

BAR EXAMINATIONS 2013**CIVIL LAW**

October 13, 2013

8:00 A.M.– 12:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains SIXTEEN (16) pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are TEN (10) Essay Questions numbered I to X (with subquestions), and TEN (10) Multiple Choice Questions (MCQs) numbered I to X (with subquestions), to be answered within *four (4) hours*.

The essay portion contains questions that are worth 80% of the whole examination, while the MCQ portion contains questions worth 20%.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only at the *front*, not the back, page of every sheet in your Examination Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back pages of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the question turns. It should

show your knowledge and understanding of the pertinent principles and theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, and to reason logically in a lawyer-like manner to a sound conclusion from the given premises.

A mere “Yes” or “No” answer without any corresponding explanation or discussion will not be given any credit. Thus, always briefly but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Examination Notebook.

4. MCQs are to be answered by writing in your Examination Notebook the capital letter (A, B, C, D, or E) corresponding to your chosen answer. *The MCQ answers should begin in the page following the last page of your essay answers.*

There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices. Note that some MCQs may need careful analysis both of the questions and the choices offered.

5. Make sure you do not write *your name* or any *extraneous note/s* or *distinctive marking/s* on your Examination Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the Examination Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE



J. ARTURO D. BRION

Chairman

2013 Bar Examinations

ESSAY QUESTIONS

I.

You are a Family Court judge and before you is a Petition for the Declaration of Nullity of Marriage (under Article 36 of the Family Code) filed by Maria against Neil. Maria claims that Neil is psychologically incapacitated to comply with the essential obligations of marriage because Neil is a drunkard, a womanizer, a gambler, and a mama's boy – traits that she never knew or saw when Neil was courting her. Although summoned, Neil did not answer Maria's petition and never appeared in court.

To support her petition, Maria presented three witnesses – herself, Dr. Elsie Chan, and Ambrosia. Dr. Chan testified on the psychological report on Neil that she prepared. Since Neil never acknowledged nor responded to her invitation for interviews, her report is solely based on her interviews with Maria and the spouses' minor children. Dr. Chan concluded that Neil is suffering from Narcissistic Personality Disorder, an ailment that she found to be already present since Neil's early adulthood and one that is grave and incurable. Maria testified on the specific instances when she found Neil drunk, with another woman, or squandering the family's resources in a casino. Ambrosia, the spouses' current household help, corroborated Maria's testimony.

On the basis of the evidence presented, will you grant the petition? (8%)

II.

A collision occurred at an intersection involving a bicycle and a taxicab. Both the bicycle rider (a businessman then doing his morning exercise) and the taxi driver claimed that the other was at fault. Based on the police report, the bicycle crossed the intersection first but the taxicab, crossing at a fast clip from the bicycle's left, could not brake in time and hit the bicycle's rear wheel, toppling it and throwing the bicycle rider into the sidewalk 5 meters away.

The bicycle rider suffered a fractured right knee, sustained when he fell on his right side on the concrete side walk. He was hospitalized and was subsequently operated on, rendering him immobile for 3 weeks and requiring physical rehabilitation for another 3 months. In his complaint for damages, the rider prayed for the award of P1,000,000 actual damages, P200,000 moral damages, P200,000 exemplary damages, P100,000 nominal damages and P50,000 attorney's fees.

A

Assuming the police report to be correct and as the lawyer for the bicycle rider, what evidence (documentary and testimonial) and legal arguments will you present in court to justify the damages that your client claims? (8%)

III.

Sergio is the registered owner of a 500-square meter land. His friend, Marcelo, who has long been interested in the property, succeeded in persuading Sergio to sell it to him. On June 2, 2012, they agreed on the purchase price of P600,000 and that Sergio would give Marcelo up to June 30, 2012 within which to raise the amount. Marcelo, in a light tone usual between them, said that they should seal their agreement through a case of Jack Daniels Black and P5,000 “pulutan” money which he immediately handed to Sergio and which the latter accepted. The friends then sat down and drank the first bottle from the case of bourbon.

