

2009 BAR EXAMINATIONS

**CIVIL LAW**

13 September 2009

8 A.M. - 12 NN.

INSTRUCTIONS

This questionnaire is in TWO (2) PARTS: Part I with ten (10) questions (numbered I to X), contained in five (5) pages; and Part II with ten (10) questions (numbered XI-XX), contained in five (5) pages, for a total number of ten (10) pages.

Write your answers to Part I and Part II in the corresponding portions indicated in the booklet.

Begin your answer to each numbered question on a separate page; an answer to a subquestion under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the questions directly and concisely. Do not repeat the questions. Write legibly.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE.

GOOD LUCK!

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**ANTONIO EDUARDO B. NACHURA**  
CHAIRPERSON  
2009 BAR EXAMINATIONS COMMITTEE

PLEASE CHECK THAT THIS SET CONTAINS ELEVEN (11) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

## PART I

### I

**TRUE or FALSE.** Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

[a] The doctrine of “processual presumption” allows the court of the forum to presume that the foreign law applicable to the case is the same as the local or domestic law.

[b] In *reserva troncal*, all *reservatarios* (reservees) inherit as a class and in equal shares regardless of their proximity in degree to the *prepositus*.

[c] An oral partnership is valid.

[d] An oral promise of guaranty is valid and binding.

[e] A dead child can be legitimated.

### II

Dr. Lopez, a 70-year old widower, and his son Roberto both died in a fire that gutted their home while they were sleeping in their air-conditioned rooms. Roberto’s wife, Marilyn, and their two children were spared because they were in the province at the time. Dr. Lopez left an estate worth ₱20M and a life insurance policy in the amount of ₱1M with his three children --- one of whom is Roberto --- as beneficiaries.

Marilyn is now claiming for herself and her children her husband’s share in the estate left by Dr. Lopez, and her husband’s share in the proceeds of Dr. Lopez’s life insurance policy. Rule on the validity of Marilyn’s claims with reasons. (4%)

### III

In December 2000, Michael and Anna, after obtaining a valid marriage license, went to the Office of the Mayor of Urbano, Bulacan, to get married. The Mayor was not there, but the Mayor's secretary asked Michael and Anna and their witnesses to fill up and sign the required marriage contract forms. The secretary then told them to wait, and went out to look for the Mayor who was attending a wedding in a neighboring municipality.

When the secretary caught up with the Mayor at the wedding reception, she showed him the marriage contract forms and told him that the couple and their witnesses were waiting in his office. The Mayor forthwith signed all the copies of the marriage contract, gave them to the secretary who returned to the Mayor's office. She then gave copies of the marriage contract to the parties, and told Michael and Anna that they were already married. Thereafter, the couple lived together as husband and wife, and had three sons.

[a] Is the marriage of Michael and Anna valid, voidable, or void? Explain your answer. (3%)

[b] What is the status of the three children of Michael and Anna? Explain your answer. (2%)

[c] What property regime governs the properties acquired by the couple? Explain. (2%)

### IV

Harry married Wilma, a very wealthy woman. Barely five (5) years into the marriage, Wilma fell in love with Joseph. Thus, Wilma went to a small country in Europe, became a naturalized citizen of that country, divorced Harry, and married Joseph. A year thereafter, Wilma and Joseph returned and established permanent residence in the Philippines.

[a] Is the divorce obtained by Wilma from Harry recognized in the Philippines? Explain your answer. (3%)

[b] If Harry hires you as his lawyer, what legal recourse would you advise him to take? Why? (2%)

[c] Harry tells you that he has fallen in love with another woman, Elizabeth, and wants to marry her because, after all, Wilma is already married to Joseph. Can Harry legally marry Elizabeth? Explain. (2%)

## V

Four children, namely: Alberto, Baldomero, Caridad, and Dioscoro, were born to the spouses Conrado and Clarita de la Costa. The children's birth certificates were duly signed by Conrado, showing them to be the couple's legitimate children.

Later, one Edilberto de la Cruz executed a notarial document acknowledging Alberto and Baldomero as his illegitimate children with Clarita. Edilberto died leaving substantial properties. In the settlement of his estate, Alberto and Baldomero intervened claiming shares as the deceased's illegitimate children. The legitimate family of Edilberto opposed the claim.

