

2010 BAR EXAMINATIONS
CIVIL LAW

12 September 2010

8 A.M. – 12 NN.

INSTRUCTIONS

There is only one Examiner in Civil Law. Hence, the following questionnaire consists of only **ONE PART** with sixteen (16) questions (numbered I to XVI), contained in eleven (11) pages.

Begin your answer to each numbered question on a separate page; an answer to a sub-question/s 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 question. Write legibly.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE

GOOD LUCK!!!

CONCHITA CARPIO MORALES
Chairperson
2010 Bar Examinations Committee

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

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

I**True or False.**

- A.** Under Article 26 of the Family Code, when a foreign spouse divorces his/her Filipino spouse, the latter may re-marry by proving only that the foreign spouse has obtained a divorce against her or him abroad. (1%)
- B.** X, a widower, died leaving a will stating that the house and lot where he lived cannot be partitioned for as long as the youngest of his four children desires to stay there. As co-heirs and co-owners, the other three may demand partition anytime. (1%)

II**Multiple choice.**

- A.** A had a 4-storey building which was constructed by Engineer B. After five years, the building developed cracks and its stairway eventually gave way and collapsed, resulting to injuries to some lessees. Who should the lessees sue for damages? (1%)
1. A, the owner
 2. B, the engineer
 3. both A & B
- B.** O, owner of Lot A, learning that Japanese soldiers may have buried gold and other treasures at the adjoining vacant Lot B belonging to spouses X & Y, excavated in Lot B where she succeeded in unearthing gold and precious stones. How will the treasures found by O be divided? (1%)

1. 100% to O as finder
 2. 50% to O and 50% to the spouses X and Y
 3. 50% to O and 50% to the state
 4. None of the above
- C.** A executed a Deed of Donation in favor of B, a bachelor, covering a parcel of land valued at ₱1 million. B was, however, out of the country at the time. For the donation to be valid, (1%)
1. B may e-mail A accepting the donation.
 2. The donation may be accepted by B's father with whom he lives.
 3. B can accept the donation anytime convenient to him.
 4. B's mother who has a general power of attorney may accept the donation for him.
 5. None of the above is sufficient to make B's acceptance valid
- D.** A executed a 5-page notarial will before a notary public and three witnesses. All of them signed each and every page of the will.
- One of the witnesses was B, the father of one of the legatees to the will. What is the effect of B being a witness to the will? (1%)
1. The will is invalidated
 2. The will is valid and effective
 3. The legacy given to B's child is not valid

III**Define, Enumerate or Explain. (2% each)**

- A. What is the difference between “guaranty” and “suretyship”?
- B. Define *quasi tort*. Who are the persons liable under *quasi torts* and what are the defenses available to them?
- C. Give at least two reasons why a court may assume jurisdiction over a conflict of laws case.

IV

Spouses B and G begot two offsprings. Albeit they had serious personality differences, the spouses continued to live under one roof. B begot a son by another woman. G also begot a daughter by another man.

- A. If G gives the surname of B to her daughter by another man, what can B do to protect their legitimate children's interests? Explain. (5%)
- B. If B acquiesces to the use of his surname by G's daughter by another man, what is/are the consequence/s? Explain. (5%)

V

G filed on July 8, 2000 a petition for declaration of nullity of her marriage to B. During the pendency of the case, the couple entered into a compromise agreement to dissolve their absolute community of property. B ceded his right to their house and lot and all his shares in two business firms to G and their two children, aged 18 and 19.

B also opened a bank account in the amount of ₱3 million in the name of the two children to answer for their educational expenses until they finish their college degrees.

For her part, G undertook to shoulder the day-to-day living expenses and upkeep of the children. The Court approved the spouses' agreement on September 8, 2000.

- A. Suppose the business firms suffered reverses, rendering G unable to support herself and the children. Can G still ask for support *pendente lite* from B? Explain. (3%)
- B. Suppose in late 2004 the two children had squandered the ₱3 million fund for their education before they could obtain their college degrees, can they ask for more support from B? Explain. (3%)

VI

Gigolo entered into an agreement with Majorette for her to carry in her womb his baby via *in vitro* fertilization. Gigolo undertook to underwrite Majorette's pre-natal expenses as well as those attendant to her delivery. Gigolo would thereafter pay Majorette ₱2 million and, in return, she would give custody of the baby to him.

After Majorette gives birth and delivers the baby to Gigolo following her receipt of ₱2 million, she engages your services as her lawyer to regain custody of the baby.

- A. What legal action can you file on behalf of Majorette? Explain. (2.5%)
- B. Can Gigolo demand from Majorette the return of the ₱2 million if he returns the baby? Explain. (2.5%)
- C. Who of the two can exercise parental authority over the child? Explain. (2.5%)

- D.** Is the child entitled to support and inheritance from Gigolo? Explain. (2.5%)

VII

G and B were married on July 3, 1989. On March 4, 2001, the marriage, which bore no offspring, was declared void *ab initio* under Article 36 of the Family Code. At the time of the dissolution of the marriage, the couple possessed the following properties:

- a house and lot acquired by B on August 3, 1988, one third (1/3) of the purchase price (representing downpayment) of which he paid; one third (1/3) was paid by G on February 14, 1990 out of a cash gift given to her by her parents on her graduation on April 6, 1989; and the balance was paid out of the spouses' joint income; and
- an apartment unit donated to B by an uncle on June 19, 1987.

