

Set A

**MULTIPLE CHOICE QUESTIONS (MCQs)
INSTRUCTIONS**

The following questionnaire consists of one hundred (100) MCQs numbered 1 up to 100 contained in TWENTY ONE (21) 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 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 TWO (22) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

REMEDIAL LAW

1. In settlement proceedings, appeal may be taken from an:
 - a. order appointing a special administrator;

- b. order appointing an administrator;
 - c. order of an administrator to recover property of the estate;
 - d. order to include or exclude property from the estate.
2. Under the Rules on the Writ of Amparo, interim relief orders may be issued by the Court except:
 - a. production order;
 - b. witness protection order;
 - c. hold departure order;
 - d. temporary protection order.
3. A narrative testimony is usually objected to but the court may allow such testimony if:
 - a. it would expedite trial and give the court a clearer understanding of the matters related;
 - b. the witness is of advanced age;
 - c. the testimony relates to family genealogy;
 - d. the witness volunteers information not sought by the examiner.
4. In default of parents, the court may appoint a guardian for a minor giving first preference to:
 - a. an older brother or sister who is over 18 years old.
 - b. the actual custodian over 21 years old.
 - c. a paternal grandparent
 - d. an uncle or aunt over 21 years old.
5. In real actions, the docket and filing fees are based on:
 - a. fair market value of the property.
 - b. assessed value of the property.
 - c. SIR zonal value of the property.
 - d. fair market value of the property and amount of damages claimed.
6. X filed a motion for Bill of Particulars, after being served with summons and a copy of the complaint. However, X's motion did not contain a notice of hearing. The court may therefore:
 - a. require the clerk of court to calendar the motion.
 - b. motu proprio dismiss the motion for not complying with Rule 15.
 - c. allow the parties the opportunity to be heard.
 - d. return the motion to X's counsel for amendment.
7. A wants to file a Petition for Writ of Habeas Data against the AFP in connection with threats to his life allegedly made by AFP intelligence officers. A needs copies of AFP highly classified intelligence reports collected by Sgt. Santos who is from AFP. A can file his petition with:
 - a. RTC where AFP is located;
 - b. RTC where Sgt. Santos resides;
 - c. Supreme Court;
 - d. Court of Appeals.
8. W was arrested in the act of committing a crime on October 1, 2011. After an inquest hearing, an information was filed against W and his lawyer learned of the same on October 5, 2011. W wants to file a motion for preliminary investigation and therefore he has only up to _____ to file the same.
 - a. October 20, 2011;
 - b. October 10, 2011;
 - c. November 15, 2011;
 - d. October 16, 2011.
9. Preliminary Prohibitive Injunction will not lie:
 - a. to enjoin repeated trespass on land.
 - b. in petitions for certiorari and mandamus.
 - c. to restrain implementation of national government infrastructure project.

- d. to restrain voting of disputed shares of stock.
10. A defendant who fails to file a timely Answer or responsive pleading will not be declared in default in:
- a. probate proceedings where the estate is valued at ₱ 1 00,000;
 - b. forcible entry cases;
 - c. collection case not exceeding ₱ 100,000;
 - d. violation of rental law.
11. The validity of a search warrant is days:
- a. 15;
 - b. 30;
 - c. 60;
 - d. 120.
12. An accused may move for the suspension of his arraignment if:
- a. a motion for reconsideration is pending before the investigating prosecutor.
 - b. accused is bonded and his bondsman failed to notify him of his scheduled arraignment.
 - c. a prejudicial question exists.
 - d. there is no available public attorney.
13. P failed to appear at the promulgation of judgment without justifiable cause. The judgment convicted P for slight physical injuries. Judgment may therefore be promulgated in the following manner:
- a. By the reading of the judgment in the presence of only the judge.
 - b. By the clerk of court in the presence of P's counsel.
 - c. By the clerk of court in the presence of a representative of P.
 - d. By entering the judgment into the criminal docket of the court.
14. Being declared in default does not constitute a waiver of all rights. However, the following right is considered waived:
- a. be cited and called to testify as a witness
 - b. file a motion for new trial
 - c. participate in deposition taking of witnesses of adverse party
 - d. file a petition for certiorari
15. At arraignment, X pleads not guilty to a Robbery charge. At the pretrial, he changes his mind and agrees to a plea bargaining, with the conformity of the prosecution and offended party, which downgraded the offense to theft. The Court should therefore:
- a. render judgment based on the change of plea.
 - b. allow the withdrawal of the earlier plea and arraign X for theft and render judgment.
 - c. receive evidence on the civil liability and render judgment.
 - d. require the prosecution to amend the information.
16. A criminal case should be instituted and tried in the place where the offense or any of the essential elements took place, except in:
- a. Estafa cases;
 - b. Complex crimes;
 - c. Cases cognizable by the Sandiganbayan;
 - d. Court martial cases.
17. X was charged for murder and was issued a warrant of arrest. X remains at large but wants to post bail. X's option is to:
- a. file a motion to recall warrant of arrest;
 - b. surrender and file a bail petition;
 - c. file a motion for reinvestigation;
 - d. file a petition for review with the OoJ.

