

2018 BAR EXAMINATIONS

REMEDIAL LAW

November 25, 2018

8:00 A.M. – 12:00 N.N.

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

Danielle, a Filipino citizen and permanent resident of Milan, Italy, filed with the Regional Trial Court (RTC) of Davao City, where she owns a rest house, a complaint for ejectment against Dan, a resident of Barangay Daliao, Davao City. Danielle's property, which is located in Digos City, Davao del Sur, has an assessed value of PhP 25,000. Appended to the complaint was Danielle's certification on non-forum shopping executed in Davao City duly notarized by Atty. Dane Danoza, a notary public.

- (a) Was there a need to refer the case to the *Lupong Tagapamayapa* for prior *barangay* conciliation before the court can take cognizance of the case? (2.5%)
- (b) Was the action properly instituted before the RTC of Davao City? (2.5%)
- (c) Should the complaint be verified or is the certification sufficient? (2.5%)

II

Dendenees Inc. and David, both stockholders owning collectively 25% of Darwinkle Inc., filed an action before the RTC of Makati to compel its Board of Directors (BOD) to hold the annual stockholders' meeting (ASM) on June 21, 2017, as required by Darwinkle Inc.'s By-Laws, with prayer for preliminary mandatory injunction to use as record date April 30, 2017. The complaint alleged, among others, that the refusal to call the ASM on June 21, 2017 was rooted in the plan of the BOD to allow Databank Inc. (which would have owned 50% of Darwinkle Inc. after July 15, 2017) to participate in the ASM to effectively dilute the complainants' shareholdings and ease them out of the BOD. Dendenees Inc. and David paid the amount of PhP 7,565 as filing fees based on the assessment of the Clerk of Court. The BOD filed a motion to dismiss on the ground of lack of jurisdiction. They averred that the filing fees should have been based on the actual value of the shares of Dendenees Inc. and David, which were collectively worth PhP 450 million.

If you were the Judge, will you grant the motion to dismiss? (5%)

III

On February 3, 2018, Danny Delucio, Sheriff of the RTC of Makati, served the Order granting the *ex-parte* application for preliminary attachment of Dinggoy against Dodong. The Order, together with the writ, was duly received by Dodong. On March 1, 2018, the Sheriff served upon Dodong the complaint and summons in connection with the same case. The counsel of Dodong filed a motion to dissolve the writ.



- (a) Can the preliminary attachment issued by the Court in favor of Dinggoy be dissolved? What ground/s can Dodong's counsel invoke? (2.5%)
- (b) If Dodong posts a counter bond, is he deemed to have waived any of his claims for damages arising from the issuance of the Order and writ of attachment? (2.5%)

IV

Dick Dixson had sons with different women — (i) Dexter with longtime partner Delia and (ii) Dongdong and Dingdong with his housemaid Divina. When Dick fell ill in 2014, he entrusted all his property titles and shares of stock in various companies to Delia who, in turn, handed them to Dexter for safekeeping. After the death of Dick, Dexter induced Dongdong and Dingdong to sign an agreement and waiver of their right to Dick's estate in consideration of PhP 45 million. As Dexter reneged on his promise to pay, Dongdong and Dingdong filed a complaint with the RTC of Manila for annulment of the agreement and waiver. The summons and complaint were received by Dalia, the housemaid of Dexter, on the day it was first served. Dexter filed a motion to dismiss on the ground of lack of jurisdiction over his person. RTC Manila granted the motion to dismiss.

Dongdong and Dingdong thereafter filed a new complaint against Dexter for annulment of the agreement and waiver. Before Dexter could file his answer, Dongdong and Dingdong filed a motion to withdraw their complaint praying that it be dismissed without prejudice. An Order was issued granting the motion to withdraw without prejudice on the basis that the summons had not yet been served on Dexter. Dexter filed a motion for reconsideration of the order of dismissal. He argued that the dismissal should have been with prejudice under the "two-dismissal rule" of Rule 17, Section 1 of the Rules of Court, in view of the previous dismissal of the first case.

