

2010 BAR EXAMINATIONS

**REMEDIAL LAW**

26 September 2010

8 A.M. - 12 NN.

**INSTRUCTIONS**

This questionnaire is in TWO (2) PARTS: Part I with seven (7) questions (numbered I to VII), contained in seven (7) pages; and Part II with thirteen (13) questions (numbered VIII to XX), 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 sub-question/s under the same number may be written continuously on the same page and succeeding pages until completed.

Answer the question 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 THIRTEEN (13)  
PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

## PART I

### I

On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio.

To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, *pa2tayin u ni Mabini. Mtgal n nyang plano i2. Mg ingat u bka ma tsugi k.*"

- A.** A subpoena *ad testificandum* was served on Gregoria for her to be presented for the purpose of identifying her cellphone and the text message. Mabini objected to her presentation on the ground of marital privilege. Resolve. (3%)
- B.** Suppose Mabini's objection in question **A** was sustained. The prosecution thereupon announced that it would be presenting Emilio's wife Graciana to identify Emilio's cellphone bearing Gregoria's text message. Mabini objected again. Rule on the objection. (2%)
- C.** If Mabini's objection in question **B** was overruled, can he object to the presentation of the text message on the ground that it is hearsay? (2%)
- D.** Suppose that shortly before he expired, Emilio was able to send a text message to his wife Graciana reading "*Nasaksak ako. D na me makahinga. Si Mabini ang may gawa ni2.*" Is this text message admissible as a dying declaration? Explain. (3%)

## II

On August 13, 2008, A, as shipper and consignee, loaded on the *M/V Atlantis* in Legaspi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the *M/V Atlantis*, for recovery of damages amounting to ₱167,899. He attached to the complaint the Bill of Lading.

- A.** B Lines filed a Motion to Dismiss upon the ground that the Regional Trial Court has exclusive original jurisdiction over “all actions in admiralty and maritime” claims. In his Reply, A contended that while the action is indeed “admiralty and maritime” in nature, it is the amount of the claim, not the nature of the action, that governs jurisdiction. Pass on the Motion to Dismiss. (3%)
- B.** The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to ₱10,000.

At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to ₱10,000 binds A. A countered that this was no longer in issue as B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (3%)

- C.** On July 21, 2009, B Lines served on A a “Notice to Take Deposition,” setting the deposition on July 29, 2009 at 8:30 a.m. at the office of its counsel in Makati. A failed to appear at the deposition-taking, despite notice. As counsel for B Lines, how would you proceed? (3%)

### III

Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for *accion publiciana*.

Anabel appealed the dismissal to the RTC which affirmed it and accordingly dismissed her appeal. She elevates the case to the Court of Appeals, which remands the case to the RTC. Is the appellate court correct? Explain. (3%)

### IV

X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street. Lawyer L, who witnessed the incident, offered his legal services to V.

V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone.

On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his "Certification Against Forum Shopping," V made no mention of the pendency of the criminal case in Sta. Maria.

A. Is V guilty of forum shopping? (2%)

- B.** Instead of filing an Answer, X and Y move to dismiss the complaint for damages on the ground of *litis pendentia*. Is the motion meritorious? Explain. (2%)
- C.** Suppose only X was named as defendant in the complaint for damages, may he move for the dismissal of the complaint for failure of V to implead Y as an indispensable party? (2%)
- D.** X moved for the suspension of the proceedings in the criminal case to await the decision in the civil case. For his part, Y moved for the suspension of the civil case to await the decision in the criminal case. Which of them is correct? Explain. (2%)
- E.** Atty. L offered in the criminal case his affidavit respecting what he witnessed during the incident. X's lawyer wanted to cross-examine Atty. L who, however, objected on the ground of lawyer-client privilege. Rule on the objection. (2%)

## V

Charisse, alleging that she was a resident of Lapu-Lapu City, filed a complaint for damages against Atlanta Bank before the RTC of Lapu-Lapu City, following the dishonor of a check she drew in favor of Shirley against her current account which she maintained in the bank's local branch.

The bank filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action, but it was denied. It thus filed an Answer.

- A.** In the course of the trial, Charisse admitted that she was a US citizen residing in Los Angeles, California and that she was temporarily billeted at the Pescado Hotel in Lapu-Lapu City, drawing the bank to file another motion to dismiss, this time on the ground of improper venue, since Charisse is not a resident of Lapu-Lapu City.

Charisse opposed the motion citing the “omnibus motion rule.” Rule on the motion. (3%)

- B.** Suppose Charisse did not raise the “omnibus motion rule,” can the judge proceed to resolve the motion to dismiss? Explain. (3%)
- C.** Suppose the judge correctly denied the second motion to dismiss and rendered judgment in favor of Charisse, ordering the bank to pay her ₱100,000 in damages plus legal interest. The judgment became final and executory in 2008. To date, Charisse has not moved to execute the judgment. The bank is concerned that its liability will increase with the delay because of the interest on the judgment award.

