

**Set A**

**MULTIPLE CHOICE QUESTIONS (MCQs)  
INSTRUCTIONS**

The following questionnaire consists of fifty (50) MCQs numbered 1 up to 50 contained in FOURTEEN (14) 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.

Do not explain your answers in the MCQ portion of the exam. You will not earn any credit for that.

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 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 Memorandum Writing Test.

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

**GOODLUCK!!!**

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**MARTIN S. VILLARAMA, JR.**

*Chairperson*

*2012 Bar Examinations Committee*

**PLEASE CHECK THAT THIS SET CONTAINS FIFTEEN (15) PAGES (INCLUDING THIS PAGE).**

**WARNING: NOT FOR SALE OR UNAUTHORIZED USE**

**LEGAL ETHICS AND PRACTICAL EXERCISES**

1. Atty. Galing is a Bar topnotcher. He has been teaching major subjects in a law school for eight (8) years and has mastered the subjects he is handling. Is he exempt from the MCLE requirement?

- a. No, eight (8) years experience is not enough.
  - b. Yes, since he has mastered what he is handling.
  - c. Yes, professors of law are exempted.
  - d. No, since he is not yet a Bar reviewer.
2. Atty. Rey has been a professor in the Legal Management Department of Y University for thirty (30) years. He teaches Constitution, Obligation and Contracts, Insurance, Introduction to Law. Is he exempted from the MCLE requirement?
    - a. Yes, because his teaching experience is already more than ten (10) years.
    - b. No, because he is not teaching in the College of Law.
    - c. Yes, because of his field of knowledge and experience.
    - d. No, because Y University is not accredited.
  3. The term of Dean Rex of X College of Law expired in the first year of the third compliance period. Does his exemption extend to the full extent of said compliance period?
    - a. No, he must comply with all the unit requirements.
    - b. Yes, to the full extent.
    - c. No, but comply proportionately.
    - d. Yes, but he must apply for exemption.
  4. What is the duration of MCLE Compliance Period?
    - a. Twelve (12) months;
    - b. Twenty four (24) months;
    - c. Thirty six (36) months;
    - d. Eighteen (18) months.
  5. When does compliance period begin?
    - a. When the lawyer actually begins law practice;
    - b. Upon admission/readmission to the Bar;
    - c. 01 October 2009;
    - d. 01 October 2006.
  6. Does the MCLE requirement apply at once to a newly-admitted lawyer?
    - a. Yes, if admitted to the Bar and there are four (4) more months remaining of the compliance period.
    - b. No, wait for the next compliance period.
    - c. Yes, if he will start law practice immediately.
    - d. Yes, if more than one (1) year remains of the compliance period.
  7. What is the purpose of MCLE?
    - a. To conform with the requirements of international law.
    - b. To provide a venue to improve fraternal relations among lawyers.
    - c. To keep abreast with law and jurisprudence and to maintain the ethical standards of the profession.
    - d. To supplement legal knowledge due to substandard law schools.
  8. Atty. Aga was appointed as Treasurer by the IBP President with the approval of the Board of Governors for a term coterminous with that of the President. A year thereafter, Atty. Aga ran as Barangay Chairman of their place, and took a leave of absence for two (2) weeks to campaign. May Atty. Aga re-assume as Treasurer after his leave of absence?
    - a. Yes, since he lost in the election.
    - b. No, because he was deemed resigned upon filing of his certificate of candidacy.
    - c. Yes, because his position as Treasurer is coterminous with the President of the IBP.
    - d. No, because he should first seek the approval of the IBP Board of Governors before running as Brgy. Chairman.
  9. Atty. Magtanggol of the PAO was assigned to defend X who is accused of Slight Physical Injury before the MTC of a far-flung town. During the trial, P02 Tulco appeared in court on

behalf of the complainant. Atty. Magtanggol objected to his appearance since the policeman is not a member of the Bar.

- a. The objection is valid. It should be the public prosecutor who should prosecute the criminal action.
- b. Atty. Magtanggol is just afraid that his client may be convicted through the efforts of a non-lawyer.
- c. In the courts of a municipality, a party may conduct his litigation in person or with the aid of an agent or friend.
- d. If a public prosecutor is not available, at least a private prosecutor who must be a lawyer should be designated.

10. Bong Tupak, a second year law student, was charged in the RTC for Forcible Abduction with Rape. Having knowledge of criminal law and procedure, he dismissed the counsel de officio assigned and appeared for himself. He asserted that there was lack of force. Eventually, the RTC found him guilty of Consented Abduction and imposed the penalty. Bong Tupak now assails the decision, saying that there was a violation of due process because he was allowed to appear by himself and he did not know that Consented Abduction is a crime. Decide.

- a. An accused before the RTC may opt to defend himself in person and he cannot fault others for his decision.
- b. The RTC should have appointed a counsel de officio to assist the accused even if not sought or requested by the accused.
- c. There was violation of due process. There is disparity between the expertise of a public prosecutor and the inexperience of a 2nd year law student.
- d. A 2nd year law student has sufficient knowledge of criminal law and procedure, hence, he is competent to defend himself.

11. RTC Judge Bell was so infuriated by the conduct of Atty. X who conveniently absents himself when his clients do not pay his appearance fee in advance. Atty. X also uses disrespectful and obscene language in his pleadings . . . At one point, when his case was called for hearing, Atty. X did not appear for his client although he was just outside the door of the court room. Judge Bell directed the client to summon Atty. X, but the latter refused. Judge Bell then issued an Order directing Atty. X to explain why no disciplinary action shall be imposed on him for this misconduct but he refused the directive. Decide.

