

2013 BAR EXAMINATIONS**MERCANTILE LAW**

October 20, 2013

8:00 a.m. to 12:00 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 TEN (10) Essay Questions numbered I to X, and FIFTEEN (15) Multiple Choice Questions (MCQs) numbered I to XV (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.

Antonio issued the following instrument:

August 10, 2013

Makati City

P100,000.00

Sixty days after date, I promise to pay Bobby or his designated representative the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) from my BPI Acct. No. 1234 if, by this due date, the sun still sets in the west to usher in the evening and rises in the east the following morning to welcome the day.

(Sgd.) Antonio Reyes

Explain each requirement of negotiability present or absent in the instrument. (8%)

II.

Benny applied for life insurance for Php1.5 Million. The insurance company approved his application and issued an insurance policy effective Nov. 6, 2008. Benny named his children as his beneficiaries. On April 6, 2010, Benny died of hepatoma, a liver ailment.

The insurance company denied the children's claim for the proceeds of the insurance policy on the ground that Benny failed to disclose in his application two previous consultations with his doctors for diabetes and hypertension, and that he had been diagnosed to be suffering from hepatoma. The insurance company also rescinded the policy and refunded the premiums paid.

Was the insurance company correct? (8%)

III.

From his first term in 2007, Congressman Abner has been endorsing his pork barrel allocations to Twin Rivers in exchange for a commission of 40% of the face value of the allocation. Twin Rivers is a non-governmental organization whose supporting papers, after audit, were found by the Commission on Audit to

be fictitious. Other than to prepare and submit falsified papers to support the encashment of the pork barrel checks, Twin Rivers does not appear to have done anything on the endorsed projects and Congressman Abner likewise does not appear to have bothered to monitor the progress of the projects he endorsed. The congressman converted most of the commissions he generated into US dollars, and deposited these in a foreign currency account with Banco de Plata (*BDP*).

Based on amply-supported tips given by a congressman from another political party, the Anti-Money Laundering Council sent BDP an order: (1) to confirm Cong. Abner's deposits with the bank and to provide details of these deposits; and (2) to hold all withdrawals and other transactions involving the congressman's bank accounts.

As counsel for BDP, would you advise the bank to comply with the order? (8%)

IV.

Rudy is a fine arts student in a university. He stays in a boarding house with Bernie as his roommate. During his free time, Rudy would paint and leave his finished works lying around the boarding house. One day, Rudy saw one of his works – an abstract painting entitled *Manila Traffic Jam* – on display at the university cafeteria. The cafeteria operator said he purchased the painting from Bernie who represented himself as its painter and owner.

Rudy and the cafeteria operator immediately confronted Bernie. While admitting that he did not do the painting, Bernie claimed ownership of its copyright since he had already registered it in his name with the National Library as provided in the Intellectual Property Code.

Who owns the copyright to the painting? Explain. (8%)

V.

You are a member of the legal staff of a law firm doing corporate and securities work for Coco Products Inc., a company with unique products derived from coconuts and whose shares are traded in the Philippine Stock Exchange. A partner in the law firm, Atty. Buenexito, to whom you report, is the Corporate Secretary of Coco Products. You have long been investing in Coco Products stocks even before you became a lawyer.

While working with Atty. Buenexito on another file, he accidentally gave you the Coco Products file containing the company's planned corporate financial rehabilitation. While you knew you had the wrong file, your curiosity prevailed and you browsed through the file before returning it. Thus, you learned that a

petition for financial rehabilitation is imminent, as the company could no longer meet its obligations as they fell due.

Soon after, your mother is rushed to the hospital for an emergency operation, and you have to raise money for her hospital bills. An immediate option for you is to sell your Coco Products shares. The sale would be very timely because the price of the company's stocks are still high.

Would you sell the shares to raise the needed funds for your mother's hospitalization? Take into account legal (5%) and ethical (3%) considerations. (8% total points)

VI.

Delano Cruz is in default in the payment of his existing loan from BDP Bank. To extend and restructure this loan, Delano agreed to execute a trust receipt in the bank's favor covering the iron pellets Delano imported from China one year earlier. Delano subsequently succeeded in selling the iron pellets to a smelting plant, but the proceeds went to the payment of the separation benefits of his employees who were laid off as he reduced his operations.

When the extended loan period expired without any significant payment from Delano (not even to the extent of the proceeds of the sale of the iron pellets), BDP Bank consulted you on how to proceed against Delano. The bank is contemplating the filing of estafa pursuant to the provisions of Pres. Decree No. 115 (*Trust Receipts Law*) to force Delano to turn in at least the proceeds of the sale of the iron pellets.

