

2017 BAR EXAMINATIONS
CRIMINAL LAW

November 19, 2017

2:00 P.M. – 6:00 P.M

INSTRUCTIONS

1. This Questionnaire contains nine (9) pages. Check and make sure that your Questionnaire has the correct number of pages. You may write on your Questionnaire as you answer the questions.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue at the back of the first page and so on. Start every number on a separate page, but an answer to a sub-question under the same number may be written continuously on the same page and on the immediately succeeding pages until the answer is complete. Follow the numbering sequence of the Questionnaire in your answers.

2. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Answers must fully explain even if the questions do not expressly require explanations. A “Yes” or “No” answer *sans* explanation or discussion will not be given full credit.

3. Marking of your Notebook with your name or other identifying signs or symbols extraneous to the subject matter of the questions may be considered as cheating and may disqualify you.

Good luck!

YOU CAN BRING HOME THE QUESTIONNAIRE.


JUSTICE LUCAS P. BERSAMIN
Chairman
2017 Bar Examinations

I.

Tonito, an 8-year-old boy, was watching a free concert at the Luneta Park with his father Tony. The child stood on a chair to be able to see the performers on the stage. Juanito, a 10-year-old boy, who was also watching the concert, could not see much of the performance on the stage because Tonito was blocking his line of sight by standing on the chair. Using his elbow, Juanito strongly shoved Tonito to get a good view of the stage. The shove caused Tonito to fall to the ground. Seeing this, Tony struck Juanito on the head with his hand and caused the boy to fall and to hit his head on a chair. Tony also wanted to strangle Juanito but the latter's aunt prevented him from doing so. Juanito sustained a lacerated wound on the head that required medical attendance for 10 days.

Tony was charged with *child abuse* in violation of Sec. 10(a), in relation to Sec. 3(b)(2), of R.A. No. 7610 (*Child Abuse Law*) for allegedly doing an "act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being." In his defense, Tony contended that he had no intention to maltreat Juanito, much less to degrade his intrinsic worth and dignity as a human being.

(a) Distinguish crimes *mala in se* from crimes *mala prohibita*. (3%)

(b) Was Tony criminally liable for *child abuse* under R.A. No. 7610? Explain your answer. (3%)

II.

Sixteen year old Aliswan prodded Amethyst, his girlfriend, to remove her clothing while they were secretly together in her bedroom late one evening. Failing to get a positive response from her, he forcibly undressed her. Apprehensive about rousing the attention of the household who did not know of his presence inside her room, she resisted him with minimal strength, but she was really sobbing in a muffled manner. He then undressed himself while blocking the door. Yet, the image of a hapless and sobbing Amethyst soon brought him to his senses, and impelled him to leave her room naked. He did not notice in his hurry that Amante, the father of Amethyst, who was then sitting alone on a sofa in the sala, saw him leave his daughter's room naked.

Outside the house, the now-clothed Aliswan spotted Alleso, Amethyst's former suitor. Knowing how Alleso had aggressively

pursued Amethyst, Aliswan fatally stabbed Alleso. Aliswan immediately went into hiding afterwards.

Upon learning from Amethyst about what Aliswan had done to her, an enraged Amante wanted to teach Aliswan a lesson he would never forget. Amante set out the next day to look for Aliswan in his school. There, Amante found a young man who looked very much like Aliswan. Amante immediately rushed and knocked the young man unconscious on the pavement, and then draped his body with a prepared tarpaulin reading *RAPIST AKO HUWAG TULARAN*. Everyone else in the school was shocked upon witnessing what had just transpired, unable to believe that the timid and quiet Alisto, Aliswan's identical twin brother, had committed rape.

(a) A criminal complaint for *attempted rape with homicide* was brought against Aliswan in the Prosecutor's Office. However, after preliminary investigation, the Investigating Prosecutor recommended the filing of two separate informations – one for *attempted rape* and the other for *homicide*. Do you agree with the recommendation? Explain your answer. (3%)

(b) Before the trial court, Aliswan moved that the cases should be dismissed because he was entitled to the exempting circumstance of minority. Is his motion correct? Explain your answer. (3%)

(c) After receiving medical attendance for 10 days, Alisto consulted you about filing the proper criminal complaint against Amante. What crimes, if any, will you charge Amante with? Explain your answer. (3%)

(d) Answering the criminal complaint filed by Alisto, Amante contended that he had incurred no criminal liability for lack of criminal intent on his part, his intended victim being Aliswan, not Alisto. What is this defense of Amante, and explain if the same will prosper? (3%)

III.

Overjoyed by the award to his firm of a multi-billion government contract for the development of an economic and tourism hub in the Province of Blank, Mr. Gangnam allotted the amount of ₱100 Million to serve as gifts for certain persons instrumental in his firm's winning the award. He gave 50% of that amount to Governor Datu, the official who had signed the contract with the proper authorization from the Sangguniang Panlalawigan; 25% to Bokal Diva, the Sangguniang Panlalawigan member who had lobbied for the award of the project in the Sangguniang Panlalawigan; and 25% to Mayor Dolor of the Municipality where the project would be

implemented. Governor Datu received his share through his wife, Provincial First Lady Dee, who then deposited the amount in her personal bank account.

