

## INSTRUCTIONS

1. This Questionnaire contains twelve (12) 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 18 items (I to XVIII) 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. Lender extended to Borrower a P100,000.00 loan covered by a promissory note. Later, Borrower obtained another P100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a P300,000.00 loan secured by a real estate mortgage on his land valued at 11500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the P500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for P500,000.00.

a.) Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2%)

At the trial, Borrower's lawyer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only P300,000.00 was the amount due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings.

b.) Should the court dismiss the case? (3%)

II. Circe filed with the RTC a complaint for the foreclosure of real estate mortgage against siblings Scylla and Charybdis, co-owners of the property and cosignatories to the mortgage deed. The siblings permanently reside in Athens, Greece. Circe tipped off Sheriff Pluto that Scylla is on a balikbayan trip and is billeted at the Century Plaza Hotel in Pasay City. Sheriff Pluto went to the hotel and personally served Scylla the summons, but the latter refused to receive summons for Charybdis as she was not authorized to do so. Sheriff Pluto requested Scylla for the email address and fax number of Charybdis which the latter readily gave. Sheriff Pluto, in his return of the summons, stated that "Summons for Scylla was served personally as shown by her signature on the receiving copy of the summons. Summons on Charybdis was served pursuant to the amendment of Rule 14 by facsimile transmittal of the summons and complaint on defendant's fax number as evidenced by transmission verification report automatically generated by the fax machine indicating that it was received by the fax number to which it was sent on the date and time indicated therein."

Circe, sixty (60) days after her receipt of Sheriff Pluto's return, filed a Motion to Declare Charybdis in default as Charybdis did not file any responsive pleading.

a.) Should the court declare Charybdis in default? (2%)

Scylla seasonably filed her answer setting forth therein as a defense that Charybdis had paid the mortgage debt.

b.) On the premise that Charybdis was properly declared in default, what is the effect of Scylla's answer to the complaint? (2%)

III. Juliet invoking the provisions of the Rule on Violence Against Women and their Children filed with the RTC designated as a Family Court a petition for issuance of a Temporary Protection Order (TPO) against her husband, Romeo. The Family Court issued a 30-day TPO against Romeo. A day before the expiration of the TPO, Juliet filed a motion for extension. Romeo in his opposition raised, among others, the constitutionality of R.A. No. 9262 (The VAWC Law)

arguing that the law authorizing the issuance of a TPO violates the equal protection and due process clauses of the 1987 Constitution. The Family Court judge, in granting the motion for extension of the TPO, declined to rule on the constitutionality of R.A. No. 9262. The Family Court judge reasoned that Family Courts are without jurisdiction to pass upon constitutional issues, being a special court of limited jurisdiction and R.A. No. 8369, the law creating the Family Courts, does not provide for such jurisdiction. Is the Family Court judge correct when he declined to resolve the constitutionality of R.A. No. 9262? (3%)

IV. Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annotated in the TCT, was not impleaded as defendant.

a.) Should the complaint be dismissed? (3%)

b.) If the case should proceed to trial without Grieg being impleaded as a party to the case, what is his remedy to protect his interest? (2%)

V. Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence.

Ernie's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

a.) Was Ernie's counsel's objection proper? (2%)

b.) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2%)

VI. A law was passed declaring Mt. Karbungko as a protected area since it as a major watershed. The protected area covered a portion located in Municipality A of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course. Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediately, Maingat and STK filed a petition for the issuance of a writ of continuing mandamus against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutiny of the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction.

a.) Was the court correct in motu proprio dismissing the petition? (3%)

Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations.

b.) Should the court dismiss the petition? (3%)

VII. Plaintiff sued defendant for collection of P 1 million based on the latter's promissory note. The complaint alleges, among others:

1) Defendant borrowed P1 million from plaintiff as evidenced by a duly executed promissory note;

2) The promissory note reads:

"Makati, Philippines  
Dec. 30, 2014

For value received from plaintiff, defendant promises to pay plaintiff P1 million, twelve (12) months from the above indicated date without necessity of demand.

Signed  
Defendant"

A copy of the promissory note is attached as Annex "A."

Defendant, in his verified answer, alleged among others:

1) Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or

2) Defendant has paid the P1 million claimed in the promissory note (Annex "A" of the Complaint) as evidenced by an "Acknowledgment Receipt" duly executed by plaintiff on January 30, 2015 in Manila with his spouse signing as witness.

A copy of the "Acknowledgment Receipt" is attached as Annex "1" hereof.

Plaintiff filed a motion for judgment on the pleadings on the ground that defendant's answer failed to tender an issue as the allegations therein on his defenses are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue.

a.) Is judgment on the pleadings proper? (3%)

Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts.

b.) Should the court grant defendant's motion for summary judgment? (3%)

VIII. Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 down payment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial, the court rendered judgment ordering Aldrin to pay all the installments due, the cancellation of Yuri's title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executory, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former.

