

2018 BAR EXAMINATIONS LEGAL AND JUDICIAL ETHICS AND PRACTICAL EXERCISES

November 25, 2018

2:00 P.M. – 6:00 P.M.

INSTRUCTIONS

1. This questionnaire contains nine (9) 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

The Lawyer's Oath is a source of any lawyer's obligations and its violation is a ground for the lawyer's suspension, disbarment, or other disciplinary action.

Without stating your name and other circumstances that will identify you, substantially write down the Lawyer's Oath that a person who has passed the bar examinations is required to take and subscribe to before the Supreme Court. (5%)

II

In a complaint filed before the Integrated Bar of the Philippines (IBP) against Atty. Cirilo Celis, a senior citizen, it was shown that: a) he failed to pay his IBP dues for six (6) years; b) he indicated uniformly in his pleadings for three (3) consecutive years "IBP Muntinlupa OR No. 12345" as proof of payment of his IBP fees; and c) he did not indicate any Professional Tax Receipt number to prove payment of his professional dues.

In his defense, Atty. Celis alleged that he is only engaged in a "limited" law practice, and his principal occupation, as disclosed in his income tax return, is that of a farmer of a 30-hectare orchard and pineapple farm in Camarines Sur. He also claimed that he believed in good faith that, as a senior citizen, he was exempt from payment of taxes, such as income tax, under Republic Act No. 7432 which grants senior citizens "exemption from the payment of individual income taxes provided that their annual taxable income does not exceed the poverty level as determined by the NEDA for that year."

As a member of the IBP Board of Governors, decide on the following:

- (a) the validity of his claim that, being engaged in a limited practice of law and being a senior citizen who is exempt from the payment of taxes, he is not required to pay his IBP and professional dues; (2.5%)
- (b) the obligations, if any, under the Rules of Court and the Code of Professional Responsibility that Atty. Celis may have violated. (2.5%)

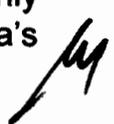
III

Carina was dismissed by her employer for breach of trust and confidence, and for willful violation of company rules and policies. She filed an action for illegal dismissal claiming that her termination was without legal basis. The Labor Arbiter found that she was illegally dismissed and awarded her the amount of PhP 80 million. On appeal to the National Labor Relations Commission (NLRC), the award was reduced to PhP 40 million as separation pay, plus PhP 5 million

for the value of her stock option plans which would have vested if she were not illegally dismissed from her job. Unsatisfied with the NLRC's decision, she appealed to the Court of Appeals (CA) the amount of monetary award granted by the NLRC. She engaged the services of Casal, Casos and Associates to handle her appeal. Her retainer agreement with Casal, Casos and Associates provided for contingent fees equivalent to 10% of her claim for separation pay and 10% of the value of stock options to be awarded to her.

The CA decision was not favorable to Carina, so she appealed the same to the Supreme Court (the Court). While the case was pending appeal with the Court, Carina entered into a compromise agreement with her employer to terminate the case upon payment to her of the full amount of PhP 40 million, less the PhP 15 million previously paid to her by her employer. Before the compromise agreement was finalized, Carina terminated the services of Casal, Casos and Associates and asked them to withdraw from the case pending before the Court. The parties negotiated the compromise agreement without the participation of their lawyers since the employer imposed the condition that no lawyers should be involved in the compromise negotiation. She, together with her employer, then filed the Compromise Agreement for approval by the Court, and sought the termination of the case, with prejudice.

Casal, Casos and Associates filed a motion to intervene in the case pending with the Court, praying that Carina be ordered to pay them PhP 4 million, representing 10% of the amount received by Carina from her employer in settlement of the case, plus 6% legal interest from the date of filing of the motion for intervention, until fully paid. The intervenors claimed that they were dismissed without justifiable cause prior to the signing of the compromise agreement for the reason that Carina, their client, wanted to evade payment of their legal fees. Carina claimed they were dismissed because Attys. Casal and Casos, who personally handled her case, had resigned from the law firm to join the government, and because of the negligence and failure of her lawyers to attend to her case. In reply, the intervenors said that the engagement was with the law firm and not with individual lawyers. The law firm also presented letters signed by their client commending them for work done well in the case.

