



2016 BAR EXAMINATIONS
CRIMINAL LAW

November 20, 2016

2:00 P.M. – 6:00 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. Do not 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

Explain the application of the Indeterminate Sentence Law (ISL). (5%)

II

- [a] Define malfeasance, misfeasance and nonfeasance. (2.5%)
- [b] Differentiate wheel conspiracy and chain conspiracy. (2.5%)

III

Pedro is married to Tessie. Juan is the first cousin of Tessie. While in the market, Pedro saw a man stabbing Juan. Seeing the attack on Juan, Pedro picked up a spade nearby and hit the attacker on his head which caused the latter's death.

Can Pedro be absolved of the killing on the ground that it is in defense of a relative? Explain. (5%)

IV

Jojo and Felipa are husband and wife. Believing that his work as a lawyer is sufficient to provide for the needs of their family, Jojo convinced Felipa to be a stay-at-home mom and care for their children. One day, Jojo arrived home earlier than usual and caught Felipa in the act of having sexual intercourse with their female nanny, Alma, in their matrimonial bed. In a fit of rage, Jojo retrieved his revolver from inside the bedroom cabinet and shot Alma, immediately killing her.

- [a] Is Art. 247 (death or physical injuries inflicted under exceptional circumstances) of the Revised Penal Code (RPC) applicable in this case given that the paramour was of the same gender as the erring spouse? (2.5%)
- [b] Is Felipa liable for adultery for having sexual relations with Alma? (2.5%)

V

Governor A was given the amount of ₱10 million by the Department of Agriculture for the purpose of buying seedlings to be distributed to the farmers. Supposedly intending to modernize the farming industry in his province, Governor A bought farm equipment through direct purchase from XY Enterprise, owned by his *kumpare* B, the alleged exclusive distributor of the said equipment. Upon inquiry, the Ombudsman discovered that B has a pending patent application for the said farm equipment. Moreover, the equipment purchased turned out to be overpriced. What crime or crimes, if any, were committed by Governor A? Explain. (5%)

VI

Ofelia, engaged in the purchase and sale of jewelry, was charged with violation of PD 1612, otherwise known as the *Anti-Fencing Law*, for having been found in possession of recently stolen jewelry valued at ₱100,000.00 at her jewelry shop. Her defense is that she merely bought the same from Antonia and produced a receipt covering the sale. She presented other receipts given to her by Antonia representing previous transactions. Convicted of the charge, Ofelia appealed, arguing that her acquisition of the jewelries resulted from a legal transaction and that the prosecution failed to prove that she knew or should have known that the pieces of jewelry which she bought from Antonia were proceeds of the crime of theft.

- [a] What is a “fence” under PD 1612? (2.5%)
- [b] Is Ofelia liable under the Anti-Fencing Law? Explain. (2.5%)

VII

Val, a Nigerian, set up a perfume business in the Philippines. The investors would buy the raw materials at a low price from Val. The raw materials consisted of powders, which the investors would mix with water and let stand until a gel was formed. Val made a written commitment to the investors that he would buy back the gel at a higher price, thus assuring the investors of a neat profit. When the amounts to be paid by Val to the investors reached millions of pesos, he sold all the equipment of his perfume business, absconded with the money, and is nowhere to be found. What crime or crimes were committed, if any? Explain. (5%)

VIII

Charges d'affaires Volvik of Latvia suffers from a psychotic disorder after he was almost assassinated in his previous assignment. One day, while shopping in a mall, he saw a group of shoppers whom he thought were the assassins who were out to kill him. He asked for the gun of his escort and shot ten (10) people and wounded five (5) others before he was subdued. The wounded persons required more than thirty (30) days of medical treatment. What crime or crimes, if any, did he commit? Explain. (5%)

IX

A is the driver of B's Mercedes Benz car. When B was on a trip to Paris, A used the car for a joy ride with C whom he is courting. Unfortunately, A met an accident. Upon his return, B came to know about the unauthorized use of the car and sued A for qualified theft. B alleged that A took and used the car with intent to gain as he derived some benefit or satisfaction from its use. On the other hand, A argued that he has no intent of making himself the owner of the car as he in fact returned it to the garage after the joy ride. What crime or crimes, if any, were committed? Explain. (5%)

X

The *Royal S.S. Maru*, a vessel registered in Panama, was 300 nautical miles from Aparri, Cagayan when its engines malfunctioned. The Captain ordered his men to drop anchor and repair the ship. While the officers and crew were asleep, armed men boarded the vessel and took away several crates containing valuable items and loaded them in their own motorboat. Before the band left, they planted an explosive which they detonated from a safe distance. The explosion damaged the hull of the ship, killed ten (10) crewmen, and injured fifteen (15) others.