On June 15, 2013, Sergio learned of another buyer, Roberto, who was offering P800,000 in ready cash for the land. When Roberto confirmed that he could pay in cash as soon as Sergio could get the documentation ready, Sergio decided to withdraw his offer to Marcelo, hoping to just explain matters to his friend. Marcelo, however, objected when the withdrawal was communicated to him, taking the position that they have a firm and binding agreement that Sergio cannot simply walk away from because he has an option to buy that is duly supported by a duly accepted valuable consideration.

(A) Does Marcelo have a cause of action against Sergio? (5%)

(B) Can Sergio claim that whatever they might have agreed upon cannot be enforced because any agreement relating to the sale of real property must be supported by evidence in writing and they never reduced their agreement to writing? (3%)

IV.

Anselmo is the registered owner of a land and a house that his friend Boboy occupied for a nominal rental and on the condition that Boboy would vacate the property on demand. With Anselmo's knowledge, Boboy introduced renovations consisting of an additional bedroom, a covered veranda, and a concrete block fence, at his own expense.

Subsequently, Anselmo needed the property as his residence and thus asked Boboy to vacate and turn it over to him. Boboy, despite an extension, failed to vacate the property, forcing Anselmo to send him a written demand to vacate.

In his own written reply, Boboy signified that he was ready to leave but Anselmo must first reimburse him the value of the improvements he introduced on the property as he is a builder in good faith. Anselmo refused, insisting that Boboy cannot ask for reimbursement as he is a mere lessee. Boboy responded by removing the improvements and leaving the building in its original state.

(A) Resolve Boboy's claim that as a builder in good faith, he should be reimbursed the value of the improvements he introduced. (4%)

(B) Can Boboy be held liable for damages for removing the improvements over Anselmo's objection? (4%)

V.

Josefa executed a deed of donation covering a one-hectare rice land in favor of her daughter, Jennifer. The deed specifically provides that:

"For and in consideration of the love and service Jennifer has shown and given to me, I hereby freely, voluntarily and irrevocably donate to her my one-hectare rice land covered by TCT No. 11550, located in San Fernando, Pampanga. This donation shall take effect upon my death."

The deed also contained Jennifer's signed acceptance, and an attached notarized declaration by Josefa and Jennifer that the land will remain in Josefa's possession and cannot be alienated, encumbered, sold or disposed of while Josefa is still alive.

Advise Jennifer on whether the deed is a donation *inter vivos* or *mortis causa* and explain the reasons supporting your advice. (8%)

VI.

Lito obtained a loan of P1,000,000 from Ferdie, payable within one year. To secure payment, Lito executed a chattel mortgage on a Toyota Avanza and a real estate mortgage on a 200-square meter piece of property.

(A) Would it be legally significant – from the point of view of validity and enforceability – if the loan and the mortgages were in public or private instruments? (6%)

(B) Lito's failure to pay led to the extra-judicial foreclosure of the mortgaged real property. Within a year from foreclosure, Lito tendered a manager's check to Ferdie to redeem the property. Ferdie refused to accept

payment on the ground that he wanted payment in cash: the check does not qualify as legal tender and does not include the interest payment.

Is Ferdie's refusal justified? (4%)

VII.

In 2005, Andres built a residential house on a lot whose only access to the national highway was a pathway crossing Brando's property. Andres and others have been using this pathway (*pathway A*) since 1980.

In 2006, Brando fenced off his property, thereby blocking Andres' access to the national highway. Andres demanded that part of the fence be removed to maintain his old access route to the highway (*pathway A*), but Brando refused, claiming that there was another available pathway (*pathway B*) for ingress and egress to the highway. Andres countered that pathway B has defects, is circuitous, and is extremely inconvenient to use.

