

2018 BAR EXAMINATIONS

REMEDIAL LAW

I. GENERAL PRINCIPLES OF REMEDIAL LAW

- A. Concepts in Remedial Law
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- C. Rule-making power of the Supreme Court
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- D. Nature of Philippine courts
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 - 2. Classification of courts
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- A. Jurisdiction of Courts
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 - 4. Regional Trial Courts
 - 5. Family Courts
 - 6. Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts
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- B. Jurisdiction over the parties
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- C. Jurisdiction over the subject matter
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 - 2. Jurisdiction versus the exercise of jurisdiction
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- D. Jurisdiction over the issues
- E. Jurisdiction over the *res* or the property in litigation
- F. Jurisdiction over cases covered by The Revised Rules of Procedure for Small Claims Cases, The Revised Rules on Summary Procedure, and Barangay Conciliation
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 - 5. Splitting a single cause of action and its effects
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 - (3) Effect on the counterclaim when the complaint is dismissed
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- J. Dismissal of Actions
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 - 2. Dismissal upon motion of plaintiff; effect on existing counterclaim
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- K. Pre-Trial
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 - 2. Nature and purpose
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 - a) Consequences of refusal to answer
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 - a) Reference by consent or ordered on motion
 - b) Powers of the commissioner
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- P. Demurrer to Evidence
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- Q. Judgments and Final Orders
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 - c) When the case not fully adjudicated
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- R. Post-judgment Remedies
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 - e) Modes of appeal
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 - 3. Issuance and contents of order of attachment; affidavit and bond
 - 4. Rule on prior or contemporaneous service of summons
 - 5. Manner of attaching real and personal property; when property attached is claimed by third persons
 - 6. Discharge and the counter-bond
 - 7. Satisfaction of judgment out of property attached
- C. Preliminary injunction
 - 1. Definitions and differences: preliminary injunction and temporary restraining order (TRO)
 - 2. Requisites
 - 3. Kinds of injunction
 - 4. When writ may be issued
 - 5. Grounds for issuance of preliminary injunction
 - 6. Grounds for objection to, or for the dissolution of injunction or restraining order
 - 7. Duration of TRO
 - 8. In relation to RA 8975 - ban on issuance of TRO or writ of injunction in cases involving government infrastructure projects
 - 9. Rule on prior or contemporaneous service of summons in relation to attachment
- D. Receivership
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 - 2. Requisites
 - 3. Requirements before issuance of an order appointing a receiver
 - 4. General powers of a receiver
 - 5. Two (2) kinds of bonds
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- E. Replevin
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 - 3. Affidavit and bond; Redelivery bond
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 - 2. Requisites of an action for declaratory relief
 - 3. When may the court refuse to make judicial declaration
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 - 5. Proceedings considered as similar remedies
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- D. Review of judgments and final orders or resolutions of the COMELEC and COA.
 - 1. Application of Rule 65 under Rule 64
 - 2. Distinction in the application of Rule 65 to judgments of the COMELEC and COA and the application of Rule 65 to other tribunals, persons, and officers
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 - a) Certiorari distinguished from appeal by certiorari
 - b) Prohibition and mandamus distinguished from injunction

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- G. Expropriation
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- H. Foreclosure of real estate mortgage
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 5. Partition by commissioners; Appointment of commissioners; Commissioners' report; Court action upon commissioners' report
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- J. Forcible entry and unlawful detainer
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 3. How to determine jurisdiction in *accion publiciana* and *accion reivindicatoria*
 4. Who may institute the action and when; against whom may the action be maintained
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- K. Contempt
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 2. Purpose and nature of each
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- A. Settlement of Estate of Deceased Persons, Venue, and Process
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- B. Summary Settlement of Estates
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- C. Production and Probate of Will
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 2. Who may petition for probate; persons entitled to notice
- D. Allowance or Disallowance of Will
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- E. Requisites before a will proved abroad would be allowed in the Philippines
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- F. Letters Testamentary and Administration
 1. When and to whom letters of administration granted
 2. Order of preference
 3. Opposition to issuance of letters testamentary; simultaneous filing of petition for administration
 4. Powers and duties of executors and administrators; restrictions on their powers
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- G. Claims against the Estate
 - 1. Time within which claims should be filed; exceptions
 - 2. Statute of non-claims
 - 3. Claim of executor or administrator against the estate
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- H. Actions By and Against Executors and Administrators
 - 1. Actions that may be brought against executors and administrators
 - 2. Requisites before creditor may bring an action for recovery of property fraudulently conveyed by the deceased
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 - 4. Instances when probate court may issue writ of execution
- K. Trustees
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 - 2. Condition of the bond
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- O. Writ of *Amparo* (A.M. No. 07-9-12-SC)
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 11. Consolidation
 12. Interim reliefs available to petitioner and respondent
 13. Quantum of proof in application for issuance of writ of *amparo*
- P. Writ of *Habeas Data* (A. M. No. 08-1-16-SC)
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 2. Availability of writ
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- R. Absentees
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- B. Prosecution of Offenses
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 6. Designation of offense
 7. Cause of the accusation
 8. Duplicity of the offense; exception
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 10. Venue of criminal actions
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- C. Prosecution of Civil Action
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- E. Arrest
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 - a) Determination of probable cause for issuance of warrant of arrest
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- J. Trial
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- C. Burden of proof and burden of evidence
- D. Presumptions
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- E. Liberal construction of the Rules on Evidence
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- G. Judicial Notice and Judicial Admissions
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- H. Object (Real) Evidence
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 - b) Public and private documents
 - c) When a private writing requires authentication; proof of a private writing

