



2016 BAR EXAMINATIONS
CIVIL LAW

November 13, 2016

8:00 A.M. – 12:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains eight (8) pages. Check the number of pages and make sure it has the correct number of pages and their proper numbers.

All the items have to be answered within *four (4) hours*. Since there are twenty (20) questions, you have 12 minutes to answer each question, and 6 minutes to answer each sub-question. **You may write on the Questionnaire for notes relating to the questions.**

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* of every sheet in your Notebook. If not sufficient then start with the back page of the first sheet and thereafter. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

2. 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, apply the pertinent laws and jurisprudence, and arrive at a sound or logical conclusion. Always support your answer with the pertinent laws, rules, jurisprudence, and the facts.

A mere "Yes" or "No" answer without any corresponding explanation or discussion will not be given full credit. Thus, always *briefly* but fully explain your answers although the question does not expressly ask for an explanation. You do not need to re-write or repeat the question in your Notebook.

3. 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.

YOU CAN BRING HOME THE QUESTIONNAIRE.

JUSTICE PRESBITERO J. VELASCO, JR.
Chairman
2016 Bar Examinations

I

Section 1 of P.D. No. 755 states:

“Section 1. Declaration of National Policy. – It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the ‘Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers’ executed by the Philippine Coconut Authority, the terms of which ‘Agreement’ are hereby incorporated by reference; x x x”

A copy of the Agreement was not attached to the Presidential Decree.

P.D. No. 755 was published in the Official Gazette but the text of the Agreement described in Section 1 was not published. Can the Agreement in question be accorded the status of a law? Explain. (5%)

II

With regard to an award of interest in the concept of actual and compensatory damages, please state the guidelines regarding the manner of computing legal interest in the following situations:

- [a] when the obligation is breached and it consists in the payment of a sum of money like a loan or forbearance of money; (2.5%)
- [b] when the obligation does not constitute a loan or forbearance of money. (2.5%)

Consider the issuance of BSP-MB Circular No. 799, which became effective on July 1, 2013.

III

Romeo and Juliet, both Filipinos, got married. After a few years, Juliet got word from her mother that she can go to the United States for naturalization. Juliet promised she will be back the moment she becomes an American. After sometime, Romeo learned from a friend that Juliet already became a U.S. citizen and even divorced him to marry a wealthy American businessman. Romeo filed a petition before the Regional Trial Court praying that an order be issued authorizing him to remarry pursuant to Article 26 of the Family Code. Decide the petition with reasons. (5%)

IV

Leo married Lina and they begot a son. After the birth of their child, Lina exhibited unusual behavior and started to neglect her son; she frequently went out with her friends and gambled in casinos. Lina later had extra-marital affairs with several men and eventually abandoned Leo and their son. Leo was able to talk to the psychiatrist of Lina who told him that Lina suffers from *dementia praecox*, a form of psychosis where the afflicted person is prone to commit homicidal attacks. Leo was once stabbed by Lina but fortunately he only suffered minor injuries. Will a Petition for Declaration of Nullity of Marriage filed with the court prosper? Explain. (5%)

V

Bernard and Dorothy lived together as common-law spouses although they are both capacitated to marry. After one year of cohabitation, Dorothy went abroad to work in Dubai as a hair stylist and regularly sent money to Bernard. With the money, Bernard bought a lot. For a good price, Bernard sold the lot. Dorothy came to know about the acquisition and sale of the lot and filed a suit to nullify the sale because she did not give her consent to the sale.

- [a] Will Dorothy's suit prosper? Decide with reasons. (2.5%)
- [b] Suppose Dorothy was jobless and did not contribute money to the acquisition of the lot and her efforts consisted mainly in the care and maintenance of the family and household, is her consent to the sale a prerequisite to its validity? Explain. (2.5%)

VI

Pedro bought a parcel of land described as Cadastral Lot No. 123 and the title was issued to his name. Juan also bought a lot in the same place, which is described as Cadastral Lot No. 124. Pedro hired a geodetic engineer to determine the actual location of Lot No. 123 but for some reason, the engineer pointed to Lot No. 124 by mistake. Pedro hired a contractor to construct his house and the latter put up a sign stating the name of the owner of the project and the construction permit number. It took more than a year before the house was constructed. When Pedro was already residing in his house, Juan told him to remove his house because it was built on his (Juan's) lot.

