

2010 BAR EXAMINATIONS

CRIMINAL LAW

19 September 2010

2 P.M. – 5 P.M.

INSTRUCTIONS

This questionnaire is in TWO (2) PARTS: Part I with eleven (11) questions (numbered I to XI), contained in five (5) pages; and Part II with twelve (12) questions (numbered XII to XXIII), contained in six (6) 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 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

PART I

I

An agonizing and protracted trial having come to a close, the judge found A guilty beyond reasonable doubt of homicide and imposed on him a straight penalty of SIX (6) YEARS and ONE (1) DAY of *prision mayor*.

The public prosecutor objected to the sentence on the ground that the proper penalty should have been TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal*.

The defense counsel chimed in, contending that application of the Indeterminate Sentence Law should lead to the imposition of a straight penalty of SIX (6) MONTHS and ONE (1) DAY of *prision correccional* only. Who of the three is on the right track? Explain. (3%)

II

- A. What is the crime of qualified bribery? (2%)
- B. May a judge be charged and prosecuted for such felony? How about a public prosecutor? A police officer? Explain. (5%)

III

May a public officer charged under Section 3(b) of Republic Act No. 3019 [“directly or indirectly requesting or receiving any gift, present, share, percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the government and any other party, wherein the public officer in his official capacity has to intervene under the law”] also

be simultaneously or successively charged with direct bribery under Article 210 of the Revised Penal Code? Explain. (4%)

IV

Because of the barbarity and hideousness of the acts committed by the suspects/respondents in cutting off their victims' appendages, stuffing their torsos, legs, body parts into oil drums and bullet-riddled vehicles and later on burying these oil drums, vehicles with the use of backhoes and other earth-moving machinery, the Commission on Human Rights (CHR) investigating team recommended to the panel of public prosecutors that all respondents be charged with violation of the "Heinous Crimes Law." The prosecution panel agreed with the CHR. As the Chief Prosecutor tasked with approving the filing of the Information, how will you pass upon the recommendation? Explain. (5%)

V

Arlene is engaged in the buy and sell of used garments, more popularly known as "*ukay-ukay*." Among the items found by the police in a raid of her store in Baguio City were brand-new *Louie Feraud* blazers.

Arlene was charged with "fencing." Will the charge prosper? Why or why not? (5%)

VI

There being probable cause to believe that certain deposits and investments in a bank are related to an unlawful activity of smuggling by Alessandro as defined under Republic Act (RA) No. 9160, as amended (Anti-Money Laundering Act) an application for an order to allow inquiry into his deposit was filed with the Regional Trial Court.

After hearing the application, the court granted the application and issued a freeze order.

Pass upon the correctness of the court's order. Explain. (3%)

VII

A widower of ten years, septuagenarian Canuto felt that he had license to engage in voyeurism. If not peeping into his neighbors' rooms through his powerful single-cylinder telescope, he would trail young, shapely damsels along the hallways of shopping malls. While going up the escalator, he stayed a step behind a mini-skirted one, and in a moment of excitement, put his hand on her left hip and massaged it. The damsel screamed and hollered for help. Canuto was apprehended and brought up on inquest. What charge/s, if any, may he be held responsible for? Explain. (5%)

VIII

A asked financial support from her showbiz friend B who accommodated her by issuing in her favor a postdated check in the sum of ₱90,000.00. Both of them knew that the check would not be honored because B's account had just been closed. The two then approached trader C whom they asked to change the check with cash, even agreeing that the exchange be discounted at ₱85,000.00 with the assurance that the check shall be funded upon maturity. Upon C's presentment of the check for payment on due date, it was dishonored because the account had already been closed.

What action/s may C commence against A and B to hold them to account for the loss of her ₱85,000.00? Explain. (5%)

IX

Proserfina, an assistant public high school principal, acted to facilitate the release of salary differentials and election duty per diem of classroom teachers with the agreement that they would reimburse her for her expenses.

Did Proserfina commit a crime? Explain. (5%)

X

A, B and C are members of SFC Fraternity. While eating in a seaside restaurant, they were attacked by X, Y and Z, members of a rival fraternity. A rumble ensued in which the abovenamed members of the two fraternities assaulted each other in a confused and tumultuous manner resulting in the death of A. As it cannot be ascertained who actually killed A, the members of the two fraternities who took part in the rumble were charged for death caused in a tumultuous affray. Will the charge prosper? Explain. (4%)

XI

Angelina maintains a website where visitors can give their comments on the posted pictures of the goods she sells in her exclusive boutique. Bettina posted a comment that the red *Birkin* bag shown in Angelina's website is fake and that Angelina is known to sell counterfeit items.

Angelina wants to file a case against Bettina. She seeks your advice. What advice will you give her? (4%)

- END OF PART I -

PART II**XII**

- A. Define Money Laundering. What are the three (3) stages in money laundering? (3%)
- B. What is the doctrine of *pro reo*? How does it relate to Article 48 of the Revised Penal Code? (3%)

XIII

While his wife was on a 2-year scholarship abroad, Romeo was having an affair with his maid Dulcinea. Realizing that the affair was going nowhere, Dulcinea told Romeo that she was going back to the province to marry her childhood sweetheart. Clouded by anger and jealousy, Romeo strangled Dulcinea to death while she was sleeping in the maid's quarters.

The following day, Romeo was found catatonic inside the maid's quarters. He was brought to the National Center for Mental Health (NCMH) where he was diagnosed to be mentally unstable.

Charged with murder, Romeo pleaded insanity as a defense.

