



Republic of the Philippines
Supreme Court
Manila

2014 BAR EXAMINATIONS

COMMERCIAL LAW

October 19, 2014

8:00 A.M. – 12:00 NN.

INSTRUCTIONS

1. This Questionnaire contains FOURTEEN (14) 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 TWENTY-NINE (29) Essay and Multiple Choice Questions (MCQs) to be answered within *four (4) hours*.

The essay portion contains questions that are equivalent to *not less than 80%* of the whole examination, while the MCQ portion contains questions equivalent to *not more than 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 on 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 page 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, or D corresponding to your chosen answer. There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices.

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.

YOU CAN BRING HOME THIS QUESTIONNAIRE OR HAND IT TOGETHER WITH YOUR NOTEBOOK

**J. DIOSDADO M. PERALTA
Chairman
2014 Bar Examinations**

I.

Carlo and *Bianca* met in the La Boracay festivities. Immediately, they fell in love with each other and got married soon after. They have been cohabiting blissfully as husband and wife, but they did not have any offspring. As the years passed by, *Carlo* decided to take out an insurance on *Bianca's* life for ₱1,000,000.00 with him (*Carlo*) as sole beneficiary, given that he did not have a steady source of income and he always depended on *Bianca* both emotionally and financially. During the term of the insurance, *Bianca* died of what appeared to be a mysterious cause so that *Carlo* immediately requested for an autopsy to be conducted. It was established that *Bianca* died of a natural cause. More than that, it was also established that *Bianca* was a transgender all along – a fact unknown to *Carlo*. Can *Carlo* claim the insurance benefit? (5%)

II.

Bong bought 300 bags of rice from *Ben* for ₱300,000.00. As payment, *Bong* indorsed to *Ben* a Bank of the Philippine Islands (*BPI*) check issued by *Baby* in the amount of ₱300,000.00. Upon presentment for payment, the *BPI* check was dishonored because *Baby's* account from which it was drawn has been closed. To replace the dishonored check, *Bong* indorsed a crossed Development Bank of the Philippines (*DBP*) check issued also by *Baby* for ₱300,000.00. Again, the check was dishonored because of insufficient funds. *Ben* sued *Bong* and *Baby* on the dishonored *BPI* check. *Bong* interposed the defense that the *BPI* check was discharged by novation when *Ben* accepted the crossed *DBP* check as replacement for the *BPI* check. *Bong* cited Section 119 of the Negotiable Instruments Law which provides that a negotiable instrument is discharged “by any other act which will discharge a simple contract for the payment of money.” Is *Bong* correct? (4%)

III.

Under the Financial Rehabilitation and Insolvency Act (*FRIA*), the filing of a petition for voluntary rehabilitation must be approved by: (1%)

- (A) a majority vote of the Board of Directors and authorized by the vote of the stockholders representing at least a majority of the outstanding capital stock
- (B) a majority vote of the Board of Directors and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock
- (C) two-thirds vote of the Board of Directors and authorized by the vote of the stockholders representing at least a majority of the outstanding capital stock

- (D) two-thirds vote of the Board of Directors and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock

IV.

DC is a unit owner of *Medici Condominium* located in Pasig City. On September 7, 2011, *Medici Condominium Corp. (Medici)* demanded from *DC* payment for alleged unpaid association dues and assessments amounting to ₱195,000.00. *DC* disputed the claim, saying that he paid all dues as shown by the fact that he was previously elected as Director and President of *Medici*. *Medici*, on the other hand, claimed that *DC*'s obligation was a carry-over of his obligations to the condominium developer, *Medici Construction Corporation*. Consequently, *DC* was prevented from exercising his right to vote and be voted for during the 2011 election of *Medici*'s Board of Directors. This prompted *DC* to file a complaint for damages before the Special Commercial Court of Pasig City. *Medici* filed a motion to dismiss on the ground that the court has no jurisdiction over the intra-corporate dispute which the Housing and Land Use Regulatory Board (*HLURB*) has exclusive jurisdiction over. Is *Medici* correct? (4%)

V.

A corporation organized under the Corporation Code commences to have corporate existence and juridical personality and is deemed incorporated: (1%)

- (A) from the date the application for incorporation is filed with the Securities and Exchange Commission (*SEC*)
- (B) from the date the *SEC* issues a certificate of incorporation under its official seal
- (C) thirty (30) days after the date the application for incorporation is filed with the *SEC*
- (D) thirty (30) days after the date the *SEC* issues a certificate of incorporation under its official seal

VI.

