



2016 BAR EXAMINATIONS
POLITICAL LAW

November 6, 2016

8:00 A.M. – 12:00 N.N.

INSTRUCTIONS

1. This Questionnaire contains ten (10) 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-

The contents of the vault of ABC company consisting of cash and documents were stolen. Paulyn, the treasurer of ABC, was invited by the Makati City Police Department to shed light on the amount of cash stolen and the details of the missing documents. Paulyn obliged and volunteered the information asked. Later, Paulyn was charged with qualified theft together with other suspects. Paulyn claims her rights under the Constitution and pertinent laws were blatantly violated. The police explained that they were just gathering evidence when Paulyn was invited for a conference and she was not a suspect at that time. Rule on her defense. (5%)

-II-

Sec. 11, Art. XII of the Constitution, provides: "No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x." Does the term "capital" mentioned in the cited section refer to the total common shares only, or to the total outstanding capital stock, or to both or "separately to each class of shares, whether common, preferred non-voting, preferred voting or any class of shares?" Explain your answer. (5%)

-III-

A law converted the component city of Malumanay, Laguna into a highly urbanized city. The Local Government Code (LGC) provides that the conversion "shall take effect only after it is approved by the majority of votes cast in a plebiscite to be held in the political units directly affected."

Before the COMELEC, Mayor Xenon of Malumanay City insists that only the registered voters of the city should vote in the plebiscite because the city is the only political unit directly affected by the conversion. Governor Yuri asserts that all the registered voters of the entire province of Laguna should participate in the plebiscite, because when the LGC speaks of the "qualified voters therein," it means all the voters of all the political units affected by such conversion, and that includes all the voters of the entire province. He argues that the income, population and area of Laguna will be reduced. Who, between Mayor Xenon and Governor Yuri, is correct? Explain your answer. (5%)

-IV-

Several concerned residents of the areas fronting Manila Bay, among them a group of students who are minors, filed a suit against the Metro Manila Development Authority (MMDA), the Department of Environment and Natural Resources (DENR), the Department of Health (DOH), the Department of Agriculture (DA), the Department of Education (DepEd), the Department of Interior and Local Government (DILG), and a number of other executive agencies, asking the court to order them to perform their duties relating to the cleanup, rehabilitation and protection of Manila Bay. The complaint alleges that the continued neglect by defendants and their failure to prevent and abate pollution in Manila Bay constitute a violation of the petitioners' constitutional right to life, health and a balanced ecology.

[a] If the defendants assert that the students/petitioners who are minors do not have *locus standi* to file the action, is the assertion correct? Explain your answer. (2.5%)

[b] In its decision which attained finality, the Court ordered the defendants to clean up, rehabilitate and sanitize Manila Bay within eighteen (18) months, and to submit to the Court periodic reports of their accomplishment, so that the Court can monitor and oversee the activities undertaken by the agencies in compliance with the Court's directives. Subsequently, a resolution was issued extending the time periods within which the agencies should comply with the directives covered by the final decision. A view was raised that the Court's continued intervention after the case has been decided violates the doctrine of separation of powers considering that the government agencies all belong to the Executive Department and are under the control of the President. Is this contention correct? Why or why not? (2.5%)

-V-

Section 8 of P.D. No. 910, entitled "Creating an Energy Development Board, defining its powers and functions, providing funds therefor and for other purposes," provides that: "All fees, revenues and receipts of the Board from any and all sources x x x shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President."

The Malampaya NGO contends that the provision constitutes an undue delegation of legislative power since the phrase "and for such other purposes as may be hereafter directed by the President" gives the President unbridled discretion to determine the purpose for which the funds will be used. On the other hand, the government urges the application of *ejusdem generis*.

