

INSTRUCTIONS

1. This questionnaire contains ten (10) pages including this page. Check the number of pages and their proper sequencing. You may write notes on this questionnaire.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order as the questions. Write your answers only on the front page of every sheet. Note well the allocated percentage points for each question or sub-question. In your answers, use the numbering system in the questionnaire.

2. Answer the questions legibly, clearly, and concisely. Start each answer 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.

3. Your answer should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at a sound or logical conclusion. Always support your answer with the pertinent laws, rules, and/or jurisprudence.

A MERE "YES" OR "NO" ANSWER WITHOUT ANY CORRESPONDING EXPLANATION OR DISCUSSION WILL NOT BE GIVEN FULL CREDIT. THUS, ALWAYS BRIEFLY BUT FULLY EXPLAIN YOUR ANSWERS AL THOUGH THE QUESTION DOES NOT EXPRESSLY ASK FOR AN EXPLANATION. DO NOT REWRITE OR REPEAT THE QUESTION ON YOUR NOTEBOOK.

4. Do not write your name or any extraneous note/s or distinctive marking/son 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 Notebook is considered cheating and can disqualify you.

YOU CAN BRING HOME THE QUESTIONNAIRE.

JUSTICE MARIANO C. DEL CASTILLO
Chairperson
2018 Bar Examinations

I

Yeti Export Corporation (YEC), thru its President, negotiated for Yahoo Bank of Manila (YBM) to issue a letter of credit to course the importation of electronic parts from China to be sold and distributed to various electronic manufacturing companies in Manila. YBM issued the letter of credit and forwarded it to its correspondent bank, Yunan Bank (YB) of Beijing, to notify the Chinese exporters to submit the bill of lading in the name of YBM covering the goods to be exported to Manila and to pay the Chinese exporters the purchase price upon verification of the authenticity of the shipping documents.

The electronic parts arrived in the Port of Manila, and YBM released them to the custody of YEC as an entrustee under a trust receipt. When YEC unpacked the imported parts in its warehouse, it found that they were not only of inferior quality but also did not fit the descriptions contained in the bill of lading. YEC refused to pay YBM the amount owed under the trust receipt. YBM thereafter commenced the following:

(a) Civil suit to hold YB liable for failure to ensure that the electronic parts loaded for exportation in China corresponded with those described in the bill of lading. Is there any merit in the case against YB? (2.5%)

(b) Criminal suit against YEC and its President for estafa, and sought the payment of the amount covered in the trust receipt. The defense of the YEC President is that he cannot be held liable for a transaction of the corporation, of which he only acted as an officer, and that it is YEC as the principal that should be held liable under the trust receipt, which was entered into in the name of YEC and pursuant to YEC's corporate purposes. He cited as his legal ground the "Doctrine of Separate Juridical Personality." Is the President's contention meritorious? (2.5%)

II

Yolanda executed and signed a promissory note with all the requisites for negotiability being present, except for the amount which was left blank. She kept the promissory note in her desk and decided to place the amount at a later date. The indicated payee, Yohann, managed to obtain the promissory note from Yolanda's desk and filled out the amount for the sum of PhP 10 million, which was the amount actually lent by him to Yolanda, but excluding the agreed interest. Yohann later endorsed and delivered the check to Yvette, under circumstances that would constitute the latter to be a holder in due course.

(a) May Yvette hold Yolanda liable on the note? (2.5%)

(b) Would your answer be the same if the promissory note was actually completed by Yolanda (including the amount of PhP 10 million), but stolen from her desk by Yohann? Can Yvette enforce the note against Yolanda? (2.5%)

III

On November 23, 2017, Yas Ysmael (Ysmael) loaned the amount of PhP 5 million to Yarn & Thread Corporation (YTC), through its President, Ylmas Yektas (Yektas), which loan was evidenced by a Promissory Note (PN), which reads as follows:

Date: _____

Within one year from date hereof, I promise to pay to the order of YAS YSMAEL, the sum of PhP 5 million with interest at 120% per annum.

YARN & THREAD Corporation

By:

(Sgd.)