- a. RTC Judge Bell can suspend Atty. X from the practice of law before his sala.
- b. The case of Atty. X can be dismissed due to non-appearance of counsel even though the party was present.
- c. The hearing of the case should be rescheduled in the interest of justice.
- d. The court can admonish the client for the unprofessional conduct of his lawyer and ask him to change his lawyer.

12. Debbie, topnotcher of their class, is now on her 4th year law studies and has enrolled in the legal aid clinic of the law school. She was assigned to handle a domestic violence and support case filed by their client against her husband. During the hearing, the clinic's supervising attorney introduced Debbie to the Branch Clerk of Court and then left to oversee another intern. In the midst of the proceedings, opposing counsel objected to the appearance of Debbie because she is not yet a lawyer. Decide.

- a. Debbie can proceed because the law student practice rule allows a student who has finished 3rd year of the regular course to appear without compensation before a trial court.
- b. Debbie can proceed since she is appearing only during the trial and did not sign the pleadings.
- c. Debbie cannot proceed without the presence of their clinic's supervising attorney.
- d. Debbie has proven her capability to handle the case and opposing counsel is

objecting only now because he might lose to a law student.

13. Atty. Quiso was the retained counsel for Alfa Security Agency and handled all the cases involving the company. Adam, the Assistant Manager of the agency, hired Atty. Quiso when he was sued in an ejectment case. Later, Adam was fired from the agency. Adam did not return a vehicle and so, Atty. Quiso - as counsel for the security agency - filed a replevin suit. Adam moved for Atty. Quiso's disqualification considering that the ejectment case is still pending. Is there conflict of interest?
  - a. No, the cases are totally unrelated and there is no occasion to unduly use confidential information acquired from one case in the other.
  - b. No, Atty. Quiso is duty bound to handle all cases of his client, including the replevin case against Adam.
  - c. Yes, proscription is against representation of opposing parties who are present clients or in an unrelated action.
  - d. Yes, Atty. Quiso must withdraw as counsel for Adam, otherwise he will lose his retainer.
14. Mr. Joseph, owner of an investment house, consulted a friend, Atty. Miro, about a potential criminal action against him because he cannot pay investors due to temporary liquidity problems. Atty. Miro asked Mr. Joseph to transfer to him all assets of the firm and he will take charge of settling the claims and getting quitclaims. A month later, Mr. Joseph was surprised to receive a demand letter from Atty. Miro, as counsel for all the claimants, for the pay back of their investments. After a while, Mr. Joseph received releases and quitclaims from the investors, with desistance from filing criminal action against him. Atty. Miro later told Mr. Joseph that he sent the demand letter so he can claim attorney's fee. Was there a conflict of interest?
  - a. No, there was no formal engagement of Atty. Miro as counsel for Mr. Joseph.
  - b. Yes, by giving legal advice to Mr. Joseph, the latter became a client of Atty. Miro.
  - c. No, there is no attorney-client relationship between Mr. Joseph and Atty. Miro as no attorney's fee was charged nor paid to the latter.
  - d. Yes, because Atty. Miro was representing Mr. Joseph when he disposed the assets to pay off the claims.
15. Atty. Gelly passed the Bar in 1975. After taking his oath, he did not enlist in any IBP chapter because he went to the USA to pursue a Master's Degree. Eventually, he passed the state bar and specialized in Immigration law. In 2005, he returned to the Philippines and was but the IBP is charging him from 1975 up to the present and threatening him with expulsion if he does not comply. Is the IBP correct?
  - a. Atty. Gelly cannot be compelled to pay the IBP dues because he was not engaged in the practice of law from 1975-2005.
  - b. Atty. Gelly is exempt from 1975-2005 because he was out of the country.
  - c. Atty. Gelly should pay the dues from 1975 to the present since membership in the IBP is compulsory.
  - d. Atty. Gelly should not pay because the rule on bar integration is unconstitutional for compelling a lawyer to join an association.
16. Mr. Joey owns a 5-hectare parcel of land which is being expropriated as market site. The government is offering only Php 15 per sqm while Mr. Joey deserves Php 20 per sqm. Atty. Al agreed to represent Mr. Joey in the expropriation case on contingent basis in that his attorney's fees shall be the excess of Php 20 per sqm. Due to expert handling, the expropriation court awarded Mr. Joey the fair market value of Php 35 per sqm. Mr. Joey complained to the court that the attorney's fee being charged is excessive as it amounts to about 63% of the award. Decide.
  - a. A retainer's agreement, as a contract, has the force of law between the parties and

must be complied with in good faith.

