

**2017 BAR EXAMINATIONS**  
**MERCANTILE LAW**

November 19, 2017

8:00 A.M. – 12:00 N.N.

**INSTRUCTIONS**

**1. This Questionnaire contains eleven (11) 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.**

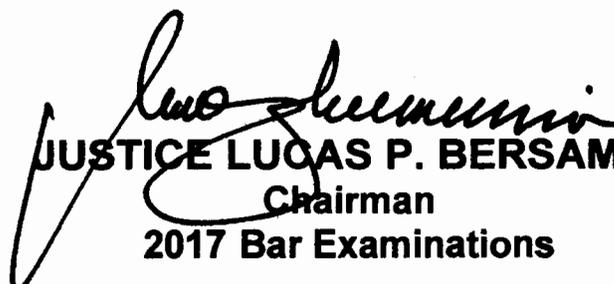
**Read each question very carefully and write your answers in your Bar Examination Notebook in the same order of the questions. Answer the essay questions legibly, clearly, and concisely. Write your answers only on the front of every page of your Notebook. If the front pages are not sufficient, continue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

**Absolute Timber Co. (ATC) has been engaged in the logging business in Isabela. To secure one of its shipments of logs to be transported by Andok Shipping Co., ATC purchased a marine policy with an “all risks” provision. Because of a strong typhoon then hitting Northern Luzon, the vessel sank and the shipment of logs was totally lost. ATC filed its claim, but the insurer denied the claim on several grounds, namely: (1) the vessel had not been seaworthy; (2) the vessel’s crew had lacked sufficient training; (3) the improper loading of the logs on only one side of the vessel had led to the tilting of the ship to that side during the stormy voyage; and (4) the extremely bad weather had been a fortuitous event.**

**ATC now seeks your legal advice to know if its claim was sustainable. What is your advice? Explain your answer. (3%)**

B.

**The newly restored Ford Mustang muscle car was just released from the car restoration shop to its owner, Seth, an avid sportsman. Given his passion for sailing, he needed to go to a round-the-world voyage with his crew on his brand-new 180-meter yacht. Hearing about his coming voyage, Sean, his bosom friend, asked Seth if he could borrow the car for his next roadshow. Sean, who had been in the business of holding motor shows and promotions, proposed to display the restored car of Seth in major cities of the country. Seth agreed and lent the Ford Mustang to Sean. Seth further expressly allowed Sean to use the car even for his own purposes on special occasions during his absence from the country. Seth and Sean then went together to Bayad Agad Insurance Co. (BAIC) to get separate policies for the car in their respective names.**

**BAIC consults you as its lawyer on whether separate policies could be issued to Seth and Sean in respect of the same car.**

**(a) What is insurable interest? (2%)**

**(b) Do Seth and Sean have separate insurable interests? Explain briefly your answer. (3%)**

**II.****A.**

**Morgan, a lawyer, received a lot of diving and other water sports equipment as payment of his professional fees by Dennis, his client in a child custody case. Dennis owned a diving and water sports dealership in Anilao, Batangas. Morgan decided to name Dennis as trustee because he did not have any experience in selling such specialized sports equipment. They executed a trust receipt agreement, with Morgan as entruster and Dennis as trustee.**

**Before the sports equipment could be sold, a strong typhoon hit Batangas. Anilao and other parts of Batangas experienced power outage. Taking advantage of the total darkness, unidentified thieves destroyed the padlocks of the establishment of Dennis, and carted off the equipment inside.**

**Morgan demanded that Dennis pay the value of the stolen equipment, but the latter refused on the ground that he also had suffered from the effects of the typhoon, and insisted that the cause of the loss was a fortuitous event or force majeure.**

**Is the justification of Dennis warranted? Explain your answer. (4%)**

**B.**

**Safe Warehouse, Inc. (Safe) issued on various dates negotiable warehouse receipts to Peter, Paul and Mary covering certain goods deposited by the latter with the former. Peter, Paul and Mary then negotiated and endorsed the warehouse receipts to Cyrus, Magnus and Charles upon payment by the latter of valuable consideration for the warehouse receipts. Cyrus, Magnus and Charles were not aware of, nor were they parties to any irregularity or infirmity affecting the title or the face of the warehouse receipts.**

