

2018 BAR EXAMINATIONS

CRIMINAL LAW

November 18, 2018

2:00 P.M. – 6:00 P.M.

INSTRUCTIONS

1. This questionnaire contains ten (10) pages including this page. Check the number of pages and their proper sequencing. You may write notes on this questionnaire.

Read each question very carefully and write your answers in your Bar Examination Notebook in the same order as the questions. Write your answers only on the front page of every sheet. Note well the allocated percentage points for each question or sub-question. In your answers, use the numbering system in the questionnaire.

2. Answer the questions legibly, clearly, and concisely. Start each answer on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

3. Your answer should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at a sound or logical conclusion. Always support your answer with the pertinent laws, rules, and/or jurisprudence.

A MERE “YES” OR “NO” ANSWER WITHOUT ANY CORRESPONDING EXPLANATION OR DISCUSSION WILL NOT BE GIVEN FULL CREDIT. THUS, ALWAYS BRIEFLY BUT FULLY EXPLAIN YOUR ANSWERS ALTHOUGH THE QUESTION DOES NOT EXPRESSLY ASK FOR AN EXPLANATION. DO NOT REWRITE OR REPEAT THE QUESTION ON YOUR NOTEBOOK.

4. Do not write your name or any extraneous note/s or distinctive marking/s on your Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner). Writing, leaving, or making any distinguishing or identifying mark in the Notebook is considered cheating and can disqualify you.

YOU CAN BRING HOME THIS QUESTIONNAIRE


JUSTICE MARIANO C. DEL CASTILLO
Chairperson
2018 Bar Examinations

I

Roberto and Ricardo have had a long-standing dispute regarding conflicting claims over the ownership of a parcel of land. One night, Roberto was so enraged that he decided to kill Ricardo. Roberto asked his best friend, Rafael, to lend him a gun and drive him to Ricardo's house. Rafael knew about Roberto's plan to kill Ricardo, but agreed to lend him a gun nevertheless. Rafael also drove Roberto to the street corner nearest the house of Ricardo. Rafael waited for him there, until the task had been accomplished, so that he could drive Roberto to the next town to evade arrest. Roberto also asked another friend, Ruel, to stand guard outside Ricardo's house, for the purpose of warning him in case there was any danger or possible witnesses, and to keep other persons away from the vicinity. All three — Roberto, Rafael and Ruel — agreed to the plan and their respective roles.

On the agreed date, Rafael drove Roberto and Ruel to the nearest corner near Ricardo's house. Roberto and Ruel walked about 50 meters where Ruel took his post as guard, and Roberto walked about five (5) meters more, aimed the gun at Ricardo's bedroom, and peppered it with bullets. When he thought that he had accomplished his plan, Roberto ran away, followed by Ruel, and together they rode in Rafael's car where they drove to the next town to spend the night there. It turned out that Ricardo was out of town when the incident happened, and no one was in his room at the time it was peppered with bullets. Thus, no one was killed or injured during the incident.

- (a) Was a crime committed? If yes, what is/are the crime/s committed (2.5%); and
- (b) If a crime was committed, what is the degree of participation of Roberto, Rafael, and Ruel? (2.5%)

II

Rico, a hit man, positioned himself at the rooftop of a nearby building of a bank, to serve as a lookout for Red and Rod while the two were robbing the bank, as the three of them had previously planned. Ramiro, a policeman, responded to the reported robbery. Rico saw Ramiro and, to eliminate the danger of Red and Rod being caught, pulled the trigger of his rifle, intending to kill Ramiro. He missed as Ramiro slipped and fell down to the ground. Instead, a woman depositor who was coming out of the bank was fatally shot. After their apprehension, Rico, Red, and Rod were charged with the special complex crime of robbery with homicide. Rico's defense was that he never intended to shoot and kill the woman, only Ramiro. Red and Rod's defense was that they were not responsible for the death of the woman as they had no participation therein.

- (a) Is Rico's defense meritorious? (2.5%)
- (b) Is Red and Rod's defense meritorious? (2.5%)



III

On February 5, 2017, Rho Rio Fraternity held initiation rites. Present were: (i) Redmont, the Lord Chancellor and head of the fraternity; (ii) ten (10) members, one (1) of whom was Ric, and (iii) five (5) neophytes, one (1) of whom was Ronald. Absent were: (i) Rollie, the fraternity's Vice Chancellor and who actually planned the initiation; and (ii) Ronnie, the owner of the house where the initiation was conducted.

