

2009 BAR EXAMINATIONS

**REMEDIAL LAW**

04 October 2009

8 A.M. – 12 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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**ANTONIO EDUARDO B. NACHURA**  
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] The *Vallejo standard* refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence.

[b] The One-Day Examination of Witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial.

[c] A suit for injunction is an action *in rem*.

[d] Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it.

[e] Summons may be served by mail.

### II

Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan.

[a] May the action prosper? Explain. (2%)

[b] Will your answer be the same if the action was for foreclosure of the mortgage over the two parcels of land? Why or why not? (2%)

### III

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a Complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of ₱19,700.00. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York.

Brigido filed a motion to dismiss the complaint on the following grounds:

[a] The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; (2%)

[b] The RTC does not have jurisdiction over the subject matter of the action involving real property with an assessed value of ₱19,700.00; exclusive and original jurisdiction is with the Municipal Trial Court where the defendant resides; (3%) and

[c] The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document. (3%)

Rule on the foregoing grounds with reasons.

### IV

Pedrito and Tomas, Mayor and Treasurer, respectively, of the Municipality of San Miguel, Leyte, are charged before the Sandiganbayan for violation of Section 3 (e), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The information alleges, among others, that the two conspired in the purchase of

several units of computer through personal canvass instead of a public bidding, causing undue injury to the municipality.

Before arraignment, the accused moved for reinvestigation of the charge, which the court granted. After reinvestigation, the Office of the Special Prosecutor filed an amended information duly signed and approved by the Special Prosecutor, alleging the same delictual facts, but with an additional allegation that the accused gave unwarranted benefits to SB Enterprises owned by Samuel. Samuel was also indicted under the amended information.

Before Samuel was arraigned, he moved to quash the amended information on the ground that the officer who filed the same had no authority to do so. Resolve the motion to quash with reasons. (3%)

## V

Frank and Gina were married on June 12, 1987 in Manila. Barely a year after the wedding, Frank exhibited a violent temperament, forcing Gina, for reasons of personal safety, to live with her parents. A year thereafter, Gina found employment as a domestic helper in Singapore, where she worked for ten consecutive years. All the time she was abroad, Gina had absolutely no communications with Frank, nor did she hear any news about him. While in Singapore, Gina met and fell in love with Willie.

On July 4, 2007, Gina filed a petition with the RTC of Manila to declare Frank presumptively dead, so that she could marry Willie. The RTC granted Gina's petition. The Office of the Solicitor General (OSG) filed a Notice of Appeal with the RTC, stating that it was appealing the decision to the Court of Appeals on questions of fact and law.

[a] Is a petition for Declaration of Presumptive Death a special proceeding? Why or why not? (2%)

[b] As the RTC judge who granted Gina's petition, will you give due course to the OSG's Notice of Appeal? Explain. (3%)

## VI

Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of "shabu" were confiscated from him. Edmond consented and also signed a receipt for the amount of ₱3,000.00, allegedly representing the "purchase price of the shabu." At the trial, the arresting officer testified and identified the documents executed and signed by Edmond. Edmond's lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond.

Edmond's lawyer objected to the admissibility of the documents for being the "fruit of the poisoned tree." Resolve the objection with reasons. (3%)

## VII

Cresencio sued Dioscoro for collection of a sum of money. During the trial, but after the presentation of plaintiff's evidence, Dioscoro died. Atty. Cruz, Dioscoro's counsel, then filed a motion to dismiss the action on the ground of his client's death. The court denied the motion to dismiss and, instead, directed counsel to furnish the court with the names and addresses of Dioscoro's heirs and ordered that the designated administrator of Dioscoro's estate be substituted as representative party.

After trial, the court rendered judgment in favor of Cresencio. When the decision had become final and executory, Cresencio moved for the issuance of a writ of execution against Dioscoro's estate to enforce his judgment claim. The court issued the writ of

execution. Was the court's issuance of the writ of execution proper? Explain. (2%)

### VIII

On July 15, 2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following: (10%)

[a] Judgment of a Municipal Trial Court (MTC) pursuant to its delegated jurisdiction dismissing his client's application for land registration?