Would you, as bank counsel and as an officer of the court, advise the bank to proceed with its contemplated action? (8%)

VII.

Stable Insurance Co. (*SIC*) and St. Peter Manufacturing Co. (*SPMC*) have had a long-standing insurance relationship with each other; SPMC secures the comprehensive fire insurance on its plant and facilities from SIC. The standing business practice between them has been to allow SPMC a credit period of 90 days from the renewal of the policy within which to pay the premium.

Soon after the new policy was issued and before premium payments could be made, a fire gutted the covered plant and facilities to the ground. The day after the fire, SPMC issued a manager's check to SIC for the fire insurance premium, for which it was issued a receipt; a week later SPMC issued its notice of loss.

SIC responded by issuing its own manager's check for the amount of the premiums SPMC had paid, and denied SPMC's claim on the ground that under the "cash and carry" principle governing fire insurance, no coverage existed at the time the fire occurred because the insurance premium had not been paid.

Is SPMC entitled to recover for the loss from SIC? (8%)

VIII.

In the November 2010 stockholders meeting of Greenville Corporation, eight (8) directors were elected to the board. The directors assumed their posts in January 2011. Since no stockholders' meeting was held in November 2011, the eight directors served in a holdover capacity and thus continued discharging their powers.

In June 2012, two (2) of Greenville Corporation's directors – Director A and Director B – resigned from the board. Relying on Section 29 of the Corporation Code, the remaining six (6) directors elected two (2) new directors to fill in the vacancy caused by the resignation of Directors A and B.

Stockholder X questioned the election of the new directors, initially, through a letter-complaint addressed to the board, and later (when his letter-complaint went unheeded), through a derivative suit filed with the court. He claimed that the vacancy in the board should be filled up by the vote of the stockholders of Greenville Corporation. Greenville Corporation's directors defended the legality of their action, claiming as well that Stockholder X's derivative suit was improper.

Rule on the issues raised. (8%)

IX.

Fil-Asia Air Flight 916 was on a scheduled passenger flight from Manila when it crashed as it landed at the Cagayan de Oro airport; the pilot miscalculated the plane's approach and undershot the runway. Of the 150 people on board, ten (10) passengers died at the crash scene.

Of the ten who died, one was a passenger who managed to leave the plane but was run over by an ambulance coming to the rescue. Another was an airline employee who hitched a free ride to Cagayan de Oro and who was not in the passenger manifest.

It appears from the Civil Aeronautics Authority investigation that the co-pilot who had control of the plane's landing had less than the required flying and landing time experience, and should not have been in control of the plane at the time. He was allowed to fly as a co-pilot because of the scarcity of pilots –

Philippine pilots have been recruited by foreign airlines under vastly improved flying terms and wages so that newer and less trained pilots are being locally deployed. The main pilot, on the other hand, had a very high level of blood alcohol at the time of the crash.

You are part of the team that the victims hired to handle the case for them as a group. In your case conference, the following questions came up:

(A) Explain the causes of action legally possible under the given facts against the airline and the pilots; whom will you specifically implead in these causes of action? (5%)

(B) How will you handle the cases of the passenger run over by the ambulance and the airline employee allowed to hitch a free ride to Cagayan de Oro? (3%)

X.

Bell Philippines, Inc. (*BelPhil*) is a public utility company, duly incorporated and registered with the Securities and Exchange Commission. Its authorized capital stock consists of voting common shares and non-voting preferred shares, with equal par values of ₱100.00/share. Currently, the issued and outstanding capital stock of BelPhil consists only of common shares shared between Bayani Cruz, a Filipino with 60% of the issued common shares, and Bernard Fleet, a Canadian, with 40%.

To secure additional working fund, BelPhil issued preferred shares to Bernard Fleet equivalent to the currently outstanding common shares. A suit was filed questioning the corporate action on the ground that the foreign equity holdings in the company would now exceed the 40% foreign equity limit allowed under the Constitution for public utilities.

Rule on the legality of Bernard Fleet's current holdings. (8%)

MULTIPLE CHOICE QUESTIONS

I. Claude, the registered stockholder of 1,000 shares in ABC Corp., pledged the shares to Conrad by endorsement in blank of the covering stock certificates and execution of a Deed of Assignment of Shares of Stock, intended as collateral for a loan of ₱1.0 Million that was also supported by a separate promissory note.