On May 26, 2014, *Jess* insured with *Jack Insurance (Jack)* his 2014 Toyota Corolla sedan under a comprehensive motor vehicle insurance policy for one year. On July 1, 2014, *Jess*' car was unlawfully taken. Hence, he immediately reported the theft to the Traffic Management Command (*TMC*) of the Philippine National Police (*PNP*), which made *Jess* accomplish a complaint sheet as part of its procedure. In the complaint sheet, *Jess* alleged that a certain *Ric Silat (Silat)* took possession of the subject vehicle to add

accessories and improvements thereon. However, *Silat* failed to return the subject vehicle within the agreed 3-day period. As a result, *Jess* notified *Jack* of his claim for reimbursement of the value of the lost vehicle under the insurance policy. *Jack* refused to pay claiming that there is no theft as *Jess* gave *Silat* lawful possession of the car. Is *Jack* correct? (4%)

VII.

Jinggy went to *Kluwer University (KU)* in Germany for his doctorate degree (*Ph.D.*). He completed his degree with the highest honors in the shortest time. When he came back, he decided to set-up his own graduate school in his hometown in Zamboanga. After seeking free legal advice from his high-flying lawyer-friends, he learned that the Philippines follows the territoriality principle in trademark law, *i.e.*, trademark rights are acquired through valid registration in accordance with the law. Forthwith, *Jinggy* named his school the Kluwer Graduate School of Business of Mindanao and immediately secured registration with the Bureau of Trademarks. *KU* did not like the unauthorized use of its name by its top alumnus no less. *KU* sought your help. What advice can you give *KU*? (4%)

VIII.

As a rule, an insurance contract is consensual and voluntary. The exception is in the case of: (1%)

- (A) Inland Marine Insurance
- (B) Industrial Life Insurance
- (C) Motor Vehicle Liability Insurance
- (D) Life Insurance

IX.

On February 21, 2013, *Barrack* entered into a contract of insurance with *Matino Insurance Company (Matino)* involving a motor vehicle. The policy obligates *Matino* to pay *Barrack* the amount of Six Hundred Thousand Pesos (₱600,000.00) in case of loss or damage to said vehicle during the period covered, which is from February 26, 2013 to February 26, 2014.

On April 16, 2013, at about 9:00 a.m., *Barrack* instructed his driver, *JJ*, to bring the motor vehicle to a nearby auto shop for tune-up. However, *JJ* no longer returned and despite diligent efforts to locate the said vehicle, the efforts proved futile. Resultantly, *Barrack* promptly notified *Matino* of the said loss and demanded payment of the insurance proceeds of ₱600,000.00.

In a letter dated July 5, 2013. *Matino* denied the claim, reasoning as stated in the contract that “the company shall not be liable for any malicious damage caused by the insured, any member of his family or by a person in the insured’s service. Is *Matino* correct in denying the claim? (4%)

X.

A person is said to have an insurable interest in the subject matter insured where he has a relation or connection with, or concern in it that he will derive pecuniary benefit or advantage from its preservation. Which among the following subject matters is not considered insurable? (1%)

- (A) A partner in a firm on its future profits
- (B) A general creditor on debtor’s property
- (C) A judgment creditor on debtor’s property
- (D) A mortgage creditor on debtor’s mortgaged property

XI.

PA Assurance (PA) was incorporated in 1980 to engage in the sale of pre-need educational plans. It sold open-ended educational plans which guaranteed the payment of tuition and other fees to planholders irrespective of the cost at the time of avilment. It also engaged in the sale of fixed value plans which guaranteed the payment of a pre-determined amount to planholders. In 1982, *PA* was among the country’s top corporations. However, it subsequently suffered financial difficulties.

On September 8, 2005, *PA* filed a Petition for Corporate Rehabilitation before the Regional Trial Court (*RTC*) of Makati City. On October 17, 2005, ten (10) *plan holders* filed an Opposition and Motion to Exclude Planholders from Stay Order on the ground that *planholders* are not creditors as they (*planholders*) have a trust relationship with *PA*. Are the *planholders* correct? (4%)

XII.