18. The Energy Regulatory Commission (ERC) promulgates a decision increasing electricity rates by 3%. KMU appeals the decision by way of petition for review. The appeal will therefore:
 - a. stay the execution of ERC decision.
 - b. shall not stay the ERC decision unless the Court of Appeals directs otherwise.
 - c. stay the execution of the ERC decision conditioned on KMU posting a bond.
 - d. shall not stay the ERC decision.
19. RTC decides an appeal from the MTC involving a simple collection case. The decision consists of only one page because it adopted by direct reference the findings of fact and conclusions of law set forth in the MTC decision. Which statement is most accurate?
 - a. The RTC decision is valid because it was issued by a court of competent jurisdiction.
 - b. The RTC decision is valid because it expedited the resolution of the appeal.
 - c. The RTC decision is valid because it is a memorandum decision recognized by law.
 - d. The RTC decision is valid because it is practical and convenient to the judge and the parties.
20. The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall:
 - a. not interrupt any prescriptive period.
 - b. interrupt the prescriptive period for 90 days.
 - c. interrupt the prescriptive period for 60 days.
 - d. interrupt the prescriptive period not exceeding 60 days.
21. In a declaratory relief action, the court may refuse to exercise its power to declare rights and construe instruments in what instance/s?
 - a. When a decision would not terminate the controversy which gave rise to the action.
 - b. In an action to consolidate ownership under Art. 1607 of the Civil Code.
 - c. To establish legitimate filiation and determine hereditary rights.
 - d. (a) and (c) above
22. In election cases involving an act or omission of an MTC or RTC, a certiorari petition shall be filed with:
 - a. The Court of Appeals
 - b. The Supreme Court
 - c. The COMELEC
 - d. The Court of Appeals or the COMELEC both having concurrent jurisdiction
23. A charge for indirect contempt committed against an RTC judge may be commenced through:
 - a. A written charge requiring respondent to show cause filed with the Court of Appeals.
 - b. An order of the RTC Judge requiring respondent to show cause in the same RTC.
 - c. Verified petition filed with another branch of the RTC.
 - d. Verified petition filed with a court of higher or equal rank with the RTC.
24. The statute of "non-claims" requires that:
 - a. claims against the estate be published by the creditors.
 - b. money claims be filed with the clerk of court within the time prescribed by the rules.
 - c. claims of an executor or administrator against the estate be filed with the special administrator.
 - d. within two (2) years after settlement and distribution of the estate, an heir unduly deprived of participation in the estate may compel the re-settlement of the estate.
25. A judicial compromise has the effect of _____ and is immediately executory and is not appealable.
 - a. Estoppel;
 - b. Conclusiveness of judgment;