- b. It was the excellent handling of the case that resulted in a bigger award; hence, it is fair that Atty. Al should be rewarded with the excess.
  - c. Mr. Joey got the desired valuation for his land. So, he must honor his contract with Atty. Al.
  - d. Attorney's fees is always subject to court supervision and may be reduced by the court based on quantum meruit.
17. Atty. Atras was the counsel for Mr. Abante. Soon after the case was submitted for decision, Mr. Abante got the files and informed Atty. Atras that he was hiring another lawyer. On that same day, a copy of the decision was received by Atty. Atras but he did not do anything anymore. He also failed to file his withdrawal, and no appearance was made by the new counsel. When Mr. Abante found out about the adverse decision, the period to appeal had lapsed. Was service to Atty. Atras effective?
- a. Yes, Atty. Atras is still considered the counsel of record until his withdrawal of appearance has been actually filed and granted.
  - b. Service should be done on Mr. Abante because he had already severed lawyer-client relationship with Atty. Atras.
  - c. Service should be done on the new counsel as soon as he enters his appearance.
  - d. Service upon Atty. Atras is not effective because his services have already been terminated by the client.
18. Atty. Utang borrowed from Y Php 300,000.00 secured by a post dated check. When presented, the check was dishonored. Y filed a BP 22 case in court, and a disbarment complaint with the IBP. In the latter case, Atty. Utang moved for dismissal as the act has nothing to do with his being a lawyer and that it is premature because the case is pending and he is entitled to presumption of innocence. Should the disbarment complaint be dismissed?
- a. No, because lawyers may be disciplined for all acts, whether professional or private.
  - b. Yes, there is no conviction yet.
  - c. Yes, BP 22 does not involve moral turpitude.
  - d. No, unless he pays the amount of the check to the satisfaction of Y.
19. Atty. Juan Cruz of the Cruz, Cruz and Cruz Law Office personally handled a damage case of Mr. Gonzalo which resulted in an award of Php 500,000.00. The writ of execution was served by Sheriff Onoy, but resulted in recovery of only Php 70,000.00. Mr. Gonzalo was unsatisfied and filed an administrative complaint. When informed, Sheriff Onoy berated and threatened Mr. Gonzalo; and for this, the Sheriff was charged with Grave Threat. Atty. Pedro Cruz of the same Cruz, Cruz and Cruz Law Office appeared as defense counsel pro bono. Mr. Gonzalo seeks his disqualification. Decide.
- a. No conflict of interest. The Grave Threat case arose out of a different factual scenario.
  - b. There is conflict of interest because both Atty. Juan Cruz and Atty. Pedro Cruz belong to one law office.
  - c. No conflict of interest since the court case was wholly handled by Atty. Juan Cruz. The law office did not participate in any way.
  - d. No conflict of interest. No likelihood that information in the civil case can be used in the criminal case.
20. Atty. Lorna, a legal officer of a government agency, and Chona, a nurse in the medical department, were best friends. At one time, Chona consulted Atty. Lorna about a legal matter, revealing that she is living with a married man and that she has a child out of wedlock fathered by another man. Later, the relation between Atty. Lorna and Chona soured. When Chona applied for promotion, Atty. Lorna filed immorality charges against Chona utilizing

solely the disclosure by the latter of her private life. Chona objected and invoked confidentiality of information from attorney-client relationship. Decide.

- a. There is no attorney-client relationship because, being in the government, Atty. Lorna is disallowed from practicing her profession.
  - b. No lawyer-client relationship privilege because the information was given as a friend, and not as a lawyer.
  - c. Personal secrets revealed to Atty. Lorna for the purpose of seeking legal advice is covered by attorney-client privilege.
  - d. There is no attorney-client relationship because no attorney's fee was paid to Atty. Lorna.
21. Atty. Nelson recently passed the Bar and wanted to specialize in marine labor law. He gave out calling cards with his name, address and telephone number in front, and the following words at the back: "We provide legal assistance to overseas seamen who are repatriated due to accident, illness, injury, or death. We also offer FINANCIAL ASSISTANCE." Does this constitute ethical misconduct?
- a. No, clients have freedom in the selection of their counsel.
  - b. No, use of a professional card is a lawful way of announcing his services as a professional.
  - c. Yes, because the offer of financial assistance is an undignified way of luring clients.
  - d. Yes, because the offer of assistance is stated at the back.
22. Which of these does not constitute competent evidence of identity?
- a. Passport;
  - b. SSS card;
  - c. Community Tax Certificate;
  - d. Senior Citizen Card.
23. A recovery of ownership complaint was filed by the Dedo and Dedo Law Firm, through Atty. Jose Dedo as counsel. During all the phases of trial, it was Atty. Jose Dedo who appeared. Unfortunately, Atty. Jose Dedo died before completion of trial. Notices and orders sent to the Dedo and Dedo Law Firm were returned to the court with the manifestation that Atty. Dedo already died and requesting the court to directly send the matters to the client. Is this proper?
- a. No, the law firm- through another lawyer - should continue to appear for the client.
  - b. Yes, because the death of the handling lawyer terminates the attorney-client relationship.
  - c. Yes, because attorney's fees was not paid to the law firm.
  - d. No, it will be unjust for the client to pay another lawyer.
24. Which of these is not a ground for disbarment?
- a. Conviction of a crime involving moral turpitude.
  - b. Belligerent disobedience to a lawful order of a trial court.
  - c. Malpractice or other gross misconduct in office.
  - d. Grossly immoral conduct.
25. (unread text)

Supreme Court are handled by:

- a. Clerk of Court of the Supreme Court
  - b. Ombudsman
  - c. Presiding Justice of the Court of Appeals
  - d. Office of the Court Administrator
26. Atty. Aimee was convicted by final judgment of Estafa Thru Falsification of a Commercial Document, a crime involving moral turpitude. What is the appropriate penalty?

