

**2008 BAR EXAMINATIONS
CIVIL LAW**

14 September 2008

8 A.M. – 12 NN.

INSTRUCTIONS

This questionnaire consists of nineteen (19) questions contained in twelve (12) pages. Read each question very carefully. Answer legibly, clearly and concisely. Start each number on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and on the immediately succeeding pages until completed. Do not repeat the question.

You will be given credit for your knowledge of legal doctrine and for the quality of your legal reasoning. 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!

**DANTE O. TINGA
CHAIRPERSON
2008 BAR EXAMINATIONS COMMITTEE**

PLEASE CHECK THE NUMBER OF PAGES IN THIS SET

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

I

Ana Rivera had a husband, a Filipino citizen like her, who was among the passengers on board a commercial jet plane which crashed in the Atlantic Ocean ten(10) years earlier and had never been heard of ever since. Believing that her husband had died, Ana married Adolf Cruz Staedtler, a divorced German national born of a German father and a Filipino mother residing in Stuttgart. To avoid being required to submit the required certificate of capacity to marry from the German Embassy in Manila, Adolf stated in the application for marriage license that he was a Filipino citizen. With the marriage license stating that Adolf was a Filipino, the couple got married in a ceremony officiated by the Parish Priest of Calamba, Laguna in a beach in Nasugbu, Batangas, as the local parish priest refused to solemnize marriages except in his church. Is the marriage valid? Explain fully. (5%)

II

At age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pietro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one week, they were found in an abandoned hut in Cavite. Marian and Pietro were hacked with bolos. Marian and the baby she delivered were both found dead, with the baby's umbilical cord already cut. Pietro survived.

a) Can Marian's baby be the beneficiary of the insurance taken on the life of the mother? (2%)

b) Between Marian and the baby, who is presumed to have died ahead? (1%)

c) Will Pietro, as surviving biological father of the baby, be entitled to claim the proceeds of the life insurance on the life of Marian? (2%)

III

Roderick and Faye were high school sweethearts. When Roderick was 18 and Faye, 16 years old, they started to live together as husband and wife without the benefit of marriage. When Faye reached 18 years of age, her parents forcibly took her back and arranged for her marriage to Brad. Although Faye lived with Brad after the marriage, Roderick continued to regularly visit Faye while Brad was away at work. During their marriage, Faye gave birth to a baby girl, Laica. When Faye was 25 years old, Brad discovered her continued liaison with Roderick and in one of their heated arguments, Faye shot Brad to death. She lost no time in marrying her true love Roderick, without a marriage license, claiming that they have been continuously cohabiting for more than 5 years.

- a) Was the marriage of Roderick and Faye valid? (2%)
- b) What is the filiation status of Laica? (2%)
- c) Can Laica bring an action to impugn her own status on the ground that based on DNA results, Roderick is her biological father? (2%)
- d) Can Laica be legitimated by the marriage of her biological parents? (1%)

IV

Gianna was born to Andy and Aimee, who at the time of Gianna's birth were not married to each other. While Andy was single at that time, Aimee was still in the process of securing a judicial declaration of nullity on her marriage to her ex-husband. Gianna's birth certificate, which was signed by both Andy and Aimee, registered the status of Gianna as "legitimate", her surname carrying that of Andy's, and that her parents were married to each other.

- a) Can a judicial action for correction of entries in Gianna's birth certificate be successfully maintained to:
 - i) Change her status from "legitimate" to "illegitimate" (1%);
and
 - ii) Change her surname from that of Andy's to Aimee's maiden surname? (1%)

b) Instead of a judicial action, can administrative proceedings be brought for the purpose of making the above corrections? (2%)

c) Assuming that Aimee is successful in declaring her former marriage void, and Andy and Aimee subsequently married each other, would Gianna be legitimated? (1%)

V

Despite several relationships with different women, Andrew remained unmarried. His first relationship with Brenda produced a daughter, Amy, now 30 years old. His second, with Carla, produced two sons: Jon and Ryan. His third, with Donna, bore him two daughters: Vina and Wilma. His fourth, with Elena, bore him no children although Elena has a daughter Jane, from a previous relationship. His last, with Fe, produced no biological children but they informally adopted without court proceedings, Sandy, now 13 years old, whom they consider as their own. Sandy was orphaned as a baby and was entrusted to them by the midwife who attended to Sandy's birth. All the children, including Amy, now live with Andrew in his house.