Previously, upon facilitation by Bokal Diva, Mr. Gangnam concluded an agreement with Mayor Dolor for the construction of the Blank Sports Arena worth ₱800 Million. The project was highly overpriced because it could be undertaken and completed for not more than ₱400 Million. For this project, Mayor Dolor received from Mr. Gangnam a gift of ₱10 Million, while Bokal Diva got ₱25 Million.

In both instances, Bokal Diva had her monetary gifts deposited in the name of her secretary, Terry, who personally maintained a bank account for Bokal Diva's share in government projects.

(a) May each of the above-named individuals be held liable for *plunder*? Explain your answer. (4%)

(b) Define *wheel conspiracy* and *chain conspiracy*. Is either or both kinds existent herein? Explain your answer. (4%)

(c) What provisions of R.A. No. 3019 (*Anti-Graft & Corrupt Practices Act*), if any, were violated by any of the above-named individuals, specifying the persons liable therefor? Explain your answer. (4%)

(d) What crimes under the *Revised Penal Code*, if any, were committed, specifying the persons liable therefor? Explain your answer. (4%)

IV

Maita was the object of Solito's avid sexual desires. Solito had attempted many times to entice Maita to a date in bed with him but Maita had consistently refused. Fed up with all her rejections, Solito abducted Maita around 7 p.m. one night. With his cohorts, Solito forced Maita into a Toyota Innova and drove off with her to a green-painted house situated in a desolate part of the town. There, Solito succeeded in having carnal knowledge of Maita against her will.

Meanwhile, the police authorities were tipped off that at 11:30 p.m. on that same night Solito would be selling *marijuana* outside the green-painted house. Acting on the tip, the PNP station of the town formed a buy-bust team with PO2 Masahol being designated the poseur buyer. During the buy-bust operation, Solito opened the trunk of the Toyota Innova to retrieve the bag of *marijuana* to be sold to PO2 Masahol. To cut the laces that he had tied the bag with, Solito took out a Swiss knife, but his doing so prompted PO2 Masahol to effect his immediate arrest out of fear that he would

attack him with the knife. PO2 Masahol then confiscated the bag of *marijuana* as well as the Toyota Innova.

(a) Two informations were filed against Solito in the RTC – one for *forcible abduction with rape*, raffled to Branch 8 of the RTC; the other for *illegal sale of drugs*, assigned to Branch 29 of the RTC. Was Solito charged with the proper offenses based on the circumstances? Explain your answer. (5%)

(b) While the Prosecution was presenting its evidence in Branch 29, Branch 8 convicted Solito. Immediately after the judgment of conviction was promulgated, Solito filed in both Branches a motion for the release of the Toyota Innova. He argued and proved that he had only borrowed the vehicle from his brother, the registered owner. Branch 8 granted the motion but Branch 29 denied it. Were the two courts correct in their rulings? Explain your answer. (5%)

V

To aid in the rebuilding and revival of Tacloban City and the surrounding areas that had been devastated by the strongest typhoon to hit the country in decades, the Government and other sectors, including NGOs, banded together in the effort. Among the NGOs was Bangon Waray, Inc. (BaWI), headed by Mr. Jose Ma. Gulang, its President and CEO. BaWI operated mainly as a social amelioration and charitable institution. For its activities in the typhoon-stricken parts of Leyte Province, BaWI received funds from all sources, local and foreign, including substantial amounts from legislators, local government officials and the EU. After several months, complaints were heard about the very slow distribution of relief goods and needed social services by BaWI.

The COA reported the results of its audit to the effect that at least P10 Million worth of funds coming from public sources channeled to BaWI were not yet properly accounted for. The COA demanded reimbursement but BaWI did not respond.

Hence, Mr. Gulang was criminally charged in the Office of the Ombudsman with *malversation of public funds* and *failure of accountable officer to render accounts* as respectively defined and punished by Art. 217 and Art. 218 of the *Revised Penal Code*. He was also charged with violation of Sec. 3(e) of R.A. No. 3019 for causing undue injury to the Government.

In his defense, Mr. Gulang mainly contended that he could not be held liable under the various charges because he was not a public officer.