Will the two-dismissal rule apply making the second dismissal with prejudice? (5%)

V

Dorton Inc. (Dorton) sued Debra Commodities Inc. (Debra), Daniel, and Debbie in the RTC of Manila for recovery of sum of money. The complaint alleged that, on October 14, 2017, Debra obtained a loan from Dorton in the amount of PhP 10 million with interest of 9% *per annum*. The loan was evidenced by a promissory note (PN) payable on demand signed by Daniel and Debbie, the principal stockholders of Debra, who also executed a surety agreement binding themselves as sureties. Copies of both the PN and the surety agreement were attached to the complaint. Dorton further alleged that it made a final demand on March 1, 2018 for Debra and the sureties to pay, but the demand was not heeded.

Debra, Daniel, and Debbie filed their answer, and raised the affirmative defense that, while the PN and the surety agreement appeared to exist, Daniel and Debbie were uncertain whether the signatures on the documents were theirs.

The PN and the surety agreement were pre-marked during pre-trial, identified but not authenticated during trial, and formally offered.

Can the RTC of Manila consider the PN and the surety agreement in rendering its decision? (5%)

VI

Daribell Inc. (Daribell) filed a complaint for sum of money and damages against spouses Dake and Donna Demapilis for unpaid purchases of construction materials in the sum of PhP 250,000. In their answer, spouses Demapilis admitted the purchases from Daribell, but alleged that they could not remember the exact amount since no copies of the documents were attached to the complaint. They nevertheless claimed that they made previous payments in the amounts of PhP 110,000 and PhP 20,000 and that they were willing to pay the balance of their indebtedness after account verification. In a written manifestation, spouses Demapilis stated that, in order to buy peace, they were willing to pay the sum of PhP 250,000, but without interests and costs. Subsequently, Daribell filed a motion for partial summary judgment. Thereafter, Daribell filed an amended complaint, alleging that the total purchases of construction materials were PhP 280,000 and only PhP 20,000 had been paid. Daribell also served upon the spouses Demapilis a request for admission asking them to admit to the genuineness of the statement of accounts, delivery receipts and invoices, as well as to the value of the principal obligation and the amount paid as stated in the amended complaint.

Daribell thereafter amended the complaint anew. The amendment modified the period covered and confirmed the partial payment of PhP 110,000 but alleged that this payment was applied to the spouses' other existing obligations. Daribell however reiterated that the principal amount remained unchanged.

- (a) Is the request for admission deemed abandoned or withdrawn by the filing of the second amended complaint? (2.5%)
- (b) Can the amendment of the complaint be allowed if it substantially alters the cause of action? (2.5%)
- (c) Can the facts subject of an unanswered request for admission be the basis of a summary judgment? (2.5%)

VII

Dory Enterprises Inc. (Dory) leased to Digna Corporation (Digna) a parcel of land located in Diliman, Quezon City. During the term of the lease, Digna was informed by DBS Banking Corporation (DBS) that it had acquired the leased property from the former owner Dory, and required Digna to pay the rentals directly

to it. Digna promptly informed Dory of DBS' claim of ownership. In response, Dory insisted on its right to collect rent on the leased property.

Due to conflicting claims of Dory and DBS over the rental payments, Digna filed a complaint for interpleader in the RTC of Manila. Digna prayed that it be allowed to consign in court the succeeding monthly rentals, and that Dory and DBS be required to litigate their conflicting claims. It later appeared that an action for nullification of a *dacion en pago* was filed by Dory against DBS in the RTC of Quezon City. In said case, Dory raised the issue as to which of the two (2) corporations had a better right to the rental payments. Dory argued that, to avoid conflicting decisions, the interpleader case must be dismissed.

Does the action for nullification of the *dacion en pago* bar the filing of the interpleader case? (2.5%)

VIII

Spouses Dondon and Donna Dumdum owned a residential lot in Dapitan City. Doy Dogan bought said lot and took possession thereof with the promise to pay the purchase price of PhP 2 million within a period of six (6) months. After receiving only PhP 500,000, spouses Dumdum executed the deed of absolute sale and transferred the title to Doy Dogan. The balance was not paid at all. Spouses Dumdum, through counsel, sent a demand letter to Doy Dogan for him to pay the balance of PhP 1.5 million plus interest of PhP150,000. Doy Dogan responded in a letter by saying that "while the remaining balance is admitted, the interest charged is excessive." There being no payment, spouses Dumdum filed with the RTC of Dapitan City a complaint for reconveyance with damages against Doy Dogan.