Juan filed a Complaint for Recovery of Possession and prayed that the house be removed because Pedro is a builder in bad faith. Pedro filed his Answer with Counterclaim that he is entitled to the payment of the value of the house plus damages because he is a builder in good faith and that Juan is guilty of estoppel and laches.

- [a] If Pedro is a builder in good faith, what are the rights given to Juan under the law? Explain. (2.5%)
- [b] If Pedro is a builder in bad faith, what are the rights given to Juan under the law? Explain. (2.5%)

VII

Benjamin is the owner of a titled lot which is bounded on the north by the Maragondon River. An alluvial deposit of two (2) hectares was added to the registered area. Daniel took possession of the portion formed by accretion and claims that he has been in open, continuous and undisturbed possession of said portion since 1923 as shown by a tax declaration. In 1958, Benjamin filed a Complaint for Quieting of Title and contends that the alluvium belongs to him as the riparian owner and that since the alluvium is, by law, part and parcel of the registered property, the same may be considered as registered property. Decide the case and explain. (5%)

VIII

Joven and Juliana are the owners of a 30-hectare plantation in Cotabato, covered by a title. One day, a group of armed men forcibly entered their house and, at gun point, forced them to sign a Deed of Absolute Sale in favor of Romeo. Romeo got the title from them and they were ejected from the house and threatened not to come back or else they will be killed. The spouses went to Manila and resided there for more than 35 years. They never went back to Cotabato for fear of their lives. Word came to them that peace and order have been restored in their former place of residence and they decided to reclaim their land for the benefit of their grandchildren. Joven and Juliana filed a suit for reconveyance of their property. This was opposed by the grandson of Romeo to whom the title was eventually transferred, on the ground of laches and prescription. Decide the case and rule on the defenses of laches and prescription. Explain your answer. (5%)

IX

Butch got a loan from Hagibis Corporation (Hagibis) but he defaulted in the payment. A case for collection of a sum of money was filed against him. As a defense, Butch claims that there was already an arrangement with Hagibis on the payment of the loan. To implement the same, Butch already surrendered five (5) service utility vehicles (SUVs) to the company for it to sell and the proceeds to be credited to the loan as payment. Was the obligation of Butch extinguished by reason of *dacion en pago* upon the surrender of the SUVs? Decide and explain. (5%)

X

Jerico, the project owner, entered into a Construction Contract with Ivan for the latter to construct his house. Jojo executed a Surety undertaking to guarantee the performance of the work by Ivan. Jerico and Ivan later entered into a Memorandum of Agreement (MOA) revising the work schedule of Ivan and the subcontractors. The MOA stated that all the stipulations of the original contract not in conflict with said agreement shall remain valid and legally effective. Jojo filed a suit to declare him relieved of his undertaking as a result of the MOA because of the change in the work schedule. Jerico claims there is no novation of the Construction Contract. Decide the case and explain. (5%)

XI

Ellen entrusted her title over the lot where she is residing to Patrick, her nephew, for safekeeping because of her poor eyesight. Patrick, a gambler, prepared a Special Power of Attorney empowering him to mortgage the lot. Ellen's signature was forged. With the help of Julia who represented herself as Ellen, Mega Bank granted a loan to Patrick secured by a mortgage on Ellen's lot. Due to non-payment, Mega Bank foreclosed the mortgage and was declared the highest bidder. Title was later registered in the name of the bank. When Ellen was notified that she should vacate the premises, she filed a complaint to nullify the loan with mortgage, the auction sale and the title of Mega Bank on the ground that the bank is not a mortgagee in good faith. Decide the case with reasons. (5%)

XII

On March 13, 2008, Ariel entered into a Deed of Absolute Sale (DAS) with Noel where the former sold his titled lot in Quezon City with an area of three hundred (300) square meters to the latter for the price of ₱300,000.00. The prevailing market value of the lot was ₱3,000.00 per square meter. On March 20, 2008, they executed another "Agreement To Buy Back/Redeem Property" where Ariel was given an option to repurchase the property on or before March 20, 2010 for the same price. Ariel, however, remained in actual possession of the lot. Since Noel did not pay the taxes, Ariel paid the real property taxes to avoid a delinquency sale.

