

2010 BAR EXAMINATIONS

**MERCANTILE LAW**

19 September 2010

8 A.M. – 12 NN.

**INSTRUCTIONS**

There is only one Examiner in Mercantile Law. Hence, the following questionnaire consists of only **ONE PART** with nineteen (19) questions (numbered I to XIX) 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!!!**

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**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**

Briefly describe the following types of banks: (2% each)

- A. universal bank
- B. commercial bank
- C. thrift bank
- D. rural bank
- E. cooperative bank

**II**

- A. How do you characterize the legal relationship between a commercial bank and its safety deposit box client? (2%)
- B. Is a stipulation in the contract for the use of a safety deposit box relieving the bank of liability in connection with the use thereof valid? (2%)
- C. Differentiate “bank deposits” from “deposit substitutes.” (2%)
- D. Why are banks required to maintain reserves against their deposits and deposit substitutes? State one of three purposes for these reserves. (2%)

**III**

Ozamis Paper Corporation secured loans from ABC Universal Bank in the aggregate principal amount of ₱100 million, evidenced by several promissory notes, and secured by a continuing guaranty of its principal stockholder Menandro Marquez; a pledge of Marquez’s shares in the corporation valued

at ₱45 million; and a real estate mortgage over certain parcels of land owned by Marquez.

The corporation defaulted and the bank extra-judicially foreclosed on the real estate mortgage. The bank, which was the sole bidder for ₱75 million, won the award.

- A. Can the bank sue Marquez for the deficiency of ₱25 million? Explain. (2%)
- B. If the bank opts to file an action for collection against the corporation, can it afterwards institute a real action to foreclose the mortgage? Explain. (2%)
- C. Can the bank foreclose on the pledged shares of Marquez and recover the deficiency from the corporation? Explain. (2%)

#### IV

Andante Realty, a marketing company that promotes and facilitates sales of real property through leverage marketing, solicits investors who are required to be a Business Center Owner (BCO) by paying an enrollment fee of \$250. The BCO is then entitled to recruit two other investors who pay \$250 each. The BCO receives \$90 from the \$250 paid by each of his recruits and is credited a certain amount for payments made by investors through the initial efforts of his Business Center. Once the accumulated amount reaches \$5,000, the same is used as down payment for the real property chosen by the BCO.

- A. Does this multi-level marketing scheme constitute an “investment contract” under the Securities Regulation Code? Define an “investment contract.” (2%)
- B. What procedure must be followed under the Securities Regulation Code to authorize the sale or offer for sale or distribution of an investment contract? (2%)

- C. What are the legal consequences of failure to follow this procedure? (2%)

## V

Venezia is a famous international fashion chain with outlets in Makati, Ortigas, and Manila. It has complied with the minimum capitalization required under the Retail Trade Nationalization Act and carries on retail business worth more than \$3 million for each of its outlets. As its Manila outlet is not doing very well, it decides to sell all of its business there consisting of remaining inventory, furniture and fixtures and other assets to its competitor.

- A. Venezia's Manila outlet constitutes one-third ( $\frac{1}{3}$ ) of its total business. Should it comply with the requirements of the Bulk Sales Law? Why or why not? (2%)
- B. If instead of selling its Manila outlet, Venezia merely mortgages its assets there, would it need to comply with the requirements of the Bulk Sales Law? (2%)
- C. What are the legal consequences of a failure to comply with the requirements of the Bulk Sales Law? (2%)

## VI

- A. What contractual stipulations are required in all technology transfer agreements? (2%)
- B. Enumerate three (3) stipulations that are prohibited in technology transfer agreements. (3%)
- C. Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example. (2%)

## VII

Union Mines, Inc. has total assets of ₱60 million with 210 stockholders holding at least 100 shares each.

The company has two principal stockholders, ABC which owns 60% of the shares of stock, and XYZ which owns 17%.

ABC in turn is owned to the extent of 21.31% by Acme, Inc.; 29.69% by Golden Boy, Inc.; 9% by XYZ; and the rest by individual stockholders.

None of the parties is a publicly-listed company.

XYZ now proposes to buy Acme's and Golden Boy's shares in ABC, which would give it direct control of ABC and indirect control of Union Mines.

Is the proposed acquisition by XYZ subject to the mandatory tender offer rule? Why or why not? What is a tender offer and when is it mandatory? (5%)

## VIII

Marlon deposited with LYRIC Bank a money market placement of ₱1 million for a term of 31 days. On maturity date, one claiming to be Marlon called up the LYRIC Bank account officer and instructed him to give the manager's check representing the proceeds of the money market placement to Marlon's girlfriend Ingrid.

The check, which bore the forged signature of Marlon, was deposited in Ingrid's account with YAMAHA Bank. YAMAHA Bank stamped a guaranty on the check reading: "All prior endorsements and/or lack of endorsement guaranteed."

Upon presentment of the check, LYRIC Bank funds the check. Days later, Marlon goes to LYRIC Bank to collect his money market placement and discovers the foregoing transactions.

Marlon thereupon sues LYRIC Bank which in turn files a third-party complaint against YAMAHA Bank. Discuss the respective rights and liabilities of the two banks. (5%)

## IX

Your client Dianne approaches you for legal advice on putting up a medium-sized restaurant business that will specialize in a novel type of cuisine. As Dianne feels that the business is a little risky, she wonders whether she should use a corporation as the business vehicle, or just run it as a single proprietorship. She already has an existing corporation that is producing meat products profitably and is also considering the alternative of simply setting up the restaurant as a branch office of the existing corporation.

