



2016 BAR EXAMINATIONS
MERCANTILE LAW

November 20, 2016

8:00 A.M. – 12:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains nine (9) 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

What does “doing business in the Philippines” under the Foreign Investments Act of 1991 mean? (5%)

II

Jason is the proud owner of a newly-built house worth ₱5 million. As a protection against any possible loss or damage to his house, Jason applied for a fire insurance policy thereon with Shure Insurance Corporation (Shure) on October 11, 2016 and paid the premium in cash. It took the company a week to approve Jason’s application. On October 18, 2016, Shure mailed the approved policy to Jason which the latter received five (5) days later. However, Jason’s house had been razed by fire which transpired a day before his receipt of the approved policy. Jason filed a written claim with Shure under the insurance policy. Shure prays for the denial of the claim on the ground that the theory of cognition applies to contracts of insurance.

Decide Jason’s claim with reasons. (5%)

III

ABC Appliances Corporation (ABC) is a domestic corporation engaged in the production and sale of televisions and other appliances. YYY Engineers, a Taiwanese company, is the manufacturer of televisions and other appliances from whom ABC actually purchases appliances. From 2000, when ABC started doing business with YYY, it has been using the mark “TTubes” in the Philippines for the television units that were bought from YYY. In 2015, YYY filed a trademark application for “TTubes.” Later, ABC also filed its application. Both claim the right over the trademark “TTubes” for television products. YYY relies on the principle of “first to file” while ABC involves the “doctrine of prior use.”

- [a] Does the fact that YYY filed its application ahead of ABC mean that YYY has the prior right over the trademark? Explain briefly. (2.5%)
- [b] Does the prior registration also mean a conclusive assumption that YYY Engineers is in fact the owner of the trademark “TTubes?” Briefly explain your answer. (2.5%)

IV

X's "MINI-ME" burgers are bestsellers in the country. Its "MINI-ME" logo, which bears the color blue, is a registered mark and has been so since the year 2010. Y, a competitor of X, has her own burger which she named "ME-TOO" and her logo thereon is printed in bluish-green. When X sued Y for trademark infringement, the trial court ruled in favor of the plaintiff by applying the Holistic Test. The court held that Y infringed on X's mark since the dissimilarities between the two marks are too trifling and frivolous such that Y's "ME-TOO," when compared to X's "MINI-ME," will likely cause confusion among consumers.

Is the application of the Holistic Test correct? (5%)

V

MS Brewery Corporation (MS) is a manufacturer and distributor of the popular beer "MS Lite." It faces stiff competition from BA Brewery Corporation (BA) whose sales of its own beer product, "BA Lighter," has soared to new heights. Meanwhile, sales of the "MS Lite" decreased considerably. The distribution and marketing personnel of MS later discovered that BA has stored thousands of empty bottles of "MS Lite" manufactured by MS in one of its warehouses. MS filed a suit for unfair competition against BA before the Regional Trial Court (RTC). Finding a connection between the dwindling sales of MS and the increased sales of BA, the RTC ruled that BA resorted to acts of unfair competition to the detriment of MS. Is the RTC correct? Explain. (5%)

VI

Nautica Shipping Lines (Nautica) bought a second hand passenger ship from Japan. It modified the design of the bulkhead of the deck of the ship to accommodate more passengers. The ship sunk with its passengers in Tablas Strait due to heavy rains brought by the monsoon. The heirs of the passengers sued Nautica for its liability as a common carrier based on the reconfiguration of the bulkhead which may have compromised the stability of the ship. Nautica raised the defense that the monsoon is a fortuitous event and, at most, its liability is prescribed by the Limited Liability Rule. Decide with reasons. (5%)

VII

A railroad track of the Philippine National Railway (PNR) is located near a busy intersection of Puyat Avenue and Osmeña Highway. One afternoon, the intersection was heavily congested, as usual. Juan, the driver of a public utility jeepney (PUJ), drove onto the railroad tracks but could go no farther because of the heavy traffic at the intersection. After the jeepney stopped right on the railroad track, it was hit and overturned by a PNR train, resulting in the death of Kim, a passenger of the PUJ, and injuries to Juan and his other passengers. Juan, the injured passengers and Kim's family sued the PNR for damages for its negligence. It was established that the steel pole barrier before the track was broken, and that the PNR had the last clear chance of avoiding the accident. On the other hand, the PNR raised the defense that the track is for the exclusive use of the train and that motorists are aware that it is negligence *per se* to stop their vehicles on the tracks. Decide the case and explain. (5%)

VIII

In 2015, Total Bank (Total) proposed to sell to Royal Bank (Royal) its banking business for ₱10 billion consisting of specified assets and liabilities. The parties reached an eventual agreement, which they termed as "Purchase and Assumption (P & A) Agreement," in which Royal would acquire Total's specified assets and liabilities, excluding contingent claims, with the further stipulation that it should be approved by the *Bangko Sentral ng Pilipinas* (BSP). BSP imposed the condition that Total should place in escrow ₱1 billion to cover for contingent claims against it. Total complied. After securing the approval of the BSP, the two banks signed the agreement. BSP thereafter issued a circular advising all bank and non-bank intermediaries that effective January 1, 2016, "the banking activities of Total Bank and Royal Bank have been consolidated and the latter has carried out their operations since then."