- a. Disbarment
  - b. Indefinite suspension
  - c. Suspension for three (3) years
  - d. Admonition
27. During the IBP Chapter elections, the candidates for President were Atty. EJ, a labor arbiter of the NLRC, Fiscal RJ of the DOJ and Atty. Gani of the PAO. After canvass, Fiscal RJ garnered the highest number of votes, followed by Arbiter EJ and by Atty. Gani. The winning Vice-President moved for the annulment of the election for President because all the candidates for President are government officials and are disqualified. Decide.
- a. The election for presidency is invalid, and the elected Vice-President shall assume the Presidency by succession.
  - b. The election is a failure, and new elections should be held.
  - c. Fiscal RJ and Arbiter EJ are disqualified. Atty. Gani should be declared winner.
  - d. All the candidates who are government officials are deemed resigned upon their acceptance of nomination; and so, Fiscal RJ is winner.
28. Atty. Edad is an 85 year old lawyer. He does not practice law anymore. However, his IBP Chapter continues to send him notices to pay his IBP dues of more than ten (10) years with warning that failure to comply will result in the removal of his name. Piqued by this, Atty. Edad filed with the IBP Secretary a sworn letter notifying that he is voluntarily terminating his membership with the IBP. Should he be allowed?
- a. No, because membership in IBP is compulsory for all lawyers.
  - b. Yes, an erstwhile IBP member may terminate his membership for good reasons.
  - c. No, that is only a ploy to evade payment of IBP dues.
  - d. Yes, it will violate his right not to join an association.
29. Who elects the members of the Board of Governors of the IBP?
- a. The Presidents of all IBP Chapters;
  - b. The members at large of the IBP;
  - c. The House of Delegates;
  - d. The Past Presidents of all IBP chapters.
30. Who elects the President and Vice-President of the IBP?
- a. The President of all IBP Chapters;
  - b. The IBP members voting at large;
  - c. The Board of Governors;
  - d. The outgoing IBP officers.
31. A judge or judicial officer is disqualified to hear a case before him wherein a party is related to him by consanguinity or affinity -
- a. up to the 6th degree;
  - b. up to the 5th degree;
  - c. up to the 4th degree;
  - d. up to the 3rd degree.
32. A judge or judicial officer should inhibit himself from hearing a case before him where the counsel for either party is a relative by consanguinity or affinity -
- a. up to the 3rd degree;
  - b. up to the 4th degree;
  - c. up to the 5th degree;
  - d. up to the 6th degree.
33. Victor has been legally separated from his wife, Belen for fifteen (15) years. He has found true love and happiness with Amor and they lived together as husband and wife. Amor convinced Victor to study law and gave him financial support. Recently, Victor passed the 2011 Bar Examinations. Upon knowing this, Belen filed a complaint against Victor for

immorality. Should Victor be allowed to take oath as an attorney?

- a. Yes, his relationship with Amor is imbued with genuine love and cannot be considered immoral and indecent.
  - b. Yes, legal separation does not allow the spouses to remarry.
  - c. No, because legal separation does not dissolve the marriage and, therefore, Victor's relationship with Amor is still considered illicit.
  - d. Yes, it is totally unfair for Belen to complain since they have lived separate lives.
34. Judge Nancy personally witnessed a vehicular accident near his house. Later, the Reckless Imprudence case was raffled to his sala. Is there a valid ground for his inhibition?
- a. No, he is not acquainted nor related with any of the parties or lawyer.
  - b. No, his personal knowledge of what actually happened will even ensure that he will decide the case justly on the basis of the true facts.
  - c. Yes, because a judge should decide a case on the basis of the evidence presented before him and not on extraneous matters.
  - d. No, because there is no ground for disqualification and no motion for inhibition.
35. Judge Ramon obtained a two (2) year car loan from a financing company. He never paid a single amortization. After the lapse of two (2) years, the financing company filed an administrative complaint against the judge for willful failure to pay a just debt. Is the judge administratively liable?
- a. No, since the loan is not connected with his judicial function.
  - b. Yes, because a judge should avoid impropriety or the appearance of impropriety even in his private dealings.
  - c. No, the financing company should have availed of the remedy of foreclosure.
  - d. No, because the administrative charge is only meant to force the judge to pay.
36. Bong, son of Judge Rey, is a fourth year law student. He helped his friend prepare an affidavit-complaint for Violation of Batas Pambansa Big. 22. After drafting, they showed it to Judge Rey who made some corrections. Later, the BP 22 case was raffled to Judge Rey who tried and convicted the accused. Was there impropriety?
- a. Yes, since Judge Rey was not a fair and impartial judge.
  - b. No, the evidence for the prosecution was strong and sufficient to prove guilt beyond reasonable doubt.
  - c. No, because any other judge would also have convicted the accused.
  - d. No, those matters were not known to the accused.
37. Atty. Fred is a law practitioner and headed a law firm bearing his name and those of his partners. When Atty. Fred was elected as Congressman, his client's needs were handled by the other partners. Later, A, a newly proclaimed congressman-friend, faced an election protest before the HRET, and sought the help of Congressman Fred who immediately directed his law firm to appear for A. 8, the protestant, sought the disqualification of Congressman Fred's law firm from appearing before the HRET because Congressman Fred is prohibited from practicing his profession. Decide.
- a. Yes, Congressman Fred's law firm is disqualified because Congressman Fred may exercise undue influence on his peers who are members of HRET.
  - b. No, the law firm is not disqualified because it is another partner, and not Congressman Fred who is appearing.
  - c. No, the prohibition is on Congressman Fred from personally appearing, and not to his partners.
  - d. Yes, the spirit of the prohibition is clearly to avoid influence and cannot be indirectly circumvented.
38. Vice-Mayor Ron is a well-loved law practitioner because he assists his constituents, especially the indigents. Ed, one of his friends who is employed as Cashier in the Register of

Deeds, sought his assistance because he was charged with Malversation in court. Can Vice-Mayor Ron appear as counsel of Ed?

