. 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?

- a) Chinese law
- b) Philippine law
- c) Indonesia law
- d) Japanese law

9. 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?

- a) Thailand law
- b) Philippine law
- c) Singapore law
- d) Japanese law

10. 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?

- a) American law
- b) Philippine law
- c) Canadian law
- d) Japanese law

11. 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?

- a) Japanese law
- b) Philippine law
- c) French law
- d) Malaysian law

12. In the absence of contrary stipulation in a marriage settlement, property relations of Filipino spouses shall be governed by ---

- 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.

13. The will of a Filipino executed in a foreign country ---

- 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.

14. 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?

- a) American law

- b) Philippine law
- c) Australian law
- d) Japanese law

(Facts for item numbers 15-18)

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.

15. What is the current status of the marriage of Charice and Justine under Philippine laws?

- a) Valid
- b) Void
- c) Voidable
- d) Dissolved

16. What id the status of the marriage between Charice and Bugoy under Philippine laws?

- a) Valid
- b) Void
- c) Voidable
- d) Unenforceable

17. What is the status of the marriage between Charice and Bugoy under Philippine laws?

- a) Valid
- b) Void
- c) Voidable
- d) Unenforceable

18. What is the status of the marriage between Regine and James under Philippine laws?

- a) Valid
- b) Void

c) Voidable

d) Unenforceable

19. 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.

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.

20. 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?

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.

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

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 annulled.

d) The donation is valid.

22. 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.

- 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.

23. Separation of property between spouses during the marriage may take place only:

- 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.

24. The husband may impugn the legitimacy of his child but not on the ground that:

- 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.

25. A marriage is void if:

- 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

26. In legal separation, which is not correct?

- 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) The prosecuting attorney has to conduct his own investigation.

27. A husband by chance discovered hidden treasure on the paraphernal property of his wife. Who owns the discovered treasure?

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

28. Which of the following marriages is void for reasons of public policy?

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

29. The following constitute the different circumstances or case of fraud which will serves as ground for the annulment of a marriage, except?

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.

30. Which of the following is not a requisite for a valid donation propter nuptias?

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.

31. Who are illegitimate children?

- 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.

32. An illegitimate child may use the surname of his father when his filiation is established in any of the following instances, **except**:

- 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.

33. 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.

- a) 30 and 15
- b) 27 and 16
- c) 50 and 10
- d) 18 and 15

34. Under RA 8043, a child qualified to be adopted is any person below _____ years old.

- a) 18
- b) 21
- c) 15
- d) 16

35. Which of the following DOES NOT result in permanent termination of parental authority?

- 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.

36. 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**:

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.

37. Which of the following statements is **wrong**?

a) The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received.

b) The possessor in bad faith has right of reimbursement for necessary expenses and those for the production, gathering and preservation of the fruits.

c) The possessor in bad faith is not entitled to a refund of ornamental expenses.

d) The possessor in bad faith is entitled to a refund of useful expenses.

38. Which phrase most accurately completes the statement The expenses incurred in improvements for the luxury or mere pleasure shall not be refunded to the possessor in bad faith:

a) but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them.

b) and he may not remove the objects for which such expenses have been incurred.

c) and he may not remove the objects for which such expenses have been incurred, unless he pays the value they may have at the time he entered into possession.

d) but he may remove the objects for which such expenses have been incurred.

39. The following are the limitations on the right of ownership imposed by the owner himself, **except**:

a) Will/Succession

b) Mortgage

c) Pledge

d) Lease

40. A plenary action for the recovery of the possession of real estate, upon mere allegation and proof of a better right thereto, and without allegation of proof of title. This action can only be brought after the expiration of one (1) year. What action is being referred to?

- a) Accion publiciana
- b) Accion reivindicatoria
- c) Accion interdictal
- d) Quieting of Title

41. Action to recover real property based on ownership. Here, the object is the recovery of the dominion over the property as owner. What action is being referred to?

- a) Accion publiciana
- b) Accion reivindicatoria
- c) Accion interdictal
- d) Quieting of Title

42. A summary action to recover physical or material possession only and must be brought within one (1) year from the time the cause of action arises. What action is being referred to?

- a) Accion publiciana
- b) Accion reivindicatoria
- c) Accion interdictal
- d) Quieting of Title

43. The following things are property of public dominion, except:

- a) ports and bridges constructed by the State.
- b) vehicles and weapons of the Armed Forces of the Philippines.
- c) rivers.
- d) lands reclaimed by the state from the sea.