In his answer, Doy Dogan raised, by way of affirmative defense, that the purchase price had been fully paid and for this reason the complaint should have been dismissed. Spouses Dumdum then filed a motion for judgment on the pleadings which was granted by the RTC of Dapitan City. The Court awarded PhP1.5 million actual damages representing the balance of the purchase price, PhP 200,000 as moral damages, PhP 200,000 as exemplary damages, PhP 90,000 as interest, PhP 50,000 as attorney's fees, and PhP 5,000 as cost of suit.

Was it proper for the RTC of Dapitan City to grant the motion for judgment on the pleadings? (2.5%)

IX

In 2015, Dempsey purchased from Daria a parcel of land located in Dumaguete, Negros Oriental. The latter executed a deed of absolute sale and handed to Dempsey the owner's duplicate copy of TCT No. 777 covering the property. Since he was working in Manila and still had to raise funds to cover taxes, registration and transfer costs, Dempsey kept the TCT in his possession without having transferred it to his name. A few years thereafter, when he already had the funds to pay for the transfer costs, Dempsey went to the Register of Deeds of 

Dumaguete and discovered that, after the sale, Daria had filed a petition for reconstitution of the owner's duplicate copy of TCT No. 777 which the RTC granted. Thus, unknown to Dempsey, Daria was able to secure a new TCT in her name.

What is Dempsey's remedy to have the reconstituted title in the name of Daria nullified? (5%)

X

In a buy-bust operation, 30 kilos of *shabu* were seized from Dave and Daryll. They were arrested and placed on inquest before Prosecutor Danilo Doon who ordered their continued detention. Thereafter, the information for the sale and distribution of *shabu* was filed in court. When arraigned, Dave and Daryll pleaded not guilty to the charge. During pre-trial, counsel for both of the accused raised, for the first time, the illegality of the arrest. The case proceeded to trial. After trial, the court scheduled the promulgation of judgment with notice to both the accused and their counsel, Atty. Dimayuga. During the promulgation, only Dave and Atty. Dimayuga were present. Both the accused were convicted of the crime charged.

- (a) Was the challenge to the validity of the arrest timely raised? (2.5%)
- (b) What is the remedy available to Daryll, if any, to be able to file an appeal? (2.5%)

XI

In 2007, Court of Appeals Justice (CA Justice) Dread Dong (J. Dong) was appointed to the Supreme Court (Court) as Associate Justice. Immediately after the appointment was announced, several groups questioned his qualification to the position on the ground that he was not a natural born Filipino citizen. In the same year, the Court issued an Order enjoining him from accepting the appointment or assuming the position and discharging the functions of his office until he is able to successfully complete all the necessary steps to show that he is a natural born citizen of the Philippines. However, he continued to exercise his functions as CA Justice.

Since the qualification of a natural born citizen applies as well to CA Justices, Atty. Dacio, a practicing lawyer, asked the Office of the Solicitor General (OSG), through a verified request, to initiate a *quo warranto* proceeding against J. Dong in the latter's capacity as incumbent CA Justice. The OSG refused to initiate the action on the ground that the issue of J. Dong's citizenship was still being litigated in another case.

When the OSG refused to initiate a *quo warranto* proceeding, Atty. Dacio filed a petition for *certiorari* against the OSG and *certiorari* and prohibition against J. Dong. The petition for *certiorari* against the OSG alleged that the OSG committed grave abuse of discretion when it deferred the filing of a *quo warranto* proceeding against J. Dong, while the petition for *certiorari* and prohibition against J. Dong asked the Court to order him to cease and desist from further exercising his powers, duties and responsibilities as CA Justice. In both instances, Atty. Dacio relied on the fact that, at the time of J. Dong's appointment as CA Justice, his birth

certificate indicated that he was a Chinese citizen and his bar records showed that he was a naturalized Filipino citizen.