I.(1) Under these facts, is there a valid pledge of the shares of stock to Conrad? (1%)

- (A) No, because shares of stock are intangible personal properties whose possession cannot be delivered and, hence, cannot be the subject of a pledge.
- (B) No, because the pledge of shares of stock requires double registration with the Register of Deeds of the principal place of business of the corporation and of the residence of the pledgor.
- (C) Yes, because endorsement and delivery of the certificates of stock is equivalent to the transfer of possession of the covered shares to the pledgee.
- (D) Yes, because the execution of the Deed of Assignment of Shares of Stock is equivalent to a lawful pledge of the shares of stock.

I.(2) After Claude defaulted on the loan, Conrad sought to have the shares registered in his name in the books of the corporation. If you are the Corporate Secretary of ABC Corporation, would you register the shares in the name of Conrad without any written instruction from Claude? (1%)

- (A) Yes, since the endorsement and delivery of the certificates of stock executed by Claude constitute the legal authority to cancel the shares in his name and to place them in Conrad's name.
- (B) Yes, since the execution of the Deed of Assignment by Claude would constitute the legal authority to cancel the shares in his name and place them in Conrad's name.
- (C) No, because corporate officers can only take direct instructions from the registered owners on the proper disposition of shares registered in their names.
- (D) No, because the corporation has a primary lien on the shares covering the unpaid subscription.

II. A foreign delegation of businessmen and investment bankers called on your law firm to discuss the possibilities of investing in various projects in the Philippines, and wanted your thoughts on certain issues regarding foreign investments in the Philippines.

II.(1) The delegation has been told about the *Foreign Investments Act of 1991*, as amended (*FIA '91*), and they asked what exactly is the law's essential thrust regarding foreign investments in Philippine business and industries.

You replied that **FIA '91 essentially reflects _____ . (1%)**

- (A) the “*Filipino First Policy*”
- (B) the “*Foreign Investments Positive Lists*” concept
- (C) the “*Foreign Investments Negative Lists*” concept
- (D) the “*Control Test*” concept
- (E) All of the above.

II.(2) The delegation asked: aside from Filipino citizens, what entities would fall under the definition of “*Philippine National*” under FIA '91?

You replied that **the definition of “*Philippine national*” under FIA '91 covers _____ . (1%)**

- (A) domestic partnerships wholly composed of Filipino citizens
- (B) domestic corporations 60% of whose capital stock, outstanding and entitled to vote, are owned and held by Filipino citizens
- (C) foreign corporations considered as doing business in the Philippines under the Corporation Code, 100% of whose capital stock, outstanding and entitled to vote, are wholly-owned by Filipino citizens
- (D) All of the above, because the law considers the juridical personality, whether domestic or foreign, as a mere medium; the test of nationality is on the individuals who control the medium
- (E) None of the above, because the term Philippine national can only cover individuals and not juridical entities.

II.(3) The delegation heard that foreigners can invest up to 100% of the equity in “*export oriented enterprises*” and you were asked exactly what the term covers.

You replied that an “export oriented enterprise” **under FIA '91 is an enterprise that _____ . (1%)**

- (A) only engages in the export of goods and services, and does not sell goods or services to the domestic market
- (B) exports consistently at least 40% of its goods or services, and sells at least 60% of the rest to the domestic market
- (C) exports consistently at least 60% of the goods or services produced, and sells at least 40% of the rest to the domestic market
- (D) exports consistently at least 60% of its goods or services produced, and can sell goods or services to the domestic market
- (E) None of the above.

II.(4) As a last question and by way of a concrete example, a delegation member finally inquired – **which of the following corporations or businesses in the Philippines may it invest in and up to what extent? (1%)**

- (A) A lifestyle magazine publication corporation, up to 40% equity
- (B) An advertising corporation, up to 100% equity
- (C) A commercial bank, up to 60% equity
- (D) A jeepney manufacturing corporation, up to 100% equity
- (E) A real estate development corporation, up to 60% equity

III. Dennis subscribed to 10,000 shares of XYZ Corporation with a par value of P100 per share. However, he paid only 25% of the subscription or P250,000.00. No call has been made on the unpaid subscription.

How many shares is Dennis entitled to vote at the annual meeting of the stockholders of XYZ? (1%)

- (A) 10,000 shares
- (B) 2,500 shares
- (C) 100 shares
- (D) 0 shares
- (E) None of the above.

