

2009 BAR EXAMINATIONS

MERCANTILE LAW

20 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 six (6) pages; and Part II with ten (10) questions (numbered XI-XX), contained in seven (7) pages, for a total number of thirteen (13) 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!

ANTONIO EDUARDO B. NACHURA
CHAIRPERSON
2009 BAR EXAMINATIONS COMMITTEE

PLEASE CHECK THAT THIS SET CONTAINS FOURTEEN (14) 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 *Denicola Test* in intellectual property law states that if design elements of an article reflect a merger of aesthetic and functional considerations, the artistic aspects of the work cannot be conceptually separable from the utilitarian aspects; thus, the article cannot be copyrighted.

[b] If the Ombudsman is convinced that there is a violation of law after investigating a complaint alleging illicit bank deposits of a public officer, the Ombudsman may order the bank concerned to allow *in camera* inspection of bank records and documents.

[c] Even if the seller and the buyer in a sale in bulk violate the Bulk Sales Law, the sale would still be valid.

[d] Dividends on shares of stocks can only be declared out of unrestricted retained earnings of the corporation.

[e] A bank under receivership can still grant new loans and accept new deposits.

II

Atlantis Realty Corporation (ARC), a local firm engaged in real estate development, plans to sell one of its prime assets --- a three-hectare land valued at about ₱100-million. For this purpose, the board of directors of ARC unanimously passed a resolution approving the sale of the property for ₱75-million to Shangrila Real Estate Ventures (SREV), a rival realty firm. The resolution

also called for a special stockholders meeting at which the proposed sale would be up for ratification.

Atty. Edric, a stockholder who owns only one (1) share in ARC, wants to stop the sale. He then commences a derivative suit for and in behalf of the corporation, to enjoin the board of directors and the stockholders from approving the sale.

[a] Can Atty. Edric, who owns only one (1) share in the company, initiate a derivative suit? Why or why not? (2%)

[b] If such a suit is commenced, would it constitute an intra-corporate dispute? If so, why and where would such a suit be filed? If not, why not? (2%)

[c] Will the suit prosper? Why or why not? (3%)

III

Armando, a resident of Manila, borrowed ₱3-million from Bernardo, offering as security his 500 shares of stock worth ₱1.5-million in Xerxes Corporation, and his 2007 BMW sedan, valued at ₱2-million. The mortgage on the shares of stock was registered in the Office of the Register of Deeds of Makati City where Xerxes Corporation has its principal office. The mortgage on the car was registered in the Office of the Register of Deeds of Manila. Armando executed a single Affidavit of Good Faith, covering both mortgages.

Armando defaulted on the payment of his obligation; thus, Bernardo foreclosed on the two chattel mortgages. Armando filed suit to nullify the foreclosure and the mortgages, raising the following issues:

[a] The execution of only one Affidavit of Good Faith for both mortgages invalidated the two mortgages; (2%) and

[b] The mortgage on the shares of stocks should have been registered in the Office of the Register of Deeds of Manila where he resides, as well as in the stock and transfer book of Xerxes Corporation. (3%)

Rule on the foregoing issues with reasons.

[c] Assume that Bernardo extrajudicially foreclosed on the mortgages, and both the car and the shares of stock were sold at public auction. If the proceeds from such public sale should be ₱1-million short of Armando's total obligation, can Bernardo recover the deficiency? Why or why not? (2%)

IV

Antarctica Life Assurance Corporation (ALAC) publicly offered a specially designed insurance policy covering persons between the ages of 50 to 75 who may be afflicted with serious and debilitating illnesses. Quirico applied for insurance coverage, stating that he was already 80 years old. Nonetheless, ALAC approved his application.

Quirico then requested ALAC for the issuance of a cover note while he was trying to raise funds to pay the insurance premium. ALAC granted the request. Ten days after he received the cover note, Quirico had a heart seizure and had to be hospitalized. He then filed a claim on the policy.

[a] Can ALAC validly deny the claim on the ground that the insurance coverage, as publicly offered, was available only to persons 50 to 75 years of age? Why or why not? (2%)

[b] Did ALAC's issuance of a cover note result in the perfection of an insurance contract between Quirico and ALAC? Explain. (3%)

V

Cecilio is planning to put up a grocery store in the subdivision where he and his family reside. To promote this proposed business venture, he told his wife and three children to send out promotional text messages to all the residents in the subdivision. Cecilio's family members did as instructed, and succeeded in reaching, through text messages, more than 80% of the residents in the subdivision.

Is Cecilio habitually engaged in commerce even if the grocery store has yet to be established? Explain your answer. (3%)

VI

Lorenzo drew a bill of exchange in the amount of ₱100,000.00 payable to Barbara or order, with his wife, Diana, as drawee. At the time the bill was drawn, Diana was unaware that Barbara is Lorenzo's paramour.

Barbara then negotiated the bill to her sister, Elena, who paid for it for value, and who did not know who Lorenzo was. On due date, Elena presented the bill to Diana for payment, but the latter promptly dishonored the instrument because, by then, Diana had already learned of her husband's dalliance.

