

## INSTRUCTIONS

1. This Questionnaire contains ten (10) pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are 22 items (I to XXII) to be answered within/our (4) hours.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only on the *front*, not the back, page of every sheet in your Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back page of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the question turns. It should show your knowledge and understanding of the pertinent principles and theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, to reason logically in a lawyer-like manner, and to form a sound conclusion from the given premises.

A mere "Yes" or "No" answer without any corresponding explanation or discussion will not be given any credit. Thus, always *briefly* but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Notebook.

4. Make sure you do not write your *name* or any *extraneous note/s* or *distinctive marking/s* on your Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the exam Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

**YOU CAN BRING HOME THIS QUESTIONNAIRE OR SUBMIT IT TOGETHER WITH YOUR NOTEBOOK**

JUSTICE TERESITA J. LEONARDO-DE CASTRO  
Chairperson  
2015 Bar Examinations

- I. The Philippines and the Republic of Kroi Sha established diplomatic relations and immediately their respective Presidents signed the following: (1) Executive Agreement allowing the Republic of Kroi Sha to establish its embassy and consular offices within Metro Manila; and (2) Executive Agreement allowing the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments from time to time for a period not exceeding one month for the purpose of training exercises with the Philippine military forces and exempting from Philippine criminal jurisdiction acts committed in the line of duty by foreign military personnel, and from paying custom duties on all the goods brought by said foreign forces into Philippine territory in connection with the holding of the activities authorized under the said Executive Agreement.

Senator Maagap questioned the constitutionality of the said Executive Agreements and demanded that the Executive Agreements be submitted to the Senate for ratification pursuant to the Philippine Constitution. Is Senator Maagap correct? Explain. (4%)

- II. (1) A bill was introduced in the House of Representatives in order to implement faithfully the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which the Philippines is a signatory. Congressman Pat Rio Tek questioned the constitutionality of the bill on the ground that the provisions of UN CLOS are violative of the provisions of the Constitution defining the Philippine internal waters and territorial sea. Do you agree or not with the said objection? Explain. (3%)

(2) Describe the following maritime regimes under UNCLOS (4%)

(a) Territorial sea

(b) Contiguous zone

(c) Exclusive economic zone

(d) Continental shelf

- III. Professor Masipag who holds a plantilla or regular item in the University of the Philippines (UP) is appointed as an Executive Assistant in the Court of Appeals (CA). The professor is considered only on leave of absence in UP while he reports for work at the CA which shall pay him the salary of the Executive Assistant. The appointment to the CA position was questioned, but Professor Masipag countered that he will not collect the salary for both positions; hence, he can not be accused of receiving double compensation. Is the argument of the professor valid? Explain. (4%)

- IV. When is a facial challenge to the constitutionality of a law on the ground of violation of the Bill of Rights traditionally allowed? Explain your answer. (3%)

- V. BD Telecommunications, Inc. (BDTI), a Filipino-owned corporation, sold its 1,000 common shares of stock in the Philippine Telecommunications Company (PTC), a public utility, to Australian Telecommunications (AT), another stockholder of the PTC which also owns 1,000 common shares. A Filipino stockholder of PTC questions the sale on the ground that it will increase the common shares of AT, a foreign company, to more than 40% of the capital (stock) of PTC in violation of the 40% limitation of foreign ownership of a public utility. AT argues that the sale does not violate the 60-40 ownership requirement in favor of Filipino

citizens decreed in Section II, Article XII of the 1987 Constitution because Filipinos still own 70% of the capital of the PTC. AT points to the fact that it owns only 2,000 common voting shares and 1,000 non-voting preferred shares while Filipino stockholders own 1,000 common shares and 6,000 preferred shares, therefore, Filipino stockholders still own a majority of the outstanding capital stock of the corporation, and both classes of shares have a par value of Php 20.00 per share. Decide. (5%)

VI. (1) Distinguish the President's authority to declare a state of rebellion from the authority to proclaim a state of national emergency. (2%)

