



2016 BAR EXAMINATIONS
REMEDIAL LAW

November 27, 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. **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

State at least five (5) civil cases that fall under the exclusive original jurisdiction of the Regional Trial Courts (RTCs). (5%)

II

- [a]** Briefly explain the procedure on “Interrogatories to Parties” under Rule 25 and state the effect of failure to serve written interrogatories. (2.5%)

- [b]** Briefly explain the procedure on “Admission by Adverse Party” under Rule 26 and the effect of failure to file and serve the request. (2.5%)

III

What are the contents of a judicial affidavit? (5%)

IV

Eduardo, a resident of the City of Manila, filed before the Regional Trial Court (RTC) of Manila a complaint for the annulment of a Deed of Real Estate Mortgage he signed in favor of Galaxy Bank (Galaxy), and the consequent foreclosure and auction sale of his mortgaged Makati property. Galaxy filed a Motion to Dismiss on the ground of improper venue alleging that the complaint should be filed with the RTC of Makati since the complaint involves the ownership and possession of Eduardo’s lot. Resolve the motion with reasons. (5%)

V

- [a]** What is the “most important witness” rule pursuant to the 2004 Guidelines of Pretrial and Use of Deposition-Discovery Measures? Explain. (2.5%)

- [b]** What is the “one day examination of witness” rule pursuant to the said 2004 Guidelines? Explain. (2.5%)

VI

Pedro and Juan are residents of Barangay Ifurug, Municipality of Dupac, Mountain Province. Pedro owes Juan the amount of ₱50,000.00. Due to non-payment, Juan brought his complaint to the Council of Elders of said barangay which implements the *bodong* justice system. Both appeared before the council where they verbally agreed that Pedro will pay in installments on specific due dates. Pedro reneged on his promise. Juan filed a complaint for sum of money before the Municipal Trial Court (MTC). Pedro filed a Motion to Dismiss on the ground that the case did not pass through the barangay conciliation under R.A. No. 7160 and that the RTC, not the MTC, has jurisdiction. In his opposition, Juan argued that the intervention of the Council of Elders is substantial compliance with the requirement of R.A. No. 7160 and the claim of ₱50,000.00 is clearly within the jurisdiction of the MTC. As MTC judge, rule on the motion and explain. (5%)

VII

Spouses Marlon and Edith have three (3) children ages 15, 12 and 7, who are studying at public schools. They have a combined gross monthly income of ₱30,000.00 and they stay in an apartment in Manila with a monthly rent of ₱5,000.00. The monthly minimum wage per employee in Metro Manila does not exceed ₱13,000.00. They do not own any real property. The spouses want to collect a loan of ₱25,000.00 from Jojo but do not have the money to pay the filing fees.

- [a] Would the spouses qualify as indigent litigants under Section 19, Rule 141 on Legal Fees? (2.5%)

- [b] If the spouses do not qualify under Rule 141, what other remedy can they avail of under the rules to exempt them from paying the filing fees? (2.5%)

VIII

Juan sued Roberto for specific performance. Roberto knew that Juan was going to file the case so he went out of town and temporarily stayed in another city to avoid service of summons. Juan engaged the services of Sheriff Matinik to serve the summons but when the latter went to the residence of Roberto, he was told by the caretaker thereof that his employer no longer resides at the house. The caretaker is a high school graduate and is the godson of Roberto. Believing the caretaker's story to be true, Sheriff Matinik left a copy of the summons and complaint with the caretaker. Was there a valid substituted service of summons? Discuss the requirements for a valid service of summons. (5%)

IX

- [a] Is the buyer in the auction sale arising from an extra-judicial foreclosure entitled to a writ of possession even before the expiration of the redemption period? If so, what is the action to be taken? (1%)
- [b] After the period of redemption has lapsed and the title to the lot is consolidated in the name of the auction buyer, is he entitled to the writ of possession as a matter of right? If so, what is the action to be taken? (2%)
- [c] Suppose that after the title to the lot has been consolidated in the name of the auction buyer, said buyer sold the lot to a third party without first getting a writ of possession. Can the transferee exercise the right of the auction buyer and claim that it is a ministerial duty of the court to issue a writ of possession in his favor? Briefly explain. (2%)

