



Republic of the Philippines
Supreme Court
Manila

2019 BAR EXAMINATIONS
CRIMINAL LAW

NOVEMBER 17, 2019

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.
2. This Questionnaire is divided into two (2) parts: Part I and Part II. Write your answers to the questions in **Part I** (consisting of problem sets labelled **A.1. to A.10.**) in **Booklet I** and the answers to questions in **Part II** (consisting of problem sets labelled **B.11. to B.20.**) in **Booklet II**. **Answers written in the wrong booklet shall not be given any credit.**
3. Read each question carefully and note the points allocated for each question. In your answers, follow the sequence and the numbering system used in the Questionnaire. Answer each numbered question on a separate page; an answer to a sub-question under the same number set may be written continuously on the same page and succeeding pages until completed.
4. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Always support your answers with the pertinent laws, rules, and/or jurisprudence. A mere “yes” or “no” answer without any corresponding explanation or discussion may not be given full credit.
5. Marking of your booklets 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 for the whole examinations.

YOU CAN BRING HOME THE QUESTIONNAIRE.

A handwritten signature in black ink, appearing to read "Estela M. Perlas-Bernabe".

JUSTICE ESTELA M. PERLAS-BERNABE

Chairperson

2019 Bar Examinations

PART I

Note: As stated in the Instructions, **Part I** covers problem sets labelled **A.1.** to **A.10.** All answers to these questions should be written in **Booklet I.**

A.1.

Define/distinguish the following terms:

- (a) *Mala in se* and *mala prohibita* (2%)
- (b) *Grave, less grave, and light felonies* (3%)
- (c) *Aberratio ictus, error in personae, and praeter intentionem* (3%)

A.2.

Mr. X has always been infatuated with Ms. Y. Scorned by Ms. Y's disregard for his feelings towards her, Mr. X came up with a plan to abduct Ms. Y in order to have carnal knowledge of her with the help of his buddies, A, B, and C.

On the day they decided to carry out the plan, and while surreptitiously waiting for Ms. Y, C had a change of heart and left. This notwithstanding, Mr. X, A, and B continued with the plan and abducted Ms. Y by forcefully taking her to a deserted house away from the city. There, Mr. X restrained Ms. Y's arms, while A held her legs apart. B stood as a lookout. Mr. X was then able to have carnal knowledge of Ms. Y, who was resisting throughout the entire ordeal.

Consequently, Mr. X was charged with the crime of Forcible Abduction under the Revised Penal Code.

- (a) **Is the charge against Mr. X proper? Explain. (3%)**
- (b) **Assuming that A, B, and C are also charged, may they be held criminally liable together with Mr. X? Explain. (2%)**

A.3.

Mr. O, a 75-year old retiree who has been a widower for the last ten (10) years, believed that, at past 70, he is licensed to engage in voyeurism to satisfy his lustful desires. If not peeping into his neighbors' rooms through his powerful single-cylinder telescope, he would trail young, shapely girls along the hallways and corridors of shopping malls. While going up the escalator, he stayed a step behind a mini-skirted, 20-year old girl, and, in the heat of the moment, put his hand

on her left buttock and massaged it. The girl screamed and hollered for help. Mr. O was thus apprehended and charged with Acts of Lasciviousness under Article 336 of the Revised Penal Code. Mr. O's counsel, however, claimed that Mr. O should only be charged with the crime of Unjust Vexation.

Is the contention of Mr. O's counsel tenable? Explain. (2.5%)

A.4.

In dire need of money, Mr. R decided to steal from his next-door neighbor, Mrs. V. On the night of May 15, 2010, Mr. R proceeded with his plan and entered Mrs. V's bedroom by breaking one of the windows from the outside. Finding Mrs. V sound asleep, he silently foraged through her cabinet, and stashed all the bundles of cash and jewelries he could find.