a) Is there any legal obstacle to the legal adoption of Amy by Andrew? To the legal adoption of Sandy by Andrew and Elena? (2%)

b) In his old age, can Andrew be legally entitled to claim support from Amy, Jon, Ryan, Vina, Wilma and Sandy assuming that all of them have the means to support him? (1%)

c) Can Amy, Jon, Ryan, Vina, Wilma and Sandy legally claim support from each other? (2%)

d) Can Jon and Jane legally marry? (1%)

VI

Alex died without a will, leaving only an undeveloped and untitled lot in Taguig City. He is survived by his wife and 4 children. His wife told the children that she is waiving her share in the property, and allowed Bobby, the eldest son who was about to get married, to construct his house on $\frac{1}{4}$ of the lot, without however obtaining the consent of his siblings. After settlement of Alex's estate and partition among the heirs, it was discovered that Bobby's house was constructed on the portion allocated to his sister,

Cathy. Cathy asked Bobby to demolish his house and vacate the portion allotted to her. In lieu of demolition, Bobby offered to purchase from Cathy the lot portion on which his house was constructed. At that time, the house was valued at ₱300,000 while the portion of the lot on which the house was constructed was valued at ₱350,000.

- a) Can Cathy lawfully ask for demolition of Bobby's house? (3%)
- b) Can Bobby legally insist on purchasing the land? (2%)

VII

Anthony bought a piece of untitled agricultural land from Bert. Bert, in turn, acquired the property by forging Carlo's signature in a deed of sale over the property. Carlo had been in possession of the property for 8 years, declared it for tax purposes, and religiously paid all taxes due on the property. Anthony is not aware of the defect in Bert's title, but has been in actual physical possession of the property from the time he bought it from Bert, who had never been in possession. Anthony has since then been in possession of the property for one year.

- a) Can Anthony acquire ownership of the property by acquisitive prescription? How many more years does he have to possess it to acquire ownership? (2%)
- b) If Carlo is able to legally recover his property, can he require Anthony to account for all the fruits he has harvested from the property while in possession? (2%)
- c) If there are standing crops on the property when Carlo recovers possession, can Carlo appropriate them? (2%)

VIII

Adam, a building contractor, was engaged by Blas to construct a house on a lot which he (Blas) owns. While digging on the lot in order to lay down the foundation of the house, Adam hit a very hard object. It turned out to be the vault of the old *Banco de las Islas Filipinas*. Using a detonation device, Adam was able to open the vault containing old notes and coins

which were in circulation during the Spanish era. While the notes and coins are no longer legal tender, they were valued at ₱ 100 million because of their historical value and the coins' silver and nickel content. The following filed legal claims over the notes and coins:

- i) Adam, as finder;
- ii) Blas, as owner of the property where they were found;
- iii) Bank of the Philippine Islands, as successor-in-interest of the owner of the vault; and
- iv) The Philippine Government because of their historical value.

a) Who owns the notes and coins? (4%)

b) Assuming that either or both Adam and Blas are adjudged as owners, will the notes and coins be deemed part of their absolute community or conjugal partnership of gains with their respective spouses? (2%)

IX

The properties of Jessica and Jenny, who are neighbors, lie along the banks of the Marikina River. At certain times of the year, the river would swell and as the water recedes, soil, rocks and other materials are deposited on Jessica's and Jenny's properties. This pattern of the river swelling, receding and depositing soil and other materials being deposited on the neighbors' properties have gone on for many years. Knowing this pattern, Jessica constructed a concrete barrier about 2 meters from her property line and extending towards the river, so that when the water recedes, soil and other materials are trapped within this barrier. After several years, the area between Jessica's property line to the concrete barrier was completely filled with soil, effectively increasing Jessica's property by 2 meters. Jenny's property, where no barrier was constructed, also increased by one meter along the side of the river.

a) Can Jessica and Jenny legally claim ownership over the additional 2 meters and one meter, respectively, of land deposited along their properties? (2%)

b) If Jessica's and Jenny's properties are registered, will the benefit of such registration extend to the increased area of their properties? (2%)

c) Assume the two properties are on a cliff adjoining the shore of Laguna Lake. Jessica and Jenny had a hotel built on the properties. They had the earth and rocks excavated from the properties dumped on the adjoining shore, giving rise to a new patch of dry land. Can they validly lay claim to the patch of land? (2%)