- (a) May the OSG be compelled, in an action for *certiorari*, to initiate a *quo warranto* proceeding against J. Dong? (2.5%)
- (b) Does Atty. Dacio have the legal personality to initiate the action for *certiorari* and prohibition against J. Dong? (2.5%)

XII

Dodo was knocked unconscious in a fist fight with Dindo. He was rushed to the emergency room of the Medical City where he was examined and treated by Dr. Datu. As he was being examined, a plastic sachet appearing to contain *shabu* fell from Dodo's jacket which was on a chair beside him. Dodo was thus arrested by the same policemen who assisted him to the hospital. At Dodo's trial, the public prosecutor called Dr. Datu to the witness stand. When the public prosecutor asked Dr. Datu as to what he saw in the emergency room, Dodo's counsel objected, claiming doctor-patient privilege rule.

How would you rule on the objection? (2.5%)

XIII

Denny is on trial for homicide. The prosecution calls Danilo, a police officer, who interviewed the victim, Drew, shortly after the shooting. Danilo's testimony is being offered by the prosecution for purposes of proving that (i) Drew is now dead; (ii) while in the emergency room, Drew was posting his medical condition on Facebook and was "liking" the posts of his Facebook friends; (iii) Drew asked the nurse for water but was refused because he was bleeding, which subsequently angered Drew; and (iv) that before dying, Drew signed a statement in which he identified Denny as the shooter.

Is the proposed testimony of Danilo admissible? (2.5%)

XIV

Dave is on trial for sexual assault of Delly, a law student who sidelines as a call center agent. Dave offers the testimony of Danny, who says that Dave is known in the community as a decent and discerning person. The prosecution presents a rebuttal witness, Dovie, who testifies that, if Dave was reputed to be a good person, that reputation was a misperception because Dave had been previously convicted of homicide.

Is Dovie's testimony admissible as to the character of Dave? (2.5%)



XV

Atty. Dalmacio, the Director of the National Bureau of Investigation, applied for a search warrant before the Executive Judge of RTC Manila. He alleged in his application that a certain alias Django was keeping about 10 kilos of *shabu* in a wooden cabinet located at Dillian's Store in Paseo de Sta. Rosa, Laguna. The Executive Judge of Manila personally examined Atty. Dalmacio and his witnesses and thereafter issued the search warrant particularly describing the place to be searched and the items to be seized.

- (a) Can the search warrant issued by the Executive Judge of Manila be enforced in Laguna? (2.5%)
- (b) Can the legal concept of "venue is jurisdictional" be validly raised in applications for search warrants? (2.5%)

XVI

Danjo, a stay-in gardener at the Dy family home in Quezon City, applied for overseas employment in Riyadh as a flower arranger. After he left for abroad, Dino Dy, head of the family, discovered that all his wristwatches were missing. Dino followed Danjo's Instagram account and in one instance saw Danjo wearing his Rolex watch. He filed a complaint for qualified theft against Danjo with the Office of the Prosecutor (OP), Quezon City. The subpoena with the affidavit-complaint was served on Denden, Danjo's wife, at their house. No counter-affidavit was filed by Danjo who continued to work in Riyadh. After conducting a preliminary investigation, the OP found probable cause against Danjo and subsequently filed the information for qualified theft before the RTC of Quezon City. The court likewise found probable cause and issued in 2016 a warrant for Danjo's arrest.

Danjo was repatriated to the Philippines in 2018. While Danjo was lurking outside the Dys' house, which was only about 100 meters away from the police station, SPO1 Dody recognized Danjo. Realizing that the police station had a copy of Danjo's warrant of arrest, SPO1 Dody immediately pursued and arrested Danjo.

- (a) Was the warrant of arrest issued against Danjo who was not in the Philippines valid? (2.5%)
- (b) Can the warrant of arrest be served on Danjo upon his return? (2.5%)

XVII

Don Deles, a contractor, was sued together with Mayor Dante Dungo and Congressman Dal Dilim for malversation of public funds before the Office of the Ombudsman. Danny Din, a material witness of the complainant Diego Domingo, was hired as an engineer by a construction company in Qatar, and had to depart in two (2) months. To perpetuate Danny Din's testimony, Diego Domingo applied for his conditional examination before the Sandiganbayan.