To settle their dispute, Andres and Brando hired Damian, a geodetic and civil engineer, to survey and examine the two pathways and the surrounding areas, and to determine the shortest and the least prejudicial way through the servient estates. After the survey, the engineer concluded that pathway B is the longer route and will need improvements and repairs, but will not significantly affect the use of Brando's property. On the other hand, pathway A that had long been in place, is the shorter route but would significantly affect the use of Brando's property.

In light of the engineer's findings and the circumstances of the case, resolve the parties' right of way dispute. (6%)

VIII.

Ciriaco Realty Corporation (*CRC*) sold to the spouses Dela Cruz a 500-square meter land (*Lot A*) in Paranaque. The land now has a fair market value of P1,200,000. *CRC* likewise sold to the spouses Rodriguez, a 700-square meter land (*Lot B*) which is adjacent to Lot A. Lot B has a present fair market value of P1,500,000.

The spouses Dela Cruz constructed a house on Lot B, relying on the representation of the *CRC* sales agent that it is the property they purchased. Only upon the completion of their house did the spouses Dela Cruz discover that they had built on Lot B owned by the spouses Rodriguez, not on Lot A that they purchased. They spent P1,000,000 for the house.

An

As their lawyer, advise the spouses Dela Cruz on their rights and obligations under the given circumstances, and the recourses and options open to them to protect their interests. (8%)

IX.

Rica petitioned for the annulment of her ten-year old marriage to Richard. Richard hired Atty. Cruz to represent him in the proceedings. In payment for Atty. Cruz's acceptance and legal fees, Richard conveyed to Atty. Cruz a parcel of land in Taguig that he recently purchased with his lotto winnings. The transfer documents were duly signed and Atty. Cruz immediately took possession by fencing off the property's entire perimeter.

Desperately needing money to pay for his mounting legal fees and his other needs and despite the transfer to Atty. Cruz, Richard offered the same parcel of land for sale to the spouses Garcia. After inspection of the land, the spouses considered it a good investment and purchased it from Richard. Immediately after the sale, the spouses Garcia commenced the construction of a three-story building over the land, but they were prevented from doing this by Atty. Cruz who claimed he has a better right in light of the prior conveyance in his favor.

Is Atty. Cruz's claim correct? (8%)

X.

Manuel was born on 12 March 1940 in a 1,000-square meter property where he grew up helping his father, Michael, cultivate the land. Michael has lived on the property since the land was opened for settlement at about the time of the Commonwealth government in 1935, but for some reason never secured any title to the property other than a tax declaration in his name. He has held the property through the years in the concept of an owner and his stay was uncontested by others. He has also conscientiously and continuously paid the realty taxes on the land.

Michael died in 2000 and Manuel – as Michael's only son and heir – now wants to secure and register title to the land in his own name. He consults you for legal advice as he wants to perfect his title to the land and secure its registration in his name.

(A) What are the laws that you need to consider in advising Manuel on how he can perfect his title and register the land in his name? Explain the relevance of these laws to your projected course of action. (4%)

(B) What do you have to prove to secure Manuel's objectives and what documentation are necessary? (4%)

MULTIPLE CHOICE QUESTIONS

I. Armand died intestate. His full-blood brothers, Bobby and Conrad, and half-blood brothers, Danny, Edward and Floro, all predeceased him. The following are the surviving relatives:

1. Benny and Bonnie, legitimate children of Bobby;
2. Cesar, legitimate child of Conrad;
3. Dante, illegitimate child of Danny;
4. Ernie, adopted child of Edward; and
5. Felix, grandson of Floro.

The net value of Armand's estate is P1,200,000.

I.(1) How much do Benny and Bonnie stand to inherit by right of representation? (1%)

- (A) P200,000
- (B) P300,000
- (C) P400,000
- (D) P150,000
- (E) None of the above.

I.(2) How much is Dante's share in the net estate? (1%)

- (A) P150,000.
- (B) P200,000.
- (C) P300,000.
- (D) P400,000.
- (E) None of the above.