**On due dates of the warehouse receipts, Cyrus, Magnus and Charles demanded that Safe surrender the goods to them. Safe refused because its warehouseman's claim must first be paid. Cyrus, Magnus and Charles refused to pay, and insisted that such claim was the liability of Peter, Paul and Mary.**

**(a) What is a warehouseman's claim? (3%)**

**(b) Is Safe's refusal to surrender the goods to Cyrus, Magnus and Charles legally justified? Explain your answer. (3%)**

**III.****A.**

Data Realty, Inc. (DRI) was engaged in realty development. The family of Matteo owned 100% of the capital stock of DRI. Matteo was also the President and Chairman of the Board of Directors. Other members of Matteo's family held the major positions in DRI. Because of a nasty takeover fight with D&E Realty Co., Inc. (D&E), another realty developer, for the control of a smaller realty company with vast landholdings, DRI and D&E engaged in an expensive litigation that eventually led to a money judgment being rendered in favor of D&E.

Meantime, DRI, facing inability to pay its liabilities as they fall due but still holding substantial assets, filed a petition for voluntary rehabilitation. Trying to beat the consequences of rehabilitation proceedings, D&E moved in the trial court for the issuance of a writ of execution. The trial court also happened to be the rehabilitation court. The writ of execution was issued.

Serving the writ of execution, Merto, the court sheriff who had just passed his Credit Transactions subject in law school, garnished Matteo's bank accounts, and levied his real properties, including his house and lot in Makati.

Are the garnishment and levy of Matteo's assets lawful and proper? Explain your answer. (4%)

**B.**

Sid used to be the majority stockholder and President of Excellent Corporation (Excellent). When Meridian Co., Inc. (Meridian), a local conglomerate, took over control and ownership of Excellent, it brought along its team of officers. Sid thus became a minority stockholder and a minority member of the Board of Directors. Excellent, being the leading beverage manufacturer in the country, became the monopoly when Meridian's own beverage business was merged with Excellent's, thereby making Excellent virtually the only beverage manufacturer in the country.

Left out and ignored by the management, Sid became a fiscalizer of sorts, questioning during the Board meetings the direction being pursued by Excellent's officers.

Ultimately, Sid demanded the inspection of the books and other corporate records of Excellent. The management refused to comply, saying that his right as a minority stockholder has been much reduced.

State under what conditions may Sid properly assert his right to inspect the books and other corporate records of Excellent. Explain your answer. (3%)

#### IV.

Procopio, a Director and the CEO of Parisian Hotel Co., Inc. (Parisian), was charged along with other company officials with several counts of *estafa* in connection with the non-remittance of SSS premiums the company had collected from its employees. During the pendency of the cases, Parisian filed a petition for rehabilitation. The court, finding the petition to be sufficient in form and substance, issued a commencement order together with a stay or suspension order.

Citing the commencement order, Procopio and the other officers facing the criminal charges moved to suspend the proceedings in the *estafa* cases.

(a) What is a commencement order, and what is the effect of its issuance? Explain your answer. (4%)

(b) Suppose you are the trial judge, will you grant the motion to suspend of Procopio, *et al.*? Explain your answer. (4%)

#### V.

##### A.

Under the Nell Doctrine, so called because it was first pronounced by the Supreme Court in the 1965 ruling in *Nell v. Pacific Farms, Inc.* (15 SCRA 415), the general rule is that where one corporation sells or otherwise transfers all of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor.

State the exceptions to the Nell Doctrine. (4%)

**B.**

**Santorini Corporation (Santorini) was in dire straits. In order to firm up its financial standing, it agreed to entertain the merger and takeover offer of Proficient Corporation (Proficient), the leading company in their line of business. Erica, the major stockholder of Santorini, strongly opposed the merger and takeover. The matter of the merger and takeover by Proficient was included in the agenda of the next meeting of Santorini's Board of Directors. However, owing to Erica's serious illness that required her to seek urgent medical treatment and care in Singapore, she failed to attend the meeting and was consequently unable to cast her vote. The Board of Directors approved the merger and takeover. At the time of the meeting, Santorini had been in the red for a number of years owing to its recurring business losses and reverses.**