Ylmas Yektas

Yektas was the controlling stockholder of YTC at the time the PN was issued. As security for the payment of the PN, Yektas issued and delivered to Ysmael a postdated personal check covering the face value of the PN drawn from his account with Yellow Bell Bank and Trust Company. The proceeds of the loan under the PN were used by YTC as working capital.

A year later, Ysmael inserted the date of "November 23, 2017" on the date section of the PN, and

made a formal demand upon YTC, through Yektas, to pay the note, but which was refused on the ground that Yektas was no longer the President and controlling shareholder of YTC. By this time, all the shares of YTC had already been sold to a new group of investors. Ysmael deposited the personal check issued by Yektas which was dishonored. He then filed a collection suit against YTC and Yektas including the accrued interest.

The defendants raised the following defenses in the collection suit. Rule on the merits of *each* defense. (2% each)

(a) A PN issued with a blank date is one that is not payable on demand or on a fixed or determinable future time, and therefore the insertion of the date constituted material alteration that nullified it, so that no cause of action arose.

(b) Yektas cannot be made liable on the PN since he signed in his capacity as President of YTC, which fact was known to Ysmael although not indicated on the PN.

(c) Yektas signed the PN merely as an accommodation to YTC. As he received no consideration for the PN, it is void for lack of consideration.

(d) YTC, now owned by new owners, cannot be held liable on the PN since it was entered into by its former owner and President, which act the new Board of Directors did not ratify.

(e) The PN is void for being in violation of the Usury Law seeking interest at an unconscionable rate of 120% p.a.

IV

Ysidro, a paying passenger, was on board Bus No. 904 owned and operated by Yatco Transportation Company (Yatco). He boarded the bus at Munoz, Nueva Ecija with Manila as his final destination. He was seated on the first row, window seat on the left side of the bus. As the bus was negotiating the national highway in front of the public market of Gerona, Tarlac, the bus came to a full stop because of the traffic. The driver of the bus took this opportunity to check on the tires of the bus and to relieve himself. As he was alighting from the bus to do these, an unidentified man standing along the highway hurled a huge rock at the left side of the bus and hit Ysidro between his eyes. He lost consciousness and immediately the driver, with the conductor, drove the bus to bring him to the nearest hospital. He expired before the bus could reach the hospital.

Ysidro's wife and children brought a civil action to collect damages from Yatco, alleging that as a common carrier, it was required to exercise extraordinary diligence in ensuring the safety of its passengers. They contended that, in case of injuries and/or death on the part of any of its passengers, the common carrier is presumed to be at fault. In its defense, Yatco alleged that it is not an absolute insurer of its passengers and that Ysidro's death was not due to any defect in the means of transport or method of transporting passengers, or the negligent acts of its employees. Since the accident was due to the fault of a stranger over whom the common carrier had no control, or of which it did not have any prior knowledge to be able to prevent it, the cause of Ysidro's death should be considered a fortuitous event and not the liability of the common carrier.

(a) Is a common carrier presumed to be at fault whenever there is death or injury to its passengers, regardless of the cause of death or injury? (2.5%)

(b) What kind of diligence is required of common carriers like Yatco for the protection of its passengers? (2.5%)

(c) Will your answer be the same as your answer in (b) above, if the assailant was another paying passenger who boarded the bus and deliberately stabbed Ysidro to death? (2.5%)

V

Yellow Fin Tuna Corporation (Yellow Fin), a domestic corporation, applied for a credit facility in the amount of PhP 50 million with Yengzi Financial Corporation (YFC). The application was approved and the Credit Agreement was signed and took effect. Ysko and Yuan, Yellow Fin Chairman and President, respectively, executed a Continuing Suretyship Agreement in favor of YFC wherein they guaranteed the due and full payment and performance of Yellow Fin's guarantee obligations under the credit facility. YFC soon discovered material inconsistencies in the financial statements given by Yellow Fin, drawing YFC to conclude that Yellow Fin committed misrepresentation. Under the Credit Agreement, any misrepresentation by Yellow Fin or its sureties will constitute an event of default. YFC thus called an event of default and filed a complaint for sum of money against Yellow Fin, Ysko, and Yuan. Immediately thereafter, Yellow Fin filed a petition for rehabilitation. The court suspended the proceedings in YFC's complaint until the rehabilitation court disposed of the petition for rehabilitation. YFC posits that the suspension of the proceedings should only be with respect to Yellow Fin but not with respect to Ysko and Yuan.