- a. Yes, members of the Sanggunian are allowed to practice their profession.
- b. No, because Ed is charged with an offense in relation to his office.
- c. Yes, since the position of Ed does not pertain to the local government.
- d. No, because all criminal cases are against the government.

39. Atty. Noe was elected Vice-Governor and continued with his law practice. Later, the governor went on sick leave for one (1) year and Atty. Noe was designated as Acting Governor. Since hearings have already been set, can Atty. Noe continue appearing as counsel in the cases handled by him?

- a. Yes, because his election is only as Vice-Governor, and his delegation as Governor is only temporary.
- b. Yes, but only for the hearings that have already been set.
- c. Yes, provided Atty. Noe seeks the permission of DILG.
- d. No, all governors- even under acting capacity- are prohibited from exercising their profession.

40. Atty. Dude is the COMELEC Officer in a very distant municipality. He is the only lawyer in that area. When election period is over, he has much spare time. Many people go to him for counseling, legal advice, preparation of documents of Sale, Mortgage and the like. He does not charge a fee in money, but he receives gifts which are offered. Is there impropriety?

- a. Yes, giving legal advice and preparing legal documents, even if free, constitutes private practice of law, which is prohibited of government employees.
- b. No, it is only giving of advices, and not court appearance.
- c. Yes, because Atty. Dude accepts gifts.
- d. No, since Atty. Dude does not accept money.

41. A notary public is required to record chronologically the notarial acts that he performs in the:

- a. Notarial Book;
- b. Roll of Documents Notarized;
- c. Notarial Register;
- d. Notarial Loose Leafs Sheets.

42. A party to a contract does not know how to write. Neither can he affix his thumbmark because both hands were amputated. How will that person execute the contract?

- a. Ask the party to affix a mark using the toe of his foot in the presence of the notary public and two (2) disinterested and unaffected witnesses to the instrument.
- b. Ask the party to hold the pen with his teeth and affix a + mark to be followed by the signature of one friend.
- c. The party may ask the notary public to sign in his behalf.
- d. None of the above.

43. The reports of a Notary Public are submitted to the:

- a. Executive Judge;
- b. Court Administrator;
- c. Notarial Archives;
- d. Clerk of Court.

44. Atty. Tony is a 25 year old Filipino lawyer. He has been a resident in Paranaque City for about ten (10) years and holds office in his residence. He filed a petition for appointment as Notary Public in Paranaque and has clearance from the I BP and the Bar Confidant. However, it appears that while still a college student, he was convicted by a Laguna Court for Reckless Imprudence Resulting in Damage to Property. During the summary hearing of his petition, the offended party therein strongly objected on that ground. Can Atty. Tony be appointed?

- a. No, because he has a previous criminal record.

- b. No, because of the opposition.
  - c. Yes, the offense of Reckless Imprudence does not involve moral turpitude.
  - d. Yes, since the Reckless Imprudence case did not happen in the jurisdiction where Atty. Tony is applying.
45. What is the effect when the parties to a document acknowledged before a notary public did not present competent evidence of identity?
- a. Voidable;
  - b. Valid;
  - c. Invalid Notarization;
  - d. Unenforceable.
46. The petition for appointment as a notary public should be filed with:
- a. The Office of the Court Administrator;
  - b. The Clerk of Court;
  - c. The MeTC Executive Judge;
  - d. The RTC Executive Judge.
47. What is a retaining lien?
- a. The lawyer who handled the case during the trial stage should continue to be retained up to the appeal.
  - b. The right of the lawyer to be retained as counsel for a party until the entire case is finished.
  - c. The right of a lawyer who is discharged or withdrawn to keep the records and property of the client in his possession until his lawful services have been paid.
  - d. The prerogative of a client's retainer to recover out-of-pocket expenses.
48. For grave misconduct, a lawyer was suspended from the practice of law indefinitely. Is he still obliged to pay his IBP dues during his suspension?
- a. Yes, as he continues to be a lawyer and a member of the IBP.
  - b. No, because indefinite suspension is practically disbarment.
  - c. No need to pay IBP dues because he cannot practice anyway.
  - d. Pay only after the lifting of the suspension, if it comes.
49. Because of his political beliefs, Atty. Guerra joined a rebel group. Later, he was apprehended and charged with Rebellion in court. A disbarment case was also filed against him. While the case was pending, the government approved a general amnesty program and Atty. Guerra applied for and was granted amnesty. Should the disbarment case be also dismissed automatically?
- a. Yes, because amnesty obliterates the criminal act.
  - b. No, disciplinary action on lawyers are sui generis and general penal principles do not strictly apply.
  - c. No, a lawyer has the duty to maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines.
  - d. Yes, if the Secretary of Justice approves the dismissal.
50. Soon after Atty. Cesar passed the Philippine Bar in 1975, he also took the New York State Bar and passed the same. He practiced law for 25 years in the USA, but he was disbarred therein for insurance fraud. He returned to the Philippines and started to practice law. X, who knew about his New York disbarment, filed a disbarment complaint with the IBP. Decide.
- a. The factual basis for the New York disbarment which is deceit also constitutes a ground for disbarment in the Philippines.
  - b. The acts complained of happened in a foreign country and cannot be penalized here.
  - c. Norms of ethical behavior of lawyers are the same worldwide.
  - d. A lawyer's fitness to become a lawyer must be maintained wherever he may be.