As Mr. R was about to leave, he heard Mrs. V shout, "*Stop or I will shoot you!*", and when he turned around, he saw Mrs. V cocking a rifle which was pointed at him. Fearing for his life, Mr. R then lunged at Mrs. V and was able to wrest the gun away from her. Thereafter, Mr. R shot Mrs. V, which resulted in her death. Mr. R's deeds were discovered on the very same night as he was seen by law enforcement authorities fleeing the crime scene.

(a) What crime/s did Mr. R commit under the Revised Penal Code? Explain. (2.5%)

(b) Based on your answer in question (a), within what period should the prosecution file the criminal charge against Mr. R in order to avoid prescription? Explain. (2%)

(c) May Mr. R validly invoke the justifying circumstance of self-defense? Explain. (2.5%)

A.5.

In August 2018, B entered into a contract with S for the purchase of the latter's second-hand car in the amount of ₱400,000.00, payable in two (2) equal monthly installments. Simultaneous with the signing of the contract and S's turnover of the car keys, B executed, issued, and delivered two (2) post-dated checks, all payable to S, with the assurance that they will all be honored on their respective maturity dates.

However, all two (2) checks were dishonored for being drawn against insufficient funds. Consequently, notices therefor were duly issued to and received by B, but this notwithstanding, no payment arrangements were made by him. Further, upon S's investigation, it was uncovered that B's checking account had only ₱50,000.00 when it was opened in June 2018 and no further deposits were

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made after that. S also found out that B knew fully well of such circumstance at the time he issued the two (2) checks.

What crime/s should B be charged with and for how many counts? Explain. (5%)

A.6.

Mr. A has a long-standing feud with Mr. B. As payback for Mr. B's numerous transgressions against him, Mr. A planned to burn down Mr. B's rest house.

One night, Mr. A went to the rest house and started pouring gasoline on its walls. However, just as Mr. A had lit the match for burning, he was discovered by Mr. B's caretaker, Ms. C, and was consequently prevented from setting the rest house on fire. Mr. A was then charged with Frustrated Arson.

(a) Is the charge of Frustrated Arson proper? Explain. (2%)

(b) Assuming that Mr. A successfully burned down Mr. B's rest house, and as a result, Ms. C was trapped therein and was subsequently killed in the fire, what crime/s did Mr. A commit? Explain. (3%)

A.7.

Mr. L is a newspaper reporter who writes about news items concerning the judiciary. Mr. L believed that members of the judiciary can be criticized and exposed for the prohibited acts that they commit by virtue of the public nature of their offices. Upon receiving numerous complaints from private citizens, Mr. L released a scathing newspaper exposé involving Judge G and his alleged acts constituting graft and corruption. Consequently, Mr. L was charged with the crime of Libel.

In response, Mr. L contended that truth is a valid defense in Libel and in this relation, claimed that he was only exposing the truth regarding Judge G's misdeeds. Further, Mr. L contended that in any event, his exposé on Judge G is based on the complaints he received from private citizens, and as such, should be deemed as a mere fair commentary on a matter of public interest.

(a) Are the contentions of Mr. L tenable? Explain. (3%)

(b) What is the effect on the criminal liability of an accused if he or she publishes a libelous article on an online news platform? Explain. (2%)

A.8.

After a successful entrapment operation by the Philippine Drug Enforcement Agency, Mr. D, a known drug pusher, was arrested on January 15, 2019 for having been caught *in flagrante delicto* selling a pack of *shabu*, a prohibited drug, to the poseur-buyer. Consequently, Mr. D was frisked by the arresting officer, and aluminum foils, plastic lighters, and another plastic sachet of *shabu* were obtained from him. The items were marked immediately upon confiscation, and they were likewise inventoried and photographed at the place of arrest. Throughout the process, a media representative was able to witness the conduct of the marking, inventory, and photography of the seized items in the presence of Mr. D.

Mr. D was then charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. In defense, he lamented that the chain of custody procedure under Section 21, Article II of the Comprehensive Dangerous Drugs Act of 2002, as amended, was not followed because only a media representative was present. In response, the prosecution maintained that the said media representative was a very credible reporter and as such, the presence of any other witness was unnecessary.