I.(3) How much is Ernie's share in the net estate? (1%)

- (A) P 0.
- (B) P400,000.
- (C) P150,000.
- (D) P200,000.
- (E) None of the above.

I.(4) How much is Felix's share in the net estate? (1%)

- (A) P400,000.
- (B) P150,000.
- (C) P300,000.

- (D) P 0.
- (E) None of the above.

II. A, B, C and D are the solidary debtors of X for P40,000. X released D from the payment of his share of P10,000. When the obligation became due and demandable, C turned out to be insolvent.

Should the share of insolvent debtor C be divided only between the two other remaining debtors, A and B? (1%)

- (A) Yes. Remission of D's share carries with it total extinguishment of his obligation to the benefit of the solidary debtors.
- (B) Yes. The Civil Code recognizes remission as a mode of extinguishing an obligation. This clearly applies to D.
- (C) No. The rule is that gratuitous acts should be restrictively construed, allowing only the least transmission of rights.
- (D) No, as the release of the share of one debtor would then increase the burden of the other debtors without their consent.

III. Amador obtained a loan of P300,000 from Basilio payable on March 25, 2012. As security for the payment of his loan, Amador constituted a mortgage on his residential house and lot in Basilio's favor. Cacho, a good friend of Amador, guaranteed and obligated himself to pay Basilio, in case Amador fails to pay his loan at maturity.

III.(1) If Amador fails to pay Basilio his loan on March 25, 2012, **can Basilio compel Cacho to pay? (1%)**

- (A) No, Basilio cannot compel Cacho to pay because as guarantor, Cacho can invoke the principle of excussion, *i.e.*, all the assets of Basilio must first be exhausted.
- (B) No, Basilio cannot compel Cacho to pay because Basilio has not exhausted the available remedies against Amador.
- (C) Yes, Basilio can compel Cacho to pay because the nature of Cacho's undertaking indicates that he has bound himself solidarily with Amador.
- (D) Yes, Basilio can compel Cacho who bound himself to unconditionally pay in case Amador fails to pay; thus the benefit of excussion will not apply.

III.(2) If Amador sells his residential house and lot to Diego, **can Basilio foreclose the real estate mortgage? (1%)**

- (A) Yes, Basilio can foreclose the real estate mortgage because real estate mortgage creates a real right that attaches to the property.
- (B) Yes, Basilio can foreclose the real estate mortgage. It is binding upon Diego as the mortgage is embodied in a public instrument.
- (C) No, Basilio cannot foreclose the real estate mortgage. The sale confers ownership on the buyer, Diego, who must therefore consent.
- (D) No, Basilio cannot foreclose the real estate mortgage. To deprive the new owner of ownership and possession is unjust and inequitable.

IV. Cruz lent Jose his car until Jose finished his Bar exams. Soon after Cruz delivered the car, Jose brought it to Mitsubishi Cubao for maintenance check up and incurred costs of P8,000. Seeing the car's peeling and faded paint, Jose also had the car repainted for P10,000. Answer the two questions below based on these common facts.

IV.(1) After the bar exams, Cruz asked for the return of his car. Jose said he would return it as soon as Cruz has reimbursed him for the car maintenance and repainting costs of P18,000.

Is Jose's refusal justified? (1%)

- (A) No, Jose's refusal is not justified. In this kind of contract, Jose is obliged to pay for all the expenses incurred for the preservation of the thing loaned.
- (B) Yes, Jose's refusal is justified. He is obliged to pay for all the ordinary and extraordinary expenses, but subject to reimbursement from Cruz.
- (C) Yes, Jose's refusal is justified. The principle of unjust enrichment warrants the reimbursement of Jose's expenses.
- (D) No, Jose's refusal is not justified. The expenses he incurred are useful for the preservation of the thing loaned. It is Jose's obligation to shoulder these useful expenses.