**Erica seeks your legal advice regarding her right as a stockholder opposed to the corporate action. Explain your answer. (4%)**

**C.**

**Samito is the President and a Director of Lucky Bank (Lucky), a commercial bank holding its main office in Makati. His brother, Othello, owned a big fishing business based in Malabon. Othello applied for a loan of ₱50 Million with Lucky. Othello followed the ordinary banking procedures in all the stages of the processing of his application. When required, he made the necessary arrangements to guarantee the loan. Thus, in addition to the real estate mortgage, Othello executed a joint and solidary suretyship, issued postdated checks, and submitted all other requirements prescribed by Lucky.**

**When the loan application was about to be approved and the proceeds released, BG Company, a keen competitor of Othello in the fishing industry, wrote to the Board of Directors and the management of Lucky questioning the loan on the ground of conflict of interest due to Samito and Othello being brothers, citing the legal restriction against bank exposure of directors, officers, stockholders or their related interests (DOSRI).**

**(a) What are the three restrictions imposed by law on DOSRI transactions? (4%)**

**(b) Is BG Company's opposition based on conflict of interest and violation of the restrictions on DOSRI transactions legally and factually correct? Explain your answer. (4%)**

**VI.****A.**

Hortencio owned a modest grocery business in Laguna. Because of the economic downturn, he incurred huge financial liabilities. He remained afloat only because of the properties inherited from his parents who had both come from landed families in Laguna. His main creditor was Puresilver Company (Puresilver), the principal supplier of the merchandise sold in his store. To secure his credit with Puresilver, he executed a real estate mortgage with a dragnet clause involving his family's assets worth several millions of pesos.

Nonetheless, Hortencio, while generally in the black, now faces a situation where he is unable to pay his liabilities as they fall due in the ordinary course of business. What will you advise him to do to resolve his dire financial condition? Explain your answer. (5%)

**B.**

Wyatt, an internet entrepreneur, engaged in a sideline business of creating computer programs for selected clients on a per project basis and for servicing basic computer problems of his friends and family members. His main job was being an IT consultant at Futurex Co., a local computer company.

Because of his ill-advised investments in the stock market and the fraud perpetrated against him by his trusted confidante, Wyatt was already drowning in debt, that is, he had far more liabilities than his entire assets.

What legal recourse remained available to Wyatt? Explain your answer. (5%)

**VII.****A.**

Virtucio was a composer of Ilocano songs who has been quite popular in the Ilocos Region. Pascuala is a professor of music in a local university with special focus on indigenous music. When she heard the musical works of Virtucio, she purchased a CD of his works. She copied the CD and sent the second copy to her Music

instructions for the class to listen to the CD and analyze the works of Virtucio.

Did Pascuala thereby infringe Virtucio's copyright? Explain your answer. (4%)

B.

Super Biology Corporation (Super Biology) invented and patented a miracle medicine for the cure of AIDS. Being the sole manufacturer, Super Biology sold the medicine at an exorbitant price. Because of the sudden prevalence of AIDS cases in Metro Manila and other urban areas, the Department of Health (DOH) asked Super Biology for a license to produce and sell the AIDS medicine to the public at a substantially lower price. Super Biology, citing the huge costs and expenses incurred for research and development, refused.

Assuming you are asked your opinion as the legal consultant of the DOH, discuss how you will resolve the matter. (4%)

VIII.

A.

Flora, a frequent traveller, found a purse concealed between the cushions of a large sofa inside the VIP lounge in NAIA while she was waiting for her flight to be called. Inside the purse was a very valuable diamond-studded necklace. She decided not to turn over the purse to the airport management, and instead to keep it. On her return from her travels, she had a dependable jeweller appraise the necklace, and the latter told her that the necklace was easily worth at least ₱5,000,000.00 in the open market. To test the appraisal, she pawned the necklace for ₱2,000,000.00. She then deposited the entire amount in her checking account with Metro Bank. Promptly, Metro Bank reported the transaction to the Anti-Money Laundering Council (AMLC).

Given that her appropriation of the necklace was theft, may Flora be successfully prosecuted for money laundering? Explain briefly your answer. (4%)

B.

Prosperous Bank is a domestic bank with head office in Makati. It handles the banking requirements of thousands of clients.