[a] Explain the "completeness test" and "sufficient standard test." (2.5%)

[b] Does the assailed portion of section 8 of PD 910 hurdle the two (2) tests? (2.5%)

-VI-

Pornographic materials in the form of tabloids, magazines and other printed materials, proliferate and are being sold openly in the streets of Masaya City. The City Mayor organized a task force which confiscated these materials. He then ordered that the materials be burned in public. Dominador, publisher of the magazine, "*Plaything*", filed a suit, raising the following constitutional issues: (a) the confiscation of the materials constituted an illegal search and seizure, because the same was done without a valid search warrant; and (b) the confiscation, as well as the proposed destruction of the materials, is a denial of the right to disseminate information, and thus, violates the constitutional right to freedom of expression. Is either or both contentions proper? Explain your answer. (5%)

-VII-

Ernesto, a minor, while driving a motor vehicle, was stopped at a mobile checkpoint. Noticing that Ernesto is a minor, SP01 Jojo asked Ernesto to exhibit his driver's license but Ernesto failed to produce it. SP01 Jojo requested Ernesto to alight from the vehicle and the latter acceded. Upon observing a bulge in the pants of Ernesto, the policeman frisked him and found an unlicensed .22-caliber pistol inside Ernesto's right pocket. Ernesto was arrested, detained and charged. At the trial, Ernesto, through his lawyer, argued that, policemen at mobile checkpoints are empowered to conduct nothing more than a "visual search". They cannot order the persons riding the vehicle to alight. They cannot frisk, or conduct a body search of the driver or the passengers of the vehicle.

Ernesto's lawyer thus posited that:

[a] The search conducted in violation of the Constitution and established jurisprudence was an illegal search; thus, the gun which was seized in the course of an illegal search is the "fruit of the poisonous tree" and is inadmissible in evidence. (2.5%)

[b] The arrest made as a consequence of the invalid search was likewise illegal, because an unlawful act (the search) cannot be made the basis of a lawful arrest. (2.5%)

Rule on the correctness of the foregoing arguments, with reasons.

-VIII-

A law is passed intended to protect women and children from all forms of violence. When a woman perceives an act to be an act of violence or a threat of violence against her, she may apply for a Barangay Protection Order (BPO) to be issued by the Barangay Chairman, which shall have the force and effect of law. Conrado, against whom a BPO had been issued on petition of his wife, went to court to challenge the constitutionality of the law. He raises the following grounds:

[a] The law violates the equal protection clause, because while it extends protection to women who may be victims of violence by their husbands, it does not extend the same protection to husbands who may be battered by their wives. (2.5%)

[b] The grant of authority to the Barangay Chairman to issue a Barangay Protection Order (BPO) constitutes an undue delegation of judicial power, because obviously, the issuance of the BPO entails the exercise of judicial power. (2.5%)

Rule on the validity of the grounds raised by Conrado, with reasons.

-IX-

The Government, through Secretary Toogood of the Department of Transportation (DOTr), filed a complaint for eminent domain to acquire a 1,000-hectare property in Bulacan, owned by Baldomero. The court granted the expropriation, fixed the amount of just compensation, and installed the Government in full possession of the property.

[a] If the Government does not immediately pay the amount fixed by the court as just compensation, can Baldomero successfully demand the return of the property to him? Explain your answer. (2.5%)

[b] If the Government paid full compensation but after two years it abandoned its plan to build an airport on the property, can Baldomero compel the Government to re-sell the property back to him? Explain your answer. (2.5%)

-X-

The Philippines entered into an international agreement with members of the international community creating the International Economic Organization (IEO) which will serve as a forum to address economic issues between States, create standards, encourage greater volume of trade between its members, and settle economic disputes. After the Philippine President signed the agreement, the Philippine Senate demanded that the international agreement be submitted to it for its ratification. The President refused, arguing that it is an executive agreement that merely created an international organization and it dwells mainly on addressing economic issues among States.

