

2013 BAR EXAMINATIONS

CRIMINAL LAW

October 20, 2013

2:00 P.M.– 6:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains FIFTEEN (15) 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 ELEVEN (11) Essay Questions numbered I to XI, and TWENTY FIVE (25) Multiple Choice Questions (MCQs) numbered I to XXV, 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 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 Notebook.

4. MCQs are to be answered by writing in your 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 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 exam 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.

Bruno was charged with homicide for killing the 75-year old owner of his rooming house. The prosecution proved that Bruno stabbed the owner causing his death; and that the killing happened at 10 in the evening in the house where the victim and Bruno lived. Bruno, on the other hand, successfully proved that he voluntarily surrendered to the authorities; that he pleaded guilty to the crime charged; that it was the victim who first attacked and did so without any provocation on his (Bruno's) part, but he prevailed because he managed to draw his knife with which he stabbed the victim. The penalty for homicide is *reclusion temporal*.

Assuming a judgment of conviction and after considering the attendant circumstances, what penalty should the judge impose? (7%)

II.

While walking alone on her way home from a party, Mildred was seized at gun point by Felipe and taken on board a tricycle to a house some distance away. Felipe was with Julio, Roldan, and Lucio, who drove the tricycle.

At the house, Felipe, Julio, and Roldan succeeded in having sexual intercourse with Mildred against her will and under the threat of Felipe's gun. Lucio was not around when the sexual assaults took place as he left after bringing his colleagues and Mildred to their destination, but he returned everyday to bring food and the news in town about Mildred's disappearance. For five days, Felipe, Julio and Roldan kept Mildred in the house and took turns in sexually assaulting her. On the 6th day, Mildred managed to escape; she proceeded immediately to the nearest police station and narrated her ordeal.

What crime/s did Felipe, Julio, Roldan, and Lucio commit and what was their degree of participation? (7%)

III.

Modesto and Abelardo are brothers. Sometime in August, 1998 while Abelardo was in his office, Modesto, together with two other men in police uniform, came with two heavy bags. Modesto asked Abelardo to keep the two bags in his vault until he comes back to get them. When Abelardo later examined the two bags, he saw bundles of money that, in his rough count, could not be less than P5 Million. He kept the money inside the vault and soon he heard the news that a gang that included Modesto had been engaged

in bank robberies. Abelardo, unsure of what to do under the circumstances, kept quiet about the two bags in his vault. Soon after, the police captured, and secured a confession from, Modesto who admitted that their loot had been deposited with Abelardo.

What is Abelardo's liability? (7%)

IV.

In her weekly gossip column in a tabloid, Gigi wrote an unflattering article about Pablo, a famous singer, and his bitter separation from his wife. The article portrayed Pablo as an abusive husband and caused him to lose lucrative endorsement contracts. Pablo charged Gigi with libel. In her defense, Gigi countered that she did not commit libel because Pablo has attained the status of a public figure so that even his personal life has become a legitimate subject of public interest and comment.

Is Gigi correct? (7%)

V.

Michael was 17 years old when he was charged for violation of Sec. 5 of R.A. 9165 (*illegal sale of prohibited drug*). By the time he was convicted and sentenced, he was already 21 years old. The court sentenced him to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, and a fine of P500,000. Michael applied for probation but his application was denied because the probation law does not apply to drug offenders under R.A. 9165. Michael then sought the suspension of his sentence under R.A. 9344 or the *Juvenile Justice and Youth Welfare Code*.

Can Michael avail of the suspension of his sentence provided under this law? (7%)

VI.

Roberto bought a Toyota Fortuner from Iñigo for P500,000. While driving his newly-bought car, Roberto met a minor accident that made the examination of his vehicle's Registration Certificate necessary. When the policeman checked the plate, chassis and motor numbers of the vehicle against those reflected in the Registration Certificate, he found the chassis and motor numbers to be different from what the Registration Certificate stated. The Deed of Sale covering the sale of the Fortuner, signed by Iñigo, also bore the same chassis and motor numbers as Roberto's Registration Certificate. The chassis and motor numbers on the Fortuner were found, upon verification with the Land Transportation Office, to correspond to a vehicle previously reported as carnapped.

Roberto claimed that he was in good faith; Iñigo sold him a carnapped vehicle and he did not know that he was buying a carnapped vehicle.

If you were the prosecutor, would you or would you not charge Roberto with a crime? (7%)

VII.

