

**2008 BAR EXAMINATIONS
MERCANTILE LAW**

21 September 2008

8 A.M. – 12 NN.

INSTRUCTIONS

This questionnaire consists of nineteen (19) questions 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 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

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I

X Corporation entered into a contract with PT Construction Corp. for the latter to construct and build a sugar mill within six (6) months. They agreed that in case of delay, PT Construction Corp. will pay X Corporation ₱100,000 for every day of delay. To ensure payment of the agreed amount of damages, PT Construction Corp. secured from Atlantic Bank a confirmed and irrevocable letter of credit which was accepted by X Corporation in due time. One week before the expiration of the six (6) month period, PT Construction Corp. requested for an extension of time to deliver claiming that the delay was due to the fault of X Corporation. A controversy as to the cause of the delay which involved the workmanship of the building ensued. The controversy remained unresolved. Despite the controversy, X Corporation presented a claim against Atlantic Bank by executing a draft against the letter of credit.

a) Can Atlantic Bank refuse payment due to the unresolved controversy? Explain. **(3%)**

b) Can X Corporation claim directly from PT Construction Corp.? Explain. **(3%)**

II

Tom Cruz obtained a loan of ₱1 Million from XYZ Bank to finance his purchase of 5,000 bags of fertilizer. He executed a trust receipt in favor of XYZ Bank over the 5,000 bags of fertilizer. Tom Cruz withdrew the 5,000 bags from the warehouse to be transported to Lucena City where his store was located. On the way, armed robbers took from Tom Cruz the 5,000 bags of fertilizer. Tom Cruz now claims that his obligation to pay the loan to XYZ Bank is extinguished because the loss was not due to his fault. Is Tom Cruz correct? Explain. **(4%)**

III

a) As a rule under the Negotiable Instruments Law, a subsequent party may hold a prior party liable but not vice-versa. Give two (2) instances where a prior party may hold a subsequent party liable. **(2%)**

b) How does the “shelter principle” embodied in the Negotiable Instruments Law operate to give the rights of a holder-in-due course to a

holder who does not have the status of a holder-in-due course? Briefly explain. **(2%)**

IV

AB Corporation drew a check for payment to XY Bank. The check was given to an officer of AB Corporation who was instructed to deliver it to XY Bank. Instead, the officer, intending to defraud the Corporation, filled up the check by making himself as the payee and delivered it to XY Bank for deposit to his personal account. XY Bank debited AB Corporation's account. AB Corporation came to know of the officer's fraudulent act after he absconded. AB Corporation asked XY Bank to recredit its amount. XY Bank refused.

a) If you were the judge, what issues would you consider relevant to resolve the case? Explain. **(3%)**

b) How would you decide the case? Explain. **(2%)**

V

Pancho drew a check to Bong and Gerard jointly. Bong indorsed the check and also forged Gerard's indorsement. The payor bank paid the check and charged Pancho's account for the amount of the check. Gerard received nothing from the payment.

a) Pancho asked the payor bank to recredit his account. Should the bank comply? Explain fully. **(3%)**

b) Based on the facts, was Pancho as drawer discharged on the instrument? Why? **(2%)**

VI

On January 1, 2000, Antonio Rivera secured a life insurance from SOS Insurance Corp. for ₱1 Million with Gemma Rivera, his adopted daughter, as the beneficiary. Antonio Rivera died on March 4, 2005 and in the police investigation, it was ascertained that Gemma Rivera participated as an accessory in the killing of Antonio Rivera. Can SOS Insurance Corp. avoid liability by setting up as a defense the participation of Gemma Rivera in the killing of Antonio Rivera? Discuss with reasons. **(4%)**

VII

Terrazas de Patio Verde, a condominium building, has a value of ₱50 Million. The owner insured the building against fire with three (3) insurance companies for the following amounts:

Northern Insurance Corp. – ₱20 Million

Southern Insurance Corp. – ₱30 Million

Eastern Insurance Corp. – ₱50 Million

a) Is the owner's taking of insurance for the building with three (3) insurers valid? Discuss. **(3%)**

b) The building was totally razed by fire. If the owner decides to claim from Eastern Insurance Corp. only ₱50 Million, will the claim prosper? Explain. **(2%)**

VIII

City Railways, Inc. (CRI) provides train service, for a fee, to commuters from Manila to Calamba, Laguna. Commuters are required to purchase tickets and then proceed to designated loading and unloading facilities to board the train. Ricardo Santos purchased a ticket for Calamba and entered the station. While waiting, he had an altercation with the security guard of CRI leading to a fistfight. Ricardo Santos fell on the railway just as a train was entering the station. Ricardo Santos was run over by the train. He died.