Is the international agreement creating the IEO a treaty or an executive agreement? Explain. (5%)

-XI-

The *USS Liberty*, a warship of the United States (U.S.), entered Philippine archipelagic waters on its way to Australia. Because of the negligence of the naval officials on board, the vessel ran aground off the island of Palawan, damaging coral reefs and other marine resources in the area. Officials of Palawan filed a suit for damages against the naval officials for their negligence, and against the U.S., based on Articles 30 and 31 of the United Nations Convention on the Law of the Sea (UNCLOS). Article 31 provides that the Flag State shall bear international responsibility for any loss or damage to the Coastal State resulting from noncompliance by a warship with the laws and regulations of the coastal State concerning passage through the territorial sea. The U. S. Government raised the defenses that:

[a] The Philippine courts cannot exercise jurisdiction over another sovereign State, including its warship and naval officials. (2.5%)

[b] The United States is not a signatory to UNCLOS and thus cannot be bound by its provisions. (2.5%)

Rule on the validity of the defenses raised by the U.S., with reasons.

-XII-

Paragraphs c, d and f of Section 36 of Republic Act No. 9165 provide:

“Sec. 36. Authorized drug testing. x x x The following shall be subjected to undergo drug testing: x x x

c. Students of secondary and tertiary schools x x x;

d. Officers and employees of public and private offices x x x;

f. All persons charged before the prosecutor’s office with a criminal offense having an imposable imprisonment of not less than 6 years and 1 day;”

Petitioners contend that the assailed portions of Sec. 36 are unconstitutional for violating the right to privacy, the right against unreasonable searches and seizures and the equal protection clause. Decide if the assailed provisions are unconstitutional. (5%)

-XIII-

While Congress was not in session, the President appointed Antero as Secretary of the Department of Tourism (DOT), Benito as Commissioner of the Bureau of Immigration (BI), Clodualdo as Chairman of the Civil Service Commission (CSC), Dexter as Chairman of the Commission on Human Rights (CHR), and Emmanuel as Philippine Ambassador to Cameroon. The following day, all the appointees took their oath before the President, and commenced to perform the functions of their respective offices.

[a] Characterize the appointments, whether permanent or temporary; and whether regular or interim, with reasons. (2.5%)

[b] A civil society group, the Volunteers Against Misguided Politics (VAMP), files suit, contesting the legality of the acts of the appointees and claiming that the appointees should not have entered into the performance of the functions of their respective offices, because their appointments had not yet been confirmed by the Commission on Appointments. Is this claim of VAMP correct? Why or why not? (2.5%)

-XIV-

Onofre, a natural born Filipino citizen, arrived in the United States in 1985. In 1990, he married Salvacion, a Mexican, and together they applied for and obtained American citizenship in 2001. In 2015, the couple and their children --Alfred, 21 years of age, Robert, 16, and Marie, 14, who were all born in the U.S. -- returned to the Philippines on June 1, 2015. On June 15, 2015, informed that he could reacquire Philippine citizenship without losing his American citizenship, Onofre went home to the Philippines and took the oath of allegiance prescribed under R.A. No. 9225. On October 28, 2015, he filed a Certificate of Candidacy to run in the May 9, 2016 elections for the position of Congressman in his home province of Palawan, running against re-electionist Congressman Profundo.

[a] Did Onofre's reacquisition of Philippine citizenship benefit his wife, Salvacion, and their minor children and confer upon them Filipino citizenship? Explain your answer. (2.5%)

[b] Before the May 9, 2016 elections, Profundo's lawyer filed a Petition to Deny Due Course or to Cancel the Certificate of Candidacy against Onofre. What grounds can he raise in his Petition to support it? Explain your answer. (2.5%)

-XV-

Congress passed a bill appropriating P100-billion. Part of the money is to be used for the purchase of a 200-hectare property in Antipolo. The rest shall be spent for the development of the area and the construction of the Universal Temple for All the World's Faiths (UTAW-F). When completed, the site will be open, free of charge, to all religions, beliefs, and faiths, where each devotee or believer shall be accommodated and treated in a fair and equal manner, without distinction, favor, or prejudice. There will also be individual segments or zones in the area which can be used for the conduct of whatever rituals, services, sacraments, or ceremonials that may be required by the customs or practices of each particular religion. The President approved the bill, happy in the thought that this could start the healing process of our wounded country and encourage people of varied and often-conflicting faiths to live together in harmony and in peace.