X

Arthur executed a will which contained only: (i) a provision disinheriting his daughter Bernice for running off with a married man, and (ii) a provision disposing of his share in the family house and lot in favor of his other children Connie and Dora. He did not make any provisions in favor of his wife Erica, because as the will stated, she would anyway get $\frac{1}{2}$ of the house and lot as her conjugal share. The will was very brief and straightforward and both the above provisions were contained in page 1, which Arthur and his instrumental witness, signed at the bottom. Page 2 contained the attestation clause and the signatures, at the bottom thereof, of the 3 instrumental witnesses which included Lambert, the driver of Arthur; Yoly, the family cook, and Attorney Zorba, the lawyer who prepared the will. There was a 3rd page, but this only contained the notarial acknowledgement. The attestation clause stated the will was signed on the same occasion by Arthur and his instrumental witnesses who all signed in the presence of each other, and the notary public who notarized the will. There are no marginal signatures or pagination appearing on any of the 3 pages. Upon his death, it was discovered that apart from the house and lot, he had a ₱ 1million account deposited with ABC Bank.

- a) Was Erica preterited? (1%)
- b) What other defects of the will, if any, can cause denial of probate? (2%)
- c) Was the disinheritance valid? (1%)
- d) How should the house and lot, and the cash be distributed? (1%)

XI

John and Paula, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage the couple acquired substantial landholdings in London and in Makati. Paula

bore John three children, Peter, Paul and Mary. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them the entire estate would go to Peter and Paul only but the two could not dispose of nor divide the London estate as long as they live. John and Paula died tragically in the London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parent's will before a Makati Regional Trial Court.

- a) Should the will be admitted to probate? (2%)
- b) Are the testamentary dispositions valid? (2%)
- c) Is the testamentary prohibition against the division of the London estate valid? (2%)

XII

Ernesto, an overseas Filipino worker, was coming home to the Philippines after working for so many years in the Middle East. He had saved ₱100,000 in his savings account in Manila which he intended to use to start a business in his home country. On his flight home, Ernesto had a fatal heart attack. He left behind his widowed mother, his common-law wife and their twin sons. He left no will, no debts, no other relatives and no other properties except the money in his savings account. Who are the heirs entitled to inherit from him and how much should each receive? (3%)

XIII

Raymond, single, named his sister Ruffa in his will as a devisee of a parcel of land which he owned. The will imposed upon Ruffa the obligation of preserving the land and transferring it, upon her death, to her illegitimate daughter Scarlet who was then only one year old. Raymond later died, leaving behind his widowed mother, Ruffa and Scarlet.

- a) Is the condition imposed upon Ruffa to preserve the property and to transmit it upon her death to Scarlet, valid? (1%)
- b) If Scarlet predeceases Ruffa, who inherits the property? (2%)
- c) If Ruffa predeceases Raymond, can Scarlet inherit the property directly from Raymond? (2%)

XIV

Stevie was born blind. He went to school for the blind, and learned to read in *Braille* language. He speaks English fluently. Can he:

- a) Make a will? (1%)
- b) Act as a witness to a will? (1%)
- c) In either of the above instances, must the will be read to him? (1%)

XV

Eduardo was granted a loan by XYZ Bank for the purpose of improving a building which XYZ leased from him. Eduardo, executed the promissory note ("PN") in favor of the bank, with his friend Recardo as co-signatory. In the PN, they both acknowledged that they are "individually and collectively" liable and waived the need for prior demand. To secure the PN, Recardo executed a real estate mortgage on his own property. When Eduardo defaulted on the PN, XYZ stopped payment of rentals on the building on the ground that legal compensation had set in. Since there was still a balance due on the PN after applying the rentals, XYZ foreclosed the real estate mortgage over Recardo's property. Recardo opposed the foreclosure on the ground that he is only a co-signatory; that no demand was made upon him for payment, and assuming he is liable, his liability should not go beyond half the balance of the loan. Further, Recardo said that when the bank invoked compensation between the rentals and the amount of the loan, it amounted to a new contract or novation, and had the effect of extinguishing the security since he did not give his consent (as owner of the property under the real estate mortgage) thereto.