Due to the severe beating suffered by Ronald on that occasion, he lost consciousness and was brought to the nearest hospital by Redmont and Ric. However, Ronald was declared dead on arrival at the hospital.

During the investigation of the case, it was found out that, although Ronald really wanted to join the fraternity because his father is also a member of the same fraternity, it was his best friend Ric who ultimately convinced him to join the fraternity and, as a prerequisite thereto, undergo initiation. It was also shown that Redmont and Ric did not actually participate in the beating of the neophytes (hazing). The two (2) either merely watched the hazing or helped in preparing food. And, lastly, two (2) days prior thereto, Ronnie texted Rollie that the fraternity may use his house as the venue for the planned initiation.

Aside from those who actually participated in the hazing, Redmont, Rollie, Ric, and Ronnie were criminally charged for the hazing of Ronald that resulted in the latter's death.

- (a) Are the four criminally liable? (2.5%)
- (b) Can all those criminally charged be exonerated upon proof that Ronald, knowing the risks, voluntarily submitted himself to the initiation? Will the absence of proof that the accused intended to kill the victim affect their liability? (2.5%)

IV

On the way home from work, Rica lost her necklace to a snatcher. A week later, she saw what looked like her necklace on display in a jewelry store in Raon. Believing that the necklace on display was the same necklace snatched from her the week before, she surreptitiously took the necklace without the knowledge and consent of the store owner. Later, the loss of the necklace was discovered, and Rica was shown on the CCTV camera of the store as the culprit. Accordingly, Rica was charged with theft of the necklace. Rica raised the defense that she could not be guilty as charged because she was the owner of the necklace and that the element of intent to gain was lacking.

What should be the verdict if:

- (a) The necklace is proven to be owned by Rica? (2.5%)
- (b) It is proven that the store acquired the necklace from another person who was the real owner of the necklace? (2.5%)



V

With a promise of reward, Robert asked Romy to bring him a young girl that he (Robert) can have carnal knowledge with. Romy agreed, seized an eight-year old girl and brought her to Robert. After receiving his reward, Romy left while Robert proceeded to have carnal knowledge with the girl.

- (a) For what felony may Robert and Romy be charged? (2.5%)
- (b) Will your answer in (a) be the same if the victim is a 15-year old lass who was enticed, through cunning and deceit of Romy, to voluntarily go to the house of Robert where the latter subsequently had carnal knowledge with her? (2.5%)

VI

A group of homeless and destitute persons invaded and occupied the houses built by the National Housing Authority (NHA) for certain military personnel. To gain entry to the houses, the group intimidated the security guards posted at the entrance gate with the firearms they were carrying and destroyed the padlocks of the doors of the houses with the use of crowbars and hammers. They claimed that they would occupy the houses and live therein because the houses were idle and they were entitled to free housing from the government.

For the reason that the houses were already awarded to military personnel who have been found to have fully complied with the requirements for the award thereof, NHA demanded the group to vacate within ten (10) days from notice the houses they occupied and were still occupying. Despite the lapse of the deadline, the group refused to vacate the houses in question.

What is the criminal liability of the members of the group, if any, for their actions? (5%)

VII

Robbie and Rannie are both inmates of the National Penitentiary, serving the maximum penalty for robbery which they committed some years before and for which they have been sentenced by final judgment. One day, Robbie tried to collect money owed by Rannie. Rannie insisted that he did not owe Robbie anything, and after a shouting episode, Rannie kicked Robbie in the stomach. Robbie fell to the ground in pain, and Rannie left him to go to the toilet to relieve himself. As Rannie was opening the door to the toilet and with his back turned against Robbie, Robbie stabbed him in the back with a bladed weapon that he had concealed in his waist. Hurt, Rannie ran to the nearest "kubol" where he fell. Robbie ran after him and, while Rannie was lying on the ground, Robbie continued to stab him, inflicting a total of 15 stab wounds. He died on the spot. Robbie immediately surrendered to the Chief Warden. When prosecuted for the murder of Rannie, Robbie raised provocation and voluntary surrender as mitigating circumstances. The prosecution, on the other hand, claimed that there was treachery in the commission of the crime.