In the action for damages filed by the heirs of Ricardo Santos, CRI interposed lack of cause of action, contending that the mishap occurred before Ricardo Santos boarded the train and that it was not guilty of negligence. Decide. **(5%)**

IX

On October 30, 2007, M/V Pacific, a Philippine registered vessel owned by Cebu Shipping Company (CSC), sank on her voyage from Hong Kong to Manila. Empire Assurance Company (Empire) is the insurer of the lost cargoes loaded on board the vessel which were consigned to

Debenhams Company. After it indemnified Debenhams, Empire as subrogee filed an action for damages against CSC.

a) Assume that the vessel was seaworthy. Before departing, the vessel was advised by the Japanese Meteorological Center that it was safe to travel to its destination. But while at sea, the vessel received a report of a typhoon moving within its general path. To avoid the typhoon, the vessel changed its course. However, it was still at the fringe of the typhoon when it was repeatedly hit by huge waves, foundered and eventually sank. The captain and the crew were saved except three (3) who perished. Is CSC liable to Empire? What principle of maritime law is applicable? Explain. **(3%)**

b) Assume the vessel was not seaworthy as in fact its hull had leaked, causing flooding in the vessel. Will your answer be the same? Explain. **(2%)**

c) Assume the facts in question (b). Can the heirs of the three (3) crew members who perished recover from CSC? Explain fully. **(3%)**

X

Nelson owned and controlled Sonnel Construction Company. Acting for the company, Nelson contracted the construction of a building. Without first installing a protective net atop the sidewalks adjoining the construction site, the company proceeded with the construction work. One day a heavy piece of lumber fell from the building. It smashed a taxicab which at that time had gone offroad and onto the sidewalk in order to avoid the traffic. The taxicab passenger died as a result.

a) Assume that the company had no more account and property in its name. As counsel for the heirs of the victim, whom will you sue for damages, and what theory will you adopt? **(3%)**

b) If you were the counsel for Sonnel Construction, how would you defend your client? What would be your theory? **(2%)**

c) Could the heirs hold the taxicab owner and driver liable? Explain. **(2%)**

XI

a) Since February 8, 1935, the legislature has not passed even a single law creating a private corporation. What provision of the Constitution precludes the passage of such a law? **(3%)**

b) May the composition of the board of directors of the National Power Corporation (NPC) be validly reduced to three (3)? Explain your answer fully. **(2%)**

XII

Pedro owns 70% of the subscribed capital stock of a company which owns an office building. Paolo and Juan own the remaining stock equally between them. Paolo also owns a security agency, a janitorial company and a catering business. In behalf of the office building company, Paolo engaged his companies to render their services to the office building. Are the service contracts valid? Explain. **(4%)**

XIII

Grand Gas Corporation, a publicly listed company, discovered after extensive drilling a rich deposit of natural gas along the coast of Antique. For five (5) months, the company did not disclose the discovery so that it could quietly and cheaply acquire neighboring land and secure mining rights to the land. Between the discovery and its disclosure of the information to the Securities and Exchange Commission, all the directors and key officers of the company bought shares in the company at very low prices. After the disclosure, the price of the shares went up. The directors and officers sold their shares at huge profits.

a) What provision of the Securities Regulation Code (SRC) did they violate, if any? Explain. **(4%)**

b) Assuming that the employees of the establishment handling the printing work of Grand Gas Corporation saw the exploration reports which were mistakenly sent to their establishment together with other materials to be printed. They too bought shares in the company at low prices and later sold them at huge profits. Will they be liable for violation of the SRC? Why? **(3%)**

XIV

Ace Cruz subscribed to 100,000 shares of stock of JP Development Corporation, which has a par value of ₱1 per share. He paid ₱25,000 and promised to pay the balance before December 31, 2008. JP Development Corporation declared cash dividends on October 15, 2008, payable on December 1, 2008.

a) For how many shares is Ace Cruz entitled to be paid cash dividends? Explain. **(2%)**

b) On December 1, 2008, can Ace Cruz compel JP Development Corporation to issue to him the stock certificate corresponding to the ₱25,000 paid by him? **(2%)**

XV

Eloise, an accomplished writer, was hired by Petong to write a bi-monthly newspaper column for *Diario de Manila*, a newly-established newspaper of which Petong was the editor-in-chief. Eloise was to be paid ₱1,000 for each column that was published. In the course of two months, Eloise submitted three columns which, after some slight editing, were printed in the newspaper. However, *Diario de Manila* proved unprofitable and closed only after two months. Due to the minimal amounts involved, Eloise chose not to pursue any claim for payment from the newspaper, which was owned by New Media Enterprises.

