

2009 BAR EXAMINATIONS

CRIMINAL LAW

20 September 2009

2 P.M. – 5 P.M.

INSTRUCTIONS

This questionnaire is in TWO (2) PARTS: Part I with ten (10) questions (numbered I to X), contained in six (6) pages; and Part II with nine (9) questions (numbered XI-XIX), contained in five (5) pages, for a total number of eleven (11) 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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CHAIRPERSON
2009 BAR EXAMINATIONS COMMITTEE

PLEASE CHECK THAT THIS SET CONTAINS TWELVE (12) 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] Amado, convicted of rape but granted an absolute pardon by the President, and one year thereafter, convicted of homicide, is a *recidivist*.

[b] The creditor who resorts to forced labor of a child under the pretext of reimbursing himself for the debt incurred by the child's father commits the crime of slavery.

[c] The use of an unlicensed firearm in homicide is considered a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance.

[d] A person who, on the occasion of a robbery, kills a bystander by accident is liable for two separate crimes: robbery and reckless imprudence resulting in homicide.

[e] A policeman who, without a judicial order, enters a private house over the owner's opposition is guilty of trespass to dwelling.

II

Antero Makabayan was convicted of the crime of Rebellion. While serving sentence, he escaped from jail. Captured, he was charged with, and convicted of, Evasion of Service of Sentence. Thereafter, the President of the Philippines issued an amnesty proclamation for the offense of Rebellion. Antero applied for and was granted the benefit of the amnesty proclamation.

Antero then filed a petition for *habeas corpus*, praying for his immediate release from confinement. He claims that the amnesty extends to the offense of Evasion of Service of Sentence. As judge, will you grant the petition? Discuss fully. (4%)

III

Rigoberto gate-crashed the 71st birthday party of Judge Lorenzo. Armed with a piece of wood commonly known as *dos por dos*, Rigoberto hit Judge Lorenzo on the back, causing the latter's hospitalization for 30 days. Upon investigation, it appeared that Rigoberto had a grudge against Judge Lorenzo who, two years earlier, had cited Rigoberto in contempt and ordered his imprisonment for three (3) days.

[a] Is Rigoberto guilty of Direct Assault? Why or why not? (3%)

[b] Would your answer be the same if the reason for the attack was that when Judge Lorenzo was still a practicing lawyer ten years ago, he prosecuted Rigoberto and succeeded in sending him to jail for one year? Explain your answer. (3%)

IV

Charlie hated his classmate, Brad, because the latter was assiduously courting Lily, Charlie's girlfriend. Charlie went to a veterinarian and asked for some poison on the pretext that it would be used to kill a very sick, old dog. Actually, Charlie intended to use the poison on Brad.

The veterinarian mistakenly gave Charlie a non-toxic powder which, when mixed with Brad's food, did not kill Brad.

[a] Did Charlie commit any crime? If so, what and why? If not, why not? (3%)

[b] Would your answer be the same if Brad proved to be allergic to the powder, and after ingesting it with his food, fell ill and was hospitalized for ten (10) days? Explain. (3%)

V

Ponciano borrowed Ruben's gun, saying that he would use it to kill Freddie. Because Ruben also resented Freddie, he readily lent his gun, but told Ponciano: "*O, pagkabaril mo kay Freddie, isauli mo kaagad, ha.*" Later, Ponciano killed Freddie, but used a knife because he did not want Freddie's neighbors to hear the gunshot.

[a] What, if any, is the liability of Ruben? Explain. (3%)

[b] Would your answer be the same if, instead of Freddie, it was Manuel, a relative of Ruben, who was killed by Ponciano using Ruben's gun? Explain. (3%)

VI

Baldo killed Conrad in a dark corner, at midnight, on January 2, 1960. Dominador witnessed the entire incident, but he was so scared to tell the authorities about it.

On January 2, 1970, Dominador, bothered by his conscience, reported the matter to the police. After investigation, the police finally arrested Baldo on January 6, 1980. Charged in court, Baldo claims that the crime he committed had already prescribed.

Is Baldo's contention correct? Explain. (3%)

VII

Charina, Clerk of Court of an RTC Branch, promised the plaintiff in a case pending before the court that she would convince the Presiding Judge to decide the case in plaintiff's favor. In consideration therefor, the plaintiff gave Charina ₱20,000.00.