- (a) Is Robbie a recidivist, or a quasi-recidivist? (2.5%)
- (b) Can the mitigating circumstances raised by Robbie, if proven, lower the penalty for the crime committed? (2.5%)

VIII

Randy was prosecuted for forcible abduction attended by the aggravating circumstance of recidivism. After trial, the court held that the prosecutor was able to prove the charge. Nonetheless, it appreciated in favor of Randy, on the basis of the defense's evidence, the mitigating circumstances of voluntary surrender, uncontrollable fear, and provocation. Under Art. 342 of the Revised Penal Code (RPC), the penalty for forcible abduction is *reclusion temporal*.

Applying the Indeterminate Sentence Law, what penalty should be imposed on Randy? (5%)

IX

Rashid asked Rene to lend him PhP50,000, payable in six (6) months and, as payment for the loan, Rashid issued a postdated check for the said amount plus the agreed interest. Rashid assured Rene that the account would have sufficient funds on maturity date. On that date, Rene presented the check to the drawee bank for payment but it was dishonored for the reason that it was drawn against insufficient funds (DAIF).

Rene sent Rashid a timely notice of dishonor of the check and demanded the latter to make good the same within five (5) days from notice. After the lapse of the five (5)-day notice, Rene redeposited the check with the drawee bank but it was again dishonored for the same reason, *i.e.*, DAIF. Rene thereafter filed two (2) separate criminal actions against Rashid: (1) Estafa under Art. 315(2)(d) of the RPC, as amended by R.A. No. 4885, *i.e.*, estafa committed by postdating a check, or issuing a check in payment of an obligation without sufficient funds in the bank; and (2) Violation of B.P. 22 or the Bouncing Checks Law.

- (a) Can he be held liable under both actions? (2.5%)
- (b) If the check is presented for payment after four (4) months, but before it becomes stale, can the two actions still proceed? (2.5%)

X

Rafa caught his wife, Rachel, in the act of having sexual intercourse with Rocco in the maid's room of their own house. Rafa shot both lovers in the chest, but they survived. Rafa charged Rachel and Rocco with adultery, while Rachel and Rocco charged Rafa with frustrated parricide and frustrated homicide.

In the adultery case, Rachel and Rocco raised the defense that Rafa and Rachel, prior to the incident in question, executed a notarized document whereby they agreed to live separately and allowed each of them to get a new partner and

live with anyone of their choice as husband and wife. This document was executed after Rachel discovered that Rafa was cohabiting with another woman. Thus, they also raised the defense of *in pari delicto*. In the frustrated parricide and frustrated homicide cases, Rafa raised the defense that, having caught them *in flagrante delicto*, he has no criminal liability.

Assuming that all defenses have been proven:

- (a) Will the action for adultery prosper? (2.5%)
- (b) Will the actions for frustrated parricide and frustrated homicide prosper? (2.5%)

XI

Wielding loose firearms, Rene and Roan held up a bank. After taking the bank's money, the robbers ran towards their getaway car, pursued by the bank security guards. As the security guards were closing in on the robbers, the two fired their firearms at the pursuing security guards. As a result, one of the security guards was hit on the head causing his immediate death.

For the taking of the bank's money and killing of the security guard with the use of loose firearms, the robbers were charged in court in two separate informations, one for robbery with homicide attended by the aggravating circumstance of use of loose firearms, and the other for illegal possession of firearms.

Are the indictments correct? (5%)

XII

Orphaned when still an infant, Rocky lived under the care of his grandmother Rosario. Now 18, Rocky entered Rosario's bedroom who was then outside doing her daily marketing. He ransacked the bedroom and took Rosario's money and valuables amounting to PhP100,000.

When Rosario came home, she found her room in disarray, and her money and valuables gone. She confronted Rocky, who confessed to taking the money and valuables in order to pay his debts.

- (a) What crime, if any, did Rocky commit? (2.5%)
- (b) Does he incur criminal and/or civil liability? (2.5%)

XIII

The brothers Roberto and Ricardo Ratute, both Filipino citizens, led a group of armed men in seizing a southern island in the Philippines, and declaring war against the duly constituted government of the country. The Armed Forces of the Philippines (AFP), led by its Chief of Staff, General Riturban, responded and a full

scale war ensued between the AFP and the armed men led by the brothers. The armed conflict raged for months.

When the brothers-led armed men were running out of supplies, Ricalde, also a Filipino, and a good friend and supporter of the Ratute brothers, was tasked to leave for abroad in order to solicit arms and funding for the cash-strapped brothers. He was able to travel to Rwanda, and there he met with Riboli, a citizen and resident of Rwanda, who agreed to help the brothers by raising funds internationally, and to send them to the Ratute brothers in order to aid them in their armed struggle against the Philippine government. Before Ricalde and Riboli could complete their fund-raising activities for the brothers, the AFP was able to reclaim the island and defeat the Ratute-led uprising.