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

**THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.**

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**2012 BAR EXAMINATIONS  
LEGAL ETHICS AND PRACTICAL EXERCISES**

28 October 2012

2:30 P.M. - 5:00 P.M.

**Set B**

**INSTRUCTIONS**

The following questionnaire consists of FIFTEEN (15) pages, including this page.

You are presented with a hypothetical case trial scenario plus research materials (provisions of law and jurisprudence) that you may want to use in your work. These materials are designed to provide sufficient basis for your Memorandum. But you are free to include such laws, rules and principles not provided that you feel will enhance your work. Some of these materials may be irrelevant. Consequently, use your judgment in writing only what is relevant to the position you take.

You are given three things: (a) the case trial scenario, (b) a Draft Pad and (c) Answer Pad. You are free to jot notes or place helpful markings like underlines on the case trial scenario and the enclosed materials. Use the Draft Pad for making a draft of your Memorandum as this will permit you to freely edit and rewrite your work. Editing and rewriting are essential to sound Memorandum Writing.

Budget your time well. The bells will be rung three times. **First bell** will be rung one hour before the end of the exam to signal the need for you to begin transferring your work to your Answer Pad. **Second bell** will be rung 15 minutes before the end of the exam to allow you to wrap up your work. And the **third bell** will be rung to signal the end of the exam. The Answer Pad will be collected whether you are finished or not. The time pressure is part of the exam.

You may prefer to skip the preparation of a draft and write your Memorandum directly on your Answer Pad. That is allowed.

Quality of writing, not length, is desired.

Corrections even on your final Memorandum on the Answer Pad are allowed and will not result in any deduction. Still, it is advised that you write clearly, legibly and in an orderly manner.

You will not be graded for a technically right or wrong Memorandum but for the quality of your legal advocacy.

The test is intended to measure your skills in:

1. communicating in English - 20%;

2. sorting out and extracting the relevant facts - 15%;
3. identifying the issue or issues presented- 15%; and
4. constructing your arguments in support of your point of view - 50%.

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

GOODLUCK!!!

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

**PLEASE CHECK THAT THIS SET CONTAINS FIFTEEN (15) PAGES INCLUDING THESE (INSTRUCTIONS) PAGES.**

**WARNING: NOT FOR SALE OR UNAUTHORIZED USE**

<b>LEGAL ETHICS AND PRACTICAL EXERCISES</b>
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Mr. Henry Chao is charged before the Metropolitan Trial Court (MeTC) Manila with five (5) counts of Violation of Batas Pambansa Big. 22 (B.P. 22). Consider the factual scenario from the testimonies of complainant Mr. Ben Que and accused Mr. Henry Chao.

**Assume to be the Defense Counsel and prepare a MEMORANDUM FOR THE ACCUSED for your client, Mr. Henry Chao.**

**Testimony of Mr. Ben Que**

*(After the cases were called for joint trial)*

P. Prosecutor : Good Morning, Your Honor. Appearing for the prosecution. Ready.

D. Counsel : Good Morning, Your Honor. Appearing as counsel for the accused. Ready.

P. Prosecutor : We are calling to the witness stand, the complainant, Mr. Ben Que, who will prove the commission of the offense.

Court Staff : Mr. Ben Que, do you swear to tell the truth, the whole truth and nothing but the truth in this proceeding?

Witness : Yes, sir.

Court Staff : State your name, age, status and other personal circumstances.

Witness : I am Ben Que, 60 years old, married, and a resident of 123 Tridalo Street, Mandaluyong City

P. Prosecutor : Mr. Que, do you know Mr. Henry Chao who is the accused in this case and, if so, under what circumstances?

Witness : Yes, sir. He is the Manager of Atlas Parts. Last June 01, 2011, accused borrowed from me the amount of ₱ 50,000.00, with 5/o monthly interest, payable in five (5) equal monthly installments of ₱ 12,500.00. He said that the money will be used to pay for their stocks.

P. Prosecutor : Did you execute a document to evidence your transaction?

Witness : As per our agreement, he issued and delivered to me five ( 5) checks.

D. Counsel : Your Honor, please. For the record, I take exception to the statement of the witness that he received checks from the accused. If we closely examine these instruments, it will show that they are NOW slips, that is , Negotiable Order of Withdrawal slips. These are not bills of exchange within the meaning of the Negotiable Instruments Law, and therefore, cannot be considered as checks.

P. Prosecutor : Your Honor, they are still bank instruments. Complainant Mr. Que specifically required the issuance of checks to facilitate and ensure the payment of the obligation, and the accused issued and delivered them for that purpose. Violation of the Bouncing Checks Law is malum prohibitum. The law was enacted to maintain faith in bank instruments for utilization in commercial transactions. We have to apply the spirit of the law.

COURT : Observation noted.

P. Prosecutor : When and where did the accused execute and hand over to you these five (5) instruments?

Witness : On June 01, 2011, at my house in Mandaluyong City, after I gave him in cash the ₱ 50,000.00 that he loaned.

P. Prosecutor : And where are these instruments now?

Witness : Here sir. (Witness handing them to the prosecutor.)