- c. Res Judicata;
 - d. Stare decisis.
26. When a party or counsel willfully or deliberately commits forum shopping, the initiatory pleading may:
- a. be cured by amendment of the complaint.
 - b. upon motion, be dismissed with prejudice.
 - c. be summarily dismissed with prejudice as it may constitute direct contempt.
 - d. be stricken from the record.
27. Equity of Redemption is the right of the mortgagor to redeem the mortgaged property after default in the performance of the conditions of the mortgage, before the sale or the confirmation of sale in a(n):
- a. extrajudicial foreclosure of mortgage.
 - b. judicial foreclosure of mortgage.
 - c. execution sale.
 - d. foreclosure by a bank.
28. X and Y, both residents of Bgy. II, Sampaloc, Manila entered into a ₱ 100,000 loan agreement. Because Y defaulted, X sued Y for collection and the complainant prayed for issuance of preliminary attachment. Y moved to dismiss the complaint because there was no Barangay conciliation. The court should therefore:
- a. dismiss X's complaint for prematurity.
 - b. dismiss X's complaint for lack of cause of action.
 - c. deny Y's motion because it is exempt from Barangay conciliation.
 - d. deny Y's motion because of the amount of the loan.
29. X was shot by Y in the course of a robbery. On the brink of death, X told W, a barangay tanod, that it was Y who shot and held him up. In the trial for robbery with homicide, X's declaration can be admitted only as a dying declaration:
- a. to prove robbery.
 - b. to prove homicide.
 - c. to prove robbery and homicide.
 - d. to prove the "corpus delicti".
30. Which of the following is not a Special Proceeding?
- a. Absentees;
 - b. Escheat;
 - c. Change of First Name;
 - d. Constitution of Family Home;
31. Atty. X fails to serve personally a copy of his motion to Atty. Y because the office and residence of Atty. Y and the latter's client changed and no forwarding addresses were given. Atty. X's remedy is to:
- a. Serve by registered mail;
 - b. Serve by publication;
 - c. Deliver copy of the motion to the clerk of court with proof of failure to serve;
 - d. Certify in the motion that personal service and through mail was impossible.
32. When caught, X readily admitted to the Forestry Ranger that he cut the trees. Such a statement may be admitted and is not necessarily hearsay because:
- a. it is a judicial admission of guilt.
 - b. it shows the statement was true.
 - c. it will form part of the circumstantial evidence to convict.
 - d. it proves that such a statement was made.
33. A complaint may be dismissed by the plaintiff by filing a notice of dismissal:
- a. At anytime after service of the answer.

- b. At anytime before a motion of summary judgment is filed.
 - c. At the pre-trial.
 - d. Before the complaint is amended.
34. In a criminal case for violation of a city ordinance, the court may issue a warrant of arrest:
- a. for failure of the accused to submit his counter-affidavit.
 - b. after finding probable cause against the accused.
 - c. for failure of the accused to post bail.
 - d. for non-appearance in court whenever required.
35. Under the Katarungan Pambarangay rules, the execution of an amicable settlement or arbitration award is started by filing a motion for execution with the Punong Barangay, who may issue a notice of execution in the name of the Lupon Tagapamayapa. Execution itself, however, will be done by:
- a. a court-appointed sheriff.
 - b. any Barangay Kagawad.
 - c. Punong Barangay.
 - d. any member of the Pangkat ng Tagapagsundo.
36. If the judgment debtor dies after entry of judgment, execution of a money judgment may be done by:
- a. presenting the judgment as a claim for payment against the estate in a special proceeding.
 - b. filing a claim for the money judgment with the special administrator of the estate of the debtor.
 - c. filing a claim for the money judgment with the debtor's successor in interest.
 - d. move for substitution of the heirs of the debtor and secure a writ of execution.
37. The Director of the BFAR launches an intensified campaign against illegal fishpen operators situated in Laguna de Bay. The illegal fishpen operators file a Section 3 (e), R.A. 3019 (causing undue injury or benefit) case against the BFAR Director before the Sandiganbayan. The Director's best remedy before Sandiganbayan is:
- a. file a Motion to Quash based on lack of jurisdiction over the person.
 - b. file a Motion to Quash for non-exhaustion of administrative remedies.
 - c. file a Motion to Dismiss because the complaint is a SLAPP suit.
 - d. move for suspension of proceedings because of a pre-judicial question.
38. A complaint may be refiled if dismissed on which of the following grounds?
- a. unenforceable under the Statute of Frauds;
 - b. Res Judicata;
 - c. Litis Pendencia;
 - d. Lack of jurisdiction.
39. The following are accurate statements on joinder of causes of action, except:
- a. joinder of actions avoids multiplicity of suits.
 - b. joinder of actions may include special civil actions.
 - c. joinder of causes of action is permissive.
 - d. the test of jurisdiction in case of money claims in a joinder of causes of action, is the "totality rule".
40. W, a legal researcher in the RTC of Makati, served summons on an amended complaint on Z at the latter's house on a Sunday. The service is invalid because:
- a. it was served on a Sunday.
 - b. the legal researcher is not a "proper court officer".
 - c. (a) and (b) above
 - d. there is no need to serve summons on an amended complaint.
41. After a plea of not guilty is entered, the accused shall have _____ days to prepare for trial.