- A. Briefly explain to your client what you see as the legal advantages and disadvantages of using a separate corporation, a single proprietorship, or a branch of an existing corporation for the proposed restaurant business. (3%)
- B. If you advise your client to use a corporation, what officer positions must the corporation at least have? (2%)
- C. What particular qualifications, if any, are these officers legally required to possess under the Corporation Code? (2%)

## X

To secure a loan of ₱10 million, Mario mortgaged his building to Armando. In accordance with the loan arrangements, Mario had the building insured with First Insurance Company for ₱10 million, designating Armando as the beneficiary.

Armando also took an insurance on the building upon his own interest with Second Insurance Company for ₱5 million.

The building was totally destroyed by fire, a peril insured against under both insurance policies. It was subsequently determined that the fire had been intentionally started by Mario and that in violation of the loan agreement, he had been storing inflammable materials in the building.

- A. How much, if any, can Armando recover from either or both insurance companies? (2%)
- B. What happens to the ₱10 million debt of Mario to Armando? Explain. (3%)

## XI

Enrique obtained from Seguro Insurance Company a comprehensive motor vehicle insurance to cover his top of the line Aston Martin. The policy was issued on March 31, 2010 and, on even date, Enrique paid the premium with a personal check postdated April 6, 2010.

On April 5, 2010, the car was involved in an accident that resulted in its total loss.

On April 10, 2010, the drawee bank returned Enrique's check with the notation "Insufficient Funds." Upon notification, Enrique immediately deposited additional funds with the bank and asked the insurer to redeposit the check.

Enrique thereupon claimed indemnity from the insurer. Is the insurer liable under the insurance coverage? Why or why not? (3%)

## XII

AA entered into a contract with BB for the latter to transport ladies wear from Manila to France with transshipment via Taiwan. Somehow the goods were not loaded in Taiwan on time, hence, these arrived in France “off-season.” AA was only paid for one-half ( $\frac{1}{2}$ ) the value by the buyer.

AA claimed damages from BB. BB invoked prescription as a defense under the Carriage of Goods by Sea Act. Considering the “loss of value” of the ladies wear as claimed by AA, is BB’s defense tenable? Explain. (3%)

## XIII

Paolo, the owner of an ocean-going vessel, offered to transport the logs of Constantino from Manila to Nagoya. Constantino accepted the offer, not knowing that the vessel was manned by an irresponsible crew with deep-seated resentments against Paolo, their employer.

Constantino insured the cargo of logs against both perils of the sea and barratry. The logs were improperly loaded on one side, thereby causing the vessel to tilt on one side. On the way to Nagoya, the crew unbolted the sea valves of the vessel causing water to flood the ship hold. The vessel sank.

Constantino tried to collect from the insurance company which denied liability, given the unworthiness of both the vessel and its crew.

Constantino countered that he was not the owner of the vessel and he could therefore not be responsible for conditions about which he was innocent.

- A. Is the insurance company liable? Why or why not? (3%)
- B. What is “barratry” in marine insurance? (2%)

**XIV**

When OCCIDENTAL Bank folded up due to insolvency, Manuel had the following separate deposits in his name: ₱200,000 in savings deposit; ₱250,000 in time deposit; ₱50,000 in a current account; ₱1 million in a trust account; and ₱3 million in money market placement. Under the Philippine Deposit Insurance Corporation Act, how much could Manuel recover? Explain. (2%)

**XV**

While vacationing in Boracay, Valentino surreptitiously took photographs of his girlfriend Monaliza in her skimpy bikini. Two weeks later, her photographs appeared in the Internet and in a national celebrity magazine.

Monaliza found out that Valentino had sold the photographs to the magazine and, adding insult to injury, uploaded them to his personal blog on the Internet.

- A.** Monaliza filed a complaint against Valentino for damages based on, among other grounds, violation of her intellectual property rights. Does she have any cause of action? Explain. (2%)
- B.** Valentino's friend Francesco stole the photographs and duplicated them and sold them to a magazine publication. Valentino sued Francesco for infringement and damages. Does Valentino have any cause of action? Explain. (2%)
- C.** Does Monaliza have any cause of action against Francesco? Explain. (2%)

**XVI**

An importer of Christmas toys loaded 100 boxes of Santa Claus talking dolls aboard a ship in Korea bound for Manila. With the intention of smuggling one-half of his cargo, he took a bill of lading for only 50 boxes. On the voyage to Manila, 50 boxes were jettisoned to save the more precious cargo.

- A.** Is the importer entitled to receive any indemnity for average? Explain. (2%)
- B.** What are the types of averages in marine commerce? (3%)

**XVII**

The Supreme Court has held that fraud is an exception to the “independence principle” governing letters of credit. Explain this principle and give an example of how fraud can be an exception. (3%)

**XVIII**

For years, Y has been engaged in the parallel importation of famous brands, including shoes carrying the foreign brand MAGIC. Exclusive distributor X demands that Y cease importation because of his appointment as exclusive distributor of MAGIC shoes in the Philippines.

Y counters that the trademark MAGIC is not registered with the Intellectual Property Office as a trademark and therefore no one has the right to prevent its parallel importation.

- A.** Who is correct? Why? (2%)
- B.** Suppose the shoes are covered by a Philippine patent issued to the brand owner, what would your answer be? Explain. (2%)

**XIX**

Dr. Nobel discovered a new method of treating Alzheimer's involving a special method of diagnosing the disease, treating it with a new medicine that has been discovered after long experimentation and field testing, and novel mental isometric exercises. He comes to you for advice on how he can have his discoveries protected.

Can he legally protect his new method of diagnosis, the new medicine, and the new method of treatment? If no, why? If yes, how? (4%)

**- NOTHING FOLLOWS -**

**RETURN THIS QUESTIONNAIRE  
WITH YOUR NOTEBOOK**