To constitute a quorum for the transaction of corporate business, only a majority of the number of Board of Directors is required: (1%)

- (A) as fixed by the corporate by-laws
- (B) as fixed in the articles of incorporation
- (C) actually serving in the board
- (D) actually serving in the board but constituting a quorum

XIII.

Pursuant to its By-Laws, *Soei Corporation's Board of Directors* created an *Executive Committee* to manage the affairs of the corporation in between board meetings. The *Board of Directors* appointed the following members of the *Executive Committee*: the President, Sarah L; the Vice-President, Jane L; and, a third member from the board, Juan Riles. On December 1, 2013, the *Executive Committee*, with Sarah L and Jane L present, met and decided on the following matters:

1. Purchase of a delivery van for use in the corporation's retail business;
2. Declaration and approval of the 13th month bonus;
3. Purchase of an office condominium unit at the Fort; and
4. Declaration of ₱10.00 per share cash dividend.

Are the actions of the *Executive Committee* valid? (4%)

XIV.

On September 25, 2013, *Danny Marcial (Danny)* procured an insurance on his life with a face value of ₱5,000,000.00 from *RN Insurance Company (RN)*, with his wife *Tina Marcial (Tina)* as sole beneficiary. On the same day, *Danny* issued an undated check to *RN* for the full amount of the premium. On October 1, 2013, *RN* issued the policy covering *Danny's* life insurance. On October 5, 2013, *Danny* met a tragic accident and died. *Tina* claimed the insurance benefit, but *RN* was quick to deny the claim because at the time of *Danny's* death, the check was not yet encashed and therefore the premium remained unpaid.

Is *RN* correct? Will your answer be the same if the check is dated October 15, 2013? (4%)

XV.

A, B, C, D, and E were members of the 2003-2004 *Board of Directors* of FLP Corporation. At the election for the 2004-2005 *Board of Directors*, not one of them was elected. They filed in court a derivative suit on behalf of FLP Corporation against the newly-elected members of the Board of Directors. They questioned the validity of the election as it was allegedly marred by lack of quorum, and prayed for the nullification of the said election. The 2004-2005 *Board of Directors* moved to dismiss the complaint because the derivative suit is not proper. Decide. (4%)

XVI.

In intellectual property cases, fraudulent intent is not an element of the cause of action except in cases involving: (1%)

- (A) trademark infringement
- (B) copyright infringement
- (C) patent infringement
- (D) unfair competition

XVII.

On December 1, 2010, *Kore A Corporation* shipped from South Korea to *LT Corporation* in Manila some 300,000 sheets of high-grade special steel. The shipment was insured against all risks by *NA Insurance (NA)*. The carrying vessel arrived at the Port of Manila on January 10, 2011. When the shipment was discharged, it was noted that 25,000 sheets were damaged and in bad order. The entire shipment was turned over to the custody of *ATI*, the arrastre operator, on January 21, 2011 for storage and safekeeping, pending its withdrawal by the consignee's authorized customs broker, *RVM*.

On January 26 and 29, 2011, the subject shipment was withdrawn by *RVM* from the custody of *ATI*. On January 29, 2011, prior to the withdrawal of the last batch of the shipment, a joint inspection of the cargo was conducted per the Request for Bad Order Survey (*RBO*) dated January 28, 2011. The examination report showed that 30,000 sheets of steel were damaged and in bad order.

NA Insurance paid *LT Corporation* the amount of ₱30,000,000.00 for the 30,000 sheets that were damaged, as shown in the Subrogation Receipt dated January 13, 2013. Thereafter, *NA Insurance* demanded reparation against *ATI* for the goods damaged in its custody, in the amount of ₱5,000,00.00. *ATI* refused to pay claiming that the claim was already barred by the statute of limitations. *ATI* alleged that the Carriage of Goods by Sea Act (*COGSA*) applies in this case since the goods were shipped from a foreign port to the Philippines. *NA Insurance* claims that the *COGSA* does not apply, since *ATI* is not a shipper or carrier. Who is correct? (5%)

XVIII.

Skechers Corporation sued *Inter-Pacific* for trademark infringement, claiming that *Inter-Pacific* used *Skechers'* registered "S" logo mark on *Inter-Pacific's* shoe products without its consent. *Skechers* has registered

the trademark “SKECHERS” and the trademark “S” (with an oval design) with the Intellectual Property Office (*IPO*).

