

INSTRUCTIONS

1. This Questionnaire contains nine (9) pages. Check and make sure that your Questionnaire has the correct number of pages. You may write on your Questionnaire as you answer the questions.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue at the back of the first page and so on. Start every number on a separate page, but an answer to a sub-question under the same number may be written continuously on the same page and on the immediately succeeding pages until the answer is complete. Follow the numbering sequence of the Questionnaire in your answers.

2. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Answers must fully explain even if the questions do not expressly require explanations. A "Yes" or "No" answer *sans* explanation or discussion will not be given full credit.

3. Marking of your Notebook with your name or other identifying signs or symbols extraneous to the subject matter of the questions may be considered as cheating and may disqualify you.

Good luck!

YOU CAN BRING HOME THE QUESTIONNAIRE.

JUSTICE LUCAS P. BERSAMIN
Chairman
2017 Bar Examinations

I.

State whether the following marital unions are valid, void, or voidable, and give the corresponding justifications for your answer:

- (a) Ador and Becky's marriage wherein Ador was afflicted with AIDS prior to the marriage. (2%)
- (b) Carlos' marriage to Dina which took place after Dina had poisoned her previous husband Edu in order to free herself from any impediment in order to live with Carlos. (2%)
- (c) Eli and Fely's marriage solemnized seven years after the disappearance of Chona, Eli's previous spouse, after the plane she had boarded crashed in the West Philippine Sea. (2%)
- (d) David who married Lina immediately the day after obtaining a judicial decree annulling his prior marriage to Elisa. (2%)
- (e) Marriage of Zoren and Carmina who did not secure a marriage license prior to their wedding, but lived together as husband and wife for 10 years without any legal impediment to marry. (2%)

II.

In 1960, Rigor and Mike occupied two separate but adjacent tracts of land in Mindoro. Rigor's tract was classified as timber land while Mike's was classified as agricultural land. Each of them fenced and cultivated his own tract continuously for 30 years. In 1991, the Government declared the land occupied by Mike as alienable and disposable, and the one cultivated by Rigor as no longer intended for public use or public service.

Rigor and Mike now come to you today for legal advice in asserting their right of ownership of their respective lands based on their long possession and occupation since 1960.

(a) What are the legal consequences of the 1991 declarations of the Government respecting the lands? Explain your answer. (2%)

(b) Given that, according to Section 48(b) of Commonwealth Act No. 141, in relation to Section 14(1) of Presidential Decree No. 1529, the open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain as basis for judicial confirmation of imperfect title must be from June 12, 1945, or earlier, may Mike nonetheless validly base his assertion of the right of ownership on prescription under the *Civil Code*? Explain your answer. (4%)

(c) Does Rigor have legal basis for his application for judicial confirmation of imperfect title based on prescription as defined by the *Civil Code* given that, like Mike, his open, continuous, exclusive and notorious possession and occupation was not since June 12, 1945, or earlier, and his tract of land was timber land until the declaration in 1991? Explain your answer. (4%)

III.

Josef owns a piece of land in Pampanga. The National Housing Authority (NHA) sought to expropriate the property for its socialized housing project. The trial court fixed the just compensation for the property at P50 million. The NHA immediately deposited the same at the authorized depository bank and filed a motion for the issuance of a writ of possession with the trial court. Unfortunately, there was delay in the resolution of the motion. Meanwhile, the amount deposited earned interest.

When Josef sought the release of the amount deposited, NHA argued that Josef should only be entitled to P50 million.

Who owns the interest earned? (3%)

IV.

(a) Distinguish antichresis from usufruct? (3%)

(b) Distinguish *commodatum* from *mutuum*. (3%)

V.

Jacob has owned a farm land in Ramos, Tarlac. In 2012, Liz surreptitiously entered and cultivated the property. In 2014, Jacob discovered Liz's presence in and cultivation of the property. Due to his being busy attending to his business in Cebu, he tolerated Liz's cultivation of the property. Subsequently, in December 2016, Jacob wanted to regain possession of the property; hence, he sent a letter to Liz demanding that she vacate the property. Liz did not vacate despite the demand.