- a. 15;
 - b. 10;
 - c. 30;
 - d. None of the above.
42. The following motions require a notice of hearing served on the opposite party, except:
- a. Motion to Set Case for Pre-trial;
 - b. Motion to take deposition;
 - c. Motion to correct TSN;
 - d. Motion to postpone hearing.
43. Which of the following statements is incorrect?
- a. A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished.
 - b. In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence.
 - c. A demurrer to evidence may be filed without leave of court in a criminal case.
 - d. None of the above.
44. Which of the following is true?
- a. Summons expires after 5 days from issue.
 - b. Writ of Execution expires after 10 days from issue.
 - c. Search Warrant expires after 20 days from issue.
 - d. Subpoena expires after 30 days from issue.
45. A person may be charged with direct contempt of court when:
- a. A person re-enters a property he was previously ejected from.
 - b. A person refuses to attend a hearing after being summoned thereto.
 - c. He attempts to rescue a property in custodia legis.
 - d. She writes and submits a pleading containing derogatory, offensive or malicious statements.
46. Under the Rules of Electronic Evidence, "ephemeral electronic conversation" refers to the following, except:
- a. text messages;
 - b. telephone conversations;
 - c. faxed document;
 - d. online chatroom sessions;
47. A private electronic document's authenticity may be received in evidence when it is proved by:
- a. evidence that it was electronically notarized.
 - b. evidence that it was digitally signed by the person who purportedly signed the same.
 - c. evidence that it contains electronic data messages.
 - d. evidence that a method or process was utilized to verify the same.
48. Atty. A drafts a pleading for his client B wherein B admits certain facts prejudicial to his case. The pleading was never filed but was signed by Atty. A. Opposing counsel got hold of the pleading and presents the same in court. Which statement is the most accurate?
- a. The prejudicial statements are not admissible because the unfiled document is not considered a pleading.
 - b. The prejudicial statements are not admissible because the client did not sign the pleading.
 - c. The prejudicial statements are not admissible because these were not made by the client in open court.
 - d. The prejudicial statements are not admissible because these were made outside the proceedings.

49. Under the Rules on Examination of a child witness, a child witness is one:
 - a. who is 18 years of age or below at the time of testifying.
 - b. who is below 18 years of age at the time of the incident/crime to be testified on.
 - c. who is below 18 years of age at the time of the giving of testimony.
 - d. who is 18 years of age in child abuse cases.
50. In which of the following is Interpleader improper?
 - a. in an action where defendants' respective claims are separate and distinct from each other.
 - b. in an action by a bank where the purchaser of a cashier's check claims it was lost and another person has presented it for payment.
 - c. in an action by a lessee who does not know where to pay rentals due to conflicting claims on the property.
 - d. in an action by a sheriff against claimants who have conflicting claims to a property seized by the sheriff in foreclosure of a chattel mortgage.
51. The Parole Evidence Rule applies to:
 - a. subsequent agreements placed on issue.
 - b. written agreements or contractual documents.
 - c. judgment on a compromise agreement.
 - d. will and testaments.
52. PDEA agents conducted a search on a house abandoned by its owners in Quezon City. The search, in order to be valid, must be made in the presence of:
 - a. any relative of the owner of the house.
 - b. the Director of the PDEA and a member of the media.
 - c. the Barangay Chairman and a Barangay Tanod.
 - d. any elected Quezon City official.
53. A judge of an MTC can hear and decide petitions for habeas corpus or applications for bail where:
 - a. the Supreme Court authorizes the MTC.
 - b. the judge is the Executive Judge of the MTC.
 - c. the judge of the RTC where the case is raffled has retired, was dismissed or had died.
 - d. in the absence of all the RTC Judges in the province or city.
54. Proof of service of summons shall be through the following, except :
 - a. written return of the sheriff;
 - b. affidavit of the person serving summons;
 - c. affidavit of the printer of the publication;
 - d. written admission of the party served.
55. As a mode of discovery, the best way to obtain an admission from any party regarding the genuineness of any material and relevant document is through a:
 - a. motion for production of documents.
 - b. written interrogatories.
 - c. request for admission under Rule 26.
 - d. request for subpoena duces tecum.
56. A judgment "non pro tunc" is one which:
 - a. dismisses a case without prejudice to it being re-filed.
 - b. clarifies an ambiguous judgment or a judgment which is difficult to comply with.
 - c. one intended to enter into the record the acts which already have been done, but which do not appear in the records.
 - d. is a memorandum decision.
57. The Sandiganbayan can entertain a quo warranto petition only in:

- a. cases involving public officers with salary grade 27 or higher.
 - b. only in aid of its appellate jurisdiction.
 - c. as a provisional remedy.
 - d. cases involving "ill gotten wealth".
58. The judgment in a criminal case may be promulgated by the following, except by:
- a. a Sandiganbayan justice in cases involving anti-graft laws.
 - b. a Clerk of Court of the court which rendered judgment.
 - c. an Executive Judge of a City Court if the accused is detained in another city.
 - d. any judge of the court in which it was rendered.
59. Leave of court is always necessary in:
- a. a demurrer to evidence in a civil case.
 - b. a demurrer to evidence in a criminal case.
 - c. motion to amend a complaint.
 - d. third party complaint.
60. Correctly complete the sentence: A lone witness ---
- a. is credible only if corroborated.
 - b. is never credible.
 - c. may be believed even if not corroborated.
 - d. is always credible.
61. A judgment of conviction in a criminal case becomes final when:
- a. accused orally waived his right to appeal.
 - b. accused was tried in absentia and failed to appear at the promulgation.
 - c. accused files an application for probation.
 - d. reclusion perpetua is imposed and the accused fails to appeal.
62. After a hearing on a Motion to Dismiss, the court may either dismiss the case or deny the same or:
- a. defer resolution because the ground relied upon is not indubitable.
 - b. order amendment of the pleading
 - c. conduct a preliminary hearing
 - d. None of the above.
63. Under Rule 52, a Second Motion for Reconsideration is a prohibited pleading. However, where may such Motion be allowed?
- a. the Sandiganbayan;
 - b. the Office of the President;
 - c. the Supreme Court;
 - d. None of the above.
64. The mortgage contract between X, who resides in Manila, and Y, who resides in Naga, covering land in Quezon provides that any suit arising from the agreement may be filed "nowhere else but in a Makati court". Y must thus sue only in:
- a. Makati;
 - b. Makati and/or Naga;
 - c. Quezon and/or Makati;
 - d. Naga.
65. Immediately after the witness had been sworn in to testify, without any formal offer of his testimony, Atty. A started asking questions on direct examination to the witness. The court may still consider his testimony if:
- a. the formal offer is done after the direct testimony.
 - b. the opposing counsel did not object.
 - c. the witness is an expert witness.
 - d. the opposing counsel offered to stipulate on the testimony given.

66. A private document may be considered as evidence when it is sequentially:
- marked, identified, authenticated.
 - identified, marked and offered in evidence.
 - marked, identified, authenticated and offered in evidence.
 - marked, authenticated and offered in evidence.
67. The Court of Appeals cannot issue a temporary restraining order in the following cases, except:
- bidding and awarding of a project of the national government.
 - against any freeze order issued by the AMLC under the antimoney laundering law.
 - against infrastructure projects like the SLEX extension.
 - against the DAR in the implementation of the CARL Law.
68. Choose the most accurate phrase to complete the statement: Mandamus will lie ---
- to compel a judge to consolidate trial of two cases pending before different branches of the court.
 - to compel a judge to reduce his decision in writing.
 - to direct a probate court to appoint a particular person as regular administrator.
 - to compel a judge to grant or deny an application for preliminary injunction.
69. A judgment by default can be issued despite an Answer being filed in:
- annulment of marriage.
 - legal separation.
 - cases where a party willfully fails to appear before the officer who is to take his deposition.
 - declaration of nullity of marriage.
70. Which of the following statements is not accurate?
- A plea of guilty later withdrawn is admissible in evidence against the accused who made the plea.
 - An unaccepted offer of a plea of guilty to a lesser offense is inadmissible in evidence against the accused.
 - An offer to pay or payment of medical expenses arising from injury is not evidence or proof of civil/criminal liability for the Injury.
 - In civil cases, an offer of compromise by the accused is admissible as an implied admission of guilt.
71. Under the Rules on Evidence, the following is a conclusive presumption and therefore cannot be contradicted by evidence.
- A person intends the ordinary consequences of his voluntary act.
 - Official duty has been regularly performed.
 - A tenant cannot deny his landlord's title during the tenancy period.
 - A writing is truly dated.
72. Cesar, age 16, a habitual offender, was caught in possession of .001 grams of marijuana. He was charged for violation of Sec. 16 of R.A. 9165, The Comprehensive Dangerous Drugs Law. The court which has jurisdiction is:
- the MTC;
 - the RTC;
 - Special Drugs Court;
 - Family Court.
73. A court can motu proprio dismiss a case on the following grounds, except :
- failure to prosecute;
 - lack of jurisdiction over the parties;
 - litis pendentia;
 - prescription.

