

2009 BAR EXAMINATIONS

**POLITICAL AND PUBLIC INTERNATIONAL LAW**

06 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 seven (7) pages; and Part II with eight (8) questions (numbered XI-XVIII), contained in six (6) 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!

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**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] A law making “Bayan Ko” the new national anthem of the Philippines, in lieu of “Lupang Hinirang,” is constitutional.

[b] Under the *archipelago doctrine*, the waters around, between, and connecting the islands of the archipelago form part of the territorial sea of the archipelagic state.

[c] A law that makes military service for women merely voluntary is constitutional.

[d] A law fixing the passing grade in the Bar examinations at 70%, with no grade lower than 40% in any subject, is constitutional.

[e] An educational institution 100% foreign-owned may be validly established in the Philippines.

### II

Despite lingering questions about his Filipino citizenship and his one-year residence in the district, Gabriel filed his certificate of candidacy for congressman before the deadline set by law. His opponent, Vito, hires you as lawyer to contest Gabriel’s candidacy.

[a] Before election day, what action or actions will you institute against Gabriel, and before which court, commission or tribunal will you file such action/s? Reasons. (2%)

[b] If, during the pendency of such action/s but before election day, Gabriel withdraws his certificate of candidacy, can he be substituted as candidate? If so, by whom and why? If not, why not? (2%)

[c] If the action/s instituted should be dismissed with finality before the election, and Gabriel assumes office after being proclaimed the winner in the election, can the issue of his candidacy and/or citizenship and residence still be questioned? If so, what action or actions may be filed and where? If not, why not? (2%)

### III

The Municipality of Bulalakaw, Leyte, passed Ordinance No. 1234, authorizing the expropriation of two parcels of land situated in the poblacion as the site of a freedom park, and appropriating the funds needed therefor. Upon review, the *Sangguniang Panlalawigan* of Leyte disapproved the ordinance because the municipality has an existing freedom park which, though smaller in size, is still suitable for the purpose, and to pursue expropriation would be needless expenditure of the people's money. Is the disapproval of the ordinance correct? Explain your answer. (2%)

### IV

The Municipality of Pinatukdao is sued for damages arising from injuries sustained by a pedestrian who was hit by a glass pane that fell from a dilapidated window frame of the municipal hall. The municipality files a motion to dismiss the complaint, invoking state immunity from suit. Resolve the motion with reasons. (3%)

## V

To address the pervasive problem of gambling, Congress is considering the following options: (1) prohibit all forms of gambling; (2) allow gambling only on Sundays; (3) allow gambling only in government-owned casinos; and (4) remove all prohibitions against gambling but impose a tax equivalent to 30% on all winnings.

[a] If Congress chooses the first option and passes the corresponding law absolutely prohibiting all forms of gambling, can the law be validly attacked on the ground that it is an invalid exercise of police power? Explain your answer. (2%)

[b] If Congress chooses the last option and passes the corresponding law imposing a 30% tax on all winnings and prizes won from gambling, would the law comply with the constitutional limitations on the exercise of the power of taxation? Explain your answer. (2%)

## VI

In a criminal prosecution for murder, the prosecution presented, as witness, an employee of the Manila Hotel who produced in court a videotape recording showing the heated exchange between the accused and the victim that took place at the lobby of the hotel barely 30 minutes before the killing. The accused objects to the admission of the videotape recording on the ground that it was taken without his knowledge or consent, in violation of his right to privacy and the Anti-Wire Tapping law. Resolve the objection with reasons. (3%)

## VII

Crack agents of the Manila Police Anti-Narcotics Unit were on surveillance of a cemetery where the sale and use of prohibited drugs were rumored to be rampant. The team saw a man with reddish and glassy eyes walking unsteadily towards them, but he immediately veered away upon seeing the policemen. The team approached the man, introduced themselves as peace officers, then asked what he had in his clenched fist. Because the man refused to answer, a policeman pried the fist open and saw a plastic sachet filled with crystalline substance. The team then took the man into custody and submitted the contents of the sachet to forensic examination. The crystalline substance in the sachet turned out to be shabu. The man was accordingly charged in court.

During the trial, the accused:

[a] challenged the validity of his arrest; (2%) and

[b] objected to the admission in evidence of the prohibited drug, claiming that it was obtained in an illegal search and seizure. (2%)

Decide with reasons.

## VIII

Congressman Nonoy delivered a privilege speech charging the Intercontinental Universal Bank (IUB) with the sale of unregistered foreign securities, in violation of R.A. 8799. He then filed, and the House of Representatives unanimously approved, a Resolution directing the House Committee on Good Government (HCGG) to conduct an inquiry on the matter, in aid of legislation, in order to prevent the recurrence of any similar fraudulent activity.

The HCGG immediately scheduled a hearing and invited the responsible officials of IUB, the Chairman and Commissioners of the Securities and Exchange Commission (SEC), and the Governor of the Bangko Sentral ng Pilipinas (BSP). On the date set for the hearing, only the SEC Commissioners appeared, prompting Congressman Nonoy to move for the issuance of the appropriate *subpoena ad testificandum* to compel the attendance of the invited resource persons.