(a) Was the chain of custody procedure validly complied with in this case? If not, was the deviation from such procedure justified? Explain. (3%)

(b) What is the consequence of an unjustified deviation from the chain of custody rule to the criminal case against Mr. D? Explain. (2%)

A.9.

X and Y approached Mayor Z and requested him to solemnize their marriage. On the day of the ceremony, X and Y proceeded to Mayor Z's office but he was not there. Mayor Z's chief of staff, Mr. U, however, represented that he himself can solemnize their marriage and just have Mayor Z sign the marriage certificate when the latter comes back. Consequently, upon X and Y's assent, Mr. U solemnized the marriage, despite his lack of authority therefor.

(a) What crime may Mr. U be charged with under the Revised Penal Code (RPC)? Explain. (2.5%)

(b) Assuming that Mayor Z signed the marriage certificate which stated that he solemnized the marriage of X and Y, what crime may Mayor Z be charged with under the RPC? Explain. (2.5%)

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A.10.

Distinguish Rebellion under the Revised Penal Code and Terrorism under the Human Security Act of 2007. (2.5%)

- END OF PART I -

Note: This marks the end of Part I. The forthcoming problem sets will fall under Part II and the answers therefor should be written in Booklet II.



PART II

Note: As stated in the Instructions, **Part II** covers problem sets labelled **B.11.** to **B.20.** All answers to these questions should be written in **Booklet II.**

B.11.

Ms. M, a Malaysian visiting the Philippines, was about to depart for Hong Kong *via* an Indonesian-registered commercial vessel. While on board the vessel, which was still docked at the port of Manila, she saw her mortal enemy, Ms. A, an Australian citizen. Ms. A was seated at the front portion of the cabin and was busy using her laptop, with no idea whatsoever that Ms. M was likewise onboard the ship.

Consumed by her anger towards Ms. A, Ms. M stealthily approached the Australian from behind, and then quickly stabbed her neck with a pocketknife, resulting in Ms. A's immediate death. Operatives from the Philippine National Police - Maritime Command arrested Ms. M for the killing of Ms. A and thereafter, intended to charge her under the Revised Penal Code (RPC). Ms. M contended that the provisions of the RPC cannot be applied and enforced against her because both she and the victim are not Filipino nationals, and besides, the alleged crime was committed in an Indonesian-registered vessel.

- (a) Is Ms. M's contention against the application of the RPC against her tenable? Explain. (3%)**
- (b) Assuming that the provisions of the RPC can be applied against Ms. M, what crime under the RPC should she be charged with? Explain. (2%)**

B.12.

In November 2018, Mr. N, a notorious criminal, was found guilty of three (3) counts of Murder and was consequently sentenced with the penalty of *reclusion perpetua* for each count. A month after, he was likewise found guilty of five (5) counts of Grave Threats in a separate criminal proceeding, and hence, meted with the penalty of *prision mayor* for each count.

- (a) What are the respective durations of the penalties of *reclusion perpetua* and *prision mayor*? (3%)**
- (b) How long will Mr. N serve all his penalties of imprisonment? Explain. (2.5%)**

(c) May Mr. N avail of the benefits of the Indeterminate Sentence Law with respect to his convictions for Murder and Grave Threats? Explain. (3%)

(d) Is Mr. N considered a habitual delinquent? Explain. (2.5%)

B.13.

Mr. Q was found guilty beyond reasonable doubt of the crime of Serious Physical Injuries, and accordingly, was sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) months of *arresto mayor*, as minimum, to four (4) years, two (2) months, and one (1) day of *prision correccional*, as maximum. He was also ordered to pay the victim actual damages in the amount of ₱50,000.00, with subsidiary imprisonment in case of insolvency.

Was the imposition of subsidiary imprisonment proper? Explain. (3%)

B.14.

Mr. X and Mr. Y engaged in a violent fistfight which Mr. X instigated. This culminated in Mr. X repeatedly smashing Mr. Y's head on the concrete pavement. Thereafter, Mr. X left Mr. Y barely breathing and almost dead. A few minutes after the incident, Mr. X immediately went to the police station to confess what he did and told the police where he left Mr. Y. Fortunately, the police rescued Mr. Y and he survived with the help of timely medical intervention. Mr. X was then charged in court with Frustrated Homicide, to which he openly confessed his guilt upon arraignment.