- A.** Who owns the foregoing properties? Explain. (5%)
- B.** If G and B had married on July 3, 1987 and their marriage was dissolved in 2007, who owns the properties? Explain. (5%)

VIII

Spouses Rex and Lea bore two children now aged 14 and 8. During the subsistence of their marriage, Rex begot a child by another woman. He is now 10 years of age.

On Lea's discovery of Rex's fathering a child by another woman, she filed a petition for legal separation which was granted.

Rex now wants to adopt his illegitimate child.

- A. Whose consent is needed for Rex's adoption of his illegitimate child? (2.5%)
- B. If there was no legal separation, can Rex still adopt his illegitimate child? Explain. (2.5%)

IX

Eighteen-year old Filipina Patrice had a daughter out of wedlock whom she named Laurie. At 26, Patrice married American citizen John who brought her to live with him in the United States of America. John at once signified his willingness to adopt Laurie.

Can John file the petition for adoption? If yes, what are the requirements? If no, why? (5%)

X

In 1997, B and G started living together without the benefit of marriage. The relationship produced one offspring, Venus. The couple acquired a residential lot in Parañaque. After four (4) years or in 2001, G having completed her 4-year college degree as a full-time student, she and B contracted marriage without a license.

The marriage of B and G was, two years later, declared null and void due to the absence of a marriage license.

- A. If you were the judge who declared the nullity of the marriage, to whom would you award the lot? Explain briefly. (3%)
- B. Is Venus legitimate, illegitimate, or legitimated? Explain briefly. (3%)

XI

The spouses Peter and Paula had three (3) children. Paula later obtained a judgment of nullity of marriage. Their absolute community of property having been dissolved, they delivered ₱1 million to each of their 3 children as their presumptive legitimes.

Peter later re-married and had two (2) children by his second wife Marie. Peter and Marie, having successfully engaged in business, acquired real properties. Peter later died intestate.

- A. Who are Peter's legal heirs and how will his estate be divided among them? (5%)
- B. What is the effect of the receipt by Peter's 3 children by his first marriage of their presumptive legitimes on their right to inherit following Peter's death? (5%)

XII

On May 5, 1989, 16-year old Rozanno, who was issued a student permit, drove to school a car, a gift from his parents. On even date, as his class was scheduled to go on a field trip, his teacher requested him to accommodate in his car, as he did, four (4) of his classmates because the van rented by the school was too crowded. On the way to a museum which the students were scheduled to visit, Rozanno made a wrong maneuver, causing a collision with a jeepney. One of his classmates died. He and the three (3) others were badly injured.

- A. Who is liable for the death of Rozanno's classmate and the injuries suffered by Rozanno and his 3 other classmates? Explain. (2%)
- B. How about the damage to the jeepney? Explain. (2%)

- C.** Under the same facts, except the date of occurrence of the incident, this time in mid-1994, what would be your answer? Explain. (2%)

XIII

Franz was the owner of Lot E which was surrounded by four (4) lots one of which – Lot C – he also owned. He promised Ava that if she bought Lot E, he would give her a right of way in Lot C.

Convinced, Ava bought Lot E and, as promised, Franz gave her a right of way in Lot C.

Ava cultivated Lot E and used the right of way granted by Franz.

Ava later found gainful employment abroad. On her return after more than 10 years, the right of way was no longer available to her because Franz had in the meantime sold Lot C to Julia who had it fenced.

- A.** Does Ava have a right to demand from Julia the activation of her right of way? Explain. (2.5%)
- B.** Assuming Ava opts to demand a right of way from any of the owners of Lots A, B, and D, can she do that? Explain. (2.5%)

XIV

Primo owns a pet iguana which he keeps in a man-made pond enclosed by a fence situated in his residential lot. A typhoon knocked down the fence of the pond and the iguana crawled out of the gate of Primo's residence. N, a neighbor who was passing by, started throwing stones at the iguana, drawing the iguana to move toward him. N panicked and ran but tripped on something and suffered a broken leg.

Is anyone liable for N's injuries? Explain. (4%)

XV

A, B, and C entered into a partnership to operate a restaurant business. When the restaurant had gone past break-even stage and started to garner considerable profits, C died. A and B continued the business without dissolving the partnership. They in fact opened a branch of the restaurant, incurring obligations in the process. Creditors started demanding for the payment of their obligations.

- A.** Who are liable for the settlement of the partnership's obligations? Explain? (3%)
- B.** What are the creditors' recourse/s? Explain. (3%)

XVI

X was the owner of an unregistered parcel of land in Cabanatuan City. As she was abroad, she advised her sister Y via overseas call to sell the land and sign a contract of sale on her behalf.

Y thus sold the land to B1 on March 31, 2001 and executed a deed of absolute sale on behalf of X. B1 fully paid the purchase price.

B2, unaware of the sale of the land to B1, signified to Y his interest to buy it but asked Y for her authority from X. Without informing X that she had sold the land to B1, Y sought X for a written authority to sell.

X e-mailed Y an authority to sell the land. Y thereafter sold the land on May 1, 2001 to B2 on monthly installment basis for two years, the first installment to be paid at the end of May 2001.

Who between B1 and B2 has a better right over the land? Explain. (5%)

- NOTHING FOLLOWS -

**RETURN THIS QUESTIONNAIRE
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