Aldrin filed a "Petition for the Issuance of a Writ of Execution" with proper notice of hearing. The petition alleged, among others, that the decision had become final and executory and he is entitled to the issuance of the writ of execution as a matter of right. Neil filed a motion to dismiss the petition on the ground that it lacked the required certification against forum shopping.

a.) Should the court grant Neil's Motion to Dismiss? (3%)

Despite the issuance of the writ of execution directing Neil to execute the deed of sale in favor of Aldrin, the former obstinately refused to execute the deed.

b.) What is Aldrin's remedy? (2%)

IX. Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, Hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City.

a.) As Hades' lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia? (2%)

b.) In what court should you file the petition? (1%)

c.) What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition? (3%)

X. An information for murder was filed against Rapido. The RTC judge, after personally evaluating the prosecutor's resolution, documents and parties' affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido's lawyer examined the rollo of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest. Immediately, Rapido's counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

a.) The judge before issuing the warrant did not personally conduct a searching examination

of the prosecution witnesses in violation of his client's constitutionally-mandated rights;

b.) There was no prior order finding probable cause before the judge issued the arrest warrant.

May the warrant of arrest be quashed on the grounds cited by Rapido's counsel? State your reason for each ground. (4%)

XI. The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

a.) Was the remedy taken by the governor correct? (2%)

b.) Will the writ of mandamus lie to compel the Ombudsman to include the treasurer in the Information? (3%)

c.) Can the Special Prosecutor move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence? (2%)

XII. Paz was awakened by a commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO 1 Remus and P02 Romulus proceeded to the condo unit identified by Paz. PO 1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as police officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by P02 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung physically hurt her. P02 Romulus detained Oasis Jung at the station's jail. After the inquest proceeding, the public prosecutor filed an information for Violation of R.A. No. 9262 (The VA WC Law) for physical violence and five separate informations for violation of R.A. No. 7610 (The Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made only after his arraignment.

a.) Did the court properly impose that bail condition? (3%)

Before arraignment, Oasis Jung's lawyer moved to quash the other four separate informations for violation of the child abuse law invoking the single larceny rule.

b.) Should the motion to quash be granted? (2%)

c.) After his release from detention on bail, can Oasis Jung still question the validity of his

arrest? (2%)

XIII. Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 9, 2015, the court granted Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015.

a.) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial? (3%)

b.) In what court and within what period should a remedy be availed of? (1%)

c.) Who should pursue the remedy? (2%)

XIV. Pedro was charged with theft for stealing Juan's cellphone worth *P20,000.00*. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the cellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan's cellphone.

At the trial, Pedro's lawyer objected to the prosecution's use of judicial affidavits of her witnesses considering the imposable penalty on the offense with which his client was charged.

a.) Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario? (2%)

b.) Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan? (2%)

At the conclusion of the prosecution's presentation of evidence, Prosecutor Marilag orally offered the receipt attached to Juan's judicial affidavit, which the court admitted over the objection of Pedro's lawyer.

After Pedro's presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly liable for *P20,000.00*.

Pedro's lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan's judicial affidavit, a documentary evidence which Prosecutor Marilag failed to orally offer.

c.) Is the motion for reconsideration meritorious? (2%)

XV. Water Builders, a construction company based in Makati City, entered into a construction agreement with Super Powers, Inc., an energy company based in

Manila, for the construction of a mini hydro electric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water

Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former P10 million, the full amount of the down payment paid, and P2 million by way of liquidated damages. Dissatisfied with the CIAC's judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City.

Should Water Builders' petition be dismissed? (3%)

XVI. AA, a twelve-year-old girl, while walking alone met BB, a teenage boy who befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:

"On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."

At the trial, the prosecutor called to the witness stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

a.) Is BB's counsel correct? (3%)

In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge motu proprio conducted his voir dire examination on AA.

b.) Was the action taken by the judge proper? (2%)

After the prosecution had rested its case, BB' s counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB' s minority as alleged in the Information.

c.) Should the court grant the demurrer? (3%)

XVII. Hercules was walking near a police station when a police officer signaled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "Sir, may problema po ba?" Instead of replying, the police officer locked up Hercules inside the police station jail.

a.) What is the remedy available to Hercules to secure his immediate release from detention? (2%)

b.) If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint? (3%)

c.) If Hercules opts to file a civil action against the police officer, will he have a cause of action? (3%)

XVIII. The residents of Mt. Ahohoy, headed by Masigasig, formed a nongovernmental organization - Alyansa Laban sa Minahan sa Ahohoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the mining site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their trucks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Ahohoy (APKA), a civilian volunteer organization serving as auxiliary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their binge drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation.

Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of amparo against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of amparo with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised among their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in an amparo petition.

a.) Is their defense tenable? (3%)

Respondents Mapusok and APKA, in their Return filed with the Court of Appeals, raised as their defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

b.) Are respondents correct in raising their defense? (3%)

c.) Mayumi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed? (1%)

---ooo0ooo---