- A. Will Romeo's defense prosper? Explain. (2%)
- B. What is the effect of the diagnosis of the NCMH on the case? (2%)

XIV

Paul lives with his long-time girlfriend Joan in a condominium in Makati. For more than a year, he has been secretly saving money in an envelope under their bed to buy her an

engagement ring. One day, while Joan was cleaning their room, she found the envelope, took the money, and left Paul. As prosecutor, what crime, if any, would you charge Joan? Explain. (3%)

XV

Suspecting that her husband of twenty years was having an affair, Leilanie hired a private investigator to spy on him. After two weeks, the private investigator showed Leilanie a video of her husband having sexual intercourse with another woman in a room of a five-star hotel. Based on what she saw on the video, Leilanie accused her husband of concubinage.

Will the case of concubinage prosper? Explain. (3%)

XVI

The president, treasurer, and secretary of ABC Corporation were charged with syndicated estafa under the following Information:

That on or about the 1st week of January 2010 or subsequent thereto in Cebu City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another in a syndicated manner, through a corporation registered with the Securities and Exchange Commission (SEC), with intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, with intent to gain and by means of fraud and deceit, did then and there wilfully, unlawfully, and feloniously defraud Virna, Lana, Deborah and several other persons by falsely or fraudulently pretending or representing in a transaction or series of transactions, which they made with complainants and the public in general, to the effect that they were in a legitimate business of foreign exchange trading successively or simultaneously operating under the name and style of ABC Corporation and DEF Management Philippines, Incorporated, induced and

succeeded in inducing complainants and several other persons to give and deliver to said accused the amount of at least ₱20,000,000.00 on the strength of said manifestations and representations, the accused knowing fully well that the above-named corporations registered with the SEC are not licensed nor authorized to engage in foreign exchange trading and that such manifestations and representations to transact in foreign exchange were false and fraudulent, that these resulted to the damage and prejudice of the complainants and other persons, and that the defraudation pertains to funds solicited from the public in general by such corporations/associations.

Will the case for syndicated estafa prosper? Explain. (5%)

XVII

A killed his wife and buried her in their backyard. He immediately went into hiding in the mountains.

Three years later, the bones of A's wife were discovered by X, the gardener. Since X had a standing warrant of arrest, he hid the bones in an old clay jar and kept quiet about it. After two years, Z, the caretaker, found the bones and reported the matter to the police.

After 15 years of hiding, A left the country but returned three years later to take care of his ailing sibling. Six years thereafter, he was charged with parricide but raised the defense of prescription.

- A. Under the Revised Penal Code, when does the period of prescription of a crime commence to run? (1%)
- B. When is it interrupted? (1%)
- C. Is A's defense tenable? Explain. (3%)

XVIII

On her way home, Eva Marie saw an injured chow chow puppy behind a bush. Since the puppy did not have a collar, she brought it home so she could have it as a pet. Her son in fact begged Eva Marie to keep the puppy. The following day, Eva Marie bought a collar for the puppy and brought it to a veterinarian for treatment.

- A. Did Eva Marie incur criminal liability in bringing the puppy home as a pet? Explain. (2%)
- B. Did she incur civil liability? Explain. (2%)

XIX

Jack and Jill have been married for seven years. One night, Jack came home drunk. Finding no food on the table, Jack started hitting Jill only to apologize the following day.

A week later, the same episode occurred – Jack came home drunk and started hitting Jill.

Fearing for her life, Jill left and stayed with her sister. To woo Jill back, Jack sent her floral arrangements of spotted lilies and confectioneries. Two days later, Jill returned home and decided to give Jack another chance. After several days, however, Jack again came home drunk. The following day, he was found dead.

Jill was charged with parricide but raised the defense of “battered woman syndrome.”

- A. Define “Battered Woman Syndrome.” (2%)
- B. What are the three phases of the “Battered Woman Syndrome”? (3 %)

- C. Would the defense prosper despite the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code? Explain. (2%)

XX

Matt was found guilty of drug trafficking while his younger brother Jeff was found guilty of possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of Republic Act No. 9165.

Matt filed a petition for probation. Jeff appealed his conviction during the pendency of which he also filed a petition for probation.

The brothers' counsel argued that they being first time offenders, their petitions for probation should be granted. How would you resolve the brothers' petitions for probation? Explain. (3%)

XXI

Because peace negotiations on the Spratlys situation had failed, the People's Republic of China declared war against the Philippines. Myra, a Filipina who lives with her Italian expatriate boyfriend, discovered e-mail correspondence between him and a certain General Tung Kat Su of China.

On March 12, 2010, Myra discovered that on even date her boyfriend had sent an e-mail to General Tung Kat Su, in which he agreed to provide vital information on the military defense of the Philippines to the Chinese government in exchange for ₱1 million and his safe return to Italy. Two weeks later, Myra decided to report the matter to the proper authorities.

Did Myra commit a crime? Explain. (3%)

XXII

Immediately after murdering Bob, Jake went to his mother to seek refuge. His mother told him to hide in the maid's quarters until she finds a better place for him to hide. After two days, Jake transferred to his aunt's house. A week later, Jake was apprehended by the police. Can Jake's mother and aunt be made criminally liable as accessories to the crime of murder? Explain. (3 %)

XXIII

Christopher, John, Richard, and Luke are fraternity brothers. To protect themselves from rival fraternities, they all carry guns wherever they go. One night, after attending a party, they boarded a taxicab, held the driver at gunpoint and took the latter's earnings.

- A. What crime, if any, did the four commit? Enumerate the elements of the crime. (2%)
- B. Would your answer be the same if they killed the driver? Explain. (2%)

- NOTHING FOLLOWS -

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