IV.(2) During the bar exam month, Jose lent the car to his girlfriend, Jolie, who parked the car at the Mall of Asia's open parking lot, with the ignition key inside the car. Car thieves broke into and took the car.

Is Jose liable to Cruz for the loss of the car due to Jolie's negligence? (1%)

- (A) No, Jose is not liable to Cruz as the loss was not due to his fault or negligence.
- (B) No, Jose is not liable to Cruz. In the absence of any

prohibition, Jose could lend the car to Jolie. Since the loss was due to *force majeure*, neither Jose nor Jolie is liable.

- (C) Yes, Jose is liable to Cruz. Since Jose lent the car to Jolie without Cruz's consent, Jose must bear the consequent loss of the car.
- (D) Yes, Jose is liable to Cruz. The contract between them is personal in nature. Jose can neither lend nor lease the car to a third person.

V. In 2005, L, M, N, O and P formed a partnership. L, M and N were capitalist partners who contributed P500,000 each, while O, a limited partner, contributed P1,000,000. P joined as an industrial partner, contributing only his services. The Articles of Partnership, registered with the Securities and Exchange Commission, designated L and O as managing partners; L was liable only to the extent of his capital contribution; and P was not liable for losses.

In 2006, the partnership earned a net profit of P800,000. In the same year, P engaged in a different business with the consent of all the partners. However, in 2007, the partnership incurred a net loss of P500,000. In 2008, the partners dissolved the partnership. The proceeds of the sale of partnership assets were insufficient to settle its obligation. After liquidation, the partnership had an unpaid liability of P300,000.

V.(1) Assuming that the just and equitable share of the industrial partner, P, in the profit in 2006 amounted to P100,000, **how much is the share of O, a limited partner, in the P800,000 net profit? (1%)**

- (A) P160,000.
- (B) P175,000.
- (C) P280,000.
- (D) P200,000.
- (E) None of the above.

V.(2) In 2007, how much is the share of O, a limited partner, in the net loss of P500,000? (1%)

- (A) P 0.
- (B) P100,000.
- (C) P125,000.
- (D) P200,000.
- (E) None of the above.

V.(3) Can the partnership creditors hold L, O and P liable after all the assets of the partnership are exhausted? (1%)

- (A) Yes. The stipulation exempting P from losses is valid only among the partners. L is liable because the agreement limiting his liability to his capital contribution is not valid insofar as the creditors are concerned. Having taken part in the management of the partnership, O is liable as capitalist partner.
- (B) No. P is not liable because there is a valid stipulation exempting him from losses. Since the other partners allowed him to engage in an outside business activity, the stipulation absolving P from liability is valid. For O, it is basic that a limited partner is liable only up to the extent of his capital contribution.
- (C) Yes. The stipulations exempting P and L from losses are not binding upon the creditors. O is likewise liable because the partnership was not formed in accordance with the requirements of a limited partnership.
- (D) No. The Civil Code allows the partners to stipulate that a partner shall not be liable for losses. The registration of the Articles of Partnership embodying such stipulations serves as constructive notice to the partnership creditors.
- (E) None of the above is completely accurate.

VI. Gary is a tobacco trader and also a lending investor. He sold tobacco leaves to Homer for delivery within a month, although the period for delivery was not guaranteed. Despite Gary's efforts to deliver on time, transportation problems and government red tape hindered his efforts and he could only deliver after 30 days. Homer refused to accept the late delivery and to pay on the ground that the agreed term had not been complied with.

As lending investor, Gary granted a P1,000,000 loan to Isaac to be paid within two years from execution of the contract. As security for the loan, Isaac promised to deliver to Gary his Toyota Innova within seven (7) days, but Isaac failed to do so. Gary was thus compelled to demand payment for the loan before the end of the agreed two-year term.