(a) Based on the above-stated facts, what is/are the mitigating circumstance/s that may be appreciated in favor of Mr. X. Explain. (2%)

(b) Under the Revised Penal Code, Homicide is punished with the penalty of *reclusion temporal*. Without applying the Indeterminate Sentence Law, what penalty should be imposed against Mr. X assuming that he is found guilty of the charge of Frustrated Homicide, and that the presence of two (2) ordinary mitigating circumstances have been duly alleged and proven? Explain. (3%)



B.15.

In June 2017, Mr. P was criminally charged with Qualified Theft under the Revised Penal Code. After due proceedings, the Regional Trial Court found him guilty beyond reasonable doubt, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years and one (1) day, of *reclusion temporal*, as maximum. Thereafter, Mr. P applied for probation.

(a) May Mr. P be extended the benefits of the Probation Law? Explain. (3%)

(b) In what instance may an accused who appeals a judgment of conviction still apply for probation? Explain. (3%)

B.16.

Ms. E was charged with the complex crime of *Estafa* through Falsification of Public Documents before the trial court. Prior to her arraignment, Ms. E moved for the dismissal of the criminal case against her, pointing out that the private offended party is her biological father, and that such relationship is an absolatory cause under Article 332 of the Revised Penal Code (RPC).

(a) Explain the concept of complex crimes under the RPC. (2%)

(b) Is Ms. E's contention correct? Explain. (3%)

B.17.

One Sunday afternoon, Mr. X, President of ABC Corp., happened to bump into the Labor Arbiter assigned to the illegal dismissal case filed by certain employees against his company. During their encounter, Mr. X promised the Labor Arbiter a luxury car in exchange for a favorable ruling. The Labor Arbiter immediately rejected the offer and walked away.

(a) What crime did Mr. X commit under the Revised Penal Code (RPC), if any? Explain. (2.5%)

(b) Assuming that Mr. X's offer was instead accepted, should the Labor Arbiter be held liable for any crime under the RPC? If so, for what crime? May the Labor Arbiter also be held liable for violation of the Anti-Graft and Corrupt Practices Act? Explain. (5%)

B.18.

A typhoon destroyed the houses of many of the inhabitants of Municipality M. Accordingly, the local government passed an appropriation in the amount of ₱1,000,000.00 to implement a Calamity Assistance Program for the typhoon victims, and the funds therefor were eventually earmarked for the purpose. Upon the orders, however, of Mayor T of Municipality M, these funds were disbursed for the reconstruction of the municipal hall which was substantially damaged by the typhoon. According to Mayor T, the reconstruction of the municipal hall was a more pressing concern than the relief program because the vital functions of the local government would be impeded if the said structure would not be immediately fixed.

What crime did Mayor T commit under the Revised Penal Code? Explain. (2%)

B.19.

Ms. L, dean of a duly recognized private school, caught K, one of her students, vandalizing one of the school's properties. Ms. L called K's attention and proceeded to scold him, causing a crowd to gather around them. Embarrassed with the situation, K attacked Ms. L by repeatedly punching her on the face. Just as K was about to strike Ms. L again, J, another student, intervened. K then turned his anger on J and also hit him repeatedly, causing him physical injuries.

What crime/s did K commit under the Revised Penal Code for his acts against Ms. L and J? Explain. (3%)

B.20.

Mr. S, a businessman and information technology practitioner, claimed to have devised an innovative business model. He would diligently compile a list of known personalities and entities in the fields of entertainment, arts, culture, and sports, and acquire numerous domain names in the internet using the names of these known personalities and entities for the purpose of selling these registered domain names to said personalities and entities in the future.

Does Mr. S's "innovative business model" expose him to any criminal liability under the Cybercrime Prevention Act of 2012? If so, for what crime? Explain. (2.5%)

- END OF PART II -
Nothing follows