The IUB officials filed suit to prohibit HCGG from proceeding with the inquiry and to quash the *subpoena*, raising the following arguments:

[a] The subject of the legislative investigation is also the subject of criminal and civil actions pending before the courts and the prosecutor's office; thus, the legislative inquiry would preempt judicial action; (3%) and

[b] Compelling the IUB officials, who are also respondents in the criminal and civil cases in court, to testify at the inquiry would violate their constitutional right against self-incrimination. (3%)

Are the foregoing arguments tenable? Reasons.

[c] May the Governor of the BSP validly invoke executive privilege and, thus, refuse to attend the legislative inquiry? Why or why not? (3%)

## IX

Warlito, a natural-born Filipino, took up permanent residence in the United States, and eventually acquired American citizenship. He then married Shirley, an American, and sired three children. In August 2009, Warlito decided to visit the Philippines with his wife and children: Johnny, 23 years of age; Warlito, Jr., 20; and Luisa, 17.

While in the Philippines, a friend informed him that he could reacquire Philippine citizenship without necessarily losing U.S. nationality. Thus, he took the oath of allegiance required under R.A. 9225.

[a] Having reacquired Philippine citizenship, is Warlito a natural-born or a naturalized Filipino citizen today? Explain your answer. (3%)

[b] With Warlito having regained Philippine citizenship, will Shirley also become a Filipino citizen? If so, why? If not, what would be the most speedy procedure for Shirley to acquire Philippine citizenship? Explain. (3%)

[c] Do the children --- Johnny, Warlito Jr., and Luisa --- become Filipino citizens with their father's reacquisition of Philippine citizenship? Explain your answer. (3%)

## X

Maximino, an employee of the Department of Education, is administratively charged with dishonesty and gross misconduct. During the formal investigation of the charges, the Secretary of Education preventively suspended him for a period of sixty (60) days. On the 60<sup>th</sup> day of the preventive suspension, the Secretary rendered a verdict, finding Maximino guilty, and ordered his immediate dismissal from the service.

Maximino appealed to the Civil Service Commission (CSC), which affirmed the Secretary's decision. Maximino then elevated the matter to the Court of Appeals (CA). The CA reversed the CSC decision, exonerating Maximino. The Secretary of Education then petitions the Supreme Court (SC) for the review of the CA decision.

[a] Is the Secretary of Education a proper party to seek the review of the CA decision exonerating Maximino? Reasons. (2%)

[b] If the SC affirms the CA decision, is Maximino entitled to recover back salaries corresponding to the entire period he was out of the service? Explain your answer. (3%)

**\*\*\* 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] Aliens are absolutely prohibited from owning private lands in the Philippines.

[b] A *de facto* public officer is, by right, entitled to receive the salaries and emoluments attached to the public office he holds.

[c] The President exercises the power of control over all executive departments and agencies, including government-owned or controlled corporations.

[d] Decisions of the Ombudsman imposing penalties in administrative disciplinary cases are merely recommendatory.

[e] Dual citizenship is not the same as dual allegiance.

### XII

William, a private American citizen, a university graduate and frequent visitor to the Philippines, was inside the U.S. embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the U.S. The request was denied, and the

counsel assigned by the police stayed for the duration of the investigation.

William protested his arrest.

[a] He argued that since the incident took place inside the U.S. embassy, Philippine courts have no jurisdiction because the U.S. embassy grounds are not part of Philippine territory; thus, technically, no crime under Philippine law was committed. Is William correct? Explain your answer. (3%)

[b] He also claimed that his Miranda rights were violated because he was not given the lawyer of his choice; that being an American, he should have been informed of his rights in proper English; and that he should have been informed of his rights as soon as he was taken into custody, not when he was already at the police station. Was William denied his Miranda rights? Why or why not? (3%)

[c] If William applies for bail, claiming that he is entitled thereto under the “international standard of justice” and that he comes from a U.S. State that has outlawed capital punishment, should William be granted bail as a matter of right? Reasons. (3%)

### **XIII**

A terrorist group called the Emerald Brigade is based in the State of Asyaland. The government of Asyaland does not support the terrorist group, but being a poor country, is powerless to stop it.

The Emerald Brigade launched an attack on the Philippines, firing two missiles that killed thousands of Filipinos. It then warned that more attacks were forthcoming. Through diplomatic channels, the Philippines demanded that Asyaland stop the Emerald Brigade; otherwise, it will do whatever is necessary to defend itself.

Receiving reliable intelligence reports of another imminent attack by the Emerald Brigade, and it appearing that Asyaland was incapable of preventing the assault, the Philippines sent a crack commando team to Asyaland. The team stayed only for a few hours in Asyaland, succeeded in killing the leaders and most of the members of the Emerald Brigade, then immediately returned to the Philippines.