Three years later, Eloise was planning to publish an anthology of her works, and wanted to include the three columns that appeared in the *Diario de Manila* in her anthology. She asks for your legal advice:

a) Does Eloise have to secure authorization from New Media Enterprises to be able to publish her *Diario de Manila* columns in her own anthology? Explain fully. **(4%)**

b) Assume that New Media Enterprises plans to publish Eloise's columns in its own anthology entitled, "The Best of *Diario de Manila*". Eloise wants to prevent the publication of her columns in that anthology since she was never paid by the newspaper. Name one irrefutable legal argument Eloise could cite to enjoin New Media Enterprises from including her columns in its anthology. **(2%)**

XVI

In 1999, Mocha Warm, an American musician, had a hit rap single called *Warm Warm Honey* which he himself composed and performed. The single was produced by a California record company, Galactic Records. Many noticed that some passages from *Warm Warm Honey* sounded eerily similar to parts of *Under Hassle*, a 1978 hit song by the British rock band Majesty. A copyright infringement suit was filed in the United States against Mocha Warm by Majesty. It was later settled out of court, with Majesty receiving attribution as co-author of *Warm Warm Honey* as well as a share in the royalties.

By 2002, Mocha Warm was nearing bankruptcy and he sold his economic rights over *Warm Warm Honey* to Galactic Records for \$10,000.

In 2008, Planet Films, a Filipino movie producing company, commissioned DJ Chef Jean, a Filipino musician, to produce an original re-mix of *Warm Warm Honey* for use in one of its latest films, *Astig!*. DJ Chef Jean remixed *Warm Warm Honey* with a salsa beat, and interspersed as well a recital of a poetic stanza by John Blake, a 17th century Scottish poet. DJ Chef Jean died shortly after submitting the remixed *Warm Warm Honey* to Planet Films.

Prior to the release of *Astig!*, Mocha Warm learns of the remixed *Warm Warm Honey* and demands that he be publicly identified as the author of the remixed song in all the CD covers and publicity releases of Planet Films.

a) Who are the parties or entities entitled to be credited as author of the remixed *Warm Warm Honey*? Reason out your answers. **(3%)**

b) Who are the particular parties or entities who exercise copyright over the remixed *Warm Warm Honey*? Explain. **(3%)**

XVII

On January 1, 2008, Al obtained a loan of ₱10,000 from Bob to be paid on January 30, 2008, secured by a chattel mortgage on a Toyota motor car. On February 1, 2008, Al obtained another loan of ₱10,000 from Bob to be paid on February 15, 2008. He secured this by executing a chattel mortgage on a Honda motorcycle. On the due date of the first loan Al failed to pay. Bob foreclosed the chattel mortgage but the car was bidden for ₱6,000 only. Al also failed to pay the second loan due on February 15, 2008. Bob filed an action for collection of sum of money. Al

filed a motion to dismiss claiming that Bob should first foreclose the mortgage on the Honda motorcycle before he can file the action for sum of money. Decide with reasons. **(4%)**

XVIII

a) Can a distressed corporation file a petition for corporate rehabilitation after the dismissal of its earlier petition for insolvency? Why? **(2%)**

b) Can the corporation file a petition for rehabilitation first, and after it is dismissed file a petition for insolvency? Why? **(2%)**

c) Explain the key phrase “equality is equity” in corporate rehabilitation proceedings. **(2%)**

XIX

Industry Bank, which has a net worth of ₱1 Billion, extended a loan to Celestial Properties Inc. amounting to ₱270 Million. The loan was secured by a mortgage over a vast commercial lot in the Fort Bonifacio Global City, appraised at ₱350 Million. After audit, the Bangko Sentral ng Pilipinas gave notice that the loan to Celestial Properties exceeded the single borrower’s limit of 25% of the bank’s net worth under a recent BSP Circular. In light of other previous similar violations of the credit limit requirement, the BSP advised Industry Bank to reduce the amount of the loan to Celestial Properties under pain of severe sanctions. When Industry Bank informed Celestial Properties that it intended to reduce the loan by ₱50 Million, Celestial Properties countered that the bank should first release a part of the collateral worth ₱50 Million. Industry Bank rejected the counter-proposal, and referred the matter to you as counsel. How would you advise Industry Bank to proceed, with its best interests in mind? **(5%)**

NOTHING FOLLOWS.