Miss Reyes, a lady professor, caught Mariano, one of her students, cheating during an examination. Aside from calling Mariano's attention, she confiscated his examination booklet and sent him out of the room, causing Mariano extreme embarrassment.

In class the following day, Mariano approached Miss Reyes and without any warning, slapped her on the face. Mariano would have inflicted grave injuries on Miss Reyes had not Dencio, another student, intervened. Mariano then turned his ire on Dencio and punched him repeatedly, causing him injuries.

What crime or crimes, if any, did Mariano commit? (7%)

VIII.

William is the son-in-law of Mercedes who owns several pieces of real property. In 1994, William's wife, Anita, died. In 1996, William caused the preparation of a Special Power of Attorney (*SPA*) giving him the authority to sell two (2) parcels of land registered in the name of Mercedes. The signature of Mercedes in the SPA was forged and, through this forged SPA and without the consent and knowledge of Mercedes, William succeeded in selling the two (2) parcels for Php 2,000,000. He pocketed the proceeds of the sale.

Mercedes eventually discovered William's misdeeds and filed a criminal complaint. William was subsequently charged with estafa through falsification of public document.

Was the criminal charge proper? (7%)

IX.

Roman and Wendy are neighbors. On Valentine's Day, without prior notice, Roman visited Wendy at her condo to invite her to dinner, but Wendy turned him down and abruptly left, leaving her condo door unlocked. Roman attempted to follow, but appeared to have second thoughts; he simply went back to Wendy's condo, let himself in, and waited for her return. On Wendy's arrival later that evening, Roman grabbed her from behind and, with a knife in hand, forced her to undress. Wendy had no

choice but to comply. Roman then tied Wendy's hands to her bed and sexually assaulted her five (5) times that night.

Roman was charged with, and was convicted of, five (5) counts of rape, but the judge did not impose the penalty of *reclusion perpetua* for each count. Instead, the judge sentenced Roman to 40 years of imprisonment on the basis of the three-fold rule.

Was the judge correct? (7%)

X.

Frank borrowed P1,000,000 from his brother Eric. To pay the loan, Frank issued a post-dated check to be presented for payment a month after the transaction. Two days before maturity, Frank called Eric telling him he had insufficient funds and requested that the deposit of the check be deferred. Nevertheless, Eric deposited the check and it was dishonored. When Frank failed to pay despite demand, Eric filed a complaint against him for violation of Batas Pambansa Blg. 22 (*The Bouncing Checks Law*).

Was the charge brought against Frank correct? (7%)

XI.

Assume that you are a member of the legal staff of Senator Salcedo who wants to file a bill about imprisonment at the National Penitentiary in Muntinlupa. He wants to make the State prison a revenue earner for the country through a law providing for premium accommodations for prisoners (other than those under maximum security status) whose wives are allowed conjugal weekend visits, and for those who want long-term premium accommodations.

For conjugal weekenders, he plans to rent out rooms with hotel-like amenities at rates equivalent to those charged by 4-star hotels; for long-term occupants, he is prepared to offer room and board with special meals in air conditioned single-occupancy rooms, at rates equivalent to those charged by 3-star hotels.

What advice will you give the Senator from the point of view of criminal law, taking into account the purpose of imprisonment (7%) and considerations of ethics and morality (3%)? (10% total points)

MULTIPLE CHOICE QUESTIONS

I. The acquittal of an accused shall bar the civil action arising from the crime where the judgment of acquittal holds that _____. (0.5%)

- (A) the acquittal is based on reasonable doubt
- (B) the liability of the accused is not criminal but civil in nature
- (C) the civil liability does not arise from or is not based on the criminal act for which the accused has been acquitted
- (D) the accused did not commit the act imputed to him

II. Subsidiary liability may be imposed on the following, except _____. (0.5%)

- (A) innkeepers, in relation to the crime committed in their establishment
- (B) employers engaged in industry, for the crime committed by their employees
- (C) parents of minors who act with discernment in committing crimes
- (D) hospital administrators or owners, for crimes committed by their hospital nurses

III. Passion or obfuscation may be appreciated _____. (0.5%)

- (A) if it arises from jealousy in an amorous relationship between a married man and a single woman
- (B) if it arises from jealousy of a man who has been living-in with the woman for the past 20 years
- (C) if it arises from jealousy with immoral, lustful and vindictive sentiments of the offender against the victim
- (D) in none of the above situations

IV. Who among the following accused is entitled to a privileged mitigating circumstance that would lower the imposable penalty by one degree? (0.5%)

- (A) A minor above 15 years old and below 18 years old who acted with discernment.
 - (B) One who, in fulfillment of his duty to carry out the warrant of arrest of a fugitive, shot the fugitive to death without ascertaining his identity.
 - (C) One who defended himself against an unlawful aggression but used unreasonable means and gave provocation.
 - (D) All of the above.
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V. Conspiracy to commit a felony is punishable only in cases where the law specifically provides a penalty.