(2) What are the limitations, if any, to the pardoning power of the President? (3%)

VII. Senator Fleur De Lis is charged with plunder before the Sandiganbayan. After finding the existence of probable cause, the court issues a warrant for the Senator's arrest. The prosecution files a motion to suspend the Senator relying on Section 5 of the Plunder Law. According to the prosecution, the suspension should last until the termination of the case. Senator Lis vigorously opposes the motion contending that only the Senate can discipline its members; and that to allow his suspension by the Court would violate the principle of separation of powers. Is Senator Lis's contention tenable? Explain. (4%)

VIII. A law provides that the Secretaries of the Departments of Finance and Trade and Industry, the Governor of the Central Bank, the Director General of the National Economic Development Authority, and the Chairperson of the Philippine Overseas Construction Board shall sit as ex-officio members of the Board of Directors (BOD) of a government owned and controlled corporation (GOCC). The other four (4) members shall come from the private sector. The BOD issues a resolution to implement a new organizational structure, staffing pattern, a position classification system, and a new set of qualification standards. After the implementation of the Resolution, Atty. Dipasupil questioned the legality of the Resolution alleging that the BOD has no authority to do so. The BOD claims otherwise arguing that the doctrine of qualified political agency applies to the case. It contends that since its agency is attached to the Department of Finance, whose head, the Secretary of Finance, is an alter ego of the President, the BOD's acts were also the acts of the President. Is the invocation of the doctrine by the BOD proper? Explain. (4%)

IX. Several senior officers of the Armed Forces of the Philippines received invitations from the Chairperson of the Senate Committees on National Defense and Security for them to appear as resource persons in scheduled public hearings regarding a wide range of subjects. The invitations state that these public hearings were triggered by the privilege speeches of the Senators that there was massive electoral fraud during the last national elections. The invitees Brigadier General Matapang and Lieutenant Coronel Makatuwiran, who were among those tasked to maintain peace and order during the last election, refused to attend because of an Executive Order banning all public officials enumerated in paragraph 3 thereof from appearing before either house of Congress without prior approval of the President to ensure adherence to the rule of executive privilege. Among those included in the enumeration are "senior officials of executive departments who, in the judgment of the department heads, are covered by executive privilege." Several individuals and groups challenge the constitutionality of the subject executive order because it frustrates the power of the Congress to conduct inquiries in aid of legislation under Section 21, Article VI of the 1987 Constitution. Decide the case. (5%)