IV. ABC Corp. issued redeemable shares. Under the terms of the issuance, the shares shall be redeemed at the end of 10 years from date of issuance, at par value plus a premium of 10%.

Choose the correct statement relating to these redeemable shares. (1%)

- (A) ABC Corp. would need unrestricted retained earnings to be able to redeem the shares.
- (B) Corporations are not allowed to issue redeemable shares; thus, the issuance by ABC Corp. is *ultra vires*.
- (C) Holders of redeemable shares enjoy a preference over creditors.
- (D) ABC Corp. may redeem the shares at the end of 10 years without need for unrestricted retained earnings provided that, after the redemption, there are sufficient assets to cover its debts.
- (E) All of the above are incorrect.

V. Arnold, representing himself as an agent of Brian for the sale of Brian's car, approached Dennis who appeared interested in buying the car. At Arnold's prodding, Dennis issued a crossed check payable to Brian for P25,000.00 on the understanding that the check would only be shown to Brian as evidence of Dennis'

good faith and interest in buying the car. Instead, Arnold used the check to pay for the medical expenses of his wife in Brian's clinic after Brian, a doctor, treated her.

Is Brian a holder in due course (HIDC)? (1%)

- (A) Yes, Brian is a HIDC because he was the payee of the check and he received it for services rendered.
- (B) Yes, Brian is a HIDC because he did not need to go behind the check that was payable to him.
- (C) No, Brian is not a HIDC because Dennis issued the check only as evidence of good faith and interest in buying the car.
- (D) No, Brian is not a HIDC because Brian should have been placed on notice: the check was crossed in his favor and Arnold was not the drawer.
- (E) No, Brian is not a HIDC because the requisite consideration to Dennis was not present.

VI. Gawsensit Corp. is a corporation incorporated in Singapore. It invested in Bumblebee Corp., a Philippine corporation, by acquiring 30% of its shares. As a result, Gawsensit Corp. nominated 30% of the directors of Bumblebee Corp., all of whom are Singaporeans and officers of Gawsensit Corp.

Choose the correct statement relating to Gawsensit Corp. (1%)

- (A) Gawsensit Corp. is doing business in the Philippines and requires a license from the Securities and Exchange Commission (SEC).
- (B) Gawsensit Corp. is not doing business in the Philippines by its mere investment in a Philippine corporation and does not need a license from the SEC.
- (C) Gawsensit Corp. has to appoint a resident agent in the Philippines.
- (D) Gawsensit Corp. cannot elect directors in Bumblebee Corp.
- (E) All the above choices are incorrect.

VII. The BIR assessed ABC Corp. for deficiency income tax for taxable year 2010 in the amount of P26,731,208.00, inclusive of surcharge and penalties.

The BIR can _____ . (1%)

- (A) run after the directors and officers of ABC Corp. to collect the deficiency tax and their liability will be solidary
- (B) run after the stockholders of ABC Corp. and their liability will be joint
- (C) run after the stockholders of ABC Corp. and their liability will be solidary
- (D) run after the unpaid subscriptions still due to ABC Corp., if any
- (E) None of the above choices is correct.

VIII. Anton imported perfumes from Taiwan and these were released to him by the bank under a trust receipt. While the perfumes were in Anton's warehouse, thieves broke in and stole all of them.

Who will shoulder the loss of the stolen perfumes? (1%)

- (A) The loss of the perfumes will be borne by the bank in whose behalf the perfumes were held in trust.
- (B) Anton will bear the loss.
- (C) The exporter can hold both the bank and Anton liable for the loss.
- (D) The exporter from whom Anton bought the perfumes will bear the loss.
- (E) No one bears the loss for an unforeseen event.

IX. A bank may acquire real property _____. (1%)

- (A) by purchase at a public sale of properties levied to satisfy tax delinquencies
- (B) by purchase from a real estate corporation in the ordinary course of the bank's business
- (C) through *dacion en pago* in satisfaction of a debt in favor of the bank
- (D) in exchange for the purchase of shares of stocks of the bank
- (E) All of the above.
- (F) None of the above.

X. Under the Anti-Money Laundering Act, a depositor's bank account may be frozen _____. (1%)

- (A) by the bank when the account is the subject of a suspicious or covered transaction report
- (B) by the Anti-Money Laundering Council (AMLC) when the account belongs to a person already convicted of money laundering
- (C) by the Regional Trial Court, upon *ex parte* motion by the AMLC, in a criminal prosecution for money laundering pending before it
- (D) by the Court of Appeals *motu proprio* in an appeal from a judgment of conviction of a criminal charge for money laundering
- (E) In none of the above.