- (a) May lawyers legally charge their clients based on contingent fees? (2.5%)
 - (b) Should Casal, Casos and Associates be allowed to intervene in the case pending before the Court in order to collect their fees from Carina? (2.5%)
 - (c) Can Carina refuse to pay attorneys' fees on the ground that the lawyers who personally handled her case had already resigned from the law firm with which she had contracted? (2.5%)
 - (d) May Carina's employer, defendant in this case, be held solidarily liable with Carina for the payment of the attorneys' fees of Carina's lawyers? (2.5%)
- 

- (e) May the intervenors collect legal interest in addition to their attorneys' fees? (2.5%)

IV

Atty. Cornelio Carbon, 36 years of age, had always dreamed of becoming a judge, and eventually, a justice, but his legal career took a different turn. Upon graduation, he joined a government-owned financial institution where he worked in the Loans and Claims Division. He also taught Negotiable Instruments Law in a nearby law school at night. He has been active in his IBP Chapter and other law organizations. However, in his 12 years of practice, he has never done trial or litigation work.

- (a) Is Atty. Carbon engaged in the "practice of law"? (2.5%)
- (b) Is Atty. Carbon qualified to become a Regional Trial Court Judge? (2.5%)

V

Carlos contracted two marriages: the first was with Consuelo, whom he left in the province, and the second was with Corinne in Manila, with whom he had six (6) children. Both women were unaware of Carlo's marriage to the other.

When Carlos entered law school, he met Cristina, a classmate, to whom he confided his marital status. Not long after, Carlos and Cristina became involved in an extramarital affair, as a result of which Carlos left Corinne and their children. During Carlos and Cristina's senior year in law school, Consuelo passed away. After their admission to the bar, Atty. Carlos and Atty. Cristina decided to get married in Hong Kong in a very private ceremony. When Corinne learned of Carlos and Cristina's wedding in Hong Kong, she filed a disbarment case against Atty. Carlos and Atty. Cristina on the ground of gross immorality. Atty. Carlos and Atty. Cristina raised the following defenses:

- a) the acts complained of took place before they were admitted to the bar; and
- b) Atty. Carlos' marriage to Corinne was void *ab initio* due to his subsisting first marriage with Consuelo, and they were free to marry after Consuelo died.

Rule on each defense. (2.5% each)

VI

Mrs. Conchita Conchu engaged the services of Atty. Carlo Colorado to act as private prosecutor to handle a criminal case against persons suspected of

slaying her husband. Atty. Colorado performed his duties — he interviewed witnesses to build up his case and religiously attended hearings. However, he failed to attend one hearing (allegedly because he did not receive a notice) in which the court, over Mrs. Conchu's objections, granted bail to all the accused. Mrs. Conchu belligerently confronted Atty. Colorado about his absence. Stung by Mrs. Conchu's words, Atty. Colorado filed with the court a "Motion to Withdraw as Counsel". The motion did not bear the consent of Mrs. Conchu, as in fact, Mrs. Conchu refused to sign her conformity to Atty. Colorado's withdrawal. Meanwhile, the hearing in the criminal case continued, but Atty. Colorado no longer appeared at the hearings nor did he contact Mrs. Conchu. Mrs. Conchu then filed a complaint seeking disciplinary sanctions against Atty. Colorado. Atty. Colorado cited "loss of confidence" and "serious differences" with the client as his reasons for withdrawing his services unilaterally.

Can Atty. Colorado be sanctioned for his actions? (2.5%)

VII

Atty. Celso Casis' relationship with Miss Cory Cerrada began when he represented her in several criminal cases for estafa and violation of B.P. 22. His expertise and diligence in personally assisting and facilitating her release on bail and other legal actions saved her from many legal predicaments. Despite her initial resistance, Miss Cerrada, convinced by Atty. Casis' sincerity and representation that he was separated from his wife and was taking necessary steps for the annulment of his marriage, began to live with him openly as husband and wife. One day, Atty. Casis' wife suddenly entered Miss Cerrada's home and assaulted her, inflicting injuries. Miss Cerrada then filed a complaint with the IBP charging Atty. Casis with gross immorality and gross misconduct. However, shortly afterwards, upon Atty. Casis' pleas, Miss Cerrada filed a motion to withdraw complaint. The IBP had required Atty. Casis to file an answer but he did not do so, relying on Miss Cerrada's withdrawal of the complaint against him.

Can the IBP continue to investigate Atty. Casis and recommend the imposition of sanctions against him, and for the Court to impose sanctions, if warranted, notwithstanding Miss Cerrada's filing of the motion to withdraw the complaint against him? (2.5%)

VIII

Judge Celso Camarin posted in the bulletin board of his sala for two weeks, an advertisement which says: "Wanted attractive waitresses, personable waiters and cooks who may be interested in applying for employment in my family's restaurant business. Interested applicants may submit applications to Branch XXX, RTC of Camarines Sur." The screening of some applicants was also conducted in the Judge's office.

