

## INSTRUCTIONS

This questionnaire consists of seventeen (17) numbers contained in nine (9) pages. Read each question very carefully. Answer *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 immediately succeeding pages until completed. Do not repeat the question. A mere "Yes" or "No" answer without any corresponding discussion will not be given any credit.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE

GOOD LUCK!!!

Signed **ANGELINA S. GUTIERREZ**

*Chairperson*

*20006 Bar Examination Committee*

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

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<b>REMEDIAL LAW</b>
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- I -

1. What is the concept of remedial law? 2%
2. Distinguish between substantive law and remedial law. 2%
3. How are remedial laws implemented in our system of government? 2%
4. Distinguish jurisdiction from venue? 2%
5. What do you mean by (a) real actions; and (b) personal actions? 2%

- II -

What court has jurisdiction over an action for specific performance filed by a subdivision homeowner against a subdivision developer? Choose the correct answer. Explain. 2.5%

1. The Housing and Land Use Regulatory Board
2. The Securities and Exchange Commission
3. The Regional Trial Court
4. The Commercial Court or the Regional Trial Court designated by the Supreme Court to hear and decide "commercial cases".

- III -

1. What is forum shopping? 2.5%
2. Honey filed with the Regional Trial Court, Taal, Batangas a complaint for specific performance against Bernie. For lack of a certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how will you resolve the motion? 5%

- IV -

Jojie filed with the Regional Trial Court of Laguna a complaint for damages against Joe. During the pre-trial, Jojie and her counsel failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence ex palte. Thereafter, the court rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? Explain. 5%

- V -

May Congress enact a law providing that a 5,000 square meter lot, apart of the UST compound in Sampaloc, Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenio Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. 5%

- VI -

Explain each mode of certiorari:

- a. As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court. 2.5%
- b. As a special civil action from the Regional Trial Court or the Court of Appeals to the Supreme Court. 2.5%
- c. As a mode of review of the decisions of the National Labor Relations Commission and the Constitutional Commissions. 2.5%

- VII -

Mark filed with the Bureau of Internal Revenue a complaint for refund of taxes paid, but it was not acted upon. So, he filed a similar complaint with the Court of Tax Appeals raffled to one of its Divisions. Mark's complaint was dismissed. Thus, he filed with the Court of Appeals a petition for certiorari under Rule 65.

Does the Court of Appeals have jurisdiction over Mark's petition? 2.5

- VIII -

Does the Court of Appeals have jurisdiction to review the Decisions in criminal and administrative cases of the Ombudsman? 2.5%

- IX -

1. What are the requisites for the issuance of (a) a writ of preliminary injunction; and (b) a final writ of injunction? 2.5%
2. Distinguish between injunction as an ancillary remedy and injunction as a main action. 2.5%

- X -

1. Define a temporary restraining order (TRO). 2%
2. Maya Regional Trial Court issue injunction without bond? 2%
3. What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? 2%
4. Differentiate a TRO from a status quo order. 2%
5. Maya justice of a Division of the Court of Appeals issue a TRO? 2%

- XI -

1. What is an interlocutory order?
2. What is the difference between a judgment and an opinion of the court? 2.5%

- XII -

Tina Guerrero filed with the Regional Trial Court of Bifian, Laguna, a complaint for sum of money amounting to P1 Million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution of the promissory note; and contending that he has fully paid his loan with interest at 12% per annum.

1. Was the summons validly served on Carlos? 2.5%
2. If you were the judge, will you grant Tina's motion to declare Carlos in default? 2.5%

- XIII -

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the , sum of P300 Million. He bequeathed P50 Million each to his 3 sons and P150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond

1. Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition for probate of the latter's last will and testament? 2%
2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? 2%
3. Can the probate court appoint the widow as executor of the will? 2%
4. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? 2%
5. Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the proper court? 2%

- XIV -

When is bail a matter of right and when is it a matter of discretion ? 5%

- XV -

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel, their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia's sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later, he was charged with arson in an Information filed with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson.

Can Leticia testify over the objection of her husband on the ground of marital privilege? 5%

- XVI -

1. What are the requirements in order that an admission of guilt of an accused during a custodial investigation be admitted in evidence? 2.5%
2. As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? Explain. 2.5%

In 1996, Congress passed Republic Act No.8189, otherwise known as the Voters' Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voters' Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 Billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 Billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for *mandamus* to compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that *mandamus* does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

1. May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of the majority? 5%.
2. Is a petition for *mandamus* an appropriate remedy to enforce contractual obligations? 5%

*NOTHING FOLLOWS.*