74. A person entitled to the estate of a deceased person escheated in favor of the State has:
- 5 years from date of judgment to file a claim.
 - 2 years from date of judgment to file a claim.
 - 5 years from date of registration of the judgment to file a claim.
 - 2 years from date of registration of the judgment to file a claim.
75. The MTC, acting as an Environmental Court, has original and exclusive jurisdiction over the following, except:
- criminal offenses punishable under the Chain Saw Act (R.A. 9175)
 - violation of the NIPAS Law (R.A. 7586)
 - violation of the Mining Laws
 - violation of Anti-Pollution Laws
76. A special administrator may be appointed by a court when:
- the executor cannot post a bond.
 - the executor fails to render an account.
 - regular administrator has a claim against estate he represents.
 - a Motion for Reconsideration is filed with respect to a decision disallowing probate of a will.
77. A defendant declared in default may, after judgment but before finality, file a:
- Petition for Relief from Judgment;
 - Petition for Certiorari;
 - Motion for Reconsideration;
 - Motion to Set Aside Order of Default.
78. With leave of court, a party may amend his pleading if:
- there is yet no responsive pleading served.
 - the amendment is unsubstantial.
 - the amendment involves clerical errors of defect in the designation of a party.
 - the amendment is to conform to the evidence.
79. When a Motion to Quash search warrant is denied, the best remedy is:
- appeal the denial order.
 - file a motion to suppress evidence.
 - file an injunction suit.
 - file a certiorari petition.
80. A court may take judicial notice of:
- the Twitter account of President Aquino.
 - a Committee Report issued by the Congressional Committee on Labor Relations.
 - the effects of taking aspirin everyday.
 - the arbitral award issued by International Court of Arbitration.
81. The case of R, who is under detention, was raffled to the RTC on March 1. His arraignment should be set not later than:
- March 4;
 - March 16;
 - March 30;
 - March 11.
82. After the DOJ Secretary granted accused's Petition for Review, the prosecution filed a motion to withdraw the Information before the trial court. The judge therein denied the same. The trial prosecutor manifested before the judge that he can no longer prosecute the case because he is only an alter ego of the DOJ Secretary who ordered him to withdraw the Information. The case should therefore be prosecuted by:
- a DOJ state prosecutor.
 - private prosecutor, if any.

- c. trial prosecutor of the pairing court.
 - d. the same trial prosecutor who manifested his inability to prosecute the case.
83. A decision or resolution of a division of the Supreme Court when concurred in by members who actually took part in the deliberation on the issues in a case and voted thereon, is a decision or resolution of the Supreme Court.
- a. three (3);
 - b. five(S);
 - c. eight (8);
 - d. ten (10).
84. A and B adopted their nephew. They filed an action for revocation of the adoption on May 1, 1998 on the ground that their nephew neglected them. Based on the Rules of Domestic Adoption, the judge must:
- a. advise A and B to just disinherit the nephew.
 - b. disallow the revocation.
 - c. refer the petition to the DSWD.
 - d. grant the petition after hearing.
85. Sandiganbayan exercises concurrent jurisdiction with the Supreme Court and the Court of Appeals over:
- a. Petitions for Writ of Certiorari and Prohibition;
 - b. Petitions for Writ of Habeas Corpus;
 - c. Petitions for Quo Warranto;
 - d. Petitions for Writ of Amparo and Habeas Corpus.
86. C, a convict, was able to get favorable results of a post-conviction DNA testing showing that C could not have committed the crime. To gain freedom, C may:
- a. file a petition for Writ of Habeas Corpus before the court of origin.
 - b. apply for full pardon.
 - c. file a Motion to annul judgment of conviction on the ground of fraud.
 - d. file a Motion for new trial under Rule 121.
87. X filed a complaint with the RTC through ABC, a private letter forwarding agency. The date of filing of the complaint shall be:
- a. the date stamped by ABC on the envelope containing the complaint.
 - b. the date of receipt by the Clerk of Court.
 - c. the date indicated by the receiving clerk of ABC.
 - d. the date when the case is officially raffled.
88. An objection to any interrogatories may be presented within_ days after service thereof:
- a. 15;
 - b. 10;
 - c. 5;
 - d. 20.
89. The deposition of a witness, whether or not a party, may be used for any purpose if the Court finds the following circumstances are attendant, EXCEPT:
- a. when the witness is dead.
 - b. when the witness is incarcerated.
 - c. when the witness is outside the Philippines and absence is procured by the party offering deposition.
 - d. when the witness is 89 years old and bed-ridden.
90. One of the exemptions to the general rule that evidence not formally offered shall not be considered is:
- a. in judgment on the pleadings.
 - b. evidence in land registration proceedings.