The AMLC initiated a discreet investigation of the financial transactions of Lorenzo, a suspected drug trafficker based in Naga City. The intelligence group of the AMLC, in coordination with the counterpart group from the PDEA and the NBI, gathered ample evidence establishing Lorenzo's unlawful drug activities. The AMLC had probable cause that his deposits and investments in various banks, including Prosperous Bank, were related to money laundering.

Accordingly, the AMLC now transmits to Prosperous Bank a formal demand to allow its agents to examine the banking transactions of Lorenzo, but Prosperous Bank refuses the demand.

Is Prosperous Bank's refusal justified? Explain your answer. (4%)

IX.

A.

Alfred issued a check for ₱1,000.00 to Benjamin, his friend, as payment for an electronic gadget. The check was drawn against Alfred's account with Good Bank. Benjamin then indorsed the check specially in favor of Cesar. However, Cesar misplaced the check. Dexter, a dormmate of Cesar, found the check, altered its amount to ₱91,000.00, and forged Cesar's indorsement by way of a blank indorsement in favor of Felix, a known jeweler. Felix then caused the deposit of the check in his account with Solar Bank. As collecting bank, Solar Bank stamped "all previous indorsements guaranteed" on the check. Seeing such stamp of the collecting bank, Good Bank paid the amount of ₱91,000.00 on the check.

May Good Bank claim reimbursement from Alfred? Explain your answer. (4%)

B.

In 2006, Donald, an American temporarily residing in Cebu City, issued to Rhodora a check for \$50,000.00 drawn against Wells Fargo Bank with offices in San Francisco, California. Rhodora negotiated the check and delivered it to Yaasmin, a Filipina socialite who frequently travelled locally and internationally. Because of her frequent travels, Yaasmin misplaced the check. It was only 11 years later on, in 2017, when she found the check inside a diary kept in her vault in her Hollywood, California house.

**Discuss and explain the rights of Yaasmin on the check. (4%)**

**X.**

**Wisconsin Transportation Co., Inc. (WTC) owned and operated an inter-island de luxe bus service plying the Manila-Batangas-Mindoro route. Three friends, namely: Aurelio, Jerome and Florencio rode on the same WTC bus from Manila bound for Mindoro. Aurelio purchased a ticket for himself. Jerome, being a boyhood friend of the bus driver, was allowed a free ride by agreeing to sit during the trip on a stool placed in the aisle. Florencio, already penniless after spending all of his money on beer the night before, just stole a ride in the bus by hiding in the on-board toilet of the bus.**

**During the trip, the bus collided with another bus coming from the opposite direction. The three friends all suffered serious physical injuries.**

**What are WTC's liabilities, if any, in favor of Aurelio, Jerome and Florencio? Explain your answer. (4%)**

**XI.**

**TRUE or FALSE - Explain briefly your answer.**

**(a) A conviction under the *Trust Receipts Law* shall bar a prosecution for *estafa* under the *Revised Penal Code*. (2%)**

**(b) The term *capital* in relation to public utilities under Sec. 11, Art. XII of the 1987 Constitution refers to the total outstanding capital stock comprising both common and non-voting preferred shares. (2%)**

**(c) Forgery is a real defense but may only be raised against a holder not in due course. (2%)**

**(d) News reports are not copyrightable. (2%)**

**(e) The law on life insurance prohibits double insurance. (2%)**

**XII.**

**Onassis Shipping, Inc. (Onassis) operated passenger vessels and cargo trucks, and offered its services to the general public. In line**

with its vision and mission to protect the environment, Go-Green Asia (Go-Green), an NGO affiliated with Greenpeace, entered into a contract with Onassis whereby Go-Green would operate with its own crew the M/V Dolphin, an ocean-going passenger vessel of Onassis.

While on its way to Palawan carrying Go-Green's invited guests who were international and local observers desirous of checking certain environmental concerns in the area, the M/V Dolphin encountered high waves and strong winds caused by a typhoon in the West Philippine Sea. The rough seas led to serious physical injuries to some of the guests.

Discuss the liabilities of Onassis and Go-Green to the passengers of the M/V Dolphin. Explain briefly your answer. (3%)

**-NOTHING FOLLOWS-**