VI.(1) Was Homer justified in refusing to accept the tobacco leaves? (1%)

- (A) Yes. Homer was justified in refusing to accept the tobacco leaves. The delivery was to be made within a month. Gary's promise of delivery on a "best effort" basis made the delivery uncertain. The term, therefore, was ambiguous.
- (B) No. Homer was not justified in refusing to accept the tobacco leaves. He consented to the terms and conditions of the sale and must abide by it. Obligations arising from contract have the force of law between the contracting parties.
- (C) Yes. Homer was justified in his refusal to accept the delivery. The contract contemplates an obligation with a term. Since the

delivery was made after 30 days, contrary to the terms agreed upon, Gary could not insist that Homer accept the tobacco leaves.

- (D) No. Homer was not justified in refusing to accept the tobacco leaves. There was no term in the contract but a mixed condition. The fulfillment of the condition did not depend purely on Gary's will but on other factors, *e.g.*, the shipping company and the government. Homer should comply with his obligation.

VI.(2) Can Gary compel Isaac to pay his loan even before the end of the two-year period? (1%)

- (A) Yes, Gary can compel Isaac to immediately pay the loan. Non-compliance with the promised guaranty or security renders the obligation immediately demandable. Isaac lost his right to make use of the period.
- (B) Yes, Gary can compel Isaac to immediately pay the loan. The delivery of the Toyota Innova is a condition for the loan. Isaac's failure to deliver the car violated the condition upon which the loan was granted. It is but fair for Gary to demand immediate payment.
- (C) No, Gary cannot compel Isaac to immediately pay the loan. The delivery of the car as security for the loan is an accessory contract; the principal contract is still the P1,000,000 loan. Thus, Isaac can still make use of the period.
- (D) No, Gary cannot compel Isaac to immediately pay the loan. Equity dictates that Gary should have granted a reasonable extension of time for Isaac to deliver his Toyota Innova. It would be unfair and burdensome for Isaac to pay the P1,000,000 simply because the promised security was not delivered.

VII.

Lito was a commercial pilot who flew for Pacific-Micronesian Air. In 1998, he was the co-pilot of the airline's Flight MA916 that mysteriously disappeared two hours after take-off from Agana, Guam, presumably over the Pacific Ocean. No trace of the plane and its 105 passengers and crew was ever found despite diligent search; Lito himself was never heard of again. Lito left behind his wife, Lita, and their two children.

In 2008, Lita met and married Jaime. They now have a child of their own.

While on a tour with her former high school classmates in a remote province of China in 2010, Lita was surprised to see Lito or somebody who

looked exactly like him, but she was sure it was Lito because of the extreme surprise that registered in his face when he also saw her. Shocked, she immediately fled to her hotel and post haste returned to the country the next day. Lita now comes to you for legal advice. She asks you the following questions:

VII(1) If Lito is alive, what is the status of his marriage to Lita? (1%)

- (A) The marriage subsists because the marital bond has not been terminated by death.
- (B) The marriage was terminated when Lita married Jaime.
- (C) The marriage subsists because Lita's marriage to Jaime is void.
- (D) The marriage is terminated because Lito is presumed dead after his plane has been missing for more than 4 years.
- (E) The marriage can be formally declared terminated if Lito would not resurface.

VII(2) If Lito is alive, what is the status of Lita's marriage to Jaime? (1%)

- (A) The marriage is valid because Lita's marriage to Lito was terminated upon Lito's disappearance for more than seven years.
- (B) The marriage is valid. After an absence of more than 10 years, Lito is already presumed dead for all purposes.
- (C) The marriage is void. Lito's mere absence, however lengthy, is insufficient to authorize Lita to contract a subsequent marriage.
- (D) The marriage is void. If Lito is indeed alive, his marriage to Lita was never dissolved and they can resume their marital relations at any time.

VIII.

Which of the following actions or defenses are meritorious: (1%)

- (A) An action for recovery of downpayment paid under a rescinded oral sale of real property.
- (B) A defense in an action for ejectment that the lessor verbally promised to extend or renew the lease.
- (C) An action for payment of sum of money filed against one who orally promised to answer another's debt in case the latter defaults.
- (D) A defense in an action for damages that the debtor has sufficient, but unliquidated assets to satisfy the credit acquired when it becomes due.
- (E) None of the above.