Which of the following combinations contain specific felonies under the Revised Penal Code? (0.5%)

- (A) Conspiracy to commit treason, conspiracy to commit rebellion, conspiracy to commit *coup d'etat*, conspiracy to commit *misprision* of treason.
- (B) Conspiracy to commit rebellion, conspiracy to commit *coup d'etat*, conspiracy to commit treason, conspiracy to commit sedition.
- (C) Conspiracy to commit rebellion or insurrection, conspiracy to commit sedition, conspiracy to commit illegal assemblies, conspiracy to commit treason.
- (D) Conspiracy to commit treason, conspiracy to commit sedition, conspiracy to commit terrorism.
- (E) None of the above.

VI. Choose the correct circumstance when a woman may be held liable for rape: (0.5%)

- (A) With the use of force or intimidation.
- (B) When the rape is committed by two or more persons.
- (C) When the offender uses an instrument and inserts it in the mouth of the victim.
- (D) When she befriends and puts a sleeping pill in the victim's drink to enable her husband to have intercourse with the victim.

VII. The death of the accused extinguishes his criminal liability but civil liability is not extinguished _____. (0.5%)

- (A) when the death of the accused occurred before conviction
 - (B) when the death of the accused occurred after conviction and after he has perfected his appeal from conviction
 - (C) when the death of the accused occurred during the pendency of his appeal
 - (D) when the death of the accused occurred after final judgment
 - (E) None of the above.
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VIII. Compelling the pilot of an aircraft of Philippine Registry to change its destination is _____. (0.5%)

- (A) grave coercion
- (B) a violation of the *Anti-Hijacking Law* or R.A. No. 6235
- (C) grave threats
- (D) a violation of the *Human Security Act of 2007* or the *Anti-Terrorism Law*
- (E) All of the above.

IX. Choose from the list below the correct principle in considering "motive". (0.5%)

- (A) If the evidence is merely circumstantial, proof of motive is essential.
- (B) Generally, proof of motive is not necessary to pin a crime on the accused if the commission of the crime has been proven and the evidence of identification is convincing.
- (C) Motive is important to ascertain the truth between two antagonistic theories.
- (D) Motive is relevant if the identity of the accused is uncertain.
- (E) All of the above are correct.

X. Luis was sentenced to *prision mayor* and to pay a fine of P50,000, with subsidiary imprisonment in case of insolvency.

Is the sentence correct? (0.5%)

- (A) Yes, because Luis has no property to pay for the fine, so he must suffer the equivalent imprisonment provided by law in lieu of fine.
 - (B) No, because subsidiary imprisonment is applicable only when the penalty imposed is *prision correccional* or below.
 - (C) Yes, because the sentence says so.
 - (D) No, because the subsidiary imprisonment is applicable only when the penalty imposed is limited to a fine.
 - (E) None of the above.
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XI. Anthony drew a promissory note and asked his terminally-ill and dying business partner Ben to sign it. The promissory note bound Ben to pay Anthony One Million Pesos (P1,000,000) plus 12% interest, on or before June 30, 2011.

If Ben died before the promissory note's due date and Anthony still collected P1,000,000 with interest from Ben's estate, **what crime/s did Anthony commit? (1%)**

- (A) Falsification of a public document.
- (B) Falsification of a private document and estafa.
- (C) Estafa.
- (D) Estafa thru falsification of a private document.
- (E) None of the above.

XII. Out of spite and simply intending to put Gina to shame for breaking off with him, Ritchie emptied a gallon of motor oil on the school's stairway where Gina usually passed. Gina, unaware of what Ritchie did, used the slippery stairway and slipped, hitting her head on the stairs. Gina died from brain hemorrhage.

What crime did Ritchie commit? (1%)

- (A) Murder.
- (B) Reckless imprudence resulting in homicide.
- (C) Homicide.
- (D) Impossible crime of homicide.
- (E) None.