P. Prosecutor : May I manifest for the record the observation that the instruments are of the same size and material as the normal checks and have these check-like features:

NOW Account No. 123456	No. 0001
Atlas Parts	Date: <u>July 1, 2011</u>
PAY TO: <u>Mr. Ben Que</u>	<u>₱ 12,500.00</u>
PESOS: <u>Twelve Thousand</u>	
<u>Five Hundred Pesos</u>	

Sgd. Henry Chao

Alloy Bank  
Pasong Tamo Branch  
Makati

P. Prosecutor : Do you know whose signature is that appearing on the lower right side of this instrument and all the four (4) others, as well?

Witness : Those are the signatures of the accused Henry Chao. I personally saw him sign them and thereafter, handed the five (5) instruments to me.

P. Prosecutor : May I request that No. 0001 dated July 1, 2011 in the amount of ₱ 12,500.00 be marked as Exhibit A for the prosecution; No. 0002 dated August 1, 2011 also in the same amount as Exhibit B; No. 0003 dated September 2, 2011 as Exhibit C; No. 0004 dated October 1, 2011 as Exhibit D; and No. 0005 dated November 1, 2011 as Exhibit E.

COURT : Mark them as requested.

P. Prosecutor : What did you do with these instruments which represented the installment payments of accused for his loan obligation?

Witness : On their respective due dates, I deposited each of them to my Savings Account at BOD Bank, Manila City Hall Branch in Manila, but all of them were dishonored by the drawee, Alloy Bank, for the reason "Account Closed."

P. Prosecutor : What proof do you have that these instruments were dishonored?

Witness : I received several debit advices from BOD Bank together with the returned slips with a stamp at the back stating as follows:

**DISHONORED/RETURNED**

Reason: Account Closed

Officer: Mr. M

P. Prosecutor : May I request that the stamps of dishonor and the reason "Account Closed" appearing at the back of each instrument be correspondingly marked as Exhibits A-1 to E-1, respectively.

COURT : Mark them accordingly.

D. Counsel : I move to strike out this particular testimony for being hearsay. This witness is not competent to testify on these matters pertaining to bank records.

COURT : Does the defense deny that all five (5) instruments were dishonored and returned to the witness?

D. Counsel : No, Your Honor. But these matters should be testified on by the bank personnel.

COURT : Motion to strike is denied.

P. Prosecutor : What action did you take?

Witness : After each dishonor, I personally went to Mr. Chao and demanded that he make good his commitment, but he merely ignored my demands.

P. Prosecutor : What did you do then after all the five (5) instruments were dishonored and your demands ignored?

Witness : I consulted a lawyer and he advised me to send a formal demand letter to the accused, which I did. On January 2, 2012, I sent the letter by registered mail to Mr. Henry Chao to his office address at 007 Malugay Street, Malabon City giving him five (5) days to make good his promise. Here is the registry receipt.

P. Prosecutor : I request that the demand letter be marked as Exhibit F and that the Registry Receipt No. 321 dated January 2, 2012 posted at Mandaluyong City Post Office be marked as Exhibit G for the prosecution.

COURT : Mark it then.

P. Prosecutor : Do you know if accused actually received your letter sent by registered mail?

Witness : I assumed that he had received it because the registered letter was not returned to me.

D. Counsel : I take exception to that statement. Your Honor, because jurisprudence require actual receipt by the drawer of the demand before any criminal liability can attach.

P. Prosecutor : May I clarify, Your Honor, that the five (5) days from notice of dishonor given to the drawer of a check to make arrangement for payment by the drawee of the amount of the dishonored checks is to forestall the existence of a prima facie evidence of knowledge of the insufficiency of funds. But here, the reason of the dishonor is "Account Closed," and not just insufficiency of funds. In short, there is actual proof of lack of credit with drawee bank. The account is already closed and accused cannot even make a deposit anymore.

COURT : The manifestation is noted.

P. Prosecutor : Has the accused paid the amounts covered by the dishonored instruments?

Witness : No, sir. He has arrogantly refused to make any payment.

P. Prosecutor : No further questions.

COURT : Cross.

D. Counsel : With the Court's permission. You earlier stated that accused Henry Chao is the Manager of Atlas Parts and that the money borrowed was used to pay for their stocks, is that correct?

Witness : Yes, sir. That is what he told me.

D. Counsel : So, it is clear that the money loaned from you was not used by the accused for his benefit?

Witness : I do not know how he used it. The fact is that I lent the money to him.

D. Counsel : Regarding the demand letter that you allegedly sent to accused, do you have the registry return card showing that accused received the letter?

Witness : No, sir. But I have the registry receipt. Since the letter was not returned to sender, it is presumed that it was received by the addressee.

D. Counsel : Is it not a fact that you have filed another collection suit against Atlas Parts seeking to recover the same P 50,000.00 covered by the dishonored slips?

Witness : Yes, sir. That is true because I want to recover my money from either of them.

D. Counsel : No further questions, Your Honor.

**Testimony of Mr. Henry Chao**

*(After oath and formal of fer of testimony.)*

D. Counsel : Do you own NOW Account No. 123456 maintained at Alloy Bank, Pasong Tamo Branch?

Witness : No, sir. That is owned by my employer Atlas Parts and, as the Manager, I am the signatory.

D. Counsel : Mr. Chao, in June 2011 when you issued the dishonored NOW slips, did you derive any personal benefit from the amount loaned?

Witness : No, sir. The money was used to pay an account payable.

D. Counsel : During the due dates of the NOW slips that you issued to Mr. Que, were you still the Manager of Atlas Parts?