- c. evidence lost/destroyed due to force majeure after being marked, identified and described in the record.
 - d. documentary evidence proving a foreign judgment.
91. In Petition for Certiorari, the Court of Appeals issues a Writ of Preliminary Injunction against the RTC restraining the latter from trying a crucial case. The Court of Appeals should therefore:
- a. decide the main case within 60 days.
 - b. decide the certiorari petition within 6 months.
 - c. decide the main case or the petition within 60 days.
 - d. decide the main case or the petition within 6 months from issue of the preliminary injunction.
92. Witness A was examined on direct examination by the prosecutor. The defense counsel however employed dilatory tactics and was able to secure numerous postponements of A's cross examination. A suffered a stroke and became incapacitated. His uncompleted testimony may therefore be:
- a. ordered stricken from the record.
 - b. allowed to remain in the record.
 - c. held in abeyance until he recovers.
 - d. not be given any probative weight.
93. If the Supreme Court en banc is equally divided in opinion covering an original action, the case shall be:
- a. re-raffled to a division.
 - b. original action shall be dismissed.
 - c. The judgment appealed from shall be official.
 - d. again deliberated upon.
94. An example of a special judgment is one which orders:
- a. the defendant to deliver and reconvey personal property to the plaintiff.
 - b. defendant to execute a Deed of Sale in favor of plaintiff.
 - c. defendant to paint a mural for the plaintiff.
 - d. Defendant to vacate the leased premises.
95. At the promulgation of judgment, P, who is bonded, failed to appear without justifiable cause. In order for P not to lose his remedies under the Rules, he must:
- a. within 15 days from receipt of a copy of the decision, file a Motion for Reconsideration.
 - b. within 15 days from the promulgation, surrender to the court and file a motion for leave to avail of remedies.
 - c. notify his bondsman within 15 days so that his bail will not be confiscated.
 - d. file a petition for certiorari.
96. X, the designated executor of a will, files a petition for probate of the same. X and his counsel failed to appear without justifiable cause at the hearing on the presentation of evidence and the court therefore dismissed, motu proprio, his petition for failure to prosecute. The effect of the dismissal is:
- a. not an adjudication upon the merits.
 - b. the will can no longer be probated.
 - c. it is a dismissal with prejudice.
 - d. a bar to a subsequent action on the same cause.
97. The Rule on Small Claims is applicable to:
- a. claims for unpaid rentals of ₱ 100,000 or less, with prayer for ejectment.
 - b. enforcement of a barangay amicable settlement involving a money claim of ₱ 50,000 after one (1) year from date of settlement.

- c. action for damages arising from a quasi-delict amounting to ₱ 100,000.
 - d. action to collect on a promissory note amounting to ₱ 105,000 where plaintiff expressly insists in recovering only ₱ 1 00,000.
98. When directed by the judge, a clerk of court can receive evidence addressed by the parties in:
- a. case where the judge is on leave.
 - b. small claims proceedings.
 - c. cases where the parties agree in writing.
 - d. land registration proceedings.
99. A certificate against Forum-Shopping is not required in:
- a. petitions for probate of will.
 - b. application for search warrant.
 - c. complaint-in-intervention.
 - d. petition for Writ of Kalikasan.
100. An accused's custodial rights, e.g., right to counsel and right to remain silent, is available:
- a. at preliminary investigation.
 - b. at police line-up for identification purposes.
 - c. at ultra-violet examination to determine presence of ultra violet powder on accused's hands.
 - d. at one-on-one confrontation with eyewitness.

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

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

**2012 BAR EXAMINATIONS
REMEDIAL LAW**

28 October 2012

10 A.M. -12 NN.

Set B

**ESSAYTYPE 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.

GOODLUCK!!!

