

**2017 BAR EXAMINATIONS**  
**LEGAL & JUDICIAL ETHICS**

November 26, 2017

2:00 P.M. – 6:00 P.M.

**INSTRUCTIONS**

**1. This Questionnaire contains ten (10) 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.**

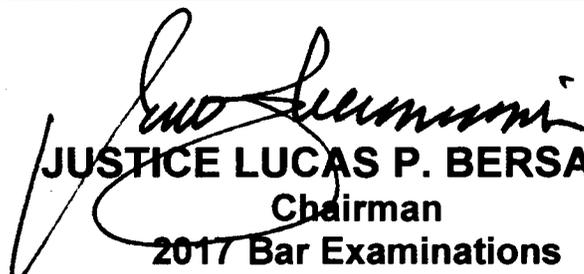
**Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue 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.

## A.

**Brando & Luzon Law Office had a retainer agreement with Gregory, a businessman with shady connections. Gregory was recently charged in the RTC in Manila with money laundering in relation to an illegal drugs syndicate using Cable Co., his holding company, as its money laundering conduit. The members of the Brando & Luzon Law Office assigned to handle Gregory's account, including yourself, were implicated in the money laundering case for their role in the incorporation of Cable Co. and in the active management of its business affairs.**

**In a bid to fortify the case against Gregory and the others, the public prosecutor approaches you (as the least guilty person who will qualify for a discharge as a state witness) and offers to make you a state witness. Should you accept the offer? Explain your answer. (5%)**

## B.

**Under the facts of the preceding question, assume that you had resigned from the Brando & Luzon Law Office prior to the filing of the money laundering case against Gregory and the others, and that you were not implicated in the case. However, you had assisted in handling the Cobra Co. account during your time with the law firm. Cobra Co. was largely owned by Cable Co.**

**The public prosecutor handling the case against Gregory and the others asks you, as a former member of the Brando & Luzon Law Office, to help strengthen the case for the Government, and hints that you may be implicated in the case if you do not cooperate. What is your legal and ethical course of action? Explain your answer. (5%)**

## II.

## A.

**Pedro Tigas, a known toughie, asked Atty. Chloe to meet with him in the Jollibee Restaurant in Harrison Plaza because he wanted to seek her legal advice on an important matter. Atty. Chloe had once before been consulted by Pedro Tigas, who had then paid her well. When they met in Jollibee Restaurant, he confided his planned**

assassination of Pepeng Taga, his rival for control of the neighborhood in San Andres Bukid, Manila. He wanted her to represent him should he be apprehended for the assassination. Atty. Chloe did not agree, and left the restaurant in a hurry before Pedro Tigas could utter anything more.

A few days afterwards, Pepeng Taga was killed near his house in San Andres Bukid, Manila. The police follow-up team arrested Pedro Tigas on the basis of testimony by at least two residents that they had heard him saying two days before the killing that Pepeng Taga would not live beyond 48 hours. Should Atty. Chloe reveal to the police investigator what Pedro Tigas had stated to her at the Jollibee Restaurant without violating the confidence of the latter as a client? Explain your answer. (4%)

B.

Assuming that the meeting between Pedro Tigas and Atty. Chloe in Jollibee Restaurant occurred after the killing of Pepeng Taga, and in that meeting Pedro Tigas expressly admitted to Atty. Chloe in strict confidence as his lawyer that he had shot Pepeng Taga. Is Atty. Chloe ethically bound to reveal the admission of Pedro Tigas to the police investigator what Pedro Tigas had stated to her at the Jollibee Restaurant? Explain your answer. (4%)

III.

A.

Alleging that Atty. Frank had seduced her when she was only 16 years old, and that she had given birth to a baby girl as a result, Malen filed a complaint for his disbarment seven years after the birth of the child charging that he was a grossly immoral person unworthy and unfit to continue in the Legal Profession. In his comment, Atty. Frank argued that the complaint for disbarment should be dismissed because of prescription.

Explain whether or not Atty. Frank's argument is justified. (4%)

B.

Beth administratively charged her former lawyer, Atty. Rawet, with gross misconduct and gross ignorance of the law for the latter's inadequate legal representation of her in her suit against her

neighbor. Midway during the investigation, Beth decided to migrate to Australia. Learning about her plans, Atty. Rawet approached her and pleaded for her understanding. He was able to persuade her to execute an affidavit of desistance in respect of her administrative complaint. He submitted the affidavit of desistance to the Supreme Court, and moved to dismiss the charge against him.

Will the affidavit of desistance warrant the dismissal of the administrative charge? Explain your answer. (4%)

#### IV.

Atty. Jessa was the counsel for Mr. Nolan, a cantankerous millionaire, in the latter's personal case. Soon after the case was submitted for decision, Mr. Nolan withdrew the files from Atty. Jessa and informed her that he was engaging another lawyer. On that same day, a copy of the decision in the case was received by Atty. Jessa but she did not do anything anymore with the decision. She did not also file a withdrawal of her appearance. Mr. Nolan's new counsel did not file any notice of his appearance. By the time Mr. Nolan found out about the adverse decision, his period to appeal had lapsed.