Is YFC correct? (2.5%)

VI

Shortly after Yin and Yang were wed, they each took out separate life insurance policies on their lives, and mutually designated one another as sole beneficiary. Both life insurance policies provided for a double indemnity clause, the cost for which was added to the premium rate. During the last 10 years of their marriage, the spouses had faithfully paid for the annual premiums over the life policies from both their salaries. Unfortunately, Yin fell in love with his officemate, Vessel, and they carried on an affair. After two years, their relationship bore them a daughter named Vinsel. Without the knowledge of Yang, Yin changed the designation of the beneficiary to an "irrevocable designation" of Vinsel and Vessel jointly. When Yang learned of the affair, she was so despondent that, having chanced upon Yin and Vessel on a date, she rammed them down with the car she was driving, resulting in Vin's death and Vessel's complete loss of mobilization. Yang was sued for parricide, and while the case was pending, she filed a claim on the proceeds of the life insurance of Yin as irrevocable beneficiary, or at least his legal heir, and opposed the claims on behalf of Vessel and her daughter Vinsel. Yang claimed that her designation as beneficiary in Vin's life insurance policy was irrevocable, in the nature of one "coupled with interest," since it was made in accordance with their mutual agreement to designate one another as sole beneficiary in their respective life policies. She also claimed that the beneficiary designation of Vessel and the illegitimate minor child Vinsel was void being the product of an illicit relationship, and therefore without "insurable interest."

(a) Is Yang correct in saying that her designation as beneficiary was irrevocable? (2.5%)

(b) Do Vessel and Vinsel have "insurable interest" on the life of Yin? (2.5%)

VII

Yelp Pictures Inc. (Yelp Pictures), a movie production company based in California, USA, entered into a contract with Yehey Movies Inc., a Filipino movie production and distribution company which is registered in the Philippines under the Securities Regulation Code (SRC) and listed in the Philippine Stock Exchange Inc. (PSE), for the exclusive distribution in the Philippines of movies produced in the USA by Yelp Pictures. Yehey Movies is currently owned 85% by Yavic Yamson, and the balance, by the public in the Philippines. For purposes of entering into the contract, suing for breach of such contract, and prosecuting unauthorized showing of movies produced by Yelp Pictures, it appointed Atty. Yson, a local lawyer, as its attorney-in-fact.

Simultaneously with the execution of the film distribution agreement, Yehey Movies also granted Yelp Pictures an option to acquire up to 40% of the total outstanding capital stock in Yehey Movies post-exercise of the option, at the option price of PhP .01 per number of shares covered by the option, exercisable within a period of one (1) year from the date of the grant, at the exercise price of PhP 100 per share. Once exercised, Yelp Pictures was granted the right to nominate two (2) directors to the Board of Yehey Movies, and Yavic Yamson agreed to vote all his shares for the election of directors to be nominated by Yelp Pictures.

(a) May the acts of entering into the film distribution contract, the subsequent execution and performance of the terms of the contract in the Philippines, and the appointment of Atty. Yson, be considered as act of "doing business" in the Philippines that will require Yelp Pictures to register as a foreign corporation and obtain a license to do business in the Philippines? (2.5%)

(b) Will your answer in (a) be the same if Yelp Pictures exercises the option, becomes a substantial shareholder, and is able to elect two (2) directors in the Board of Yehey Movies? (2.5%)

(c) Must the option granted to Yelp Pictures be registered under the SRC? (2.5%)

VIII

Yenkell Cement Corporation (YCC) is a public corporation whose shares are listed at the PSE. It is 60% owned by Yenkell Holdings Corporation (YHC) and 20% by Yengco Exploration Inc. (YEI). The remaining 20% is held by the public. YHC is a private non-listed corporation which, in turn, is 60% owned by Yatlas Mines Inc. (YMI), and 40% by Yacnotan Consolidated Inc. (YCI). On August 8, 2008, the Board of Directors of YEI passed a resolution approving the acquisition of 50% and 25% of the shares held by YMI and YCI, respectively, in the authorized capital stock of YHC.