Jacob comes to enlist your legal assistance to bring an action against Liz to recover the possession of the property.

What remedies are available to Jacob to recover possession of his property under the circumstances? Explain your answer. (4%)

VI.

Tyler owns a lot that is enclosed by the lots of Riley to the North and East, of Dylan to the South, and of Reece to the West. The current route to the public highway is a kilometer's walk through the northern lot of Riley, but the route is a rough road that gets muddy during the rainy season, and is inconvenient because it is only 2.5 meters wide. Tyler's nearest access to the public highway would be through the southern lot of Dylan.

May Dylan be legally required to afford to Tyler a right of way through his property? Explain your answer. (4%)

VII.

Alice agreed to sell a parcel of land with an area of 500 square meters registered in her name and covered by TCT No. 12345 in favor of Bernadette for the amount of 900,000.00. Their agreement dated October 15, 2015 reads as follows:

I, Bernadette, agree to buy the lot owned by Alice covered by TCT No. 12345 for the amount of 900,000.00 subject to the following schedule of payment:

Upon signing of agreement 100,000.00

November 15, 2015 200,000.00

December 15, 2015 - 200,000.00

January 15, 2016 - 200,000.00

February 15, 2016 - 200,000.00

Title to the property shall be transferred upon full payment of 900,000.00 on or before February 15, 2016.

After making the initial payment of 100,000.00 on October 15, 2015, and the second instalment of 200,000.00 on November 15, 2015, Bernadette defaulted despite repeated demands from Alice.

In December 2016, Bernadette offered to pay her balance but Alice refused and told her that the land was no longer for sale. Due to the refusal, Bernadette caused the annotation of her adverse claim upon TCT No. 12345 on December 19, 2016. Later on, Bernadette discovered that Alice had sold the property to Chona on February 5, 2016, and that TCT No. 12345 had been cancelled and another one issued (TCT No. 67891) in favor of Chona as the new owner.

Bernadette sued Alice and Chona for specific performance, annulment of sale and cancellation of TCT No. 67891. Bernadette insisted that she had entered into a contract of sale with Alice; and that

because Alice had engaged in double sale, TCT No. 67891 should be cancelled and another title be issued in Bernadette's favor.

(a) Did Alice and Bernadette enter into a contract of sale of the lot covered by TCT No. 12345? Explain your answer. (4%)

(b) Did Alice engage in double sale of the property? Explain your answer. (4%)

VIII.

Pedro had worked for 15 years in Saudi Arabia when he finally decided to engage in farming in his home province where his 10- hectare farmland valued at 2,000,000.00 was located. He had already 3,000,000.00 savings from his long stint in Saudi Arabia.

Eagerly awaiting Pedro's arrival at the NAIA were his aging parents Modesto and Jacinta, his common-law spouse Veneranda, their three children, and Alex, his child by Carol, his departed legal wife. Sadly for all of them, Pedro suffered a stroke because of his overexcitement just as the plane was about to land, and died without seeing any of them.

The farmland and the savings were all the properties he left.

(a) State who are Pedro's legal heirs, and the shares of each legal heir to the estate? Explain your answer. (4%)

(b) Assuming that Pedro's will is discovered soon after his funeral. In the will, he disposed of half of his estate in favor of Veneranda, and the other half in favor of his children and his parents in equal shares. Assuming also that the will is admitted to probate by the proper court. Are the testamentary dispositions valid and effective under the law on succession? Explain your answer. (4%)

IX.

Danny and Elsa were married in 2002. In 2012, Elsa left the conjugal home and her two minor children with Danny to live with her paramour. In 2015, Danny sold without Elsa's consent a parcel of land registered in his name that he had purchased prior to the marriage. Danny used the proceeds of the sale to pay for his children's tuition fees.

Is the sale valid, void or voidable? Explain your answer. (3%)

X.

Briefly explain whether the following contracts are valid, rescissible, unenforceable, or void:

(a) A contract of sale between Lana and Andy wherein 16-year old Lana agreed to sell her grand piano for 5,000.-00. (2%)

(b) A contract of lease of the Philippine Sea entered by and between Mitoy and Elsa. (2%)

(c) A barter of toys executed by 12-year old Clarence and 10-year old Czar (2%)

(d) A sale entered by Barri and Garri, both minors, which their parents later ratified. (2%)

(e) Jenny's sale of her car to Celestine in order to evade attachment by Jenny's creditors. (2%)

XI.