What provisions, if any, of the Code of Judicial Conduct did Judge Camarin violate? (2.5%)

IX

In a case pending before the Sandiganbayan, the Sandiganbayan justices themselves actually took part in the questioning of a defense witness and the accused. The records show that, while a witness was asked 16 questions on direct examination by the defense counsel and six (6) questions by the prosecutor on cross-examination, one justice interjected a total of 27 questions. After the defense opted not to conduct any re-direct examination, another justice asked 10 more questions. With respect to one of the accused, both justices asked a total of 67 questions after cross-examination, and with respect to the other accused, a total of 41 questions after cross-examination. More importantly, the questions of the justices were in the nature of cross-examinations characteristic of confrontation, probing, and insinuation.

Is this manner of questioning proper? (5%)

X

In a complaint for disbarment, Connie alleged that she engaged the services of Atty. Cesar Corpuz in the preparation and execution in her favor of a Deed of Sale over a parcel of land from her common-law husband. Subsequently, Atty. Corpuz filed a civil case on behalf of Constancia, the legal wife of Connie's common-law husband, for the annulment of the Deed of Sale, impleading Connie as defendant.

In his defense, Atty. Corpuz asserted that, with the permission of Constancia, he wrote a letter to Connie informing the latter of Constancia's adverse claim and urging her to settle the same, but Connie ignored his letter. He also said that Connie did not object to his handling of the case on behalf of Constancia; therefore, he felt free to file the complaint against her.

Is Atty. Corpuz guilty of misconduct for representing conflicting interests? (5%)

XI

Atty. Claire Cortez, a member of the Philippine Bar who was also admitted to the New York Bar, was disbarred from the practice of law in New York for violation of Anti-Money Laundering laws of that State. She returned to the Philippines in order to resume her Philippine law practice.

Can she also be disbarred from practicing law in the Philippines for the same infraction committed in the foreign jurisdiction? (5%)

XII

From February to November 2004, Atty. Calumpang, in fraudulent connivance with brokers, convinced Corinna to deliver to him advance money for

the titling of a beachfront property in Caramoan. Six (6) months had elapsed and Atty. Calumpang had made absolutely no progress in the titling of the land. He also could not return the advance money paid by Corinna because he had converted the money to his personal use. After almost a decade, and the property could still not be titled in Corinna's name, she filed an action with the Commission on Bar Discipline (CBD) in 2014 for deceit, malpractice, and conduct unbecoming of a member of the Bar. In his defense, Atty. Calumpang asserted that, since the acts complained of took place more than 10 years ago, the case had already prescribed.

Rule on the defense of Atty. Calumpang. (5%)

XIII

Dr. Cielo is a well-known medical doctor specializing in cosmetic surgery. Dr. Cielo, together with a team of doctors, performed a surgical buttocks enhancement procedure in her clinic on Ms. Cosette Concio (Concio). Unfortunately, after a couple of years, the implant introduced during the enhancement procedure caused infection and Concio became seriously ill.

Concio filed a criminal action for medical malpractice against Dr. Cielo which was eventually dismissed for failure to prove that Dr. Cielo was negligent. Concio was represented in this action by Atty. Cogie Ciguerra (Ciguerra). After they lost the medical malpractice case, Ciguerra started writing a series of posts on his Facebook (FB) account containing insulting and verbally abusive language against Dr. Cielo. Among others, Ciguerra called Dr. Cielo a quack doctor, "reyna ng kaplastikan at kapalpakan", and accused her of maintaining a *payola* or extra-legal budget to pay off prosecutors and judges in order to win her cases. He also called on patients to boycott the clinic of Dr. Cielo.

Dr. Cielo filed a disbarment case against Ciguerra for posting on his FB account sexist, vulgar, and obscene comments and language disrespectful of women. Ciguerra's defense is that his FB posts were private remarks on his private FB account and meant only to be shared among his FB friends, and Dr. Cielo was not part of them. He also claimed that the disbarment case was filed in violation of his constitutionally-guaranteed right to privacy. The Court, however, found that Ciguerra did not have privacy settings.