[a] Was the bill lawfully dishonored by Diana? Explain. (3%)

[b] Does the illicit cause or consideration adversely affect the negotiability of the bill? Explain. (3%)

VII

Global Transport Services, Inc. (GTSI) operates a fleet of cargo vessels plying interisland routes. One of its vessels, MV Dona Juana, left the port of Manila for Cebu laden with, among

other goods, 10,000 television sets consigned to Romualdo, a TV retailer in Cebu.

When the vessel was about ten nautical miles away from Manila, the ship captain heard on the radio that a typhoon which, as announced by PAG-ASA, was on its way out of the country, had suddenly veered back into Philippine territory. The captain realized that MV Dona Juana would traverse the storm's path, but decided to proceed with the voyage. True enough, the vessel sailed into the storm. The captain ordered the jettison of the 10,000 television sets, along with some other cargo, in order to lighten the vessel and make it easier to steer the vessel out of the path of the typhoon. Eventually, the vessel, with its crew intact, arrived safely in Cebu.

[a] Will you characterize the jettison of Romualdo's TV sets as an average? If so, what kind of an average, and why? If not, why not? (3%)

[b] Against whom does Romualdo have a cause of action for indemnity of his lost TV sets? Explain. (3%)

VIII

Maharlikang Pilipino Banking Corporation (MPBC) operates several branches of Maharlikang Pilipino Rural Bank in Eastern Visayas. Almost all the branch managers are close relatives of the members of the Board of Directors of the corporation. Many undeserving relatives of the branch managers were granted loans. In time, the branches could not settle their obligations to depositors and creditors.

Receiving reports of these irregularities, the Supervising and Examining Department (SED) of the Monetary Board prepared a detailed report (SED Report) specifying the facts and the chronology of events relative to the problems that beset MPBC rural bank branches. The report concluded that the bank branches were unable to pay their liabilities as they fell due, and could not

possibly continue in business without incurring substantial losses to its depositors and creditors.

[a] May the Monetary Board order the closure of the MPBC rural banks relying only on the SED Report, without need of an examination? Explain. (3%)

[b] If MPBC hires you as lawyer because the Monetary Board has forbidden it from carrying on its business due to its imminent insolvency, what action will you institute to question the Monetary Board's order? Explain. (3%)

IX

When is there an *ultra vires* act on the part of [a] the corporation; [b] the board of directors; and [c] the corporate officers. (3%)

X

What are the so-called *exempt securities* under the Securities Regulation Code? (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 loan agreement which provides that the debtor shall pay interest at the rate determined by the bank's branch manager violates the disclosure requirement of the Truth in Lending Act.

[b] Under the Warehouse Receipts Law, a warehouseman loses his lien upon the goods when he surrenders possession thereof.

[c] The *Howey Test* states that there is an investment contract when a person invests money in a common enterprise and is led to expect profits primarily from the efforts of others.

[d] A document, dated July 15, 2009, that reads: "*Pay to X or order the sum of ₱5,000.00 five days after his pet dog, Sparky, dies. Signed Y.*" is a negotiable instrument.

[e] "A bank is bound to know its depositor's signature" is an inflexible rule in determining the liability of a bank in forgery cases.

XII

Gaudencio, a store owner, obtained a ₱1-million loan from Bathala Financing Corporation (BFC). As security, Gaudencio executed a "Deed of Assignment of Receivables," assigning 15 checks received from various customers who bought merchandise from his store. The checks were duly indorsed by Gaudencio's customers.

The Deed of Assignment contains the following stipulation:

“If, for any reason, the receivables or any part thereof cannot be paid by the obligors, the ASSIGNOR unconditionally and irrevocably agrees to pay the same, assuming the liability to pay, by way of penalty, three percent (3%) of the total amount unpaid, for the period of delay until the same is fully paid.”

When the checks became due, BFC deposited them for collection, but the drawee banks dishonored all the checks for one of the following reasons: “account closed,” “payment stopped,” “account under garnishment,” or “insufficiency of funds.” BFC wrote Gaudencio notifying him of the dishonored checks, and demanding payment of the loan. Because Gaudencio did not pay, BFC filed a collection suit.

In his defense, Gaudencio contended that [a] BFC did not give timely notice of dishonor (of the checks); and [b] considering that the checks were duly indorsed, BFC should proceed against the drawers and the indorsers of the checks.

Are Gaudencio’s defenses tenable? Explain. (5%)

XIII

Ciriaco leased a commercial apartment from Supreme Building Corporation (SBC). One of the provisions of the one-year lease contract states:

“18. x x x The LESSEE shall not insure against fire the chattels, merchandise, textiles, goods and effects placed at any stall or store or space in the leased premises without first obtaining the written consent of the LESSOR. If the LESSEE obtains fire insurance coverage without the consent of the LESSOR, the insurance policy is deemed assigned and transferred to the LESSOR for the latter’s benefit.”

Notwithstanding the stipulation in the contract, without the consent of SBC, Ciriaco insured the merchandise inside the leased premises against loss by fire in the amount of ₱500,000.00 with First United Insurance Corporation (FUIC).