Yolly, one of the staff members in the office of the Corporate Secretary of YEI, was immediately asked to type the resolution and file the disclosure with the PSE and the Securities and Exchange Commission (SEC). Before doing that, she secretly called her brother who works with a stock brokerage company, to purchase, in the name of Yolly's husband, 5,000 shares in YCC. After the acquisition was disclosed to the SEC and the PSE, the market price of YCC increased by 50%.

(a) In acquiring 75% of the total capital stock of YHC, should YEI be required to do a mandatory tender offer? (2.5%)

(b) Can Yolly be held liable for insider trading? (2.5%)

IX

Yangchou Inc.'s (YI) Articles of Incorporation (AOI) provides for two (2) types of shares of stock:

common and preferred shares. Its AOI further provides that "the preferred shares shall have a guaranteed annual dividend of 3% of the par value." Its By-Laws also specifically provides that "preferred shareholdings shall be cumulative and participating." No other terms of preference are provided for preferred shares in either the AOI or By-Laws of YI.

For the first five years of operations, the company was operating at a loss. At the end of the sixth year, YI realized a net profit of PhP 100 million, and unrestricted retained earnings of PhP 30 million. The YI Board of Directors declared and paid out dividends of 1 % on common shares, and 5% on preferred shares, which amounted to a total of PhP 30 million.

However, the preferred shareholders made a formal demand that they be given an additional 3% dividend for each of the five (5) years based on the preferred shares features of "cumulative and participating," and an additional 1 % given to the common shareholders, which could all be accommodated within the remaining balance of the net profits.

Should Yi's Board heed the demand of its preferred shareholders? (2.5%)

X

Ybarra is the registered shareholder of 500 shares in Yakal Inc., of which only 50% has been paid up, but for which the corporation had erroneously issued a covering certificate of stock for the entire 500 shares. Ybarra sells the entire 500 shares for cash pursuant to a notarized Deed of Sale in favor of Ynchon, and which certificate was duly endorsed and delivered. When Ynchon presented the Deed of Sale and the endorsed certificate of stock, as well as proof of payment to the Bureau of Internal Revenue (BIR) of the tax due on the sale of shares, the Corporate Secretary of Yakal Inc. refused to register the sale on the ground of lack of written authority from Ybarra to cancel the certificate and have the shares registered in the name of Ynchon.

(a) Does Ynchon have a cause of action to file a petition for *mandamus* to compel the corporation to register the 500 shares in his name in the corporation books? (2.5%)

(b) Who is liable to pay the remaining unpaid 50% balance - Ybarra or Ynchon? (2.5%)

XI

Yenetic Corporation wants to increase its Authorized Capital Stock (which is currently fully subscribed and issued) to be able to increase its working capital to undertake business expansions.

The Board of Directors consults with you as legal counsel on the proper answers to the following issues: (2.5% each)

(a) Can Yenetic's AOI be formally amended to remove the right of appraisal on all dissenting stockholders in all matters under the law which requires a ratification vote of the stockholders?

(b) If the increase in Authorized Capital Stock is formally submitted to the stockholders in a meeting duly called for the purpose, what is the vote necessary for the stockholders' ratification, and may the dissenting stockholders exercise their appraisal right?

(c) Once the increase in the Authorized Capital Stock of Yenetic has been legally effected with the SEC, can the new shares from the unissued shares be offered to a new limited group of investors

without having to offer them to the shareholders of record since no pre-emptive right is provided for in the AOI and By-laws of Yenetic?

XII

Yashtag Holdings, Inc.'s (Yashtag Holdings) AOI states that its primary purpose is "to invest in real and personal properties of every kind or otherwise acquire and deal with stocks, bonds, and other securities or evidence of indebtedness of any other corporation, and to hold or to own, use, sell, deal in, and dispose of, any such stock." It further states that it has an authorized capital stock of PhP 1 million, all of which have been fully subscribed and paid up.