Zeny and Nolan were best friends for a long time already. Zeny borrowed 10,000.00 from Nolan, evidenced by a promissory note whereby Zeny promised to pay the loan "once *his means permit*." Two months later, they had a quarrel that broke their long-standing friendship.

Nolan seeks your advice on how to collect from Zeny despite the tenor of the promissory note. What will your advice be? Explain your answer. (3%)

XII.

Krystal owns a parcel of land covered by TCT No. 12345 in Angeles City. Due to severe financial constraints, Krystal was forced to sell the property to RBP Corporation, a foreign corporation based in South Korea. Subsequently, RBP Corporation sold the property to Gloria, one of its most valued clients.

Wanting her property back, Krystal, learning of the transfer of the property from RBP Corporation to Gloria, sued both of them in the Regional Trial Court (RTC) for annulment of sale and for reconveyance. She alleged that the sale by RBP Corporation to Gloria was void because RBP Corporation was a foreign corporation prohibited by the Constitution from acquiring and owning lands in the Philippines.

Will Krystal's suit for annulment of sale and reconveyance prosper? Explain your answer. (4%)

XIII.

TRUE or FALSE - Explain your answers.

(a) All rights are considered as property. (2%)

(b) A lessee cannot bring a case for quieting of title respecting the property that he leases. (2%)

(c) Only the city or municipal mayor can file a civil action to abate a public nuisance. (2%)

(d) Possession of a movable property is lost when the location of the said movable is unknown to the owner. (2%)

(e) Continuous non-apparent easements can be acquired either through title or by prescription. (2%)

XIV.

Plutarco owned land that borders on a river. After several years, the action of the water of the river caused the deposit of soil, and increased the area of Plutarco's property by 200 square meters.

(a) If Plutarco wants to own the increase in area, what will be his legal basis for doing so? Explain your answer. (2%)

(b) On the other hand, if the river dries up, may Plutarco validly claim a right of ownership of the dried-

up river bed? Explain your answer. (2%)

XV.

Kevin signed a loan agreement with ABC Bank. To secure payment, Kevin requested his girlfriend Rosella to execute a document entitled "Continuing Guaranty Agreement" whereby she expressly agreed to be solidarily liable for the obligation of Kevin.

Can ABC Bank proceed directly against Rosella upon Kevin's default even without proceeding against Kevin first? Explain your answer. (3%)

XVI.

Jovencio operated a school bus to ferry his two sons and five of their schoolmates from their houses to their school, and back. The parents of the five schoolmates paid for the service. One morning, Porfirio, the driver, took a short cut on the way to school because he was running late, and drove across an unmanned railway crossing. At the time, Porfirio was wearing earphones because he loved to hear loud music while driving. As he crossed the railway tracks, a speeding PNR train loudly blared its horn to warn Porfirio, but the latter did not hear the horn because of the loud music. The train inevitably rammed into the school bus. The strong impact of the collision between the school bus and the train resulted in the instant death of one of the classmates of Jovencio's younger son.

The parents of the fatality sued Jovencio for damages based on *culpa contractual* alleging that Jovencio was a common carrier; Porfirio for being negligent; and the PNR for damages based on *culpa aquiliana*.

Jovencio denied being a common carrier. He insisted that he had exercised the diligence of a good father of a family in supervising Porfirio, claiming that the latter had had no history of negligence or recklessness before the fatal accident.

(a) Did his operation of the school bus service for a limited clientele render Jovencio a common carrier? Explain your answer. (3%)

(b) In accordance with your answer to the preceding question, state the degree of diligence to be observed by Jovencio, and the consequences thereof. Explain your answer. (3%)

(c) Assuming that the fatality was a minor of only 15 years of age who had no earning capacity at the time of his death because he was still a student in high school, and the trial court is minded to award indemnity, what may possibly be the legal and factual justifications for the award of loss of earning capacity? Explain your answer. (4%)

-NOTHING FOLLOWS-