Charina was charged with violation of Section 3 (b) of Republic Act No. 3019, prohibiting any public officer from directly or indirectly requesting or receiving any gift, present, percentage, or benefit in connection with any contract or transaction x x x wherein the public officer, in his official capacity, has to intervene under the law.

While the case was being tried, the Ombudsman filed another information against Charina for Indirect Bribery under the Revised Penal Code. Charina demurred to the second information, claiming that she can no longer be charged under the Revised Penal Code having been charged for the same act under R.A. 3019.

Is Charina correct? Explain. (3%)

VIII

While Alfredo, Braulio, Ciriaco, and Domingo were robbing a bank, policemen arrived. A firefight ensued between the bank robbers and the responding policemen, and one of the policemen was killed.

[a] What crime or crimes, if any, had been committed? Explain. (3%)

[b] Suppose it was Alfredo who was killed by the responding policemen, what charges can be filed against Braulio, Ciriaco and Domingo? Explain. (2%)

[c] Suppose in the course of the robbery, before the policemen arrived, Braulio shot and killed Alfredo following a heated disagreement on who should carry the money bags, what would be the criminal liability of Braulio, Ciriaco and Domingo? Explain. (2%)

IX

Virgilio, armed with a gun, stopped a van along a major thoroughfare in Manila, pointed the gun at the driver and shouted: *“Tigil! Kidnap ito!”*

Terrified, the driver, Juanito, stopped the van and allowed Virgilio to board. Inside the van were Jeremias, a 6-year-old child, son of a multi-millionaire, and Daday, the child’s nanny. Virgilio told Juanito to drive to a deserted place, and there, ordered the driver to alight. Before Juanito was allowed to go, Virgilio instructed him to tell Jeremias’ parents that unless they give a ransom of ₱10-million within two (2) days, Jeremias would be beheaded. Daday was told to remain in the van and take care of Jeremias until the ransom is paid. Virgilio then drove the van to his safehouse.

What crime or crimes, if any, did Virgilio commit? Explain. (5%)

X

To secure the release of his brother Willy, a detention prisoner, and his cousin Vincent, who is serving sentence for homicide, Chito asked the RTC Branch Clerk of Court to issue an Order which would allow the two prisoners to be brought out of jail. At first, the Clerk refused, but when Chito gave her ₱50,000.00, she consented.

She then prepared an Order requiring the appearance in court of Willy and Vincent, ostensibly as witnesses in a pending case. She forged the judge's signature, and delivered the Order to the jail warden who, in turn, allowed Willy and Vincent to go out of jail in the company of an armed escort, Edwin. Chito also gave Edwin ₱50,000.00 to leave the two inmates unguarded for three minutes and provide them with an opportunity to escape. Thus, Willy and Vincent were able to escape.

What crime or crimes, if any, had been committed by Chito, Willy, Vincent, the Branch Clerk of Court, Edwin, and the jail warden? Explain your answer. (5%)

***** 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] Life imprisonment is a penalty more favorable to the convict than *reclusion perpetua*.

[b] Voluntary surrender is a mitigating circumstance in all acts and omissions punishable under the Revised Penal Code.

[c] In a prosecution for fencing under P.D. 1612, it is a complete defense for the accused to prove that he had no knowledge that the goods or articles found in his possession had been the subject of robbery.

[d] In the crime of libel, truth is an absolute defense.

[e] For a person who transacts an instrument representing the proceeds of a covered unlawful activity to be liable under the Anti-Money Laundering Act (R.A. 9160, as amended), it must be shown that he has knowledge of the identities of the culprits involved in the commission of the predicate crimes.

XII

[a] In a conviction for homicide, the trial court appreciated two (2) mitigating circumstances and one (1) aggravating circumstance. Homicide under Article 249 of the Revised Penal Code is punishable by *reclusion temporal*, an imprisonment term of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, determine the appropriate penalty to be imposed. Explain. (3%)

[b] Will your answer be the same if it is a conviction for illegal possession of drugs under R.A. 9165 (Dangerous Drugs Act of 2002), the prescribed penalty of which is also imprisonment for a term of twelve (12) years and one (1) day to twenty (20) years? Why or why not? (3%)

XIII

Angelo devised a Ponzi Scheme in which 500 persons were deceived into investing their money upon a promise of a capital return of 25%, computed monthly, and guaranteed by post-dated checks. During the first two months following the investment, the investors received their profits, but thereafter, Angelo vanished.