Was the service of the decision on Atty. Jessa still effective? Explain your answer. (4%)

#### V.

Eva consulted Atty. Doble Kara, a well-known solo practitioner, to represent her as a probable heir to the huge estate of her late lamented grandaunt who died without issue. After Atty. Doble Kara perused the documents relevant to the estate presented by Eva, he told Eva that he could not be of help to her.

A few days later, Eva learned that Atty. Doble Kara had just initiated intestate proceedings involving the same estate in the RTC, and the petitioner seeking appointment as administratrix was Mely, Eva's hostile cousin and co-heir to the estate.

Eva moved to immediately disqualify Atty. Doble Kara from representing Mely on the ground of conflict of interest, but Atty. Doble Kara explained to the estate court that there was no conflict of interest because he had no lawyer-client relationship with Eva. He further indicated that Eva had not also paid him any retainer fee.

Given his explanations to the estate court, may Atty. Doble Kara ethically represent Mely? (4%)

VI.

For services to be rendered by Atty. Hamilton as counsel for Gener in a civil case involving the recovery of the ownership and possession of a parcel of land with an area of 5,000 square meters, the two of them agreed on a success fee for Atty. Hamilton of ₱50,000.00 plus 500 square meters of the land. The trial court ultimately rendered judgment in favor of Gener, and the judgment became final and executory. After receiving ₱50,000.00, Atty. Hamilton demanded the transfer to him of the promised 500 square meters of the land.

Instead of complying, Gener brought an administrative complaint charging Atty. Hamilton with violation of the *Code of Professional Responsibility* and Art. 1491(5) of the *Civil Code* for demanding the delivery of a portion of the land subject of the litigation.

Is Atty. Hamilton liable under the *Code of Professional Responsibility* and the *Civil Code*? Explain your answer. (4%)

VII.

A.

You had just taken your oath as a new lawyer. The secretary of a big university offered to get you as the university's notary public. She explained that the faculty and students would be sent to you to have their documentations and affidavits notarized; and that the arrangement would be very lucrative for you. However, the secretary wants you to share with her half of your earnings throughout the year.

Will you agree to the arrangement proposed by the secretary of the university? Explain your answer. (4%)

B.

The plaintiff died during the pendency of the case in the RTC. If you were the counsel of the plaintiff, what is the last duty you need to discharge in behalf of the late client before your professional

9

engagement for the case may be deemed terminated? Explain briefly your answer. (4%)

### VIII.

#### A.

Sancho Mahilig went to the office of Atty. Charm to engage her legal representation in the criminal case for adultery that the husband of his socialite friend had brought against him in the City Prosecutor's Office in Manila. Atty. Charm thoroughly interviewed Sancho in her office with only Linda, the secretary/stenographer of Atty. Charm, the only other person present. On that occasion, Sancho candidly informed Atty. Charm about his illicit affair with the socialite wife, and gave many details. Linda faithfully recorded the interview.

During the trial of the criminal case for adultery, the trial prosecutor requested the court to issue a subpoena *duces tecum* to compel the production of the record of the interview and a subpoena *ad testificandum* to compel Linda to testify on the admission of the affair by Sancho. Atty. Charm objected to the request on the basis of lawyer-client confidentiality.

If you were the trial judge, how will you resolve the objection of Atty. Charm? Justify your answer. (4%)

#### B.

Prosecutor Regan was designated to represent the State during the trial of an action to declare the nullity of a marriage. He realized soon enough, however, that the counsels of the parties were very competent and sincere in doing their work for their respective clients. Thus, Prosecutor Regan, mindful of his large caseload of preliminary investigations, and believing that his attendance at the trial was superfluous, decided not to attend the trial anymore so that he could devote more time to the work back in his office.

Explain whether or not the decision of Prosecutor Regan to miss the trial of the action to declare the nullity of the marriage was warranted. (4%)

### IX.

Atty. Miriam rents her office space in a building owned by Winston. Eventually, Atty. Miriam became Winston's regular legal counsel.

Because of their good relationship, Atty. Miriam did not hesitate to borrow money from Winston. Atty. Miriam issued postdated checks covering the interest of her loans. Unfortunately, Atty. Miriam failed to pay her obligations to Winston. Her postdated checks with Winston also bounced. Hence, he filed a criminal case for violation of the *Bouncing Checks Law* against her.

In her counter-affidavit, Atty. Miriam averred that Winston was “a businessman who is engaged in the real estate business, trading and buy and sell of deficiency taxed imported cars, shark loans and other shady deals and has many cases pending in court.”

Hurt by the allegations, Winston filed a disbarment complaint against Atty. Miriam arguing that her allegations in the counter-affidavit constituted a breach of their confidential lawyer-client relationship.

Discuss whether or not the disclosures in Atty. Miriam’s counter-affidavit constitute a breach of fidelity towards her client. (4%)

X.