Yashtag Holdings' President, Mr. Yokada, convinced Yeh, Yah, and Yo to lend/invest money with Yashtag, which money will be invested in a sister company, Yashtag Realty, Inc. (Yashtag Realty), a corporation that develops premium real estate projects in the Philippines. For the amount loaned/invested, Yashtag Holdings issued two (2) postdated checks to each lender/investor, one representing the principal amount, and the other covering the guaranteed interest that ranged between 18-32% p.a. On the maturity dates of the checks, the individual lender/investor can review the loans/investment, and may either collect only the interest or roll over the same with the principal amounts. Eventually, the bursting of the real estate bubble brought about a serious financial crisis around the world, including the Philippines. Yashtag Realty collapsed and with it Yashtag Holdings defaulted in the payment of its loans/investments, as well as the dishonor of the tens of thousands of postdated checks issued to its various lenders/investors.

Yeh, Yah, and Yo filed several charges against Yashtag Holdings and its President, making them solidarily liable for the investments they failed to recover. Yeh, Yah, and Yo proved that Yashtag Holdings, acting through Mr. Yokada, was able to get a total of PhP 800 million of loans/investments from the public under the scheme, and from which Mr. Yokada, as the controlling stockholder, was able to withdraw a total amount of PhP 300 million for his personal account and entered into the books of Yashtag Holdings as "Advances to Stockholders." Mr. Yokada pleads as a defense that he cannot be made personally liable on the claim of the group under the doctrines of "Separate Juridical Personality" and "Limited Liability."

(a) What are the doctrines of "Separate Juridical Personality" and "Limited Liability"? (2.5%)

(b) Decide on the merits of Mr. Yokada's defense against being made liable for Yashtag Holdings' obligations. (2.5%)

XIII

YBC Bank extended a loan of PhP 50 million to Mr. Yamato secured by a real estate mortgage (REM) on a large tract of land. The covering Transfer Certificate of Title (TCT) of the property mortgaged did not indicate any encumbrance or lien on it, and the bank was able to obtain a certified true copy of the TCT from the Register of Deeds showing that the owner's copy submitted to the bank was a genuine title. The Loan Agreement provided an escalation clause which stated that, at the anniversary date of the loan, YBC Bank was granted the option to increase the interest rate whenever there would be an increase in the Bangko Sentral ng Pilipinas' prevailing rates. Three years later, Mr. Yamato received a formal notice from YBC Bank raising the interest rate of the loan based on the escalation clause provided for in the Loan Agreement. Mr. Yamato refused to pay based on the increased interest rate that was effected without his consent. YBC Bank insists on the binding effect of the escalation clause appearing on their Loan Agreement.

Mr. Yamato subsequently defaulted on the loan and vanished. Thus, YBC Bank extrajudicially foreclosed on the REM, and was the highest bidder at the public auction sale. It was only then that the bank determined that there were actually two separate TCTs issued for the property and one of which was in the name of Mr. Yamsuan who occupied the property after having bought it earlier from Mr. Yamato.

(a) Can YBC Bank unilaterally increase the interest rates on the loan? (2.5%)

(b) Is YBC Bank a mortgagee buyer in good faith? Is it preferred over Mr. Yamsuan? (2.5%)

XIV

On June 21, 2008, Yate took out a life insurance policy on her life in the amount of PhP 10 million and named her husband Vandy and daughter as joint irrevocable beneficiaries. Before the policy was issued and the premiums were paid, Yate underwent a medical checkup with a physician accredited by the insurer, and the only result found was that she was suffering from high blood pressure. Yate was previously diagnosed by a private physician of having breast cancer which she did not disclose to the insurer in her application, nor to the insurer's accredited physician because by then, she was told that she was already cancer-free after undergoing surgery which removed both her breasts. She was later diagnosed with psychotic tendency that graduated into extreme despondency. She was found dead hanging in her closet 36 months after the issuance of the policy. The police authorities declared it to be a case of suicide. The policy did not include suicide as an excepted risk.

(a) Can the insurer raise the issue of failure to disclose that she had cancer as a cause for denying the claim of the beneficiaries? (2.5%)

(b) Are the beneficiaries entitled to receive the proceeds of the life insurance notwithstanding the fact that the cause of death was suicide? (2.5%)

XV

A distinctive-tasting pastillas is well-known throughout the country as having been developed within a close-knit women's group in Barangay San Ysmael which is located along a very busy national highway. Its popularity has encouraged the setting up of several shops selling similar delicacies, with the most famous product being the pastillas of "Barangay San Ysmael." Eventually, the pastillas of Aling Voling under the brand name "Ysmaellas" began to attract national distinction. Aling Voling therefore registered it as a copyright with the National Library. Her neighbor, Aling Yasmin, realizing the commercial value of the brand, started using the term "Ysmaellas" for her pastillas but used different colors. Aling Yasmin registered the brand name "Ysmaellas" with the Intellectual Property Office (IPO).