Angelo was charged with 500 counts of estafa and 2,000 counts of violation of Batas Pambansa (BP) 22. In his motion to quash, Angelo contends that he committed a continued crime, or *delito continuado*, hence, he committed only one count of estafa and one count of violation of BP 22.

[a] What is *delito continuado*? (1%)

[b] Is Angelo's contention tenable? Explain. (4%)

XIV

Following his arrest after a valid buy-bust operation, Tommy was convicted of violation of Section 5, Republic Act 9165. On appeal, Tommy questioned the admissibility of the evidence because the police officers who conducted the buy-bust operation failed to observe the requisite "chain of custody" of the evidence confiscated and/or seized from him.

What is the "chain of custody" requirement in drug offenses? What is its rationale? What is the effect of failure to observe the requirement? (3%)

XV

Joe was 17 years old when he committed homicide in 2005. The crime is punishable by *reclusion temporal*. After two years in hiding, he was arrested and appropriately charged in May 2007. Since Republic Act 9344 (Juvenile Justice and Welfare Act of 2006) was already in effect, Joe moved to avail of the process of intervention or diversion.

[a] What is intervention or diversion? Is Joe entitled to intervention or diversion? Explain. (3%)

[b] Suppose Joe's motion for intervention or diversion was denied, and he was convicted two (2) years later when Joe was already 21 years old, should the judge apply the suspension of sentence? Explain. (2%)

[c] Suppose Joe was convicted of attempted murder with a special aggravating circumstance and was denied suspension of sentence, would he be eligible for probation under Presidential Decree (PD) 968, considering that the death penalty is impossible for the consummated felony? Explain. (2%)

XVI

Roger and Jessie, Municipal Mayor and Treasurer, respectively, of San Rafael, Leyte, caused the disbursement of public funds allocated for their local development programs for 2008. Records show that the amount of ₱2-million was purportedly used as financial assistance for a rice production livelihood project. Upon investigation, however, it was found that Roger and Jessie falsified the disbursement vouchers and supporting documents in order to make it appear that qualified recipients who, in fact, are non-existent individuals, received the money.

Roger and Jessie are charged with malversation through falsification and violation of Section 3 (e) of R.A. 3019 for causing undue injury to the government. Discuss the propriety of the charges filed against Roger and Jessie. Explain. (4%)

XVII

Wenceslao and Loretta were staying in the same boarding house, occupying different rooms. One late evening, when everyone in the house was asleep, Wenceslao entered Loretta's room with the use of a picklock. Then, with force and violence, Wenceslao ravished Loretta. After he had satisfied his lust, Wenceslao stabbed Loretta to death and, before leaving the room, took her jewelry.

[a] What crime or crimes, if any, did Wenceslao commit? Explain. (4%)

[b] Discuss the applicability of the relevant aggravating circumstances of dwelling, nocturnity and the use of the picklock to enter the room of the victim. (3%)

[c] Would your answer to [a] be the same if, despite the serious stab wounds she sustained, Loretta survived? Explain. (3%)

XVIII

At the Maligaya Disco Club, Leoncio and Evelyn were intimately dancing a very seductive dance number. While gyrating with their bodies, Leoncio dipped his private parts in Evelyn's buttocks. Incensed, Evelyn protested, but Leoncio continued and tightly embraced her.

[a] What crime or crimes, if any, did Leoncio commit? Explain. (3%)

[b] Would your answer be the same if, even after the music had stopped, Leoncio continued to dance dirty, rubbing his private parts on Evelyn's buttocks? Explain. (3%)

XIX

Delmo learned that his enemy, Oscar, was confined at the Intensive Care Unit (ICU) of the Philippine Medical Center. Intending to kill Oscar, Delmo disguised himself as a nurse, entered the ICU, and saw a man lying on the hospital bed with several life-saving tubes attached to the body. Delmo disconnected the tubes and left. Later, the resident physician doing his rounds entered the ICU and, seeing the disconnected tubes, replaced them. The patient survived. It turned out that the patient was Larry, as Oscar had been discharged from the hospital earlier.

Delmo was charged with frustrated murder, qualified by evident premeditation and treachery as aggravating circumstances. Discuss the propriety of the charge. (4%)

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

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