XIII. Santos was sentenced to suffer imprisonment in three separate judgments: 6 months and 1 day to 4 years for attempted homicide; 6 years and 1 day to 8 years for frustrated homicide; and 6 years and 1 day to 20 years for homicide. After his 20th year in the National Penitentiary, Santos filed a petition for *habeas corpus* claiming that he had fully served his sentence of 20 years and should therefore be immediately released from imprisonment.

Was Santos correct? (1%)

- (A) Yes, because he served his sentences simultaneously so that his 20 years of incarceration was sufficient.
- (B) No, because multiple sentences are served successively not simultaneously.
- (C) No, only penalties other than imprisonment can be served simultaneously.
- (D) Yes, because after he has served the minimum of his penalties, he can now be released.

XIV. Amelia, a famous actress, bought the penthouse unit of a posh condominium building in Taguig City. Every night, Amelia would swim naked in the private, but open air, pool of her penthouse unit. It must have been obvious to Amelia that she could be seen from nearby buildings. In fact, some residents occupying the higher floors of the nearby residential buildings did indeed entertain themselves and their friends by watching her swim in the nude from their windows.

What crime did Amelia commit? (1%)

- (A) Alarms and scandals because her act of swimming naked disturbs the public tranquility.
- (B) Grave scandal because she committed highly scandalous acts that are offensive to decency or good customs.
- (C) Immoral doctrines, obscene publications and exhibitions, and indecent shows under Article 201 of the Revised Penal Code, because her act of swimming naked is akin to an indecent live show.
- (D) Amelia did not commit any crime because the swimming pool is located in her private home.

XV. After drinking a bottle of Jack Daniels, Jonjon drove his BMW sports car at high speed, rammed into a group of crossing pedestrians, and hit a traffic light post. The incident caused the death of one (1) pedestrian, serious injuries to three (3) others, and the destruction of the traffic light post.

If you were the prosecutor, what would you charge Jonjon? (1%)

- (A) Homicide with serious physical injuries through simple negligence.
 - (B) Damage to property, serious physical injuries and homicide through reckless negligence.
 - (C) Simple negligence resulting in damage to property, serious physical injuries and homicide.
 - (D) Reckless imprudence resulting in homicide, serious physical injuries and damage to property.
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XVI. On June 1, 2011, Efren bought a used top-of-the-line Mercedes Benz for P7.5 Million from Switik Trading. On the same day, he paid P2,500,000 in cash and issued Switik Trading a check for P5,000,000 dated July 31, 2011. He then brought the car to a friend's house and hid it in an underground garage. The check Efren issued was dishonored for insufficiency of funds when presented for payment on due date. Efren was asked to honor and pay the check or to return the car, but he refused.

What crime/s did Efren commit? (1%)

- (A) Carnapping.
- (B) Estafa and carnapping.
- (C) A violation of BP Blg. 22.
- (D) Estafa and a violation of BP Blg. 22.
- (E) None of the above.

XVII. In his Answer to a complaint, Atty. Jose (counsel for the defendant) stated that Atty. Agrada (counsel for the plaintiff) is "*bobo*, inutile, good for nothing, stupid, and a menace to clients."

Can Atty. Jose be held criminally liable for libel? (1%)

- (A) No, because an Answer to a complaint is a court pleading where communications made are privileged; the writer cannot be held liable for libel.
- (B) Yes, because the statement casts aspersion on the character, integrity and reputation of Atty. Agrada as a lawyer and exposed him to public ridicule.
- (C) Yes, although a court pleading is a privileged communication, malicious statements that are irrelevant and impertinent to the issue in the pleading may be libelous.
- (D) Yes, there was a malicious intent to ridicule Atty. Agrada as a lawyer.
- (E) No, because the statement is in a pleading, but Atty. Jose can be charged administratively for misconduct before the Supreme Court.

XVIII. Using his charms because of his movie star looks, Phil, in a movie date with Lyn, a 19-year old *colegiala*, kissed her on the cheek and stroked her pubic hair. Lyn shouted for help and Phil was arrested.

Phil is liable for _____. (1%)

- (A) rape by sexual assault for using his fingers
- (B) violation of the Anti-Child Abuse Law for lascivious conduct
- (C) unjust vexation
- (D) acts of lasciviousness
- (E) None of the above.