Are Alberto and Baldomero entitled to share in the estate of Edilberto? Explain. (4%)

## VI

On December 1, 2000, Dr. Juanito Fuentes executed a holographic will, wherein he gave nothing to his recognized illegitimate son, Jay. Dr. Fuentes left for the United States, passed the New York medical licensure examinations, resided therein, and became a naturalized American citizen. He died in New York in 2007. The laws of New York do not recognize holographic wills or compulsory heirs.

[a] Can the holographic will of Dr. Fuentes be admitted to probate in the Philippines? Why or why not? (3%)

[b] Assuming that the will is probated in the Philippines, can Jay validly insist that he be given his legitime? Why or why not? (3%)

## VII

Ramon Mayaman died intestate, leaving a net estate of ₱10,000,000.00. Determine how much each heir will receive from the estate:

[a] If Ramon is survived by his wife, three full-blood brothers, two half-brothers, and one nephew (the son of a deceased full-blood brother)? Explain. (3%)

[b] If Ramon is survived by his wife, a half-sister, and three nephews (sons of a deceased full-blood brother)? Explain. (3%)

## VIII

Jude owned a building which he had leased to several tenants. Without informing his tenants, Jude sold the building to Ildefonso. Thereafter, the latter notified all the tenants that he is the new owner of the building. Ildefonso ordered the tenants to vacate the premises within thirty (30) days from notice because he had other plans for the building. The tenants refused to vacate, insisting that they will only do so when the term of their lease shall have expired. Is Ildefonso bound to respect the lease contracts between Jude and his tenants? Explain your answer. (3%)

**IX**

Before migrating to Canada in 1992, the spouses Teodoro and Anita entrusted all their legal papers and documents to their nephew, Atty. Tan. Taking advantage of the situation, Atty. Tan forged a deed of sale, making it appear that he had bought the couple's property in Quezon City. In 2000, he succeeded in obtaining a TCT over the property in his name. Subsequently, Atty. Tan sold the same property to Luis, who built an auto repair shop on the property. In 2004, Luis registered the deed of conveyance, and title over the property was transferred in his name.

In 2006, the spouses Teodoro and Anita came to the Philippines for a visit and discovered what had happened to their property. They immediately hire you as lawyer. What action or actions will you institute in order to vindicate their rights? Explain fully. (4%)

**X**

Rommel's private car, while being driven by the regular family driver, Amado, hits a pedestrian causing the latter's death. Rommel is not in the car when the incident happened.

[a] Is Rommel liable for damages to the heirs of the deceased? Explain. (2%)

[b] Would your answer be the same if Rommel was in the car at the time of the accident? Explain. (2%)

**\*\*\* END OF PART I \*\*\***

## PART II

### XI

**TRUE or FALSE.** Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

[a] A clause in an arbitration contract granting one of the parties the power to choose more arbitrators than the other renders the arbitration contract void.

[b] If there is no marriage settlement, the salary of a “spouse” in an adulterous marriage belongs to the conjugal partnership of gains.

[c] Acquisitive prescription of a negative easement runs from the time the owner of the dominant estate forbids, in a notarized document, the owner of the servient estate from executing an act which would be lawful without the easement.

[d] The renunciation by a co-owner of his undivided share in the co-owned property in lieu of the performance of his obligation to contribute to taxes and expenses for the preservation of the property constitutes *dacion en pago*.

[e] A person can dispose of his corpse through an act *inter vivos*.

### XII

Emmanuel and Margarita, American citizens and employees of the U.S. State Department, got married in the African state of Kenya where sterility is a ground for annulment of marriage. Thereafter, the spouses were assigned to the U.S. Embassy in

Manila. On the first year of the spouses' tour of duty in the Philippines, Margarita filed an annulment case against Emmanuel before a Philippine court on the ground of her husband's sterility at the time of the celebration of the marriage.

[a] Will the suit prosper? Explain your answer. (3%)

[b] Assume Emmanuel and Margarita are both Filipinos. After their wedding in Kenya, they come back and take up residence in the Philippines. Can their marriage be annulled on the ground of Emmanuel's sterility? Explain. (3%)

### **XIII**

Rafael, a wealthy bachelor, filed a petition for the adoption of Dolly, a one-year old foundling who had a severe heart ailment. During the pendency of the adoption proceedings, Rafael died of natural causes. The Office of the Solicitor General files a motion to dismiss the petition on the ground that the case can no longer proceed because of the petitioner's death.