[a] Was the Philippine action justified under the international law principle of “self-defense”? Explain your answer. (3%)

[b] As a consequence of the foregoing incident, Asyaland charges the Philippines with violation of Article 2.4 of the United Nations Charter that prohibits “the threat or use of force against the territorial integrity or political independence of any State.” The Philippines counters that its commando team neither took any territory nor interfered in the political processes of Asyaland. Which contention is correct? Reasons. (3%)

[c] Assume that the commando team captured a member of the Emerald Brigade and brought him back to the Philippines. The Philippine Government insists that a special international tribunal should try the terrorist. On the other hand, the terrorist argues that terrorism is not an international crime and, therefore, the municipal laws of the Philippines, which recognize access of the accused to constitutional rights, should apply. Decide with reasons. (3%)

#### XIV

The Philippine Government is negotiating a new security treaty with the United States which could involve engagement in joint military operations of the two countries’ armed forces. A loose organization of Filipinos, the Kabataan at Matatandang Makabansa (KMM) wrote the Department of Foreign Affairs (DFA) and the Department of National Defense (DND) demanding disclosure of the details of the negotiations, as well as copies of the minutes of the meetings. The DFA and the DND refused, contending that premature disclosure of the offers and counter-

offers between the parties could jeopardize on-going negotiations with another country. KMM filed suit to compel disclosure of the negotiation details, and be granted access to the records of the meetings, invoking the constitutional right of the people to information on matters of public concern.

[a] Decide with reasons. (3%)

[b] Will your answer be the same if the information sought by KMM pertains to contracts entered into by the Government in its proprietary or commercial capacity? Why or why not? (3%)

## XV

The KKK Television Network (KKK-TV) aired the documentary, “Case Law: How the Supreme Court Decides,” without obtaining the necessary permit required by P.D. 1986. Consequently, the Movie and Television Review and Classification Board (MTRCB) suspended the airing of KKK-TV programs. MTRCB declared that under P.D. 1986, it has the power of prior review over all television programs, except “newsreels” and programs “by the Government”, and the subject documentary does not fall under either of these two classes. The suspension order was ostensibly based on Memorandum Circular No. 98-17 which grants MTRCB the authority to issue such an order.

KKK-TV filed a certiorari petition in court, raising the following issues:

[a] The act of MTRCB constitutes “prior restraint” and violates the constitutionally guaranteed freedom of expression; (3%) and

[b] While Memorandum Circular No. 98-17 was issued and published in a newspaper of general circulation, a copy thereof was never filed with the Office of the National Register of the University of the Philippines Law Center. (2%)

Resolve the foregoing issues, with reasons.

## XVI

[a] Angelina, a married woman, is a Division Chief in the Department of Science and Technology. She had been living with a married man, not her husband, for the last fifteen (15) years. Administratively charged with immorality and conduct prejudicial to the best interest of the service, she admits her live-in arrangement, but maintains that this conjugal understanding is in conformity with their religious beliefs. As members of the religious sect, *Yahweh's Observers*, they had executed a Declaration of Pledging Faithfulness which has been confirmed and blessed by their Council of Elders. At the formal investigation of the administrative case, the Grand Elder of the sect affirmed Angelina's testimony and attested to the sincerity of Angelina and her partner in the profession of their faith. If you were to judge this case, will you exonerate Angelina? Reasons. (3%)

[b] Meanwhile, Jenny, also a member of *Yahweh's Observers*, was severely disappointed at the manner the Grand Elder validated what she considered was an obviously immoral conjugal arrangement between Angelina and her partner. Jenny filed suit in court, seeking the removal of the Grand Elder from the religious sect on the ground that his act in supporting Angelina not only ruined the reputation of their religion, but also violated the constitutional policy upholding the sanctity of marriage and the solidarity of the family. Will Jenny's case prosper? Explain your answer. (2%)

## XVII

Filipinas Computer Corporation (FCC), a local manufacturer of computers and computer parts, owns a sprawling plant in a 5,000-square meter lot in Pasig City. To remedy the city's acute housing shortage, compounded by a burgeoning population, the *Sangguniang Panglungsod* authorized the City Mayor to negotiate for the purchase of the lot. The *Sanggunian* intends to subdivide the property into small residential lots to be distributed at cost to qualified city residents. But FCC refused to sell the lot. Hard-

pressed to find a suitable property to house its homeless residents, the City filed a complaint for eminent domain against FCC.

[a] If FCC hires you as lawyer, what defense or defenses would you set up in order to resist the expropriation of the property? Explain. (5%)

[b] If the Court grants the City's prayer for expropriation, but the City delays payment of the amount determined by the court as just compensation, can FCC recover the property from Pasig City? Explain. (2%)

[c] Suppose the expropriation succeeds, but the City decides to abandon its plan to subdivide the property for residential purposes having found a much bigger lot, can FCC legally demand that it be allowed to repurchase the property from the City of Pasig? Why or why not? (2%)

### **XVIII**

What are the essential elements of a valid petition for a people's initiative to amend the 1987 Constitution? Discuss. (2%)

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

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