

**2017 BAR EXAMINATIONS**  
**REMEDIAL LAW**

November 26, 2017

8:00 A.M. – 12:00 N.N.

**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.

**What trial court outside Metro Manila has exclusive original jurisdiction over the following cases? Explain briefly your answers.**

**(a) An action filed on November 13, 2017 to recover the possession of an apartment unit being occupied by the defendant by mere tolerance of the plaintiff, after the former ignored the last demand to vacate that was duly served upon and received by him on July 6, 2016. (2.5%)**

**(b) A complaint in which the principal relief sought is the enforcement of a seller's contractual right to repurchase a lot with an assessed value of ₱15,000.00. (2.5%)**

## II.

**Santa filed against Era in the RTC of Quezon City an action for specific performance praying for the delivery of a parcel of land subject of their contract of sale. Unknown to the parties, the case was inadvertently raffled to an RTC designated as a *special commercial court*. Later, the RTC rendered judgment adverse to Era, who, upon realizing that the trial court was not a *regular* RTC, approaches you and wants you to file a petition to have the judgment annulled for lack of jurisdiction.**

**What advice would you give to Era? Explain your answer. (4%)**

## III.

**Answer the following briefly:**

**(a) What elements should concur for circumstantial evidence to be sufficient for conviction? (2%)**

**(b) When is bail a matter of judicial discretion? (2%)**

**(c) Give at least two instances when a peace officer or a private person may make a valid warrantless arrest. (2%)**

**(d) What is a *tender of excluded evidence*? (2%)**

## IV.

Give brief answers to the following:

- (a) What is the doctrine of hierarchy of courts? (2%)
- (b) What is the *Harmless Error Rule* in relation to appeals? (2%)
- (c) When does a public prosecutor conduct an inquest instead of a preliminary investigation? (2%)

## V.

After working for 25 years in the Middle East, Evan returned to the Philippines to retire in Manila, the place of his birth and childhood. Ten years before his retirement, he bought for cash in his name a house and lot in Malate, Manila. Six months after his return, he learned that his house and lot were the subject of foreclosure proceedings commenced by ABC Bank on the basis of a promissory note and a deed of real estate mortgage he had allegedly executed in favor of ABC Bank five years earlier.

Knowing that he was not in the country at the time the promissory note and deed of mortgage were supposedly executed, Evan forthwith initiated a complaint in the RTC of Manila praying that the subject documents be declared null and void.

ABC Bank filed a motion to dismiss Evan's complaint on the ground of improper venue on the basis of a stipulation in both documents designating Quezon City as the exclusive venue in the event of litigation between the parties arising out of the loan and mortgage.

Should the motion to dismiss of ABC Bank be granted? Explain your answer. (5%)

## VI.

Hanna, a resident of Manila, filed a complaint for the partition of a large tract of land located in Oriental Mindoro. She impleaded her two brothers John and Adrian as defendants but did not implead Leica and Agatha, her two sisters who were permanent residents of Australia.

Arguing that there could be no final determination of the case without impleading all indispensable parties, John and Adrian moved to dismiss the complaint.

Does the trial court have a reason to deny the motion? Explain your answer. (4%)

## VII.

Elise obtained a loan of ₱3 Million from Merchant Bank. Aside from executing a promissory note in favor of Merchant Bank, she executed a deed of real estate mortgage over her house and lot as security for her obligation. The loan fell due but remained unpaid; hence, Merchant Bank filed an action against Elise to foreclose the real estate mortgage. A month after, and while the foreclosure suit was pending, Merchant Bank also filed an action to recover the principal sum of ₱3 Million against Elise based on the same promissory note previously executed by the latter.

In opposing the motion of Elise to dismiss the second action on the ground of splitting of a single cause of action, Merchant Bank argued that the ground relied upon by Elise was devoid of any legal basis considering that the two actions were based on separate contracts, namely, the contract of loan evidenced by the promissory note, and the deed of real estate mortgage.

Is there a splitting of a single cause of action? Explain your answer. (4%)

## VIII.

### A.

Laura was the lessee of an apartment unit owned by Louie. When the lease expired, Laura refused to vacate the property. Her refusal prompted Louie to file an action for unlawful detainer against Laura who failed to answer the complaint within the reglementary period.