Can Ciguerra be disbarred for the series of posts against Dr. Cielo in his FB account? (5%)

XIV

Cacai, a law student, filed an administrative complaint against RTC Judge Casimiro Conde, her professor in law school, based on the following allegations:

- (a) In a school convocation where Judge Conde was the guest speaker, Judge Conde openly disagreed and criticized a recently-decided

Supreme Court decision and even stressed that the decision of the Supreme Court in that case was a serious violation of the Constitution.

- (b) In his class discussions, Judge Conde named Cacai's mother, an MTC judge, as one of the judges involved in a marriage scam. At that time, the case against her mother was still pending. Judge Conde also included in his class discussion Cacai's brother whom he referred to as a "court-noted drug addict."

Cacai asserted that the acts of Judge Conde were open displays of insensitivity, impropriety, and lack of *delicadeza* bordering on oppressive and abusive conduct. She also alleged that Judge Conde acted with absolute disrespect for the Court and violated the "sub judice rule" when he discussed the marriage scam involving her mother because, at that time, the case was still pending.

In his defense, Judge Conde argued that the case he discussed in the school convocation was already of public knowledge and had been published after it had become final. He also said it was part of his academic freedom to openly discuss and criticize a decision of the Court since it was already decided with finality, was patently erroneous, and clearly a violation of the Constitution. With respect to discussions in class about Cacai's mother, he said that the marriage scam where her mother was charged scandalized the Judiciary and became public knowledge when the Office of the Court Administrator held a press conference on the matter and, that as a citizen, he could comment thereon in the exercise of his rights to freedom of speech and expression. He also asserted that his discussions in both fora could not be the subject of an administrative complaint because they were not done in the performance of his judicial duties.

Rule on each of the charges raised by Cacai, and the corresponding defenses raised by Judge Conde. (2.5% each)

XV

Charo Conti engaged the services of Atty. Cesar Compostela for the registration of a property located in Cebu, and which property she had inherited together with her siblings. It was agreed in writing that Charo would pay Atty. Compostela PhP 20,000 as acceptance fee and PhP 2,000 as appearance fee. During the last hearing of the case, Atty. Compostela demanded an additional amount of PhP 20,000 for the preparation of a memorandum, which he said would further strengthen Charo's position, plus 20% of the total area of the property as additional fees for his services. Charo did not agree to Atty. Compostela's demands since they were contrary to their agreement. Besides, the property was co-owned with her siblings and she could not agree to Atty. Compostela's demands without the consent of her co-heirs.



Four (4) years later, the petition for registration was approved and the Land Registration Authority notified Charo that the decree of registration and the original of the owner's duplicate copy of the title had already been transmitted to the Register of Deeds (RD). When Charo went to the RD, she was surprised to discover that the owner's duplicate copy of the title had already been claimed by, and released to, Atty. Compostela. Despite demand, Atty. Compostela refused to deliver the title to Charo until she paid the additional attorneys' fees that he was demanding. Charo then instituted a complaint for disbarment against him. In his defense, Atty. Compostela claimed that:

- (a) he had a right to retain the owner's duplicate of the title as his retaining lien; and
- (b) he was entitled to the payment of additional professional fees on the basis of the principle of *quantum meruit*.

Rule on Atty. Compostela's defenses. (2.5% each)

XVI

On March 1, 2017, sisters and business partners Carmina and Celeste Corominas borrowed PhP 500,000 from Carmen Carunungan. It was agreed that the amount will be paid in full one (1) year after, or on March 1, 2018, with interest at the rate of 10% *per annum*, without necessity of a demand. They also agreed to be bound jointly and severally. For this purpose, they executed a promissory note, secured by a postdated check in the amount of PhP 550,000 drawn from their joint account, which check was dated March 1, 2018.

When the debt became due, Carmen deposited the check but it was dishonored for insufficient funds. Carmen then sued Carmina and Celeste for estafa through falsification of a commercial document. After finding probable cause, the prosecutor filed a criminal case in court, where the sisters were required to file their joint judicial affidavit. In their affidavit, they raised the defense that they could not be guilty of estafa because: (i) the check was issued only as a form of security; (ii) even if issued as payment, it was for a pre-existing debt; and (iii) it was only upon Carmen's insistence that they issued the check.

Before the case could be decided, the sisters offered to settle their debt through a *dacion en pago*. They offered a Honda CRV which they jointly owned in full settlement of the loan. Carmen agreed.

Prepare the following documents in legally acceptable and enforceable forms, based on the above facts:

- (a) The promissory note (5%);
- (b) The judicial affidavit (10%); and
- (c) The *dacion en pago* (10%).

-NOTHING FOLLOWS-