44. Which of the following statements is **wrong**?

- a) patrimonial property of the state, when no longer intended for public use or for public service, shall become property of public dominion.
- b) all property of the State, which is not of public dominion, is patrimonial property.

c) The property of provinces, cities and municipalities is divided into property for public use and patrimonial property.

d) Property is either of public dominion or of private ownership.

45. The following cannot ask for the reduction of inofficious donation, **except:**

a) Creditors of the deceased

b) Devisees or legatees

c) Compulsory heirs of the donor

d) The surviving spouse of the donee.

46. Donation is perfected from the moment ---

a) the donee accepts the donation.

b) the donor executes the deed of donation.

c) the donor knows of the donees 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 formers acceptance.

47. The following are the elements of an obligation, **except:**

a) Juridical/Legal Tie

b) Active subject

c) Passive subject

d) Consideration

48. It is a conduct that may consist of giving, doing, or not doing something.

a) Obligation

b) Juridical necessity

c) Prestation

d) Contract

49. 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.

a) Quasi-contract

b) Quasi-delict

c) Contract

d) Delict

50. The following are the elements of quasi-delict, **except**:

a) Act or omission

b) Fault/negligence

c) Damage/injury

d) Pre-existing contract

51. A debtor is liable for damages in case of delay if he is guilty of any of the following, **except**:

a) default (mora)

b) mistake

c) negligence (culpa)

d) breach through contravention of the tenor thereof

52. This term refers to a delay on the part of both the debtor and creditor in reciprocal obligations.

a) Mora accipiendi

b) Mora solvendi

c) Compensation morae

d) Solution indibiti

53. The following are the requisites of mora solvendi, **except**:

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.

54. It is an intentional evasion of the faithful performance of the obligation.

a) Negligence

- b) Fraud
- c) Delay
- d) Mistake

55. The following are the requisites of fortuitous event, **except**:

- 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.

56. 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**:

- 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.

57. 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?

- a) Buko can 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.

58. 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?

- 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.

59. 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?

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.

60. 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?

a) ₱ 200,000.00

b) ₱ 300,000.00

c) ₱ 100,000.00

d) ₱ 150,000.00

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

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.

62. The following are the requisites of legal compensation, **except**:

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.

63. Which of the following statements is **correct**?

- a) All contracts are perfected by mere consent.
- b) All contracts are perfected by delivery of the object.
- c) All contracts are required to be in writing.
- d) All contracts are required to have a valid consideration.

64. It is a principle which holds that parties are bound not only by what has been expressly provided for in the contract but also to the natural consequences that flow out of such agreement.

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

65. 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.

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

66. 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.

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

67. 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.

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

68. The following are the ways by which innominate contracts are regulated, **except:**

- 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.

69. An offer becomes ineffective on any of the following grounds, **except:**

- 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.

70. Which of the following statements is **correct?**

- 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.

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

- 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.

72. The following are rescissible contracts, **except:**

- a) Entered into by guardian whenever ward suffers damage more than of value of property.
- b) Agreed upon in representation of absentees, if absentee suffers lesion by more than of value of property.
- c) Contracts where fraud is committed on creditor (accion pauliana).
- d) Contracts entered into by minors.

73. The following are the requisites before a contract entered into in fraud of creditors may be rescinded, **except:**

- 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.

74. The following are the characteristics of a voidable contract, **except:**

- 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.

75. The following are void contracts, **except:**

- a) Pactum commissorium
- b) Pactum de non alienando
- c) Pactum leonina
- d) Pacto de retro

76. 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.
- b) As a matter of course.
- c) If the amount borrowed is very large.
- d) If the lender so demands at the maturity date.

77. 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:

- a) Joint and subsidiary
- b) Principal and solidary
- c) Principal and joint
- d) Subsidiary and solidary.

78. The creditor has the right to the fruits of the thing from the time:

- a) the thing is delivered.
- b) the obligation to deliver the things arises.
- c) the contract is perfected.
- d) the fruits are delivered.

79. If one of the parties to the contract is without juridical capacity, the contract is:

- a) voidable
- b) rescissible
- c) void
- d) unenforceable

80. When both parties to the contract are minors, the contract is:

- a) voidable
- b) rescissible
- c) void
- d) unenforceable

81. When the consent of one of the parties was vitiated, the contract is:

- a) voidable
- b) rescissible
- c) void

d) unenforceable

82. An obligation which is based on equity and natural law is known as:

a) pure

b) quasi-contract

c) civil

d) natural

83. Consent was given by one in representation of another but without authority. The contract is:

a) voidable

b) rescissible

c) void

d) unenforceable

84. 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 ---

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.

