

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.

A priority thrust of the Administration is the change of the form of government from unitary to federal. The change can be effected only through constitutional amendment or revision.

(a) What are the methods of amending the Constitution? Explain briefly each method. (3%)

(b) Cite at least three provisions of the Constitution that need to be amended or revised to effect the change from unitary to federal, and briefly explain why? (3%)

II.

A.

Under the doctrine of immunity from suit, the State cannot be sued without its consent. How may the consent be given by the State? Explain your answer. (3%)

B.

The doctrine of immunity from suit in favor of the State extends to public officials in the performance of their official duties. May such officials be sued nonetheless to prevent or to undo their oppressive

or illegal acts, or to compel them to act? Explain your answer. (3%)

C.

Do government-owned or -controlled corporations also enjoy the immunity of the State from suit? Explain your answer. (3%)

III.

State A and State B, two sovereign states, enter into a 10-year mutual defense treaty. After five years, State A finds that the more progressive State B did not go to the aid of State A when it was threatened by its strong neighbor State C. State B reasoned that it had to be prudent and deliberate in reacting to State C because of their existing trade treaties.

(a) May State A now unilaterally withdraw from its mutual defense treaty with State B? Explain your answer. (2.5%)

(b) What is the difference between the principles of *pacta sunt servanda* and *rebus sic stantibus* in international law? (2.5%)

(c) Are the principles of *pacta sunt servanda* and *rebus sic stantibus* relevant in the treaty relations between State A and State B? What about in the treaty relations between State B and State C? Explain your answer. (2.5%)

IV.

A.

What is the pardoning power of the President under Art. VIII, Sec. 19 of the Constitution?

Is the exercise of the power absolute? (4%)

B.

Distinguish pardon from amnesty. (4%)

V.

(a) What is the right of legation, and how is it undertaken between states? Explain your answer. (2%)

(b) Under this right, may a country like Malaysia insist that the Philippines establishes a consulate in Sabah to look after the welfare of the Filipino migrants in the area? Explain your answer. (2%)

VI.

A.

The President appoints the Vice President as his Administration's Housing Czar, a position that requires the appointee to sit in the Cabinet. Although the appointment of the members of the Cabinet requires confirmation by the Commission on Appointment (CA), the Office of the President does not

submit the appointment to the CA. May the Vice President validly sit in the Cabinet? (2.5%)

B.

The Executive Department has accumulated substantial savings from its appropriations. Needing 3,000,000.00 for the conduct of a plebiscite for the creation of a new city but has no funds appropriated soon by the Congress for the purpose, the COMELEC requests the President to transfer funds from the savings of the Executive Department in order to avoid a delay in the holding of the plebiscite.

May the President validly exercise his power under the 1987 Constitution to transfer funds from the savings of the Executive Department, and make a cross-border transfer of 3,000,000.00 to the COMELEC by way of augmentation? Is your answer the same if the transfer is treated as aid to the COMELEC? Explain your answer. (4%)

VII.

Give the limitations on the power of the Congress to enact the General Appropriations Act? Explain your answer. (5%)

VIII.

A bank acquired a large tract of land as the highest bidder in the foreclosure sale of the mortgaged assets of its borrower. It appears that the land has been originally registered under the Torrens system in 1922 pursuant to the provisions of the Philippine Bill of 1902, the organic act of the Philippine Islands as a colony of the USA. Sec. 21 of the Philippine Bill of 1902 provided that *"all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands."* Sec. 27 of the law declared that a holder of the mineral claim so located was entitled to all the minerals that lie within his claim, but he could not mine outside the boundary lines of his claim.

The 1935 Constitution expressly prohibited the alienation of natural resources except agricultural lands. Sec. 2, Art. XII of the 1987 Constitution contains a similar prohibition, and proclaims that all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. This provision enunciates the Regalian Doctrine.

May the Government, on the basis of the Regalian Doctrine enunciated in the constitutional provisions, deny the bank its right as owner to the mineral resources underneath the surface of its property as recognized under the Philippine Bill of 1902? Explain your answer. (5%)

IX.

A.

Ambassador Robert of State Alpha committed a very serious crime while he headed his foreign mission in the Philippines. Is he subject to arrest by Philippine authorities? Explain your answer. (3%)

B.