In its complaint, *Skechers* points out the following similarities: the color scheme of the blue, white and gray utilized by *Skechers*. Even the design and “wave-like” pattern of the mid-sole and outer sole of *Inter-Pacific*’s shoes are very similar to *Skechers*’ shoes, if not exact patterns thereof. On the side of *Inter-Pacific*’s shoes, near the upper part, appears the stylized “S” placed in the exact location as that of the stylized “S” the *Skechers* shoes. On top of the “tongue” of both shoes, appears the stylized “S” in practically the same location and size.

In its defense, *Inter-Pacific* claims that under the *Holistic Test*, the following dissimilarities are present: the mark “S” found in Strong shoes is not enclosed in an “oval design”; the word “Strong” is conspicuously placed at the backside and insoles; the hang tags labels attached to the shoes bear the word “Strong” for *Inter-Pacific* and “Skechers U.S.A.” for *Skechers*; and, Strong shoes are modestly priced compared to the costs of *Skechers* shoes.

Under the foregoing circumstances, which is the proper test to be applied – *Holistic or Dominancy Test*? Decide. (4%)

XIX.

Guetze and his wife have three (3) children: *Neymar*, 25, who is now based in Rio de Janeiro, Brazil; *Muelter*, 23, who has migrated to Munich, Germany; and *James*, 21, who resides in Bogota, Colombia. *Neymar* and *Muelter* have since renounced their Philippine citizenship in favor of their country of residence. Nearing 70 years old, *Guetze* decided to incorporate his business in Binondo, Manila. He asked his wife and three (3) children to act as incorporators with one (1) share of stock each, while he owned 999,996 shares of the 1,000,000 shares of the capital stock. (6%)

- (A) Assuming all other requirements are met, should the Securities and Exchange Commission (*SEC*) accept or reject the Articles of Incorporation? Why?
- (B) Being the control freak and micro-manager that he is, *Guetze* asked you – his astute legal adviser – if he can serve as Chairman of the Board of Directors, as President, and as General Manager of the corporation, all at the same time. Please advise *Guetze*.
- (C) Assuming the corporation has been properly registered, may the Articles of Incorporation now be amended to reduce the number of directors to two (2) – *Guetze* and his wife – to reflect the real owners of the shares of stock?

XX.

On May 13, 1996, *PAM, Inc.* obtained a ₱15,000,000.00 fire insurance policy from *Ilocano Insurance* covering its machineries and equipment effective for one (1) year or until May 14, 1997. The policy expressly stated that the insured properties were located at “Sanyo Precision Phils. Building, Phase III, Lots 4 and 6, Block 15, PEZA, Rosario, Cavite.” Before its expiration, the policy was renewed on “as is” basis for another year or until May 13, 1998. The subject properties were later transferred to Pace Factory also in PEZA. On October 12, 1997, during the effectivity of the renewed policy, a fire broke out at the Pace Factory which totally burned the insured properties.

The policy forbade the removal of the insured properties unless sanctioned by *Ilocano*. Condition 9(c) of the policy provides that “the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy x x x (c) if the property insured is removed to any building or place other than in that which is herein stated to be insured.” *PAM* claims that it has substantially complied with notifying *Ilocano* through its sister company, the *RBC*, which, in fact, referred *PAM* to *Ilocano* for the insurance coverage. Is *Ilocano* liable under the policy? (4%)

XXI.

On July 3, 1993, *Delia Sotero (Sotero)* took out a life insurance policy from *Ilocos Bankers Life Insurance Corporation (Ilocos Life)* designating *Creencia Aban (Aban)*, her niece, as her beneficiary. *Ilocos Life* issued Policy No. 747, with a face value of ₱100,000.00, in *Sotero*’s favor on August 30, 1993, after the requisite medical examination and payment of the premium.

On April 10, 1996, *Sotero* died. *Aban* filed a claim for the insurance proceeds on July 9, 1996. *Ilocos Life* conducted an investigation into the claim and came out with the following findings:

1. *Sotero* did not personally apply for insurance coverage, as she was illiterate.
2. *Sotero* was sickly since 1990.
3. *Sotero* did not have the financial capability to pay the premium on the policy.
4. *Sotero* did not sign the application for insurance.
5. *Aban* was the one who filed the insurance application and designated herself as the beneficiary.