If the law is questioned on the ground that it violates Sec. 5, Article III of the Constitution that "no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof," how will you resolve the challenge? Explain. (5%)

-XVI-

Jojo filed a criminal complaint against Art for theft of a backpack worth P150.00 with the Office of the City Prosecutor of Manila. The crime is punishable with *arresto mayor* to *prision correccional* in its minimum period, or not to exceed 4 years and 2 months. The case was assigned to Prosecutor Tristan and he applied Sec. 8(a) of Rule 112 which reads: "(a) If filed with the prosecutor. – If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in Sec. 3(a) of this Rule shall be observed. The Prosecutor shall act on the complaint within ten (10) days from its filing."

On the other hand, Sec. 3(a) of Rule 112 provides: "(a) The complaint shall state the address of the respondent and shall be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents to establish probable cause. x x x"

Since Sec. 8(a) authorizes the Prosecutor to decide the complaint on the basis of the affidavits and other supporting documents submitted by the complainant, Prosecutor Tristan did not notify Art nor require him to submit a counter-affidavit. He proceeded to file the Information against Art with the Metropolitan Trial Court. Art vehemently assails Sec. 8(a) of Rule 112 as unconstitutional and violative of due process and his rights as an accused under the Constitution for he was not informed of the complaint nor was he given the opportunity to raise his defenses thereto before the Information was filed. Rule on the constitutionality of Sec. 8(a) of Rule 112. Explain. (5%)

-XVII-

[a] Define the archipelagic doctrine of national territory, state its rationale; and explain how it is implemented through the straight baseline method. (2.5%)

[b] Section 2 of RA 9522 declared the Kalayaan Island Group (KIG) and Scarborough Shoal as “Regimes of Islands.” Professor Agaton contends that since the law did not enclose said islands, then the Philippines lost its sovereignty and jurisdiction over them. Is his contention correct? Explain. (2.5%)

-XVIII-

Sec. 8, Article X of the 1987 Constitution provides that no elective official shall serve for more than three (3) consecutive terms. Rule and explain briefly the reason if the official is prohibited to run for another term in each of the following situations: (a) if the official is a Vice-Mayor who assumed the position of Mayor for the unexpired term under the Local Government Code; (b) if the official has served for three consecutive terms and did not seek a 4th term but who won in a recall election; (c) if the position of Mayor of a town is abolished due to conversion of the town to a city; (d) if the official is preventively suspended during his term but was exonerated; and (e) if the official is proclaimed as winner and assumes office but loses in an election protest. (5%)

-XIX-

Fernando filed an administrative complaint against his co-teacher, Amelia, claiming that the latter is living with a married man who is not her husband. Fernando charged Amelia with committing “disgraceful and immoral conduct” in violation of the Revised Administrative Code and, thus, should not be allowed to remain employed in the government. Amelia, on the other hand, claims that she and her partner are members of a religious sect that allows members of the congregation who have been abandoned by their respective spouses to enter marital relations under a “Declaration of Pledging Faithfulness.” Having made such Declaration, she argues that she cannot be charged with committing immoral conduct for she is entitled to free exercise of religion under the Constitution.

[a] Is Amelia administratively liable? State your reasons briefly. (2.5%)

[b] Briefly explain the concept of “benevolent neutrality.” (2.5%)

-XX-

Under Sec. 5, Article VIII of the Constitution, the Supreme Court shall have the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts x x x.” Section 23 of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 provides that “any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.” Patricio, a user who was charged with alleged sale of shabu but who wants to enter a plea of guilt to a charge of possession, questions the constitutionality of Sec. 23 on the ground that Congress encroached on the rule-making power of the Supreme Court under Sec. 5, Article VIII. He argues that plea-bargaining is procedural in nature and is within the exclusive constitutional power of the Court. Is Patricio correct? Explain your answer. (5%)

- END -