(a) Who is a public officer? (2%)

(b) Discuss whether the crimes charged against Mr. Gulang are proper. Explain your answer. (3%)

VI

Answer with brief explanations the following queries:

(a) If the slightest penetration of the female genitalia consummates *rape by carnal knowledge*, how does the accused commit *attempted rape by carnal knowledge*? (2%)

(b) What crime is committed by a *capataz* who enrolls two fictitious names in the payroll and collects their supposed daily wages every payday? (2%)

(c) What is now the age of *doli incapax* in the Philippines? (2%)

(d) Why is there no crime of *frustrated serious physical injuries*? (2%)

VII

Bernardo was enraged by his conviction for *robbery* by Judge Samsonite despite insufficient evidence. Pending his appeal, Bernardo escaped in order to get even with Judge Samsonite. Bernardo learned that the judge regularly slept in his mistress' house every weekend. Thus, he waited for the judge to arrive on Saturday evening at the house of his mistress. It was about 8:00 p.m. when Bernardo entered the house of the mistress. He found the judge and his mistress having coffee in the kitchen and engaging in small talk. Without warning, Bernardo stabbed the judge at least 20 times. The judge instantly died.

Prosecuted and tried, Bernardo was convicted of *direct assault with murder*. Rule with reasons whether or not the conviction for *direct assault with murder* was justified, and whether or not the trial court should appreciate the following aggravating circumstances against Bernardo, to wit: (1) disregard of rank and age of the victim, who was 68 years old; (2) dwelling; (3) nighttime; (4) cruelty; and (5) quasi-recidivism. (10%)

VIII

Porthos made a sudden turn on a dark street, and his Rolls-Royce SUV bumped the rear of a parked Cadillac Sedan inside which Aramis was then taking a nap. Angered by the violent impact, Aramis alighted and confronted Porthos who had also alighted. Aramis angrily and repeatedly shouted at Porthos: *Putang Ina mol* Porthos, displaying fearlessness, aggressively shouted back at Aramis: *Wag kang magtapang-tapangan dyan, papatayin kita!* Without saying anything more, Aramis drew his gun from his waist and shot Porthos in the leg. Porthos' wound was not life threatening.

(a) What are the kinds of unlawful aggression, and which kind was displayed in this case? Explain your answer. (3%)

(b) Standing trial for *frustrated murder*, Aramis pleaded self-defense. The Prosecution's contention was that the plea of self-defense applied only to consummated killings. Rule, with explanations, on the tenability of Aramis' claim of self-defense, and on the Prosecution's contention. (3%)

(c) Porthos insisted that the element of treachery was present. To rule out treachery, Aramis asserted that both he and Porthos were then facing and confronting each other when he fired the shot. Rule, with reasons, on the respective contentions. (3%)

IX

During the nationwide transport strike to protest the phase out of old public utility vehicles, striking jeepney drivers Percy, Pablo, Pater and Sencio, each armed with guns, hailed several MMDA buses then providing free transport to the stranded public to stop them from plying their routes. They later on commandeered one of the buses without allowing any of the passengers to alight, and told the driver to bring the bus to Tanay, Rizal.

Upon reaching a remote area in Tanay, Percy, Pablo, Pater and Sencio forcibly divested the passengers of their cash and valuables. They ordered the passengers to leave thereafter. Then, they burned the bus. When a *tanod* of the *barangay* of the area came around to intervene, Pater fired at him, instantly killing him.

After Percy, Pablo, Pater and Sencio were arrested, the police authorities recommended them to be charged with the following crimes, to wit: (1) *carjacking*; (2) *robbery*; (3) *direct assault with homicide*; (4) *kidnapping*; and (5) *arson*.

State your legal opinion on the recommendation of the police authorities on the criminal liabilities incurred by Percy, Pablo, Pater and Sencio. (10%)

X.

Sammy Peke was convicted of a violation of R.A. No. 123456 for selling fake books. The law prescribes the penalty of *prision correccional*, a divisible penalty whose minimum period is six months and one day to two years and four months; medium period is two years, four months and one day to four years and two months; and maximum period is four years, two months and one day to six years.

At arraignment, Sammy Peke pleads *guilty* to the crime charged.

(a) Explain how the *Indeterminate Sentence Law* is applied in crimes punished by special laws. (3%)

(b) Supposing the trial judge imposes a straight penalty of imprisonment for one year, is the penalty correct in the context of the *Indeterminate Sentence Law*? Explain your answer. (3%)

XI.

In his homily, Fr. Chris loudly denounced the many extrajudicial killings committed by the men in uniform. Policeman Stone, then attending the mass, was peeved by the denunciations of Fr. Chris. He immediately approached the priest during the homily, openly displayed his firearm tucked in his waist, and menacingly uttered at the priest: *Father, may kalalagyan kayo kung hindi kayo tumigil*. His brazenness terrified the priest, who cut short his homily then and there. The celebration of the mass was disrupted, and the congregation left the church in disgust over the actuations of Policeman Stone, a co-parishioner.

Policeman Stone was subsequently charged.

The Office of the Provincial Prosecutor is now about to resolve the case, and is mulling on what to charge Policeman Stone with.

May Policeman Stone be properly charged with either or both of the following crimes, or, if not, with what proper crime?

(a) *Interruption of religious worship* as defined and punished under Art. 132 of the *Revised Penal Code*; and/or

(b) *Offending the religious feelings* as defined and punished under Art. 133 of the *Revised Penal Code*.

Explain fully your answers. (8%)

-NOTHING FOLLOWS-