A day before the lease contract expired, fire broke out inside the leased premises, damaging Ciriaco's merchandise. Having learned of the insurance earlier procured by Ciriaco, SBC demanded from FUIC that the proceeds of the insurance policy be paid directly to it, as provided in the lease contract.

Who is legally entitled to receive the insurance proceeds? Explain. (4%)

XIV

XXX Corporation (XXX) and its sister company, YYY Corporation (YYY), are both under judicial receivership. The receiver has the option to sell all or substantially all of the properties of YYY to XXX, or simply merge the two corporations. Under either option, the requirements under the Corporation Code have to be complied with.

The receiver seeks your advice on whether the Bulk Sales Law will apply to either, or both, options. What will your advice be? Explain. (4%)

XV

After disposing of his last opponent in only two rounds in Las Vegas, the renowned Filipino boxer Sonny Bachao arrived at the Ninoy Aquino International Airport met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo shirt embroidered with the 2-inch Lacoste crocodile logo appeared on the front page of every Philippine newspaper.

Lacoste International, the French firm that manufactures Lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase “*Sonny Bachao just loves Lacoste.*”

When Sonny sees the Lacoste advertisements, he hires you as lawyer and asks you to sue Lacoste International before a Philippine court:

[a] For trademark infringement in the Philippines because Lacoste International used his image without his permission; (2%)

[b] For copyright infringement because of the unauthorized use of the published photographs; (2%) and

[c] For injunction in order to stop Lacoste International from featuring him in their commercials. (2%)

Will these actions prosper? Explain.

[d] Can Lacoste International validly invoke the defense that it is not a Philippine company and, therefore, Philippine courts have no jurisdiction? Explain. (2%)

XVI

On September 15, 2007, XYZ Corporation issued to Paterno 800 preferred shares with the following terms:

“The Preferred Shares shall have the following rights, preferences, qualifications, and limitations, to wit:

1. *The right to receive a quarterly dividend of One Per Centum (1%), cumulative and participating;*
2. *These shares may be redeemed, by drawing of lots, at any time after two (2) years from date of issue, at the option of the Corporation; x x x.*”

Today, Paterno sues XYZ Corporation for specific performance, for the payment of dividends on, and to compel the redemption of, the preferred shares, under the terms and conditions provided in the stock certificates. Will the suit prosper? Explain. (3%)

XVII

Philippine Palaces Realty (PPR) had been representing itself as a registered broker of securities, duly authorized by the Securities and Exchange Commission (SEC). On October 6, 1996, PPR sold to spouses Leon and Carina one (1) timeshare of *Palacio del Boracay* for US\$7,500.00. However, its Registration Statement became effective only on February 11, 1998 after the SEC issued a resolution declaring that PPR was authorized to sell securities, including timeshares.

On March 30, 1998, Leon and Carina wrote PPR rescinding their purchase agreement and demanding the refund of the amount they paid, because the *Palacio del Boracay* timeshare was sold to them by PPR without the requisite license or authority from the SEC. PPR contended that the grant of the SEC authority had the effect of ratifying the purchase agreement (with Leon and Carina) of October 6, 1996.

Is the contention of PPR correct? Explain. (3%)

XVIII

Triple A Corporation (Triple A) was incorporated in 1960, with 500 founders' shares and 78 common shares as its initial capital stock subscription. However, Triple A registered its stock and transfer book only in 1978, and recorded merely 33 common shares as the corporation's issued and outstanding shares.

[a] In 1982, Juancho, the sole heir of one of the original incorporators filed a petition with the Securities and Exchange Commission (SEC) for the registration of his property rights over 120 founders' shares and 12 common shares. The petition was supported by a copy of the Articles of Incorporation indicating the incorporators' initial capital stock subscription. Will the petition be granted? Why or why not? (3%)

[b] On May 6, 1992, a special stockholders' meeting was held. At this meeting, what would have constituted a quorum? Explain. (3%)

[c] What is a stock and transfer book? (1%)

XIX

One of the passenger buses owned by Continental Transit Corporation (CTC), plying its usual route, figured in a collision with another bus owned by Universal Transport, Inc. (UTI). Among those injured inside the CTC bus were: Romeo, a stow away; Samuel, a pickpocket then in the act of robbing his seatmate when the collision occurred; Teresita, the bus driver's mistress who usually accompanied the driver on his trips for free; and Uriel, holder of a free riding pass he won in a raffle held by CTC.

[a] Will a suit for breach of contract of carriage filed by Romeo, Samuel, Teresita, and Uriel against CTC prosper? Explain. (3%)

[b] Do Romeo, Samuel, Teresita, and Uriel have a cause of action for damages against UTI? Explain. (3%)

[c] What, if any, are the valid defenses that CTC and UTI can raise in the respective actions against them? Explain. (3%)

XX

Under the Securities Regulation Code, what is the *Margin Trading Rule*? (2%)

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

RETURN THIS QUESTIONNAIRE
WITH YOUR BOOKLET