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

REMEDIAL LAW

I

- a. After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused's petition for review, reversed the investigating prosecutor's finding of probable cause. Upon order of the DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

"Based on the review by the DOJ Secretary of the findings of the investigating prosecutor during the preliminary investigation, the Court agrees that there is no sufficient evidence against the accused to sustain the allegation in the information. The motion to withdraw Information is, therefore, granted."

If you were the private prosecutor, what should you do? Explain. (5%)

- b. A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail saying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

II

- a. Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (5%)
- b. What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (5%)

III

- a. Distinguish error of jurisdiction from error of judgment. (5%)
- b. A, a resident of Quezon City, wants to file an action against B, a resident of Pasay, to

compel the latter to execute a Deed of Sale covering a lot situated in Marikina and that transfer of title be issued to him claiming ownership of the land. Where should A file the case? Explain. (5%)

IV

- a. A bought a Volvo Sedan from ABC Cars for ₱ 5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car's upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)
- b. Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of indirect contempt. If you were X's lawyer, what would you do? Why? (5%)

V

- a. X was arrested, en flagrante, for robbing a bank. After an investigation, he was brought before the office of the prosecutor for inquest, but unfortunately no inquest prosecutor was available. May the bank directly file the complaint with the proper court? If in the affirmative, what document should be filed? (5%)

VI

A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, Laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he applies for a search warrant in any Laguna court, their plan might leak out.

- a. Where can he file an application for search warrant? (2%)
- b. What documents should he prepare in his application for search warrant? (2%)
- c. Describe the procedure that should be taken by the judge on the application. (2%)

Suppose the judge issues the search warrant worded in this way:

PEOPLE OF THE PHILIPPINES

Plaintiff

-versus-

Ho Pia and Sio Pao,
Accused.

Criminal Case No. 007

for

Violation of R.A. 9165

X- - - - -X

TO ANY PEACE OFFICER

Greetings:

It appearing to the satisfaction of the undersigned after examining under oath PDEA Director

shabunot that there is probable cause to believe that violations of Section 18 and 16 of R.A. 9165 have been committed and that there are good and sufficient reasons to believe that Ho Pia and Sio Pao have in their possession or control, in a two (2) door apartment with an iron gate located at Jupiter St., Sta. Cruz, Laguna, undetermined amount of "shabu" and drug manufacturing implements and paraphernalia which should be seized and brought to the undersigned,

You are hereby commanded to make an immediate search, at any time in the day or night, of the premises above described and forthwith seize and take possession of the abovementioned personal property, and bring said property to the undersigned to be dealt with as the law directs.

Witness my hand this 1st day of March, 2012.

(signed)
Judge XYZ

- d. Cite/enumerate the defects, if any, of the search warrant. (3%)
- e. Suppose the search warrant was served on March 15, 2012 and the search yielded the described contraband and a case was filed against the accused in RTC, Sta. Cruz, Laguna and you are the lawyer of Sio Pao and Ho Pia, what will you do? (3%)
- f. Suppose an unlicensed armalite was found in plain view by the searchers and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals?

Explain your answer. (3%)

VII

- a. Counsel A objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection Sustained". Can Counsel 8 ask for a reconsideration of the ruling? Why? (5%)
- b. Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

VIII

- a. A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. 8 moves to lift the attachment. Rule on this. (5%)
- b. Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

IX

- a. X, an undersecretary of DENR, was charged before the Sandiganbayan for malversation of public funds allegedly committed when he was still the Mayor of a town in Rizal. After arraignment, the prosecution moved that X be preventively suspended. X opposed the motion arguing that he was now occupying a position different from that which the Information charged him and therefore, there is no more possibility that he can intimidate witnesses and hamper the prosecution. Decide. Suppose X files a Motion to Quash challenging the validity of the Information and the Sandiganbayan denies the same, will there still be a need to conduct a pre-suspension hearing? Explain. (5%)
- b. Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)

X

- a. Where and how will you appeal the following:
- (1) An order of execution issued by the RTC. (1%)
 - (2) Judgment of RTC denying a petition for Writ of Amparo. (1%)
 - (3) Judgment of MTC on a land registration case based on its delegated jurisdiction. (1%)
 - (4) A decision of the Court of Tax Appeal's First Division. (1%)
- b. A files a Complaint against B for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B's Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge "unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office", B files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)
- c. What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

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