- X. The Secretary of the Department of Environment and Natural Resources (DENR) issued Memorandum Circular No. 123-15 prescribing the administrative requirements for the conversion of a timber license agreement (TLA) into an Integrated Forestry Management Agreement (IFMA). ABC Corporation, a holder of a TLA which is about to expire, claims that the conditions for conversion imposed by the said circular are unreasonable and arbitrary and a patent nullity because it violates the non-impairment clause under the Bill of Rights of the 1987 Constitution. ABC Corporation goes to court seeking the nullification of the subject circular. The DENR moves to dismiss the case on the ground that ABC Corporation has failed to exhaust administrative remedies which is fatal to its cause of action. If you were the judge, will you grant the motion? Explain. (4%)
- XI. (1) What is the concept of expanded judicial review under the 1987 Constitution? (3%)
- (2) Differentiate the rule-making power or the power of the Supreme Court to promulgate rules under Section 5, Article VIII of the 1987 Constitution and judicial legislation. (2%)
- XII. Discuss the evolution of the principle of *jus sanguinis* as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (3%)
- XIII. On August 15, 2015, Congresswoman Dina Tatalo filed and sponsored House Bill No. 5432, entitled "An Act Providing for the Apportionment of the Lone District of the City of Pangarap." The bill eventually became a law, R.A. No. 1234. It mandated that the lone legislative district of the City of Pangarap would now consist of two (2) districts. For the 2016 elections, the voters of the City of Pangarap would be classified as belonging to either the first or second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight (8) members of the Sangguniang Panglungsod. R.A. No. 1234 apportioned the City's barangays. The COMELEC thereafter promulgated Resolution No. 2170 implementing R.A. No. 1234.
- Piolo Cruz assails the COMELEC Resolution as unconstitutional. According to him, R.A. No. 1234 cannot be implemented without conducting a plebiscite because the apportionment under the law falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the 1987 Constitution. Is the claim correct? Explain. (4%)
- XIV. Congress enacted R.A. No. 14344 creating the City of Masuwerte which took effect on September 25, 2014. Section 23 of the law specifically exempts the City of Masuwerte from the payment of legal fees in the cases that it would file and/or prosecute in the courts of law. In two (2) cases that it filed, the City of Masuwerte was assessed legal fees by the clerk of court pursuant to Rule 141 (Legal Fees) of the Rules of Court. The City of Masuwerte questions the assessment claiming that it is exempt from paying legal fees under Section 23 of its charter. Is the claim of exemption tenable? Explain. (4%)
- XV. The President appointed Dexter I. Ty as Chairperson of the COMELEC on June 14, 2011 for a term of seven (7) years pursuant to the 1987 Constitution. His term of office started on June 2, 2011 to end on June 2, 2018. Subsequently, the President appointed Ms. Marikit as the third member of the COMELEC for a term of seven (7) years starting June 2, 2014 until June 2, 2021. On June 2, 2015, Chairperson Ty retired optionally after having served the government for thirty (30) years. The President then appointed Commissioner Marikit as COMELEC Chairperson. The Commission on Appointments confirmed her appointment. The

appointment papers expressly indicate that Marikit will serve as COMELEC Chairperson "until the expiration of the original term of her office as COMELEC Commissioner or on June 2, 2021." Matalino, a tax payer, files a petition for certiorari before the Supreme Court asserting that the appointment of Marikit as COMELEC Chairperson is unconstitutional for the following reasons: (1) The appointment of Marikit as COMELEC Chairperson constituted a reappointment which is proscribed by Section 1 (2), Article IX of the 1987 Constitution; and (2) the term of office expressly stated in the appointment papers of Marikit likewise contravenes the aforementioned constitutional provision. Will the constitutional challenge succeed? Explain. (4%)

XVI. (1) Gandang Bai filed her certificate of candidacy (COC) for municipal mayor stating that she is eligible to run for the said position. Pasyo Maagap, who also filed his COC for the same position, filed a petition to deny due course or cancel Bai's COC under Section 78 of the Omnibus Election Code for material misrepresentation as before Bai filed her COC, she had already been convicted of a crime involving moral turpitude. Hence, she is disqualified perpetually from holding any public office or from being elected to any public office. Before the election, the COMELEC cancelled Bai' s COC but her motion for reconsideration (MR) remained pending even after the election. Bai garnered the highest number of votes followed by Pasyo Maagap, who took his oath as Acting Mayor. Thereafter, the COMELEC denied Bai's MR and declared her disqualified for running for Mayor. P. Maagap asked the Department of Interior and Local Government Secretary to be allowed to take his oath as permanent municipal mayor. This request was opposed by Vice Mayor Umaasa, invoking the rule on succession to the permanent vacancy in the Mayor's office. Who between Pasyo Maagap and Vice Mayor Umaasa has the right to occupy the position of Mayor? Explain your answer. (5%)

(2) How do you differentiate the petition filed under Section 68 from the petition filed under Section 78, both of the Omnibus Election Code? (3%)

XVII. The Gay, Bisexual and Transgender Youth Association (GBTYA), an organization of gay, bisexual, and transgender persons, filed for accreditation with the COMELEC to join the forthcoming party-list elections. The COMELEC denied the application for accreditation on the ground that GBTY A espouses immorality which offends religious dogmas. GBTY A challenges the denial of its application based on moral grounds because it violates its right to equal protection of the law.