For the above reasons and claiming fraud, *Ilocos Life* denied *Aban's* claim on April 16, 1997, but refunded the premium paid on the policy. (6%)

- (A) May *Sotero* validly designate her niece as beneficiary?
- (B) May the incontestability period set in even in cases of fraud as alleged in this case?
- (C) Is *Aban* entitled to claim the proceeds under the policy?

XXII.

Paul George Pua (Pua) filed a complaint for a sum of money against the spouses *Benito* and *Caroline James (Spouses James)*. In the complaint, *Pua* prayed that the defendants pay *Pua* the amount of ₱8,500,000.00, covered by a check. *Pua* asserts that defendants owed him a sum of money way back in 1988 for which the *Spouses James* gave him several checks. These checks, however, had all been dishonored and *Pua* has not been paid the amount of the loan plus the agreed interest. In 1996, the *Spouses James* approached *Pua* to get the computation of their liability including the 2% compounded interest. After bargaining to lower the amount of their liability, the *Spouses James* gave *Pua* a postdated check bearing the discounted amount of ₱8,500,000.00. Like the 1988 checks, the drawee bank likewise dishonored this check. To prove his allegations, *Pua* submitted the original copies of the 17 checks issued by *Caroline* in 1988 and the check issued in 1996, Manilatrust Check No. 750. The *Spouses James*, on the other hand, completely denied the existence of the debt asserting that they had never approached *Pua* to borrow money in 1988 or in 1996. They assert, instead, that *Pua* is simply acting at the instance of his sister, *Lilian*, to file a false charge against them using a check left to fund a gambling business previously operated by *Lilian* and *Caroline*. Decide. (5%)

XXIII.

What vote is needed to consider every decision to be a valid corporate act? (1%)

- (A) a majority of the directors present at the meeting
- (B) two-thirds of the directors present at the meeting
- (C) a majority of the directors present at the meeting at which there is a quorum
- (D) two-thirds of the directors present at the meeting at which there is a quorum

XXIV.

A criminal complaint for violation of B.P. 22 was filed by *Foton Motors (Foton)*, an entity engaged in the business of car dealership, against *Pura Felipe (Pura)* with the Office of the City Prosecutor of Quezon City. The Office found probable cause to indict *Pura* and filed an information before the Metropolitan Trial Court (*MeTC*) of Quezon City, for her issuance of a postdated check in the amount of ₱1,020,000.00 which was subsequently dishonored upon presentment due to “Stop Payment.”

Pura issued the check because her son, *Freddie*, attracted by a huge discount of ₱220,000.00, purchased a Foton Blizzard 4x2 from *Foton*. The term of the transaction was Cash-on-Delivery and no downpayment was required. The car was delivered on May 14, 1997, but *Freddie* failed to pay upon delivery. Despite non-payment, *Freddie* took possession of the vehicle.

Pura was eventually acquitted of the charge of violating B.P. 22 but was found civilly liable for the amount of the check plus legal interest. *Pura* appealed the decision as regards the civil liability, claiming that there was no privity of contract between *Foton* and *Pura*. No civil liability could be adjudged against her because of her acquittal from the criminal charge. It was *Freddie* who was civilly liable to *Foton*, *Pura* claimed. *Pura* added that she could not be an accommodation party either because she only came in after *Freddie* failed to pay the purchase price, or six (6) months after the execution of the contract between *Foton* and *Freddie*. Her liability was limited to her act of issuing a worthless check, but by her acquittal in the criminal charge, there was no more basis for her to be held civilly liable to *Foton*. *Pura*'s act of issuing the subject check did not, by itself, assume the obligation of *Freddie* to *Foton* or automatically make her a party to the contract. Is *Pura* liable? (5%)

XXV.