XIX. If Rod killed Irene, his illegitimate daughter, after taking her diamond earrings and forcing her to have sex with him, **what crime/s should Rod be charged with? (1%)**

- (A) Robbery and rape with parricide.
- (B) Robbery, rape and parricide.
- (C) Rape with homicide and theft.
- (D) Rape with homicide.
- (E) None of the above.

XX. From an extension line, Ricardo overheard a telephone conversation between Julito and Atty. Hipolito. The latter (Atty. Hipolito) was asking money from Julito in exchange for dropping the extortion charge filed against Julito. Ricardo was charged of violating the *Anti-Wire Tapping Act* or R.A. 4200.

Under these facts, was there a violation as charged? (1%)

- (A) Yes, because the conversation was private in nature.
 - (B) Yes, because the conversation was overheard without the consent of the parties, Julito and Atty. Hipolito.
 - (C) No, because what is punishable is intentional listening to a conversation through a wire.
 - (D) No, because a telephone extension line is not the device or arrangement contemplated by the law and the use of an extension line cannot be considered as wire tapping.
 - (D) None of the above.
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XXI. Judge Talim, upon complaint and application of the realty corporation Batmanson, Inc., issued a writ of preliminary injunction against Darjeeling Ventures, Inc., a competitor of Batmanson, Inc., without notice and hearing.

If you were counsel for Darjeeling Ventures, Inc., what criminal charge should you file against Judge Talim? (1%)

- (A) Rendering a manifestly unjust judgment.
- (B) Knowingly rendering an unjust interlocutory order.
- (C) Causing undue injury through manifest partiality under R.A. No. 3019.
- (D) Bribery.
- (E) None of the above.

XXII. George, the 20-year old son of a rich politician, was arrested at the NAIA arrival lounge and found positive for opium, a dangerous drug. When arrested, 15 grams of cocaine were found in his backpack.

What offense would you charge George under R.A. No. 9160 (*Comprehensive Dangerous Drugs Act*)? (1%)

- (A) Use of dangerous drug.
- (B) Use and possession of dangerous drugs.
- (C) Possession of dangerous drugs.
- (D) Importation of dangerous drugs.
- (E) None of the above.

XXIII. During a military uprising aimed at ousting the duly constituted authorities and taking over the government, General Tejero and his men forcibly took over the entire Rich Hotel which they used as their base. They used the rooms and other facilities of the hotel, ate all the available food they found, and detained some hotel guests.

What crime did General Tejero and his men commit? (1%)

- (A) Rebellion complexed with serious illegal detention and estafa.
- (B) Rebellion.
- (C) *Coup d'etat*.
- (D) Terrorism.
- (E) None of the above..

XXIV. Andres was convicted of frustrated homicide and was sentenced to 6 years and 1 day as minimum, to 8 years of *prision mayor* as maximum. Andres appealed his conviction to the Court of Appeals, which convicted him of attempted homicide, and sentenced him to 6 months of *arresto mayor* as minimum, to 4 years of *prision correccional* as maximum.

Instead of appealing his conviction, Andres filed an application for probation with the Regional Trial Court. **Is Andres qualified to avail of the benefits of the probation law? (1%)**

- (A) No, because when he filed a notice of appeal with the Court of Appeals, he waived his right under the probation law.
- (B) Yes, because after his appeal, he qualified for probation as the sentence imposed on him was less than 6 years.
- (C) Yes, because the probation law is meant to favor the accused.
- (D) No, because his previous sentence of more than 6 years disqualified him so that he can no longer avail of probation as an alternative remedy.
- (E) None of the above.

XXV. Juancho owns a small piggery in Malolos, Bulacan. One Saturday afternoon, he discovered that all his pigs had died. Suspecting that one of his neighbours had poisoned the pigs, Juancho went home, took his rifle, went around the neighbourhood, and fired his rifle in the air while shouting, “*makakatikim sa akin ang naglason ng mga baboy ko.*” Barangay officials requested police assistance and Juancho was apprehended. Juancho was charged with and convicted of the crime of alarms and scandals. Juancho did not appeal his conviction.

Is Juancho qualified for probation? (1%)

- (A) Yes, because the penalty for alarms and scandals is less than six (6) years.
- (B) Yes, because Juancho did not appeal his conviction.
- (C) No, because the crime of alarms and scandals carries with it a fine of P200.
- (D) No, because the crime of alarms and scandals affects public order.
- (E) None of the above.

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