On March 21, 2010, Ariel sent a letter to Noel, attaching thereto a manager's check for ₱300,000.00 manifesting that he is redeeming the property. Noel rejected the redemption claiming that the DAS was a true and valid sale representing the true intent of the parties. Ariel filed a suit for the nullification of the DAS or the reformation of said agreement to that of a Loan with Real Estate Mortgage. He claims the DAS and the redemption agreement constitute an equitable mortgage. Noel however claims it is a valid sale with *pacto de retro* and Ariel clearly failed to redeem the property.

As the RTC judge, decide the case with reasons. (5%)

XIII

Peter, a resident of Cebu City, sent through Reliable Pera Padala (RPP) the amount of ₱20,000.00 to his daughter, Paula, for the payment of her tuition fee. Paula went to an RPP branch but was informed that there was no money remitted to her name. Peter inquired from RPP and was informed that there was a computer glitch and the money was credited to another person. Peter and Paula sued RPP for actual damages, moral damages and exemplary damages. The trial court ruled that there was no proof of pecuniary loss to the plaintiffs but awarded moral damages of ₱20,000.00 and exemplary damages of ₱5,000.00. On appeal, RPP questioned the award of moral and exemplary damages. Is the trial court correct in awarding moral and exemplary damages? Explain. (5%)

XIV

On February 28, 1998, Arthur filed an application for registration of title of a lot in Ternate, Cavite before the Regional Trial Court of Naic, Cavite under Section 48(b) of Commonwealth Act No. 141 (CA 141) for judicial confirmation of imperfect title. Section 48(b) of CA 141 requires possession counted from June 12, 1945. Arthur presented testimonial and documentary evidence that his possession and that of his predecessors-in-interest started in 1936. The lot was declared alienable and disposable (A and D) in 1993 based on a PENRO certification and a certified true copy of the original classification made by the DENR Secretary. The government opposed the application on the ground that the lot was certified A and D only in 1993 while the application was instituted only in 1998. Arthur's possession of five (5) years from the date of declaration does not comply with the 30-year period required under CA 141. Should the possession of Arthur be reckoned from the date when the lot was declared A and D or from the date of actual possession of the applicant? Explain. (5%)

XV

Peter and Paul entered into a Contract to Sell whereby Peter, the lot owner, agreed to sell to Paul his lot on November 6, 2016 for the price of ₱1,000,000.00 to be paid at the residence of Peter in Makati City at 1:00 p.m. If the full price is paid in cash at the specified time and place, then Peter will execute a Deed of Absolute Sale and deliver the title to Paul.

On November 6, 2016, Paul did not show up and was not heard of from that date on. In view of the nonperformance by Paul of his obligation, Peter sent a letter to Paul that he is expressly and extra-judicially declaring the Contract to Sell rescinded and of no legal and binding effect. Peter further stated that failure on the part of Paul to contest the rescission within thirty (30) days from receipt of said letter shall mean that the latter agreed to the rescission.

Paul did not reply to this letter for five (5) years. Thus, Peter decided to sell his lot to Henry in 2021. After hearing that Henry bought the lot, Paul now questions the sale of the lot to Henry and files a complaint for nullification of the sale.

- [a]** Is the exercise by Peter of his power to rescind extra-judicially the Contract to Sell the proper and legal way of rescinding said contract? Explain. (2.5%)
- [b]** In case Paul made a downpayment pursuant to a stipulation in the Contract to Sell, what is the legal remedy of Peter? (2.5%)