Atty. Anna Kirmet was one of Worry Bank’s valued clients. The bank gave her a credit card with a credit limit of ₱250,000.00. Because of her extravagance, Atty. Kirmet exceeded her credit limit and refused to pay the monthly charges as they fell due.

Hence, aside from a collection case, Worry Bank filed a disbarment case against Atty. Kirmet. In her comment on the disbarment complaint, Atty. Kirmet insisted that she did not violate the *Code of Professional Responsibility* because her obligation to the bank was personal in nature and had no relation to her being a lawyer.

Is Atty. Kirmet correct? Explain your answer briefly. (4%)

XI.

A.

Define champerty. (3%)

B.

Atty. Andy and Atty. Valeriano were classmates in law school. As such, they developed a close friendly relationship. They agreed that they would refer clients to each other, and whoever referred clients

2

would receive a commission or portion of the attorney's fees. Atty. Andy referred a client to Atty. Valeriano, who charged the client ₱100,000.00 as initial attorney's fees. Thereafter, Atty. Valeriano sent 15% of ₱100,000.00, or ₱15,000.00, to Atty. Andy as the latter's referral fee.

Explain if the agreement on the referral fee is ethical. (3%)

## XII.

Atty. Simplicio published the following advertisement in a local newspaper: "Annulment of Marriage, Competent Attorney, Reasonable Fees, Call 221-2345."

A Justice of the Supreme Court saw the advertisement and thereafter called the attention of his colleagues. The Supreme Court directed the Bar Confidant investigate the matter. When directed to explain why no disciplinary action should be taken against him for the improper advertisement, Atty. Simplicio contended that: (a) the advertisement was not improper because his name was not mentioned; and (b) he could not be subjected to disciplinary action because there was no complaint filed against him.

Rule on Atty. Simplicio's contentions. (4%)

## XIII.

Herbert Madasalin, a 25-year old Bar candidate, surrendered his driver's license to the security guard at the Arlegui Gate when he entered the Malacanang compound to pray at the National Shrine of St. Jude Thaddeus. After praying the novena to St. Jude, Herbert went to the Arlegui Gate to retrieve his driver's license. However, he was not able to get the license because the security guard was then elsewhere. He returned the next day only to be told that the security guard had misplaced the license. The security guard concerned could not anymore remember where he had placed the license.

Herbert immediately requests your assistance in the preparation of an affidavit of loss. His address is at 143 Zuzuregui Street, Don Antonio Heights, Quezon City. As his friend, prepare Herbert's affidavit of loss. (5%)

## XIV.

Kyle Angelo was served with summons and a copy of the complaint of Ciara Jane for collection of the amount of ₱1,000,000.00 as



evidenced by a promissory note signed by Kyle Angelo. She alleged that the debt was overdue; and that Kyle Angelo refused to pay despite repeated demands.

Kyle Angelo engaged the services of Atty. Carlos Sabit, who decided to file a motion to dismiss on the ground of lack of cause of action and prescription. Atty. Carlos Sabit drafted the motion and sent the draft to Kyle Angelo for his perusal. Kyle Angelo, being himself a law graduate, quickly noticed that the draft did not contain a notice of hearing.

Draft the notice of hearing that Atty. Carlos Sabit should include in the motion to dismiss. (3%)

#### XV.

Believing that an onerous transfer would result in lesser taxes than a gratuitous transfer, Nenita Villo, a widow, decided to sell her lone asset worth ₱3,000,000.00 to her daughters, Andrea, Carina and Carissa, all of legal age, gainfully employed and still unmarried. The asset consisted of the house and the lot registered under Transfer Certificate of Title No. 67890 of the Register of Deeds of Paranaque City and situated at No. 3156 Bayswater Street, Metro Ville Subdivision, Paranaque City where Nenita and her daughters presently resided.

Nenita required her daughters to make a down payment of ₱1,000,000.00, and the balance to be paid once the title to the property was transferred to her daughters' names. All the taxes, fees, and costs related to the sale would be for the account of Nenita, while those related to the transfer of title would be paid by Andrea, Carina and Carissa.

Draft the contract to be executed by Nenita and her daughters in connection with the transfer of the house and lot. Omit details other than those stated in the question. (10%)

#### XVI.

Determine if the following advertisements by an attorney are ethical or unethical. Explain your answer.

(a) A calling card, 2 inches x 2 inches in size, bearing the attorney's name in bold print, office, residence and email addresses, telephone and facsimile numbers. (2%)

**(b) A business card, 3 inches x 4 inches in size, indicating the aforementioned data with his 1 inch x 1 inch photograph. (2%)**

**(c) A pictorial press release in a broadsheet newspaper made by the attorney showing him being congratulated by the president of a client corporation for winning a multi-million damage suit against the company in the Supreme Court. (2%)**

**(d)The same press release made in a tabloid by the attorney's client. (2%)**

**(e) A small announcement that the attorney is giving free legal advice on November 30, 2017 published in *Balita*, a tabloid in Filipino. (2%)**

**- NOTHING FOLLOWS -**