Extradition is the process pursuant to a treaty between two State parties for the surrender by the requested State to the custody of the requesting State of a fugitive criminal residing in the former. However, extradition depends on the application of two principles - the *principle of specialty* and the *dual criminality principle*. Explain these principles. (4%)

C.

The President signs an agreement with his counterpart in another country involving reciprocity in the treatment of each country's nationals residing in the other's territory. However, he does not submit the agreement to the Senate for concurrence.

Sec. 21, Art. VII of the Constitution provides that no treaty or international agreement shall be valid and effective without such concurrence.

Is the agreement signed by the President effective despite the lack of Senate concurrence? Explain your answer. (4%)

X.

A.

Under the *enrolled bill doctrine*, the signing of a bill by both the Speaker of the House of Representatives and the President of the Senate and the certification by the secretaries of both Houses of Congress that the bill was passed on a certain date are conclusive on the bill's due enactment. Assuming there is a conflict between the enrolled bill and the legislative journal, to the effect that the enrolled bill signed by the Senate President and eventually approved by the President turned out to be different from what the Senate actually passed as reflected in the legislative journal.

(a) May the Senate President disregard the *enrolled bill doctrine* and consider his signature as invalid and of no effect? (2.5%)

(b) May the President thereafter withdraw his signature? Explain your answer. (2.5%)

B.

Sec. 26(2), Art. VI of the Constitution provides that no bill passed by either House of Congress shall become a law unless it has passed three readings on separate days and printed copies of it in its final form have been distributed to the Members of the House three days before its passage.

Is there an exception to the provision? Explain your answer. (3%)

XI.

Sec. 17, Art. VI of the Constitution establishes an Electoral Tribunal for each of the Houses of Congress, and makes each Electoral Tribunal "the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." On the other hand, Sec. 2(1), C (Commission on Elections), Art. IX of the Constitution grants to the COMELEC the power to enforce and administer all laws and regulations "relative to the conduct of an election, plebiscite, initiative,

referendum, and recall."

Considering that there is no concurrence of jurisdiction between the Electoral Tribunals and the COMELEC, state when the jurisdiction of the Electoral Tribunals begins, and the COMELEC's jurisdiction ends. Explain your answer. (4%)

XII.

The Congress establishes by law Philippine Funds, Inc., a private corporation, to receive foreign donations coming from abroad during national and local calamities and disasters, and to enable the unhampered and speedy disbursements of the donations through the mere action of its Board of Directors. Thereby, delays in the release of the donated funds occasioned by the stringent rules of procurement would be avoided. Also, the releases would not come under the jurisdiction of the Commission on Audit (COA).

(a) Is the law establishing Philippine Funds, Inc. constitutional? Explain your answer. (3%)

(b) Can the Congress pass the law that would exempt the foreign grants from the jurisdiction of the COA? Explain your answer. (3%)

XIII.

Command responsibility pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts. The doctrine has now found application in civil actions for human rights abuses, and in proceedings seeking the privilege of the writ of *amparo*.

(a) What are the elements to be established in order to hold the superior or commander liable under the doctrine of *command responsibility*? (4%)

(b) May the doctrine of *command responsibility* apply to the President for the abuses of the armed forces (AFP and PNP) given his unique role as the commander-in-chief of all the armed forces? Explain your answer. (4%)

XIV.

To fulfill a campaign promise to the poor folk in a far-flung area in Mindanao, the President requested his friend, Pastor Roy, to devote his ministry to them. The President would pay Pastor Roy a monthly stipend of 50,000.00 from his discretionary fund, and would also erect a modest house of worship in the locality in an area of the latter's choice.

Does the President thereby violate any provisions of the Constitution? Explain your answer. (3%)

XV.

A.

According to Sec. 3, Art. VIII of the Constitution, the Judiciary shall enjoy fiscal autonomy. What does the term *fiscal autonomy* signify? Explain your answer. (3%)

B.

May a complaint for disbarment against the Ombudsman prosper during her incumbency? Explain your answer. (3%)

C.

Sec. 3, Art. XI of the Constitution states that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year."

What constitutes initiation of impeachment proceedings under the provision? (3%)

-NOTHING FOLLOWS-