What crime or crimes, if any, were committed? Explain. (5%)

XI

Angelino, a Filipino, is a transgender who underwent gender reassignment and had implants in different parts of her body. She changed her name to Angelina and was a finalist in the Miss Gay International. She came back to the Philippines and while she was walking outside her home, she was abducted by Max and Razzy who took her to a house in the province. She was then placed in a room and Razzy forced her to have sex with him at knife's point. After the act, it dawned upon Razzy that Angelina is actually a male. Incensed, Razzy called Max to help him beat Angelina. The beatings that Angelina received eventually caused her death. What crime or crimes, if any, were committed? Explain. (5%)

XII

Arnold, 25 years of age, was sitting on a bench in Luneta Park watching the statue of Jose Rizal when, without his permission, Leilani, 17 years of age, sat beside him and asked for financial assistance, allegedly for payment of her tuition fee, in exchange for sex. While they were conversing, police operatives arrested and charged him with violation of Section 10 of RA 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act), accusing him of having in his company a minor, who is not related to him, in a public place. It was established that Arnold was not in the performance of a social, moral and legal duty at that time.

Is Arnold liable for the charge? Explain. (5%)

XIII

Domingo is the caretaker of two (2) cows and two (2) horses owned by Hannibal. Hannibal told Domingo to lend the cows to Tristan on the condition that the latter will give a goat to the former when the cows are returned. Instead, Tristan sold the cows and pocketed the money. Due to the neglect of Domingo, one of the horses was stolen. Knowing that he will be blamed for the loss, Domingo slaughtered the other horse, got the meat, and sold it to Pastor. He later reported to Hannibal that the two horses were stolen.

[a] What crime or crimes, if any, did Tristan commit? Explain. (2.5%)

[b] What crime or crimes, if any, were committed by Domingo? Explain. (2.5%)

XIV

Dimas was arrested after a valid buy-bust operation. Macario, the policeman who acted as poseur-buyer, inventoried and photographed ten (10) sachets of *shabu* in the presence of a *barangay tanod*. The inventory was signed by Macario and the *tanod*, but Dimas refused to sign. As Macario was stricken with flu the day after, he was able to surrender the sachets to the PNP Crime Laboratory only after four (4) days. During pre-trial, the counsel *de officio* of Dimas stipulated that the substance contained in the sachets examined by the forensic chemist is in fact methamphetamine hydrochloride or *shabu*. Dimas was convicted of violating Section 5 of RA 9165. On appeal, Dimas questioned the admissibility of the evidence because Macario failed to observe the requisite “chain of custody” of the alleged “*shabu*” seized from him. On behalf of the State, the Solicitor General claimed that despite non-compliance with some requirements, the prosecution was able to show that the integrity of the substance was preserved. Moreover, even with some deviations from the requirements, the counsel of Dimas stipulated that the substance seized from Dimas was *shabu* so that the conviction should be affirmed.

[a] What is the “chain of custody” requirement in drug offenses? (2.5%)

[b] Rule on the contention of the State. (2.5%)

XV

Pedro, Pablito, Juan and Julio, all armed with bolos, robbed the house where Antonio, his wife, and three (3) daughters were residing. While the four were ransacking Antonio's house, Julio noticed that one of Antonio's daughters was trying to escape. He chased and caught up with her at a thicket somewhat distant from the house, but before bringing her back, raped her.

- [a] What crime or crimes, if any, did Pedro, Pablito, Juan and Julio commit? Explain. (2.5%)
- [b] Suppose, after the robbery, the four took turns in raping the three daughters inside the house, and, to prevent identification, killed the whole family just before they left. What crime or crimes, if any, did the four malefactors commit? (2.5%)

XVI

A is the president of the corporate publisher of the daily tabloid, *Bulgar*; B is the managing editor; and C is the author/writer. In his column, *Direct Hit*, C wrote about X, the head examiner of the BIR-RDO Manila as follows:

"Itong si X ay talagang BUWAYA kaya ang logo ng Lacoste T shirt niya ay napaka suwapang na buwaya. Ang nickname niya ay si Atty. Buwaya. Ang PR niya ay 90% sa bayad ng taxpayer at ang para sa RP ay 10% lang. Kaya ang baba ng collection ng RDO niya. Masyadong magnanakaw si X at dapat tanggalin itong bundat na bundat na buwaya na ito at napakalaki na ng kurakot."