[a] Should the case be dismissed? Explain. (2%)

[b] Will your answer be the same if it was Dolly who died during the pendency of the adoption proceedings? Explain. (2%)

### **XIV**

Rodolfo, married to Sharon, had an illicit affair with his secretary, Nanette, a 19-year old girl, and begot a baby girl, Rona. Nanette sued Rodolfo for damages: actual, for hospital and other medical expenses in delivering the child by caesarean section; moral, claiming that Rodolfo promised to marry her, representing that he was single when, in fact, he was not; and exemplary, to teach a lesson to like-minded Lotharios.

[a] If you were the judge, would you award all the claims of Nanette? Explain. (3%)

[b] Suppose Rodolfo later on acknowledges Rona and gives her regular support, can he compel her to use his surname? Why or why not? (2%)

[c] When Rona reaches seven (7) years old, she tells Rodolfo that she prefers to live with him, because he is better off financially than Nanette. If Rodolfo files an action for the custody of Rona, alleging that he is Rona's choice as custodial parent, will the court grant Rodolfo's petition? Why or why not? (2%)

## XV

Sarah had a deposit in a savings account with Filipino Universal Bank in the amount of five million pesos (₱5,000,000.00). To buy a new car, she obtained a loan from the same bank in the amount of ₱1,200,000.00, payable in twelve monthly installments. Sarah issued in favor of the bank post-dated checks, each in the amount of ₱100,000.00, to cover the twelve monthly installment payments. On the third, fourth and fifth months, the corresponding checks bounced.

The bank then declared the whole obligation due, and proceeded to deduct the amount of one million pesos (₱1,000,000.00) from Sarah's deposit after notice to her that this is a form of compensation allowed by law. Is the bank correct? Explain. (4%)

## XVI

Marciano is the owner of a parcel of land through which a river runs out into the sea. The land had been brought under the Torrens System, and is cultivated by Ulpiano and his family as farmworkers therein. Over the years, the river has brought silt and sediment from its sources up in the mountains and forests so that

gradually the land owned by Marciano increased in area by three hectares. Ulpiano built three huts on this additional area, where he and his two married children live. On this same area, Ulpiano and his family planted peanuts, monggo beans and vegetables. Ulpiano also regularly paid taxes on the land, as shown by tax declarations, for over thirty years.

When Marciano learned of the increase in the size of the land, he ordered Ulpiano to demolish the huts, and demanded that he be paid his share in the proceeds of the harvest. Marciano claims that under the Civil Code, the alluvium belongs to him as a registered riparian owner to whose land the accretion attaches, and that his right is enforceable against the whole world.

[a] Is Marciano correct? Explain. (3%)

[b] What rights, if any, does Ulpiano have against Marciano? Explain. (3%)

## XVII

Rosario obtained a loan of ₱100,000.00 from Jennifer, and pledged her diamond ring. The contract signed by the parties stipulated that if Rosario is unable to redeem the ring on due date, she will execute a document in favor of Jennifer providing that the ring shall automatically be considered full payment of the loan.

[a] Is the contract valid? Explain. (3%)

[b] Will your answer to [a] be the same if the contract stipulates that upon failure of Rosario to redeem the ring on due date, Jennifer may immediately sell the ring and appropriate the entire proceeds thereof for herself as full payment of the loan? Reasons. (3%)

**XVIII**

The Ifugao Arms is a condominium project in Baguio City. A strong earthquake occurred which left huge cracks in the outer walls of the building. As a result, a number of condominium units were rendered unfit for use. May Edwin, owner of one of the condominium units affected, legally sue for partition by sale of the whole project? Explain. (4%)

**XIX**

In 1972, Luciano de la Cruz sold to Chua Chung Chun, a Chinese citizen, a parcel of land in Binondo. Chua died in 1990, leaving behind his wife and three children, one of whom, Julian, is a naturalized Filipino citizen. Six years after Chua's death, the heirs executed an extrajudicial settlement of estate, and the parcel of land was allocated to Julian. In 2007, Luciano filed suit to recover the land he sold to Chua, alleging that the sale was void because it contravened the Constitution which prohibits the sale of private lands to aliens. Julian moved to dismiss the suit on grounds of *pari delicto*, laches and acquisitive prescription. Decide the case with reasons. (4%)

**XX**

[a] If Ligaya, a Filipino citizen residing in the United States, files a petition for change of name before the District Court of New York, what law shall apply? Explain. (2%)

[b] If Henry, an American citizen residing in the Philippines, files a petition for change of name before a Philippine court, what law shall apply? Explain. (2%)

**\*\*\* END OF PART II \*\*\***

**RETURN THIS QUESTIONNAIRE**  
**WITH YOUR BOOKLET**