Should the application for conditional examination of Danny Din be granted?
(2.5%)

XVIII

The Republic of the Philippines (Republic) filed a complaint with the Sandiganbayan in connection with the sequestered assets and properties of Demo Companies Inc. (Demo) and impleaded its officers and directors. Since the complaint did not include Demo as defendant, the Sandiganbayan issued a Resolution where it ordered Demo to be impleaded. Thereafter, the Republic filed an amended complaint naming Demo as additional defendant, which amendment was later admitted.

Demo filed a motion for bill of particulars for the Republic to clarify certain matters in its amended complaint. The Sandiganbayan immediately granted the motion. Upon submission of the bill of particulars by the Republic, Demo filed a motion to dismiss arguing that the answers in the bill of particulars were indefinite and deficient responses to the question of what the alleged illegally acquired funds or properties of Demo were. The Sandiganbayan dismissed the case.

- (a) Was the Sandiganbayan correct in dismissing the case? (2.5%)
- (b) What can the defendant, in a civil case, do in the event that his motion for bill of particulars is denied? (2.5%)

XIX

Drylvik, a German national, married Dara, a Filipina, in Dusseldorf, Germany. When the marriage collapsed, Dara filed a petition for declaration of nullity of marriage before the RTC of Manila. Drylvik, on the other hand, was able to obtain a divorce decree from the German Family Court. The decree, in essence, states:

The marriage of the Parties contracted on xxx before the Civil Registrar of Dusseldorf is hereby dissolved. The parental custody of the children Diktor and Daus is granted to the father.

Drylvik filed a motion to dismiss in the RTC of Manila on the ground that the court no longer had jurisdiction over the matter as a decree of divorce had already been promulgated dissolving his marriage to Dara. Dara objected, saying that while she was not challenging the divorce decree, the case in the RTC still had to proceed for the purpose of determining the issue of the children's custody. Drylvik counters that the issue had been disposed of in the divorce decree, thus constituting *res judicata*.

- (a) Should Drylvik's motion to dismiss be granted? (2.5%)
- (b) Is a foreign divorce decree between a foreign spouse and a Filipino spouse, uncontested by both parties, sufficient by itself to cancel the entry in the civil registry pertaining to the spouses' marriage? (2.5%)

XX

Dominic was appointed special administrator of the Estate of Dakota Dragon. Delton, husband of Dakota, together with their five (5) children, opposed the appointment of Dominic claiming that he (Dominic) was just a stepbrother of Dakota. After giving Dominic the chance to comment, the court issued an Order affirming the appointment of Dominic.

- (a) What is the remedy available to the oppositors? (2.5%)
- (b) If there are no qualified heirs, can the government initiate escheat proceedings over the assets of the deceased? To whom, in particular, shall the estate of the deceased go and for whose benefit? (2.5%)

XXI

The municipality of Danao, Cebu was a quiet and peaceful town until a group of miners from Denmark visited the area and discovered that it was rich in nickel. In partnership with the municipal mayor, the Danish miners had to flatten 10 hectares of forest land by cutting all the trees before starting their mining operations. The local DENR, together with the *Samahan Laban sa Sumisira sa Kalikasan*, filed a petition for writ of *kalikasan* against the municipal mayor and the Danish miners in the RTC of Cebu.

- (a) Is the petition within the jurisdiction of the RTC of Cebu? (2.5%)
- (b) What is the Precautionary Principle? (2.5%)

XXII

Danica obtained a personal loan of PhP 180,000 from Dinggoy, payable in 18 equal monthly installments of PhP 10,000 until fully paid. In order to complete her payment at an earlier date, Danica instead paid PhP 20,000 monthly, and continued doing so until the 18th month, which payments Dinggoy all accepted. Later on, she realized that she had overpaid Dinggoy by 100% as she should have already completed payment in nine (9) months. She demanded the return of the excess payment, but Dinggoy completely ignored her. Thus, Danica availed of the Rules of Procedure for Small Claims Cases by filing before the Municipal Trial Court (MTC) a statement of claim, together with the required documents.

Should the MTC proceed with the case under the: (i) Revised Rules on Summary Procedure; (ii) the Rules of Procedure for Small Claims; or (iii) the regular procedure for civil cases? (5%)

-NOTHING FOLLOWS-