- [a] Was there a merger and consolidation of the two banks in point of the Corporation Code? Explain. (2.5%)
- [b] What is meant by a *de facto* merger? Discuss. (2.5%)

IX

X insured his life for ₱20 million. X, plays golf and regularly exercises everyday, hence is considered in good health. He did not know, however, that his frequent headache is really caused by his being hypertensive. In his application form for a life insurance for himself, he did not put a check to the question if he is suffering from hypertension, believing that because of his active lifestyle, being hypertensive is a remote possibility. While playing golf one day, X collapsed at the fairway and was declared dead on arrival at the hospital. His death certificate stated that X suffered a massive heart attack.

- [a] Will the beneficiary of X be entitled to the proceeds of the life insurance under the circumstances, despite the non-disclosure that he is hypertensive at the time of application? (2.5%)
- [b] If X died in an accident instead of a heart attack, would the fact of X's failure to disclose that he is hypertensive be considered as material information? (2.5%)

X

After securing a ₱1 million loan from B, A drew in B's favor a bill of exchange with C as drawee. The bill reads: "October 1, 2016. Pay to the order of B the sum of ₱1 million. To: C (drawee). Signed, A." A then delivered the bill to B who, however, lost it. It turned out that it was stolen by D, B's brother. D lost no time in forging B's signature and negotiated it to E who acquired it for value and in good faith.

May E recover on the bill from C, the drawee? Explain. (5%)

XI

Royal Links Golf Club obtained a loan from a bank which is secured by a mortgage on a titled lot where holes 1, 2, 3 and 4 are located. The bank informed the Board of Directors (Board) that if the arrearages are not paid within thirty (30) days, it will extra-judicially foreclose the mortgage. The Board decided to offer to the members 200 proprietary membership shares, which are treasury shares, at the price of ₱175,000.00 per share even when the current market value is ₱200,000.00.

In behalf and for the benefit of the corporation, Peter, a stockholder, filed a derivative suit against the members of the Board for breach of trust for selling the shares at ₱25,000.00, lower than its market value, and asked for the nullification of the sales and the removal of the board members. Peter claims the Club incurred a loss of ₱5 million. The Board presented the defense that in its honest belief any delay in the payment of the arrearages will be prejudicial to the Club as the mortgage on its assets will be foreclosed and the sale at a lower price is the best solution to the problem. Decide the suit and explain. (5%)

XII

X owns 10,000 shares in Z Telecoms Corp. As he is in immediate need of money, he offered to sell all his shares to his friend, Y, at a bargain price. Upon receipt of the purchase price from Y, X proceeded to indorse in blank the certificates of shares and delivered these to Y. The latter then went to the corporate secretary of Z Telecoms Corp. and requested the transfer of the shares in his name. The corporate secretary refused since X merely indorsed the certificates in blank to Y. According to the corporate secretary, the certificates should have been specifically indorsed to the purchaser, Y. Was the corporate secretary justified in declining Y's request? Discuss. (5%)

XIII

C Corp. is the direct holder of 10% of the shareholdings in U Corp., a non-listed (not public) firm, which in turn owns 62% of the shareholdings in H Corp., a publicly listed company. The other principal stockholder in H Corp. is C Corp. which owns 18% of its shares. Meanwhile, the majority stocks in U Corp. are owned by B Corp. and V Corp. at 22% and 30%, respectively. B Corp. and V Corp. later sold their respective shares in U Corp. to C Corp., thereby resulting in the increase of C Corp.'s interest in U Corp., whether direct or indirect, to more than 50%.

- [a] Explain the Tender Offer Rule under the Securities Regulation Code. (2.5%)
- [b] Does the Tender Offer Rule apply in this case where there has been an indirect acquisition of the shareholdings in H Corp. by C Corp.? Discuss. (2.5%)

XIV

X, a government official, has a number of bank accounts in T Bank containing millions of pesos. He also opened several trust accounts in the same bank which specifically covered the placement and/or investment of funds. X was later charged with graft and corruption before the Sandiganbayan (SB) by the Ombudsman. The Special Prosecutor filed a motion praying for a court order authorizing it to look into the savings and trust accounts of X in T Bank. X opposed the motion arguing that the trust accounts are not "deposits" under the Law on Secrecy of Bank Deposits (Rep. Act No. 1405). Is the contention of X correct? Explain. (5%)

XV

ABC Corp. is engaged in the pawnshop business involving cellphones, laptops and other gadgets of value. In order to expand its business and attract investors, it offered to any person who invests at least ₱100,000.00 a “Promissory Note” where it obligated itself to pay the holder a 50% return on investment within one month. Due to the attractive offer, many individuals invested in the company but not one of them was able to realize any profit after one month.