Ricalde and Riboli were charged with conspiracy to commit treason. During the hearing of the two cases, the government only presented as witness, General Riturban, who testified on the activities of the Ratute brothers, Ricalde, and Riboli.

- (a) Can Ricalde and Riboli be convicted of the crime of conspiracy to commit treason? (2.5%)
- (b) Will the testimony of General Riturban, assuming he can testify on acts within his personal knowledge, be sufficient to convict the Ratute brothers, Ricalde, and Riboli? (2.5%)

XIV

Robin and Rowell are best friends and have been classmates since grade school. When the boys graduated from high school, their parents gifted them with a trip to Amsterdam, all expenses paid. At age 16, this was their first European trip. Thrilled with a sense of freedom, they decided to try what Amsterdam was known for. One night, they scampered out of their hotel room, went to the De Wallen, better known as the Red-light District of Amsterdam. There, they went to a "coffee shop" which sells only drinks and various items made from opium poppy, cannabis, and marijuana, all of which are legal in Amsterdam. They represented themselves to be of age, and were served, and took shots of, cannabis and marijuana products. They indulged in these products the whole night, even if it was their first time to try them.

Before returning to Manila, they bought a dozen lollipops laced with cannabis, as souvenir and "pasalubong" for their friends. They were accosted at the Manila International Airport and were charged with importation of dangerous drugs under the Comprehensive Dangerous Drugs Act of 2002. They were also charged with use of dangerous drugs after pictures of them in the "coffee shop" in Amsterdam were posted on Facebook, showing them smoking and taking shots of a whole menu of cannabis and marijuana products. Their own captions on their Facebook posts clearly admitted that they were using the dangerous products. The pictures were posted by them through Private Messenger (PM) only for their close friends, but Roccino, the older brother of one of their best friends, was able to get hold of his younger brother's password, and without authority from his brother, accessed his PM and shared Robin and Rowell's Amsterdam photos on Facebook.

- (a) Can Robin and Rowell be prosecuted for use of dangerous drugs for their one-night use of these products in Amsterdam? (2.5%)
- (b) Can they be prosecuted for importation of dangerous drugs? (2.5%)
- (c) If found liable under either (a) or (b) above, what is the penalty that may be imposed on them? (2.5%)
- (d) Can Roccino be prosecuted for the act of accessing and sharing on Facebook the private pictures sent by PM to his brother? If yes, for what crime? (2.5%)

XV

During the presentation of the prosecution's evidence, Reichter was called to the witness stand with the stated purpose that he would testify that his wife Rima had shot him in the stomach with a .38 caliber pistol, resulting in near fatal injuries. Upon objection of the defense on the ground of the marital disqualification rule, the presiding judge (Judge Rossano) disallowed Reichter from testifying in the case. Its motion for reconsideration having been denied, the People of the Philippines went up on *certiorari* to the Court of Appeals (CA) questioning Judge Rossano's ruling.

After due proceedings, the CA rendered judgment declaring Judge Rossano's ruling void *ab initio* for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction, and directing Judge Rossano to allow Reichter to testify in the criminal case for the stated purpose. This is based on the fact that the marital privilege rule does not apply where a spouse committed the crime against the other.

As the CA decision became final and executory, the criminal case before the RTC was calendared for trial. At the scheduled trial, the prosecution called Reichter to the witness stand in order to testify on the same matter it earlier announced. The defense objected on the ground that the CA erred in its disposition of the *certiorari* case. Judge Rossano sustained the objection and again disallowed Reichter from testifying in the criminal case. Repeated pleas from the prosecution for Judge Rossano to reconsider his ruling and to allow Reichter to testify fell on deaf ears.

May Judge Rossano be convicted of a crime? If yes, what crime did he commit? (5%)

XVI

For the past five years, Ruben and Rorie had been living together as husband and wife without the benefit of marriage. Initially, they had a happy relationship which was blessed with a daughter, Rona, who was born on March 1, 2014. However, the partners' relationship became sour when Ruben began indulging in vices, such as women and alcohol, causing frequent arguments between them. Their relationship got worse when, even for slight mistakes, Ruben

would lay his hands on Rorie. One day, a tipsy Ruben barged into their house and, for no reason, repeatedly punched Rorie in the stomach. To avoid further harm, Rorie ran out of the house. But Ruben pursued her and stripped her naked in full view of their neighbors; and then he vanished.