X

Hannibal, Donna, Florence and Joel, concerned residents of Laguna de Bay, filed a complaint for mandamus against the Laguna Lake Development Authority, the Department of Environment and Natural Resources, the Department of Public Work and Highways, Department of Interior and Local Government, Department of Agriculture, Department of Budget, and Philippine National Police before the RTC of Laguna alleging that the continued neglect of defendants in performing their duties has resulted in serious deterioration of the water quality of the lake and the degradation of the marine life in the lake. The plaintiffs prayed that said government agencies be ordered to clean up Laguna de Bay and restore its water quality to Class C waters as prescribed by Presidential Decree No. 1152, otherwise known as the Philippine Environment Code. Defendants raise the defense that the cleanup of the lake is not a ministerial function and they cannot be compelled by mandamus to perform the same. The RTC of Laguna rendered a decision declaring that it is the duty of the agencies to clean up Laguna de Bay and issued a permanent writ of mandamus ordering said agencies to perform their duties prescribed by law relating to the cleanup of Laguna de Bay.

- [a] Is the RTC correct in issuing the writ of mandamus? Explain. (2.5%)
- [b] What is the writ of continuing mandamus? (2.5%)

XI

Miguel filed a Complaint for damages against Jose, who denied liability and filed a Motion to Dismiss on the ground of failure to state a cause of action. In an Order received by Jose on January 5, 2015, the trial court denied the Motion to Dismiss. On February 4, 2015, Jose sought reconsideration of that Order through a Motion for Reconsideration. Miguel opposed the Motion for Reconsideration on the ground that it was filed out of time. Jose countered that the 15-day rule under Section 1 of Rule 52 does not apply where the Order sought to be reconsidered is an interlocutory order that does not attain finality. Is Jose correct? Explain. (5%)

XII

Tailors Toto, Nelson and Yenyen filed a special civil action for certiorari under Rule 65 from an adverse decision of the National Labor Relations Commission (NLRC) on the complaint for illegal dismissal against Empire Textile Corporation. They were terminated on the ground that they failed to meet the prescribed production quota at least four (4) times. The NLRC decision was assailed in a special civil action under Rule 65 before the Court of Appeals (CA). In the verification and certification against forum shopping, only Toto signed the verification and certification, while Atty. Arman signed for Nelson. Empire filed a motion to dismiss on the ground of defective verification and certification. Decide with reasons. (5%)

XIII

The officers of "*Ang Kapitaligiran ay Alagaan, Inc.*" engaged your services to file an action against ABC Mining Corporation which is engaged in mining operations in Sta. Cruz, Marinduque. ABC used highly toxic chemicals in extracting gold. ABC's toxic mine tailings were accidentally released from its storage dams and were discharged into the rivers of said town. The mine tailings found their way to Calancan Bay and allegedly to the waters of nearby Romblon and Quezon. The damage to the crops and loss of earnings were estimated at ₱1 Billion. Damage to the environment is estimated at ₱1 Billion. As lawyer for the organization, you are requested to explain the advantages derived from a petition for writ of kalikasan before the Supreme Court over a complaint for damages before the RTC of Marinduque or vice-versa. What action will you recommend? Explain. (5%)

XIV

Pedro, the principal witness in a criminal case, testified and completed his testimony on direct examination in 2015. Due to several postponements by the accused, grounded on his recurring illness, which were all granted by the judge, the cross-examination of Pedro was finally set on October 15, 2016. Before the said date, Pedro died. The accused moved to expunge Pedro's testimony on the ground that it violates his right of confrontation and the right to cross-examine the witness. The prosecution opposed the motion and asked that Pedro's testimony on direct examination be admitted as evidence. Is the motion meritorious? Explain. (5%)

XV

Chika sued Gringo, a Venezuelan, for a sum of money. The Metropolitan Trial Court of Manila (MeTC) rendered a decision ordering Gringo to pay Chika ₱50,000.00 plus legal interest. During its pendency of the appeal before the RTC, Gringo died of acute hemorrhagic pancreatitis. Atty. Perfecto, counsel of Gringo, filed a manifestation attaching the death certificate of Gringo and informing the RTC that he cannot substitute the heirs since Gringo did not disclose any information on his family. As counsel for Chika, what remedy can you recommend to your client so the case can move forward and she can eventually recover her money? Explain. (5%)