- d) When evidence of authenticity of a private writing is not required (ancient documents)
- e) How to prove genuineness of a hand writing
- f) Public documents as evidence; proof of official records
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- j) How a judicial record is impeached
- k) Proof of notarial documents
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J. Testimonial Evidence

- 1. Qualification of a witness
- 2. Competency versus credibility of a witness
- 3. Disqualifications of witnesses
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 - b) Disqualification by reason of marriage
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 - (a) Husband and wife
 - (b) Attorney and client
 - (c) Physician and patient
 - (d) Priest and penitent
 - (e) Public officers
 - (f) Parental and filial privilege rule
- 4. Examination of a witness
 - a) Judicial Affidavit Rule (A.M. No. 12-8-8-SC)
 - (1) Scope and where applicable
 - (2) Contents and procedure
 - (3) Application to criminal actions
 - (4) Effect of non-compliance
 - (5) Effect on other rules

5. Rights and obligations of a witness
6. Order in the examination of an individual witness
 - a) Direct examination
 - b) Cross examination
 - c) Re-direct examination
 - d) Re-cross examination
 - e) Recalling the witness
7. Leading and misleading questions
8. Methods of impeaching the adverse party's witness
9. How the witness is impeached by evidence of inconsistent statements (laying the predicate)
10. Evidence of the good character of a Witness
11. Admissions and confessions
 - a) *Res inter alios acta rule*
 - b) Admission by a party
 - c) Admission by a third party
 - d) Admission by a co-partner or agent
 - e) Admission by a conspirator
 - f) Admission by privies
 - g) Admission by silence
 - h) Confessions
 - i) Similar acts as evidence
12. Hearsay rule
 - a) Meaning of hearsay
 - b) Reason for exclusion of hearsay evidence
 - c) Exceptions to the hearsay rule
 - (1) Dying declaration
 - (2) Declaration against interest
 - (3) Act or declaration about pedigree
 - (4) Family reputation or tradition regarding pedigree
 - (5) Common reputation
 - (6) Part of the *res gestae*
 - (7) Entries in the course of business
 - (8) Entries in the official records
 - (9) Commercial lists and the like

- (10) Learned treatises
- (11) Testimony or deposition at a former trial
- 13. Opinion rule
 - a) Opinion of expert witness
 - b) Opinion of ordinary witness
- 14. Character evidence
 - a) Criminal Cases
 - b) Civil Cases
- K. Offer and objection
 - 1. Offer of evidence
 - a) When to make an offer
 - b) Objection
 - c) Repetition of an objection
 - d) Ruling
 - e) Striking out of an answer
 - f) Tender of excluded evidence

IX. REVISED RULE ON SUMMARY PROCEDURE

- A. Cases covered by the Rule
- B. Prohibited pleadings and motions
- C. Effect of failure to answer
- D. Preliminary conference and appearances of parties

X. RULES OF PROCEDURE FOR SMALL CLAIMS CASES (AM No. 08-8-7-SC)

- A. Scope and applicability of the rule
- B. Commencement of small claims action; Response
- C. Prohibited pleadings and motions
- D. Appearances
- E. Hearing; duty of the judge
- F. Finality of judgment

XI. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (AM No. 09-6-8-SC)

- A. Scope and Applicability of the Rule
- B. Civil Procedure
 1. Prohibition against temporary restraining order and preliminary injunction
 2. Pre-trial conference; consent decree
 3. Prohibited pleadings and motions
 4. Temporary Environmental Protection Order
 5. Judgment and execution; reliefs in a citizen's suit
 6. Permanent Environmental Protection Order; writ of continuing *mandamus*
 7. Strategic lawsuit against public participation
- C. Special Proceedings
 1. Writ of *Kalikasan*
 2. Prohibited pleadings and motions
 3. Discovery measures
 4. Writ of continuing *mandamus*
- D. Criminal Procedure
 1. Who may file
 2. Institution of criminal and civil action
 3. Arrest without warrant, when valid
 4. Strategic lawsuit against public participation
 5. Procedure in the custody and disposition of seized items
 6. Bail
 7. Arraignment and plea
 8. Pre-trial
 9. Subsidiary liabilities
- E. Evidence
 1. Precautionary principle
 2. Documentary evidence

IMPORTANT NOTES:

- The listing of covered topics is not intended and should not be used by law schools as a course outline. This listing has been drawn up for the limited purpose of ensuring that the Bar candidates are guided on the coverage of the 2018 Bar Examinations.

- All laws, rules, issuances, and jurisprudence pertinent to every subject and its listed topics as of June 30, 2017 are examinable materials within the coverage of the 2018 Bar Examinations.
- Principles of law are not covered by the cut-off period stated herein.