Has ABC Corp. violated any law with its scheme? Explain. (5%)

XVI

Henry is a board director in XYZ Corporation. For being the “fiscalizer” in the Board, the majority of the board directors want him removed and his shares sold at auction, so he can no longer participate even in the stockholders’ meetings. Henry approaches you for advice on whether he can be removed as board director and stockholder even without cause. What is your advice? Explain “amotion” and the procedure in removing a director. (5%)

XVII

PJ Corporation (PJ) obtained a loan from ABC Bank (ABC) in the amount of ₱10 million for the purchase of 100 pieces of ecodoors. Thereafter, a Letter of Credit was obtained by PJ against such loan. The beneficiary of the Letter of Credit is Scrap Metal Corp. (Scrap Metal) in Beijing, China. Upon arrival of 100 pieces of ecodoors, PJ executed a Trust Receipt in favor of ABC to cover for the value of the ecodoors for its release to PJ. The terms of the Trust Receipt is that any proceeds from the sale of the ecodoors will be delivered to ABC as payment. After the ecodoors were sold, PJ, instead of paying ABC, used the proceeds of the sale to order from Scrap Metal another 100 pieces of ecodoors but using another bank to issue a new Letter of Credit fully covered by such proceeds.

PJ refused to pay the proceeds of the sale of the first set of ecodoors to ABC, claiming that the ecodoors that were delivered were defective. It then instructed ABC not to negotiate the Letter of Credit that was issued in favor of Scrap Metal.

- [a] Explain what is a “Letter of Credit” as a financial device and a “Trust Receipt” as a security to the Letter of Credit. (2.5%)
- [b] As counsel of ABC, you are asked for advice on whether or not to grant the instruction of PJ. What will be your advice? (2.5%)

XVIII

B Bank, a large universal bank, regularly extends revolving credit lines to business establishments under what it terms as socially responsible banking and private business partnership relations. All loans that are extended to clients have a common “Escalation Clause,” to wit: “B Bank hereby reserves its right to make successive increases in interest rates in accordance with the bank’s adopted policies as approved by the Monetary Board; Provided that each successive increase shall be with the written assent of the depositor.”

- [a] X, a regular client of the bank, contends that the “Escalation Clause” is unfair, unconscionable and contrary to law, morals, public policy and customs. Rule on the issue and explain. (2.5%)
- [b] Suppose that the “Escalation Clause” instead reads: “B Bank hereby reserves the right to make reasonable increases in interest rates in accordance with bank policies as approved by the Monetary Board; Provided, there shall be corresponding reasonable decreases in interest rates as approved by the Monetary Board.” Would this be valid? Explain. (2.5%)

XIX

In 2015, R Corp., a domestic company that is wholly owned by Filipinos, filed its opposition to the applications for Mineral Production Sharing Agreements (MPSA) of O Corp., P Corp., and Q Corp. which were pending before the Panel of Arbitrators (POA) of the Department of Environment and Natural Resources (DENR). The three corporations wanted to undertake exploration and mining activities in the province of Isabela. The oppositor alleged that at least 60% of the capital shareholdings of the applicants are owned by B Corp., a 100% Chinese corporation, in violation of Sec. 2, Art. XII of the Constitution. The applicants countered that they are qualified corporations as defined under the Philippine Mining Act of 1995 and the Foreign Investments Act of 1991 since B Corp. holds only 40% of the capital stocks in each of them and not 60% as alleged by R Corp.

The Summary of Significant Accounting Policies statement of B Corp. reveals that the joint venture agreements of B Corp. with Sigma Corp. and Delta Corp. involve the O Corp., P Corp., and Q Corp. The ownership of the layered corporations and joint venture agreements show that B Corp. practically exercises control over the O, P and Q corporations. O, P and Q corporations contend that the control test should be applied and its MPSA applications granted. On the other hand, R Corp. argues that the “grandfather rule” should be applied. Decide with reasons. (5%)

XX

Company X issued a Bank A Check No. 12345 in the amount of ₱500,000.00 payable to the Bureau of Internal Revenue (BIR) for the company's taxes for the third quarter of 1997. The check was deposited with Bank B, the collecting bank with which the BIR has an account. The check was subsequently cleared and the amount of ₱500,000.00 was deducted from the company's balance. Thereafter, Company X was notified by the BIR of its non-payment of its unpaid taxes despite the ₱500,000.00 debit from its account. This prompted the company to seek assistance from the proper authorities to investigate on the matter.

The results of the investigation disclosed that unknown then to Company X, its chief accountant Bonifacio Santos is part of a syndicate that devised a scheme to syphon its funds. It was discovered that though deposited, the check was never paid to the BIR but was passed on by Santos to Winston Reyes, Bank B's branch manager and Santos' co-conspirator. Instead of bringing the check to the clearing house, Reyes replaced Check No. 12345 with a worthless check bearing the same amount, and tampered documents to cover his tracks. No amount was then credited to the BIR. Meanwhile, Check No. 12345 was subsequently cleared and the amount therein credited into the accounts of fictitious persons, to be later withdrawn by Santos and Reyes.

Company X then sued Bank B for the amount of ₱500,000.00 representing the amount deducted from its account. Bank B interposed the defense that Company X was guilty of contributory negligence since its confidential employee Santos was an integral part of the scheme to divert the proceeds of Check No. 12345. Is Company X entitled to reimbursement from Bank B, the collecting bank? Explain. (5%)

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