[b] Judgment of the Regional Trial Court (RTC) denying his client's petition for a Writ of Habeas Data?

[c] Order of a Family Court denying his client's petition for Habeas Corpus in relation to custody of a minor child?

[d] Order of the RTC denying his client's Petition for Certiorari questioning the Metropolitan Trial Court's (MeTC's) denial of a motion to suspend criminal proceedings?

[e] Judgment of the First Division of the Court of Tax Appeals (CTA) affirming the RTC decision convicting his client for violation of the National Internal Revenue Code?

### IX

Modesto sued Ernesto for a sum of money, claiming that the latter owed him ₱1-million, evidenced by a promissory note, quoted and attached to the complaint. In his answer with

counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him ₱1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of ₱0.5-million. At the pre-trial, Modesto marked and identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of ₱0.5-million, which Ernesto did not dispute.

After pre-trial, Modesto filed a motion for judgment on the pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons. (5%)

## X

Upon termination of the pre-trial, the judge dictated the pre-trial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.

[a] If, immediately upon receipt of his copy of the pre-trial order, plaintiff's counsel should move for its amendment to include a fourth (4<sup>th</sup>) triable issue which he allegedly inadvertently failed to mention when the judge dictated the order. Should the motion to amend be granted? Reasons. (2%)

[b] Suppose trial had already commenced and after the plaintiff's second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5<sup>th</sup>) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiff's counsel? Reasons. (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] The accused in a criminal case has the right to avail of the various modes of discovery.

[b] The viatory right of a witness served with a *subpoena ad testificandum* refers to his right not to comply with the subpoena.

[c] In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of *habeas corpus*.

[d] An electronic document is the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

[e] The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal.

### XII

Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgment in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ.

[a] How can Mike stay the execution of the MTC judgment? Explain. (2%)

[b] Mike appealed to the Regional Trial Court (RTC), which affirmed the MTC decision. Mike then filed a petition for review with the Court of Appeals (CA). The CA dismissed the petition on the ground that the sheriff had already executed the MTC decision and had ejected Mike from the premises, thus rendering the appeal moot and academic. Is the CA correct? Reasons. (3%)

### **XIII**

[a] Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products. To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC. Resolve BTC's motion with reasons. (3%)

[b] Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto who shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%)

**XIV**

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

[a] Will Jovito's motion to dismiss prosper? Explain. (3%)

[b] As judge, will you grant the writ of possession prayed for by DPWH? Explain. (3%)

**XV**

[a] Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Hernando and Inocencio, the other co-owners of the property. As judge, will you grant the motion to dismiss? Explain. (3%)

[b] Mariano, through his attorney-in-fact, Marcos, filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply with the mandatory barangay conciliation. Resolve the motion with reasons. (3%)

**XVI**

[a] After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurrer to evidence with leave of court. The prosecution was allowed to comment thereon. Thereafter, the court granted the demurrer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurrer was not in accord with the law and jurisprudence, will the motion prosper? Explain your answer. (3%)

[b] A criminal information is filed in court charging Anselmo with homicide. Anselmo files a motion to quash the information on the ground that no preliminary investigation was conducted. Will the motion be granted? Why or why not? (3%)

**XVII**

Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

[a] How may Patricio prevent the sale of the property on execution? (2%)

[b] If Orencio is the purchaser of the property at the execution sale, how much does he have to pay? Explain. (2%)

[c] If the property is sold to a third party at the execution sale, what can Patricio do to recover the property? Explain. (2%)

**XVIII**

Pinoy died without a will. His wife, Rosie, and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate.

Rosie and the three children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed.

Are Rosie and the three children correct? Explain. (4%)

**XIX**

[a] Distinguish the two (2) modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals. (3%)

[b] What is the writ of amparo? How is it distinguished from the writ of habeas corpus? (2%)

[c] What is the writ of habeas data? (1%)

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

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