- a) Can XYZ Bank validly assert legal compensation? (2%)
- b) Can Recardo's property be foreclosed to pay the full balance of the loan? (2%)
- c) Does Recardo have basis under the Civil Code for claiming that the original contract was novated? (2%)

XVI

Dux leased his house to Iris for a period of 2 years, at the rate of ₱25,000.00 monthly, payable annually in advance. The contract stipulated that it may be renewed for another 2-year period upon mutual agreement of the parties. The contract also granted Iris the right of first refusal to purchase the property at any time during the lease, if Dux decides to sell the property at the same price that the property is offered for sale to a third party. Twenty-three months after execution of the lease contract, Dux sold the house to his mother for ₱2 million. Iris claimed that the sale was a breach of her right of first refusal. Dux said there was no breach because the property was sold to his mother who is not a third party. Iris filed an action to rescind the sale and to compel Dux to sell the property to her at the same price. Alternatively, she asked the court to extend the lease for another 2 years on the same terms.

- a) Can Iris seek rescission of the sale of the property to Dux's mother? (3%)
- b) Will the alternative prayer for extension of the lease prosper? (2%)

XVII

Felipe borrowed \$100 from Gustavo in 1998, when the Phil ₱ - US\$ exchange rate was ₱56 – US\$1. On March 1, 2008, Felipe tendered to Gustavo a cashier's check in the amount of ₱4,135 in payment of his US\$ 100 debt, based on the Phil ₱ – US\$ exchange rate at that time. Gustavo accepted the check, but forgot to deposit it until Sept. 12, 2008. His bank refused to accept the check because it had become stale. Gustavo now wants Felipe to pay him in cash the amount of ₱5,600. Claiming that the previous payment was not in legal tender, and that there has been extraordinary deflation since 1998, and therefore, Felipe should pay him the value of the debt at the time it was incurred. Felipe refused to pay him again, claiming that Gustavo is estopped from raising the issue of legal tender, having accepted the check in March, and that it was Gustavo's negligence in not depositing the check immediately that caused the check to become stale.

- a) Can Gustavo now raise the issue that the cashier's check is not legal tender? (2%)
- b) Can Felipe validly refuse to pay Gustavo again? (2%)
- c) Can Felipe compel Gustavo to receive US\$100 instead? (1%)

XVIII

AB Corp. entered into a contract with XY Corp. whereby the former agreed to construct the research and laboratory facilities of the latter. Under the terms of the contract, AB Corp. agreed to complete the facility in 18 months, at the total contract price of ₱10 million. XY Corp. paid 50% of the total contract price, the balance to be paid upon completion of the work. The work started immediately, but AB Corp. later experienced work slippage because of labor unrest in his company. AB Corp.'s employees claimed that they are not being paid on time; hence, the work slowdown. As of the 17th month, work was only 45% completed. AB Corp. asked for extension of time, claiming that its labor problems is a case of fortuitous event, but this was denied by XY Corp. When it became certain that the construction could not be finished on time, XY Corp. sent written notice canceling the contract, and requiring AB Corp. to immediately vacate the premises.

- a) Can the labor unrest be considered a fortuitous event? (1%)
- b) Can XY Corp. unilaterally and immediately cancel the contract? (2%)
- c) Must AB Corp. return the 50% downpayment? (2%)

XIX

Juliet offered to sell her house and lot, together with all the furniture and appliances therein, to Dehlma. Before agreeing to purchase the property, Dehlma went to the Register of Deeds to verify Juliet's title. She discovered that while the property was registered in Juliet's name under the Land Registration Act, as amended by the Property Registration Decree, it was mortgaged to Elaine to secure a debt of ₱80,000. Wanting to buy the property, Dehlma told Juliet to redeem the property from Elaine, and gave her an advance payment to be used for purposes of releasing the mortgage on the property. When the mortgage was released, Juliet executed a Deed of Absolute Sale over the property which was duly registered with the Registry of Deeds, and a new TCT was issued in Dehlma's name. Dehlma immediately took possession over the house and lot and the movables

therein. Thereafter, Dehlma went to the Assessor's Office to get a new tax declaration under her name. She was surprised to find out that the property was already declared for tax purposes in the name of XYZ Bank which had foreclosed the mortgage on the property before it was sold to her. XYZ Bank was also the purchaser in the foreclosure sale of the property. At that time, the property was still unregistered but XYZ Bank registered the Sheriff's Deed of Conveyance in the day book of the Register of Deeds under Act. 3344 and obtained a tax declaration in its name.

- a) Was Dehlma a purchaser in good faith? (2%)
- b) Who as between Dehlma and XYZ Bank has a better right to the house and lot? (2%)
- c) Who owns the movables inside the house? (2%)

NOTHING FOLLOWS.