In an action for collection of a sum of money, the Regional Trial Court (*RTC*) of Makati City issued a decision finding *D-Securities, Inc.* liable to *Rehouse Corporation* for ₱10,000,000.00. Subsequently, the writ of execution was issued but returned unsatisfied because *D-Securities* had no more assets to satisfy the judgment. *Rehouse* moved for an Alias Writ of Execution against *Fairfield Bank (FB)*, the parent company of *D-Securities*. *FB* opposed the motion on the grounds that it is a separate entity and that it was never made a party to the case. The *RTC* granted the motion and issued the Alias Writ of Execution. In its Resolution, the *RTC* relied on the following facts: 499,995 out of the 500,000 outstanding shares of stocks of *D-Securities* are owned by *FB*; *FB* had actual knowledge of the subject matter of litigation as the lawyers who represented *D-Securities* are also the

lawyers of *FB*. As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied. The *RTC* ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon *D-Securities* has bestowed jurisdiction over both the parent and wholly-owned subsidiary. Is the *RTC* correct? (4%)

XXVI.

DMP Corporation (DMP) obtained a loan of ₱20 million from *National Bank (NB)* secured by a real estate mortgage over a 63,380-square-meter land situated in Cabanatuan City. Due to the Asian Economic Crisis, *DMP* experienced liquidity problems disenableing it from paying its loan on time. For that reason, *NB* sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on June 30, 2003. On September 4, 2003, the mortgaged property was sold at public auction, which was eventually awarded to *NB* as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of *NB*.

On October 21, 2003, *DMP* filed a Petition for Rehabilitation before the Regional Trial Court (*RTC*). Pursuant to this, a Stay Order was issued by the *RTC* on October 27, 2003.

On the other hand, *NB* caused the recording of the Sheriff's Certificate of Sale on December 3, 2003 with the Register of Deeds of Cabanatuan City. *NB* executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of *DMP*. Consequently, the Register of Deeds cancelled *DMP*'s title and issued a new title in the name of *NB* on December 10, 2003.

NB also filed on March 17, 2004 an Ex-Parte Petition for Issuance of Writ of Possession before the *RTC* of Cabanatuan City. After hearing, the *RTC* issued on September 6, 2004 an Order directing the Issuance of the Writ of Possession, which was issued on October 4, 2004.

DMP claims that all subsequent actions pertaining to the Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court. Is *DMP* correct? (4%)

XXVII.

ELP Insurance, Inc. issued Marine Policy No. 888 in favor of *FCL Corp.* to insure the shipment of 132 bundles of electric copper cathodes against all risks. Subsequently, the cargoes were shipped on board the vessel "*M/V Menchu*" from Leyte to Pier 10, North Harbor, Manila.

Upon arrival, *FCL Corp.* engaged the services of *CGM, Inc.* for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants in Valenzuela City. The goods were loaded on board twelve (12) trucks owned by *CGM, Inc.*, driven by its employed drivers and accompanied by its employed truck helpers. Of the twelve (12) trucks *en route* to Valenzuela City, only eleven (11) reached the destination. One (1) truck, loaded with eleven (11) bundles of copper cathodes, failed to deliver its cargo.

Because of this incident, *FCL Corp.* filed with *ELP Insurance, Inc.* a claim for insurance indemnity in the amount of ₱1,500,000.00. After the requisite investigation and adjustment, *ELP Insurance, Inc.* paid *FCL Corp.* the amount of ₱1,350,000.00 as insurance indemnity.

ELP Insurance, Inc., thereafter, filed a complaint for damages against *CGM, Inc.* before the Regional Trial Court (*RTC*), seeking reimbursement of the amount it had paid to *FCL Corp.* for the loss of the subject cargo. *CGM, Inc.* denied the claim on the basis that it is not privy to the contract entered into by and between *FCL Corp.* and *ELP Insurance, Inc.*, and hence, it is not liable therefor. If you are the judge, how will you decide the case? (4%)

XXVIII.

Which of the following instruments is negotiable if all the other requirements of negotiability are met? (1%)

- (A) A promissory note with promise to pay out of the U.S. Dollar account of the maker in XYZ Bank
- (B) A promissory note which designates the U.S. Dollar currency in which payment is to be made
- (C) A promissory note which contains in addition a promise to paint the portrait of the bearer
- (D) A promissory note made payable to the order of Jose Cruz or Josefa Cruz

XXIX.

KK is from Bangkok, Thailand. She studies medicine in the Pontifical University of Santo Tomas (*UST*). She learned that the same foreign books prescribed in *UST* are 40-50% cheaper in Bangkok. So she ordered 50 copies of each book for herself and her classmates and sold the books at 20% less than the price in the Philippines. *XX*, the exclusive licensed publisher of the books in the Philippines, sued *KK* for copyright infringement. Decide. (4%)