XVI

Under Section 5, Rule 113 a warrantless arrest is allowed when an offense has just been committed and the peace officer has probable cause to believe, based on his personal knowledge of facts or circumstances, that the person to be arrested has committed it. A policeman approaches you for advice and asks you how he will execute a warrantless arrest against a murderer who escaped after killing a person. The policeman arrived two (2) hours after the killing and a certain Max was allegedly the killer per information given by a witness. He asks you to clarify the following:

- [a] How long after the commission of the crime can he still execute the warrantless arrest? (2.5%)
- [b] What does "personal knowledge of the facts and circumstances that the person to be arrested committed it" mean? (2.5%)

XVII

The information against Roger Alindogan for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code avers:

“That on or about 10:30 o’clock in the evening of February 1, 2010 at Barangay Matalaba, Imus, Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, wilfully, unlawfully and feloniously commit sexual abuse on his daughter, Rose Domingo, a minor of 11 years old, **either by raping her or committing acts of lasciviousness on her**, against her will and consent to her damage and prejudice.

ACTS CONTRARY TO LAW.”

The accused wants to have the case dismissed because he believes that the charge is confusing and the information is defective. What ground or grounds can he raise in moving for the quashal of the information? Explain. (5%)

XVIII

John filed a petition for declaration of nullity of his marriage to Anne on the ground of psychological incapacity under Article 36 of the Family Code. He obtained a copy of the confidential psychiatric evaluation report on his wife from the secretary of the psychiatrist. Can he testify on the said report without offending the rule on privileged communication? Explain. (5%)

XIX

Tristan filed a suit with the RTC of Pasay against Arthur King and/or Estate of Arthur King for reconveyance of a lot declared in the name of Arthur King under TCT No. 1234. The complaint alleged that “on account Arthur King’s residence abroad up to the present and the uncertainty of whether he is still alive or dead, he or his estate may be served with summons by publication.” Summons was published and nobody filed any responsive pleading within sixty (60) days therefrom. Upon motion, defendants were declared in default and judgment was rendered declaring Tristan as legal owner and ordering defendants to reconvey said lot to Tristan.

Jojo, the court-designated administrator of Arthur King’s estate, filed a petition for annulment of judgment before the CA praying that the decision in favor of Tristan be declared null and void for lack of jurisdiction. He claims that the action filed by Tristan is an action *in personam* and that the court did not acquire jurisdiction over defendants Arthur King and/or his estate. On the other hand, Tristan claims that the suit is an action *in rem* or at least an action *quasi in rem*. Is the RTC judge correct in ordering service of summons by publication? Explain. (5%)

XX

Royal Bank (Royal) filed a complaint for a sum of money against Ervin and Jude before the RTC of Manila. The initiatory pleading averred that on February 14, 2010, Ervin obtained a loan from Royal in the amount of ₱1 Million, as evidenced by Promissory Note No. 007 (PN) signed by Ervin. Jude signed a Surety Agreement binding herself as surety for the loan. Royal made a final demand on February 14, 2015 for Ervin and Jude (defendants) to pay, but the latter failed to pay. Royal prayed that defendants Ervin and Jude be ordered to pay the amount of ₱1 Million plus interests.

In their answer, Ervin admitted that he obtained the loan from Royal and signed the PN. Jude also admitted that she signed the Surety Agreement. Defendants pointed out that the PN did not provide the due date for payment, and that the loan has not yet matured as the maturity date was left blank to be agreed upon by the parties at a later date. Defendants filed a Motion for a Judgment on the Pleadings on the ground that there is no genuine issue presented by the parties' submissions. Royal opposed the motion on the ground that the PN's maturity is an issue that must be threshed out during trial.

- [a] Resolve the motion with reasons. (2.5%)
- [b] Distinguish "Summary Judgment" and "Judgment on the Pleadings." (2.5%)

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