(1) What are the three (3) levels of test that are applied in equal protection cases? Explain. (3%)

(2) Which of the three (3) levels of test should be applied to the present case? Explain. (3%)

XVIII. Around 12:00 midnight, a team of police officers was on routine patrol in Barangay Makatarungan when it noticed an open delivery van neatly covered with banana leaves. Believing that the van was loaded with contraband, the team leader flagged down the vehicle which was driven by Hades. He inquired from Hades what was loaded on the van. Hades just gave the police officer a blank stare and started to perspire profusely. The police officers then told Hades that they will look inside the vehicle. Hades did not make any reply. The police officers then lifted the banana leaves and saw several boxes. They opened the boxes and discovered several kilos of shabu inside. Hades was charged with illegal possession of illegal drugs. After due proceedings, he was convicted by the trial court. On appeal, the Court of

Appeals affirmed his conviction.

In his final bid for exoneration, Hades went to the Supreme Court claiming that his constitutional right against unreasonable searches and seizures was violated when the police officers searched his vehicle without a warrant; that the shabu confiscated from him is thus inadmissible in evidence; and that there being no evidence against him, he is entitled to an acquittal.

For its part, the People of the Philippines maintains that the case of Hades involved a consented warrantless search which is legally recognized. The People adverts to the fact that Hades did not offer any protest when the police officers asked him if they could look inside the vehicle. Thus, any evidence obtained in the course thereof is admissible in evidence.

Whose claim is correct? Explain. (5%)

XIX. Pursuant to its mandate to manage the orderly sale, disposition and privatization of the National Power Corporation's (NPC) generation assets, real estate and other disposable assets, the Power Sector Assets and Liabilities Management (PSALM) started the bidding process for the privatization of Angat Hydro Electric Power Plant (AHEPP). After evaluation of the bids, K-Pop Energy Corporation, a South Korean Company, was the highest bidder. Consequently, a notice of award was issued to K-Pop. The Citizens' Party questioned the sale arguing that it violates the constitutional provisions on the appropriation and utilization of a natural resource which should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. The PSALM countered that only the hydroelectric facility is being sold and not the Angat Dam; and that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source of water that enters the intake gate of the power plant which is an artificial structure. Whose claim is correct? Explain. (4%)

XX. Typhoon Bangis devastated the Province of Sinagtala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls. There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. (4%)

XXI. The Partido ng Mapagkakatiwalaang Pilipino (PMP) is a major political party which has participated in every election since the enactment of the 1987 Constitution. It has fielded candidates mostly for legislative district elections. In fact, a number of its members were elected, and are actually serving, in the House of Representatives. In the coming 2016 elections, the PMP leadership intends to join the party-list system.

Can PMP join the party-list system without violating the Constitution and Republic Act (R.A.)

No. 7941? (4%)

XXII. The President appoints Emilio Melchor as Chairperson of the Civil Service Commission. Upon confirmation of Melchor's appointment, the President issues an executive order including him as Ex-Officio member of the Board of Trustees of the Government Service Insurance System (GSIS), Employees Compensation Commission (ECC), and the Board of Directors of the Philippine Health Insurance Corporation (PHILHEALTH). Allegedly, this is based on the Administrative Code of 1997 (E.O. No. 292), particularly Section 14, Chapter 3, Title I-A, Book V. This provision reads: "The chairman of the CSC shall be a member of the Board of Directors of other governing bodies of government entities whose functions affect the career development, employment, status, rights, privileges, and welfare of government officials and employees... " A taxpayer questions the designation of Melchor as ex-officio member of the said corporations before the Supreme Court based on two (2) grounds, to wit: (1) it violates the constitutional prohibition on members of the Constitutional Commissions to hold any other office or employment during his tenure; and (2) it impairs the independence of the CSC. Will the petition prosper? Explain. (4%)

---ooo0ooo---