A, B and C were charged with libel before the RTC of Manila. The three (3) defendants argued that the article is within the ambit of qualified privileged communication; that there is no malice in law and in fact; and, that defamatory comments on the acts of public officials which are related to the discharge of their official duties do not constitute libel.

Was the crime of libel committed? If so, are A, B, and C all liable for the crime? Explain. (5%)

XVII

Braulio invited Lulu, his 11-year old stepdaughter, inside the master bedroom. He pulled out a knife and threatened her with harm unless she submitted to his desires. He was touching her chest and sex organ when his wife caught him in the act. The prosecutor is unsure whether to charge Braulio for acts of lasciviousness under Art. 336 of the RPC; for lascivious conduct under RA 7610 (Special Protection against Child Abuse, Exploitation and Discrimination Act); or for rape under Art. 266-A of the RPC. What is the crime committed? Explain. (5%)

XVIII

Lina worked as a housemaid and yaya of the one-week old son of the spouses John and Joana. When Lina learned that her 70-year old mother was seriously ill, she asked John for a cash advance of ₱20,000.00, but the latter refused. In anger, Lina gagged the mouth of the child with stockings, placed him in a box, sealed it with masking tape, and placed the box in the attic. Lina then left the house and asked her friend Fely to demand a ₱20,000.00 ransom for the release of the spouses' child to be paid within twenty-four hours. The spouses did not pay the ransom. After a couple of days, John discovered the box in the attic with his child already dead. According to the autopsy report, the child died of asphyxiation barely minutes after the box was sealed.

What crime or crimes, if any, did Lina and Fely commit? Explain. (5%)

XIX

Romeo and Julia have been married for twelve (12) years and had two (2) children. The first few years of their marriage went along smoothly. However, on the fifth year onwards, they would often quarrel when Romeo comes home drunk. The quarrels became increasingly violent, marked by quiet periods when Julia would leave the conjugal dwelling. During these times of quiet, Romeo would "court" Julia with flowers and chocolate and convince her to return home, telling her that he could not live without her; or Romeo would ask Julia to forgive him, which she did, believing that if she humbled herself, Romeo would change. After a month of marital bliss, Romeo would return to his drinking habit and the quarrel would start again, verbally at first, until it would escalate to physical violence.

One night, Romeo came home drunk and went straight to bed. Fearing the onset of another violent fight, Julia stabbed Romeo while he was asleep. A week later, their neighbors discovered Romeo's rotting corpse on the marital bed. Julia and the children were nowhere to be found. Julia was charged with parricide. She asserted "battered woman's syndrome" as her defense.

- [a] Explain the "cycle of violence." (2.5%)
- [b] Is Julia's "battered woman's syndrome" defense meritorious? Explain. (2.5%)

XX

A, an OFW, worked in Kuwait for several years as a chief accountant, religiously sending to his wife, B, 80% of all his earnings. After his stint abroad, he was shocked to know that B became the paramour of a married man, C, and that all the monies he sent to B were given by her to C. To avenge his honor, A hired X, Y and Z and told them to kidnap C and his wife, D, so that he can inflict injuries on C to make him suffer, and humiliate him in front of his wife. X, Y and Z were paid ₱20,000.00 each and were promised a reward of ₱50,000.00 each once the job is done.

At midnight, A, with the fully armed X, Y and Z, forcibly opened the door and gained entrance to the house of C and D. C put up a struggle before he was subdued by A's group. They boarded C and D in a van and brought the two to a small hut in a farm outside Metro Manila. Both hands of C and D were tied. With the help of X, Y and Z, A raped D in front of C. X, Y and Z then took turns in raping D, and subjected C to torture until he was black and blue and bleeding profusely from several stab wounds. A and his group set the hut on fire before leaving, killing both C and D. X, Y and Z were paid their reward. Bothered by his conscience, A surrendered the next day to the police, admitting the crimes he committed.

As the RTC judge, decide what crime or crimes were committed by A, X, Y and Z, and what mitigating and aggravating circumstances will be applied in imposing the penalty. Explain. (5%)

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