As counsel of the bank, what move should you take? (3%)

## VI

Antique dealer Mercedes borrowed ₱1,000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.

Mercedes filed in February 2009 her Answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a *dacion en pago* agreement in which her vintage ₱1,000,000 *Rolex* watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a “frivolous lawsuit.” She accordingly prayed for ₱50,000 damages.

- A. Benjamin soon after moved for the dismissal of the case. The trial court accordingly dismissed the complaint. And it also dismissed the Counterclaim.

Mercedes moved for a reconsideration of the dismissal of the Counterclaim. Pass upon Mercedes' motion. (3%)

- B. Suppose there was no Counterclaim and Benjamin's complaint was not dismissed, and judgment was rendered against Mercedes for ₱1,000,000. The judgment became final and executory and a writ of execution was correspondingly issued.

Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at ₱1.2 million. The Sheriff, however, on request of Benjamin, seized Mercedes' 17<sup>th</sup> century ivory image of the *La Sagrada Familia* estimated to be worth over ₱1,000,000.

Was the Sheriff's action in order? (3%)

## VII

As Cicero was walking down a dark alley one midnight, he saw an "owner-type jeepney" approaching him. Sensing that the occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle – elements from the Western Police District – gave chase and apprehended him.

The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of *shabu* tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body-search legal? (3%)

**- END OF PART I -**

## PART II

### VIII

Dominique was accused of committing a violation of the Human Security Act. He was detained *incommunicado*, deprived of sleep, and subjected to water torture. He later allegedly confessed his guilt via an affidavit.

After trial, he was acquitted on the ground that his confession was obtained through torture, hence, inadmissible as evidence.

In a subsequent criminal case for torture against those who deprived him of sleep and subjected him to water torture, Dominique was asked to testify and to, among other things, identify his above-said affidavit of confession. As he was about to identify the affidavit, the defense counsel objected on the ground that the affidavit is a fruit of a poisonous tree. Can the objection be sustained? Explain. (3%)

### IX

In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused's. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)

### X

Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US authorities in connection with the *Balikatan* exercises.

Marinella alleges that as a result of her exposé, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed.

Atty. Daro, counsel for the Chief of Staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro's motion. Explain. (3%)

## XI

X was arrested for the alleged murder of a 6-year old lad. He was read his *Miranda* rights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of non-stop interrogation. He remained quiet until, on the 3<sup>rd</sup> hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court, interpreting X's answer as an admission of guilt, convicted him.

On appeal, X's counsel faulted the trial court in its interpretation of his client's answer, arguing that X invoked his *Miranda* rights when he remained quiet for the first two hours of questioning. Rule on the assignment of error. (3%)

## XII

In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the Anti-Graft and Corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground/s. Respond. (3%)

### XIII

Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of *shabu* which they alleged was swallowed by Lorenzo.

Suppose the PGH agreed to, and did perform the surgery, is the package of *shabu* admissible in evidence? Explain. (3%)

### XIV

Czarina died single. She left all her properties by will to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.

Duqueza soon instituted an action for probate of Czarina's will. Marco, on the other hand, instituted intestate proceedings. Both actions were consolidated before the RTC of Pasig. On motion of Marco, Duqueza's petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%)

### XV

Pedrillo, a Fil-Am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity.

Upon Pedrillo's demise, his will was duly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US\$1,000 per month for the next 15 years.

Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo's will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate.

Winston now files in the Makati RTC a motion to compel XYZ to account for all sums in its possession forming part of Pedrillo's estate. Rule on the motion. (5%)

## XVI

Sal Mineo died intestate, leaving a ₱1 billion estate. He was survived by his wife Dayanara and their five children.

Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%)

## XVII

What is "*res judicata* in prison grey"? (2%)

## XVIII

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-way airplane ticket was purchased online using his credit card for a flight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

- A. What is the proper procedure to prevent Dina from leaving the Philippines? (2%)
- B. Suppose an Information is filed against Dina on August 12, 2008 and she is immediately arrested. What pieces of electronic evidence will Dante have to secure in order to prove the fraudulent online transaction? (2%)

### XIX

- 1. Enumerate the requisites of a “trial *in absentia*” (2%) and a “promulgation of judgment *in absentia*” (2%).
- 2. Name two instances where the trial court can hold the accused civilly liable even if he is acquitted. (2%)

### XX

Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved by her co-employees because she extends cash advances or “*vales*” to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her.

Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat.

Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company’s refusal to disclose the results of its investigation.

Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of *habeas data* before the Regional Trial Court (RTC) to enjoin Temptation, Inc. from transferring her on the ground that the company's refusal to provide her with a copy of the investigation results compromises her right to life, liberty and privacy.

Resolve the petition. Explain. (5%)

**- NOTHING FOLLOWS -**

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