IX.

Betty entrusted to her agent, Aida, several pieces of jewelry to be sold on commission with the express obligation to turn over to Betty the proceeds of the sale, or to return the jewelries if not sold in a month's time. Instead of selling the jewelries, Aida pawned them with the Tambunting Pawnshop, and used the money for herself. Aida failed to redeem the pawned jewelries and after a month, Betty discovered what Aida had done. Betty brought criminal charges which resulted in Aida's conviction for estafa.

Betty thereafter filed an action against Tambunting Pawnshop for the recovery of the jewelries. Tambunting raised the defense of ownership, additionally arguing that it is duly licensed to engage in the pawnshop and lending business, and that it accepted the mortgage of the jewelry in good faith and in the regular course of its business.

If you were the judge, how will you decide the case? (1%)

- (A) I will rule in favor of Betty. My ruling is based on the Civil Code provision that one who has lost any movable or has been unlawfully deprived thereof may recover it from the person in possession of the same. Tambunting's claim of good faith is inconsequential.
- (B) I will rule in favor of Betty. Tambunting's claim of good faith pales into insignificance in light of the unlawful deprivation of the jewelries. However, equity dictates that Tambunting must be reimbursed for the pawn value of the jewelries.
- (C) I will rule in favor of Tambunting. Its good faith takes precedence over the right of Betty to recover the jewelries.
- (D) I will rule in favor of Tambunting. Good faith is always presumed. Tambunting's lawful acquisition in the ordinary course of business coupled with good faith gives it legal right over the jewelries.

X.

Arlene owns a row of apartment houses in Kamuning, Quezon City. She agreed to lease Apartment No. 1 to Janet for a period of 18 months at the rate of P10,000 per month. The lease was not covered by any contract. Janet promptly gave Arlene two (2) months deposit and 18 checks covering the rental payment for 18 months. This show of good faith prompted Arlene

to promise Janet that should Arlene decide to sell the property, she would give Janet the right of first refusal.

X.(1) Not long after Janet moved in, she received news that her application for a Master of Laws scholarship at King's College in London had been approved. Since her acceptance of the scholarship entailed a transfer of residence, Janet asked Arlene to return the advance rental payments she made. Arlene refused, prompting Janet to file an action to recover the payments. Arlene filed a motion to dismiss, claiming that the lease on which the action is based, is unenforceable.

If you were the judge, would you grant Arlene's motion? (1%)

- (A) Yes, I will grant the motion because the lease contract between Arlene and Janet was not in writing, hence, Janet may not enforce any right arising from the same contract.
- (B) No, I will not grant the motion because to allow Arlene to retain the advance payments would amount to unjust enrichment.
- (C) Yes, I will grant the motion because the action for recovery is premature; Janet should first secure a judicial rescission of the contract of lease.
- (D) No. I will not grant the motion because the cause of action does not seek to enforce any right under the contract of lease.

X.(2) Assume that Janet decided not to accept the scholarship and continued leasing Apartment No. 1. Midway through the lease period, Arlene decided to sell Apartment No. 1 to Jun in breach of her promise to Janet to grant her the right of first refusal. Thus, Janet filed an action seeking the recognition of her right of first refusal, the payment of damages for the violation of this right, and the rescission of the sale between Arlene and Jun.

Is Janet's action meritorious? (1%)

- (A) Yes, under the Civil Code, a promise to buy and sell a determinate thing is reciprocally demandable.
- (B) No, the promise to buy and sell a determinate thing was not supported by a consideration.
- (C) Yes, Janet's right of first refusal was clearly violated when the property was not offered for sale to her before it was sold to Jun.
- (D) No, a right of first refusal involves an interest over real property that must be embodied in a written contract to be enforceable.
- (E) None of the above.