Louie then filed a motion to declare Laura in default. Should the motion be granted? Explain your answer. (3%)

**B.**

Agatha filed a complaint against Yana in the RTC in Makati City to collect ₱350,000.00, an amount representing the unpaid balance on the price of the car Yana had bought from Agatha. Realizing a jurisdictional error in filing the complaint in the RTC, Agatha filed a notice of dismissal before she was served with the answer of Yana. The RTC issued an order confirming the dismissal.

Three months later, Agatha filed another complaint against Yana based on the same cause of action this time in the MeTC of Makati City. However, for reasons personal to her, Agatha decided to have the complaint dismissed without prejudice by filing a notice of dismissal prior to the service of the answer of Yana. Hence, the case was dismissed by the MeTC.

A month later, Agatha refiled the complaint against Yana in the same MeTC.

May Yana successfully invoke the *Two-Dismissal Rule* to bar Agatha's third complaint? Explain your answer. (3%)

**IX.**

Abraham filed a complaint for damages in the amount of ₱750,000.00 against Salvador in the RTC in Quezon City for the latter's alleged breach of their contract of services. Salvador promptly filed his answer, and included a counterclaim for ₱250,000.00 arising from the allegedly baseless and malicious claims of Abraham that compelled him to litigate and to engage the services of counsel, and thus caused him to suffer mental anguish.

Noting that the amount of the counterclaim was below the exclusive original jurisdiction of the RTC, Abraham filed a motion to dismiss vis-à-vis the counterclaim on that ground.

Should the counterclaim of Salvador be dismissed? Explain your answer. (4%)

**X.**

On the basis of an alleged promissory note executed by Harold in favor of Ramon, the latter filed a complaint for ₱950,000.00 against the former in the RTC of Davao City. In an unverified answer,

Harold specifically denied the genuineness of the promissory note. During the trial, Harold sought to offer the testimonies of the following: (1) the testimony of an NBI handwriting expert to prove the forgery of his signature; and (2) the testimony of a credible witness to prove that if ever Harold had executed the note in favor of Ramon, the same was not supported by a consideration.

May Ramon validly object to the proposed testimonies? Give a brief explanation of your answer. (5%)

XI.

A.

Teddy filed against Buboy an action for rescission of a contract for the sale of a commercial lot. After having been told by the wife of Buboy that her husband was out of town and would not be back until after a couple of days, the sheriff requested the wife to just receive the summons in behalf of her husband. The wife acceded to the request, received the summons and a copy of the complaint, and signed for the same.

(a) Was there a valid service of summons upon Buboy? Explain your answer briefly. (3%)

(b) If Buboy files a motion to dismiss the complaint based on the twin grounds of lack of jurisdiction over his person and prescription of the cause of action, may he be deemed to have voluntarily submitted himself to the jurisdiction of the court? Explain your answer briefly (3%).

B.

What is the mode of appeal applicable to the following cases, and what issues may be raised before the reviewing court/tribunal?

(a) The decision or final order of the National Labor Relations Commission. (1.5%)

(b) The judgment or final order of the RTC in the exercise of its appellate jurisdiction. (1.5%)

**XII.****A.**

Judgment was rendered against defendant Jaypee in an action for unlawful detainer. The judgment ordered Jaypee to vacate and to pay attorney's fees in favor of Bart, the plaintiff.

To prevent the immediate execution of the judgment, would you advise the posting of a *supersedeas* bond as counsel for Jaypee? Explain your answer briefly? (2%).

**B.**

A temporary restraining order (TRO) was issued on September 20, 2017 by the RTC against defendant Jeff enjoining him from entering the land of Regan, the plaintiff.

On October 9, 2017, upon application of Regan, the trial court, allegedly in the interest of justice, extended the TRO for another 20 days based on the same ground for which the TRO was issued.

On October 15, 2017, Jeff entered the land subject of the TRO.

May Jeff be liable for contempt of court? Why? (4%)

**XIII.**

Police officers arrested Mr. Druggie in a buy-bust operation and confiscated from him 10 sachets of *shabu* and several marked genuine peso bills worth ₱5,000.00 used as the buy-bust money during the buy-bust operation.

At the trial of Mr. Druggie for violation of R.A. No. 9165 (*Comprehensive Dangerous Drug Act of 2002*), the Prosecution offered in evidence, among others, photocopies of the confiscated marked genuine peso bills. The photocopies were offered to prove that Mr. Druggie had engaged at the time of his arrest in the illegal selling of dangerous drugs.