XI. Unknown to the other four proponents, Enrico (who had been given the task of attending to the Articles of Incorporation of the proposed corporation, *Auto Mo, Ayo Ko*) misappropriated the filing fees and never filed the Articles of Incorporation with the Securities and Exchange Commission (*SEC*). Instead, he prepared and presented to the proposed incorporators a falsified *SEC* certificate approving the Articles. Relying on the falsified *SEC* certificate, the latter began assuming and discharging corporate powers.

Auto Mo, Ayo Ko is a _____. (1%)

- (A) *de jure* corporation
- (B) *de facto* corporation
- (C) corporation by estoppel
- (D) general partnership
- (E) None of the above.

XII. Preferred shares cannot vote on the proposal _____. (1%)

- (A) to include other corporate officers in the corporation's by-laws
- (B) to issue corporate bonds
- (C) to shorten the corporate term
- (D) All of the above.
- (E) None of the above.

XIII. In 2010, the Philippine National Police declared Kaddafy Benjelani "Public Enemy No. 1" because of his terrorist activities in the country that have resulted in the death of thousands of Filipinos. A ransom of P15 million was placed on Kaddafy Benjelani's head.

Worried about the future of their family, Kaddafy Benjelani's estranged wife, Aurelia, secured in December 2010 a life insurance policy on his life and designated herself as the beneficiary.

Is the policy valid and binding? (1%)

- (A) Yes, the policy is valid and binding because Aurelia has an insurable interest on the life of Kaddafy Benjelani.
- (B) No, the policy is not valid and binding because Kaddafy Benjelani has been officially declared a public enemy.
- (C) Yes, the policy is valid and binding because it has been in force for more than two years.
- (D) No, the policy is not valid and binding since the spouses' estrangement removed Aurelia's insurable interest in Benjelani's life.
- (E) None of the above.

XIV. Muebles Classico, Inc. (MC), a Manila-based furniture shop, purchased hardwood lumber from Surigao Timber, Inc. (STI), a Mindanao-based logging company. MC was to pay STI the amount of P5.0 million for 50 tons of lumber. To pay STI, MC opened a letter of credit with Banco de Plata (BDP). BDP duly informed STI of the opening of a letter of credit in its favor.

In the meantime, MC – which had been undergoing financial reverses – filed a petition for corporate rehabilitation. The rehabilitation court issued a Stay Order to stay the enforcement of all claims against MC.

After shipping the lumber, STI went to BDP, presented the shipping documents, and demanded payment of the letter of credit opened in its favor. MC, on the other hand, informed the bank of the Stay Order and instructed it to deny payment to STI because of the Stay Order.

BDP comes to you for advice. Your best advice is to _____. (1%)

- (A) grant STI's claim. Under the "Independence Principle," the bank deals only with the documents and not the underlying circumstances; hence, the presentation of the letter of credit is sufficient.
- (B) deny STI's claim. The Stay Order covers all claims against the debtor and binds all its creditors. The letter of credit is a claim against the debtor that is covered by the Stay Order.
- (C) grant STI's claim. The letter of credit is not a claim against the debtor under rehabilitation, but against the bank which has assumed a solidary obligation.
- (D) deny STI's claim. If the bank disregards the Stay Order, it may be subject to contempt by the rehabilitation court. STI should file its claim with the rehabilitation court.
- (E) file an action for interpleader to resolve the parties' competing claims.

XV. Akiro of Tokyo, Japan sent various goods to his friend Juan in Cebu City, Philippines, through one of the vessels of Worthwell Shippers, Inc., an American corporation. *En route* to Cebu City, the vessel had two stops, first in Hong Kong, and second, in Manila.

XV.(1) While travelling from Tokyo to Hong Kong, the goods were damaged. **What law will govern? (1%)**

- (A) Japanese law
- (B) Hong Kong law
- (C) Chinese law
- (D) Philippine law

(E) American law

XV.(2) Assuming Philippine law to be applicable and Juan fails to file a claim with the carrier, **may he still commence an action to recover damages with the court? (1%)**

- (A) No, the failure to file a claim with the carrier is a condition precedent for recovery.
- (B) Yes, provided he files the complaint within 10 years from delivery.
- (C) Yes, provided he files the complaint within 10 years from discovery of the damage.
- (D) Yes, provided he files the complaint within 1 year from delivery.
- (E) Yes, provided he files the complaint within 1 year from discovery of the damage.

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