Ten days later, Ruben came back to Rorie and pleaded for forgiveness. However, Rorie expressed her wish to live separately from Ruben and asked him to continue providing financial support for their daughter Rona. At that time, Ruben was earning enough to support a family. He threatened to withdraw the support he was giving to Rona unless Rorie would agree to live with him again. But Rorie was steadfast in refusing to live with Ruben again, and insisted on her demand for support for Rona. As the ex-lovers could not reach an agreement, no further support was given by Ruben.

What crimes did Ruben commit:

- (a) For beating and humiliating Rorie? (2.5%)
- (b) For withdrawing support for Rona? (2.5%)

XVII

Robina bought from Ramsey a seaside property located in Romblon. At that time, she was in the process of returning to the Philippines as a returning resident, after retiring from her work in Russia, and was planning to set up a diving school in the area. In a non-notarized "Kasunduan ng Pagbibili," Ramsey represented the property as alienable and disposable, and that he had a valid title to the property. When the sale was completed, and as she was applying for permits and licenses for her school, she found out that the property was a public non-alienable and non-disposable land which Ramsey had bought from someone who only had a foreshore lease over the same. As she was bent on setting up the diving school in the area, having made all the preparations and having already bought all the equipment, she filed a Miscellaneous Lease Application (MLA) with the Department of Environment and Natural Resources (DENR) at the Community Environment and Natural Resources Office in Romblon. In her application, she stated that she was a Filipino citizen, although she was still a naturalized Russian citizen at that time. It was only six months after she filed the MLA that she filed her petition for dual citizenship under R.A. No. 9225. When DENR discovered that, at the time of filing the MLA, she was still a Russian citizen, her application was denied and she was charged with falsification of a public document for misrepresenting herself as a Filipino citizen. Infuriated, Robina also filed charges against Ramsey for falsification of a private document for stating in their "Kasunduan" that the property was alienable and disposable.

In the case for falsification of a public document, Robina's defense was that, at the time she filed the MLA, she had every intention to reacquire Philippine citizenship, as in fact she filed for dual citizenship six months thereafter, and that she had no intent to gain or to injure the Philippine government since she expected that her application for dual citizenship would be approved before the MLA could be approved. On the other hand, she claimed in the action against Ramsey that intent to gain was present since he received the purchase price as a result of his

misrepresentation. Ramsey's defense was that he had a valid Transfer Certificate of Title in his name, and he had a right to rely on his title.

- (a) Will the case for falsification of public document filed against Robina prosper? (2.5%)
- (b) Will the case for falsification of private document filed against Ramsey prosper? (2.5%)

XVIII

Mrs. Robinson is a teacher at an elementary school. In one of her classes, she found, to her consternation, that an 8-year old Richard was always the cause of distraction, as he was fond of bullying classmates smaller in size than him.

One morning, Reymart, a 7-year old pupil, cried loudly and complained to Mrs. Robinson that Richard had boxed him on the ear. Confronted by Mrs. Robinson about Reymart's accusation, Richard sheepishly admitted the same. Because of this, Mrs. Robinson ordered Richard to lie face down on a desk during class. After Richard obliged, Mrs. Robinson hit him ten (10) times on the legs with a ruler and pinched his ears. Richard ran home and reported to his mother what he had suffered at the hands of Mrs. Robinson. When Richard's parents went to Mrs. Robinson to complain, she interposed the defense that she merely performed her duty as a teacher to discipline erring pupils.

Richard's parents ask your advice on what actions can be instituted against Mrs. Robinson for acts committed on their minor child.

- (a) May Mrs. Robinson be charged with child abuse OR slight physical injuries? (2.5%)
- (b) May Mrs. Robinson be charged with child abuse AND slight physical injuries? (2.5%)

XIX

Ricky was driving his car when he was flagged down by a traffic enforcer for overspeeding. Realizing his undoing, but in a hurry for a meeting, Ricky shoved a PhP500 bill in the traffic enforcer's pocket and whispered to the latter to refrain from issuing him a traffic violation receipt. The traffic enforcer still issued him a ticket, and returned his money.

What crime, if any, was committed by Ricky? (5%)

-NOTHING FOLLOWS-