Witness : Not anymore, sir, because in the middle of June 2011, I resigned as Manager, and I was not aware of the dishonor.

D. Counsel : Did you receive the demand letter sent to you by Mr. Que after the dishonor?

Witness : No, sir.

COURT : Cross?

P. Prosecutor : With the kind permission of the Court. Mr. Chao, is it not a fact that Mr. Que specifically required you to issue checks to pay the monthly installment of the loan?

Witness : Yes, sir.

P. Prosecutor : You will agree with me that without those five (5) checks, or NOW slips as you call them, Mr. Que will not lend money to you?

Witness : Yes, sir.

P. Prosecutor : You will also agree that the demand letter of Mr. Que was delivered to yo'ur office address because that is the address that you gave to Mr. Que in connection with your transaction?

Witness :Yes, sir. That is possible, but I was not able to receive it because I had already resigned and I could not do anything anymore.

P. Prosecutor : That is all, Your Honor.

## **LAWS AND JURISPRUDENCE**

### **A. BATAS PAMBANSA BLG. 22**

#### AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDITS AND FOR OTHER PURPOSES.

Section 1. *Checks without sufficient funds.* - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty (30) days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where .the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Section 2. *Evidence of knowledge of insufficient funds.* - The making, drawing and issuance of a check, payment of which is refused by the drawee because of insufficient funds in or credit with such bank when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Section 3. *Duty of drawee; rules of evidence.* - It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed, or

stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same. Provided, that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecutions under this Act, the introduction in evidence of any unpaid and dishonored check, having 'the drawee's refusal to pay stamped or written thereon or attached thereto, with the reason therefor as aforesaid, shall be prima facie evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

Notwithstanding receipt of an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact.

## **B. NEGOTIABLE INSTRUMENTS LAW**

ACT NO. 2031

AN ACT ENTITLED "THE NEGOTIABLE INSTRUMENTS LAW."

Section 1. *Form of negotiable instruments.* - An instrument to be negotiable must conform to the following requirements:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Section 126. *Bill of exchange, defined.* - A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Section 185. *Check, defined.* - A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

## **C. RULES OF COURT**

RULE 132

Section 34. *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

Section 35. *When to make offer.* - As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

## **JURISPRUDENCE**

### **Isip vs. People**

G. R. No. 170298, June 26, 2007, 525 SCRA 735

The concept of venue of actions in criminal cases, unlike in civil cases, is jurisdictional. The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.

### **Alferez vs. People**

G.R. No. 182301, January 31, 2011, 641 SCRA 116

In this case, the prosecution merely presented a copy of the demand letter, together with the registry receipt and the return card allegedly sent to petitioner. However, there was no attempt to authenticate or identify the signature on the registry return card. Receipts for registered letters and return receipts do not by themselves prove receipt ; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor. To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that petitioner received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check .. The prosecution must also prove actual receipt of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check. The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B. P. Big. 22 cases, there should be clear proof of notice. Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. From the registry receipt alone, it is possible that petitioner or his authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. The consistent rule is that penal statutes have "to be construed strictly against the State and liberally in favor of the accused. The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution. As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.

**Lozano vs. Hon. Martinez**

G.R. Nos. L-63419, L-66839-42, L-71654, L-74524-25, L-75122-49, L-75812-13, L-75765-67 and L-75789, December 18, 1986, 146 SCRA 323

The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property, but an offense against public order.

**Ambito vs. People**

G.R. No. 127327, February 13, 2009, 579 SCRA 69

The mere act of issuing a worthless check - whether as a deposit, as a guarantee or even as evidence of pre-existing debt - is *malum prohibitum*.

Under B.P. Big. 22, the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was actually notified that the check was dishonored, and that he or she failed, within five (5) banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution for violation of the Bouncing Checks Law cannot prosper.

The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually sent to and received by the accused. The accused has a right to demand - and the basic postulates of fairness require-- that the notice of dishonor be actually sent to and received by the same to afford him/her the opportunity to avert prosecution under B.P. Big. 22.

**Gosiaco vs. Ching**

G.R. No. 173807, April 16, 2009, 585 SCRA 471

B.P. Big. 22 imposes a distinct civil liability on the signatory of the check which is distinct from the civil liability of the corporation for the amount represented from the check. The civil liability attaching to the signatory arises from the wrongful act of signing the check despite the insufficiency of funds in the account, while the civil liability attaching to the corporation is itself the very obligation covered by the check or the consideration for its execution. Yet these civil liabilities are mistaken to be indistinct. The confusion is traceable to the singularity of the amount of each.

If we conclude, as we should, that under the current Rules of Criminal Procedure, the civil action that is impliedly instituted in the B.P. Big. 22 action is only the civil liability of the signatory, and not that of the corporation itself, the distinctness of the cause of action against the signatory and that against the corporation is rendered beyond dispute. It follows that the actions involving these liabilities should be adjudged according to their respective standards and merits. In the . B. P. Big. 22 case, what the trial court should determine is whether or not the signatory had signed the check with knowledge of the insufficiency of funds or credit in the bank account, while in the civil case the trial court should ascertain whether or not the obligation itself is valid and demandable. The litigation

of both questions could, in theory, proceed independently and simultaneously without being ultimately conclusive on one or the other.

- END -

**- NOTHING FOLLOWS -**

HAND IN YOUR ANSWER PAD.

**THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.**