(a) Can Aling Voling successfully obtain court relief to prohibit Aling Yasmin from using the brand name "Ysmaellas" in her products on the basis of her (Aling Voling's) copyright? What is the difference between registration as a copyright and registration as a trade or brand name? (2.5%)

(b) Can Aling Yasmin seek injunctive relief against Aling Voling from using the brand name "Ysmaellas," the latter relying on the doctrine of "prior use" as evidenced by her prior copyright registration? (2.5%)

(c) Can Aling Voling seek the cancellation of Aling Yasmin's trademark registration of the brand name

"Ysmaellas" on the ground of "Well Known Brand" clearly evidenced by her (Aling Yoling's) prior copyright registration, actual use of the brand, and several magazine articles? (2.5%)

XVI

Yosha was able to put together a mechanical water pump in his garage consisting of suction systems capable of drawing water from the earth using less human effort than what was then required by existing models. The water pump system provides for a new system which has the elements of novelty and inventive steps. Yosha, while preparing to have his invention registered with the IPO, had several models of his new system fabricated and sold in his province.

(a) Is Yosha's invention no longer patentable by virtue of the fact that he had sold several models to the public before the formal application for registration of patent was filed with the IPO? (2.5%)

(b) If Yosha is able to properly register his patent with the IPO, can he prevent anyone who has possession of the earlier models from using them? (2.5%)

XVII

Yvan was a slot machine operator supervisor in a casino operated by the Philippine Amusement and Gaming Corporation (PAGCOR). On the basis of an intelligence report, he was found, in connivance with some slot machine customers, to have padded the credit meter readings of slot machines in the casino where he was employed. After being served with notice and opportunity to contest the findings, he was found guilty of the charges and ordered dismissed by PAGCOR. After receiving his copy of the order for dismissal, he claimed to have sent to the Board of PAGCOR his motion for reconsideration through facsimile transmission. After a considerable time, when his motion for reconsideration was unacted upon, he filed an action with the Civil Service Commission (CSC) for illegal dismissal. PAGCOR claimed that his action has prescribed because it was filed more than 15 days after his dismissal became final. Yvan claimed that there was no final decision yet because the Board of PAGCOR has not yet acted on his motion for reconsideration. He presented a copy of his facsimile transmission addressed to the Board of PAGCOR seeking reconsideration of his dismissal, and the fact that there has been no action taken. He claimed that based on the Electronic Commerce Act of 2000, his facsimile transmission should be considered like any genuine and authentic paper pleading. PAGCOR denied having received it and was able to prove that the telephone number of PAGCOR used in the facsimile transmission was wrong. CSC denied his complaint on account of prescription. He appealed CSC's dismissal in court.

(a) Was CSC correct in dismissing the case? (2.5%)

(b) Can Yvan's bank be ordered by the court to disclose if there were unreasonable increases in his bank deposit when the alleged acts were committed? (2.5%)

XVIII

Through various acts of graft and bribery, Mayor Ycasiano accumulated a large amount of wealth which he converted into U.S. dollars and deposited in a Foreign Currency Deposit Unit (FCDU) account with the Yuen Bank (YB). On a tip given by the secretary of the mayor, the Anti-Money Laundering Council (AMLC) sent an order to YB to confirm the amount of U.S. dollars that Mayor Ycasiano had in his FCDU account. YB claims that, under the Foreign Currency Deposit Act (R.A. No. 6426, as amended), a written permission from the depositor is the only instance allowed for the

examination of FCDU accounts. YB alleges that AMLC on its own cannot order a banking institution to reveal matters relating to bank accounts.

(a) Is the legal position of YB, in requiring written permission from the depositor, correct? (2.5%)

(b) Does AMLC have the power to order a banking institution to reveal matters relating to bank accounts? (2.5%)

-NOTHING FOLLOWS-