XVI

Don Ricardo had 2 legitimate children – Tomas and Tristan. Tristan has 3 children. Meanwhile, Tomas had a relationship with Nancy, who was also single and had the legal capacity to marry. Nancy became pregnant and gave birth to Tomas, Jr. After the birth of Tomas, Jr., his father, Tomas, died. Later, Don Ricardo died without a will and Tristan opposed the motion of Tomas, Jr. to be declared an heir of the deceased since he is an illegitimate child. Tomas, Jr. countered that Article 992 of the Civil Code is unconstitutional for violation of the equal protection of the laws. He explained that an illegitimate child of an illegitimate parent is allowed to inherit under Articles 902, 982 and 990 of the Civil Code while he – an illegitimate child of a legitimate father – cannot. Civil Law commentator Arturo Tolentino opined that Article 992 created an absurdity and committed an injustice because while the illegitimate descendant of an illegitimate child can represent, the illegitimate descendant of a legitimate child cannot. Decide the case and explain. (5%)

XVII

Macario bought a titled lot from Ramon, got the title and took possession of the lot. Since Macario did not have the money to pay the taxes, fees and registration expenses, he was not able to register the Deed of Absolute Sale. Upon advice, he merely executed an Affidavit of Adverse Claim and had it annotated at the back of the title. A few years after, he received a Notice of Levy on Attachment and Writ of Execution in favor of Alex. The notice, writ and certificate of sale were annotated at the back of the title still in Ramon's name. Alex contends that since the Affidavit of Adverse Claim is effective only for 30 days from the date of its registration, then its validity has expired. Macario posits that the annotation of his adverse claim is notice to the whole world of his purchase of the lot in question. Who has the superior right over the disputed property – Macario or Alex? Explain. (5%)

XVIII

Dr. Jack, a surgeon, holds clinic at the St. Vincent's Hospital and pays rent to the hospital. The fees of Dr. Jack are paid directly to him by the patient or through the cashier of the hospital. The hospital publicly displays in the lobby the names and specializations of the doctors associated or accredited by it, including that of Dr. Jack. Marta engaged the services of Dr. Jack because of recurring stomach pain. It was diagnosed that she is suffering from cancer and had to be operated on. Before the operation, she was asked to sign a "consent for hospital care," which reads:

"Permission is hereby given to the medical, nursing and laboratory staff of the St. Vincent's Hospital to perform such procedures and to administer such medications and treatments as may be deemed necessary or advisable by the physicians of this hospital for and during the confinement."

After the surgery, the attending nurses reported that two (2) sponges were missing. Later, Marta died due to complications brought about by the sponges that were left in her stomach. The husband of Marta sued the hospital and Dr. Jack for damages arising from negligence in the medical procedure. The hospital raised the defense that Dr. Jack is not its employee as it did not hire Dr. Jack nor pay him any salary or compensation. It has absolutely no control over the medical services and treatment being provided by Dr. Jack. Dr. Jack even signed an agreement that he holds the hospital free and harmless from any liability arising from his medical practice in the hospital.

Is St. Vincent's Hospital liable for the negligence of Dr. Jack? Explain your answer. (5%)

XIX

Brad and Angelina had a secret marriage before a pastor whose office is located in Arroceros Street, City of Manila. They paid money to the pastor who took care of all the documentation. When Angelina wanted to go to the U.S., she found out that there was no marriage license issued to them before their marriage. Since their marriage was solemnized in 1995 after the effectivity of the Family Code, Angelina filed a petition for judicial declaration of nullity on the strength of a certification by the Civil Registrar of Manila that, after a diligent and exhaustive search, the alleged marriage license indicated in the marriage certificate does not appear in the records and cannot be found.

- [a] Decide the case and explain. (2.5%)
- [b] In case the marriage was solemnized in 1980 before the effectivity of the Family Code, is it required that a judicial petition be filed to declare the marriage null and void? Explain. (2.5%)

XX

Princess married Roberto and bore a son, Onofre. Roberto died in a plane crash. Princess later married Mark and they also had a son – Pepito. Onofre donated to Pepito, his half-brother, a lot in Makati City worth ₱3,000,000.00. Pepito succumbed to an illness and died intestate. The lot given to Pepito by Onofre was inherited by his father, Mark. Mark also died intestate. Lonely, Princess followed Mark to the life beyond. The claimants to the subject lot emerged – Jojo, the father of Princess; Victor, the father of Mark; and Jerico, the father of Roberto.

Who among the three (3) ascendants is entitled to the lot? Explain. (5%)

- END -