Invoking the *Best Evidence Rule*, Atty. Maya Bang, the defense counsel, objected to the admissibility of the photocopies of the confiscated marked genuine peso bills.

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**Should the trial judge sustain the objection of the defense counsel? Briefly explain your answer (5%)**

**XIV.**

**Immediately before he died of gunshot wounds to his chest, Venancio told the attending physician, in a very feeble voice, that it was Arnulfo, his co-worker, who had shot him. Venancio added that it was also Arnulfo who had shot Vicente, the man whose cadaver was lying on the bed beside him.**

**In the prosecution of Arnulfo for the criminal killing of Venancio and Vicente, are all the statements of Venancio admissible as dying declarations? Explain your answer. (5%)**

**XV.**

**In an attempt to discredit and impeach a Prosecution witness in a homicide case, the defense counsel called to the stand a person who had been the boyhood friend and next-door neighbor of the Prosecution witness for 30 years. One question that the defense counsel asked of the impeaching witness was: *"Can you tell this Honorable Court about the general reputation of the prosecution witness in your community for aggressiveness and violent tendencies?"***

**Would you, as the trial prosecutor, interpose your objection to the question of the defense counsel? Explain your answer. (4%)**

**XVI.**

**Engr. Magna Nakaw, the District Engineer of the DPWH in the Province of Walang Progreso, and Mr. Pork Chop, a private contractor, were both charged in the Office of the Ombudsman for violation of the *Anti-Graft and Corrupt Practices Act* (R.A. No. 3019) under a conspiracy theory.**

**While the charges were undergoing investigation in the Office of the Ombudsman, Engr. Magna Nakaw passed away. Mr. Pork Chop immediately filed a motion to terminate the investigation and to dismiss the charges against him, arguing that because he was charged in conspiracy with the deceased, there was no longer a**

conspiracy to speak of and, consequently, any legal ground to hold him for trial had been extinguished.

Rule on the motion to terminate filed by Mr. Pork Chop, with brief reasons. (5%).

#### XVII.

Juancho entered a plea of *guilty* when he was arraigned under an information for homicide. To determine the penalty to be imposed, the trial court allowed Juancho to present evidence proving any mitigating circumstance in his favor. Juancho was able to establish complete self-defense.

Convinced by the evidence adduced by Juancho, the trial court rendered a verdict of acquittal.

May the Prosecution assail the acquittal without infringing the constitutional guarantee against double jeopardy in favor of Juancho? Explain your answer. (5%)

#### XVIII.

Tomas was criminally charged with serious physical injuries allegedly committed against Darwin. During the pendency of the criminal case, Darwin filed a separate civil action for damages based on the injuries he had sustained.

Tomas filed a motion to dismiss the separate civil action on the ground of *litis pendentia*, pointing out that when the criminal action was filed against him, the civil action to recover the civil liability from the offense charged was also deemed instituted. He insisted that the basis of the separate civil action was the very same act that gave rise to the criminal action.

Rule on Tomas' motion to dismiss, with brief reasons. (5%)

#### XIX.

Boy Maton, a neighborhood tough guy, was arrested by a police officer on suspicion that he was keeping prohibited drugs in his clutch bag. When Boy Maton was searched immediately after the arrest, the officer found and recovered 10 sachets of *shabu* neatly

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tucked in the inner linings of the clutch bag. At the time of his arrest, Boy Maton was watching a basketball game being played in the town plaza, and he was cheering for his favorite team. He was subsequently charged with illegal possession of dangerous drugs, and he entered a plea of *not guilty* when he was arraigned.

During the trial, Boy Maton moved for the dismissal of the information on the ground that the facts revealed that he had been illegally arrested. He further moved for the suppression of the evidence confiscated from him as being the consequence of the illegal arrest, hence, the *fruit of the poisonous tree*.

The trial court, in denying the motions of Boy Maton, explained that at the time the motions were filed Boy Maton had already waived the right to raise the issue of the legality of the arrest. The trial court observed that, pursuant to the *Rules of Court*, Boy Maton, as the accused, should have assailed the validity of the arrest before entering his plea to the information. Hence, the trial court opined that any adverse consequence of the alleged illegal arrest had also been equally waived.

Comment on the ruling of the trial court. (5%)

-NOTHING FOLLOWS-

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