85. Which of the following contracts is void?

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.

86. Which of the following expresses a correct principle of law? Choose the best answer.

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 annulable if employed not by a contracting party but by a third person.

c) A threat to enforce ones 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.

87. 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?

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.

88. Which of the following statements is **wrong**?

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.

89. Which phrase most accurately completes the statement Any third person who induces another to violate his contract:

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.

90. The requisites of succession are as follows, **except**:

a) Death of decedent

b) Transmissible estate

c) Existence and capacity of successor, designated by decedent or law

d) Payment of Taxes

91. The characteristics of succession are as follows, **except:**

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.

92. The following rights are extinguished by death, **except:**

a) Legal support

b) Parental authority

c) Right to inherit

d) Agency

93. The attestation clause contains the following, **except:**

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.

94. The following are the formalities required in the execution of holographic will, **except:**

a) Entirely written;

b) Dated;

c) Signed by testator *himself*

d) Notarized by a notary public.

95. The following are the grounds for disallowance of wills, **except:**

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.

96. 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?

- a) reserva troncal
- b) preterition
- c) fideicommissary
- d) disposicion captatoria

97. 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?

- a) reserva troncal
- b) preterition
- c) fideicommissary
- d) disposicion captatoria

98. 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:

- 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.

99. 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?

- a) Option Contract
- b) Contract to Sell
- c) Contract of Sale

d) Lease

100. Which of the following contracts of sale is void?

- a) Sale of EGMs car by KRP, EGMs agent, whose authority is not reduced into writing.
- b) Sale of EGMs piece of land by KRP, EGMs agent, whose authority is not reduced into writing.
- c) Sale of EGMs car by KRP, a person stranger to EGM, without EGMs consent or authority.
- d) Sale of EGMs piece of land by KRP, a person stranger to EGM, without EGMs consent or authority.

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

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**2012 BAR EXAMINATIONS
CIVIL LAW**

14 October 2012

10 A.M.-12 NN.

Set B

**ESSAY TYPE QUESTIONS
INSTRUCTIONS**

The following questionnaire consists of ten (10) questions (numbered I to X) contained in FIVE (5) pages.

Begin your answer to each numbered question on a separate page; an answer to a sub-question/s under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the question directly and concisely. Do not repeat the question. Write legibly.

HAND IN YOUR NOTEBOOK. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOOD LUCK!!!

MARTIN S. VILLARAMA, JR.
Chairperson
2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS SIX (6) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

CIVIL LAW

I

a) 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 Robertos action prosper? Explain. (5%)

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%)

II

a) 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-Chatos 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. (5%)

b) 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. (5%)

III

a) 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. (5%)

b) 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. (5%)

IV

a) 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 Christians sexual infidelity. Will the action prosper? Explain. (5%)

b) Honorato filed a petition to adopt his minor illegitimate child Stephanie, alleging that Stephanies mother is Gemma Astorga Garcia; that Stephanie has been using her mothers middle name and surname; and that he is now a widower and qualified to be her adopting parent. He prayed that Stephanies middle name be changed from "Astorga" to "Garcia," which is her mothers 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 Hororatos request for Stephanies use of her mothers surname as her middle name? Explain. (5%)

V

a) 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 childrens parents by naming them Michelle P. Lim and Michael Jude Lim. Subsequently, Monina married Angel Olario after Primos 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. (5%)

b) 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 Borrromeo. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to Borrromeo.

Borrromeo discovered that titles to the three (3) lots have been transfereed in the name of Descallar. Who is the rightful owner of the properties? Explain. (5%)

VI

a) 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.

1) Is the payment of interest valid? Explain. (3%)

2) Is solution indebiti applicable? Explain. (2%)

b) 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 grandniece 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. (5%)

VII

a) 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. (5%)

b) 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 Regional Trial Court. Joshur vehemently objected because he was preterited.

1) Should the will be admitted to probate? Explain. (2%)

2) Are the testamentary dispositions valid? Explain. (2%)

3) Is the testamentary prohibition against the division of the London estate valid? Explain. (1%)

VIII

a) 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. Frnaco 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? (5%)

b) 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?

IX

a) Does the right to request for the issuance of a writ of possession over a foreclosed real property prescribe in five (5) years? (5%)

b) 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. (5%)

X

a) A contract to sell is the same as a conditional contract of sale. Do you agree? Explain your answer. (5%)

b) A partner cannot demand the return of his share (contribution) during the existence of a partnership. Do you agree? Explain your answer. (5%)

- NOTHING FOLLOWS -

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