

SYLLABUS FOR THE 2019 BAR EXAMINATIONS
MERCANTILE LAW

NOTE: This syllabus is an outline of the key topics that fall under the core subject “Mercantile Law”. Accordingly, all Bar candidates should be guided that only laws, rules, issuances, and jurisprudence pertinent to these topics as of **June 30, 2018** are examinable materials within the coverage of the 2019 Bar Examinations.

I. LETTERS OF CREDIT AND TRUST RECEIPTS

- A. Basic concepts
 - 1. Doctrine of independence
 - 2. Fraud exception principle
 - 3. Doctrine of strict compliance
 - 4. Warehouseman’s lien
- B. Rights and obligations of parties
 - 1. Entruster/entrustee
 - 2. Applicant/banks/beneficiary
- C. Remedies available

II. NEGOTIABLE INSTRUMENTS LAW (Act No. 2031)

- A. Requisites of negotiability
- B. Forgery and material alteration
- C. Negotiation
- D. Rights of the holder
 - 1. Holder in due course
 - 2. Defenses against the holder
- E. Checks

III. INSURANCE (PD 612, as amended by RA 10607)

- A. Basic concepts
 - 1. What may be insured
 - 2. Insurable interest
 - 3. Double insurance and overinsurance
 - 4. Reinsurance
 - 5. No fault, suicide, and incontestability clauses
- B. Perfection of the insurance contract
- C. Rights and obligations of parties
 - 1. Insurer
 - 2. Insured
 - 3. Beneficiary
- D. Rescission of insurance contracts
 - 1. Concealment
 - 2. Misrepresentation or omissions
 - 3. Breach of warranties
- E. Loss

IV. TRANSPORTATION

- A. Common carriers
 - 1. Concept
 - 2. Common carrier vs. private carrier
 - 3. Diligence required
- B. Obligations and liabilities
 - 1. Vigilance over goods
 - 2. Safety of passengers

- C. Defenses available to a common carrier
 - 1. Proof of negligence
 - 2. Due diligence in the selection and supervision of employees
 - 3. Fortuitous event
 - 4. Contributory negligence
 - 5. Doctrine of last clear chance
- D. Extent of liability
 - 1. Recoverable damages
 - 2. Stipulations limiting liability
 - 3. Limitations under the Warsaw Convention

V. CORPORATION LAW (Provisions of BP 68, not affected by RA 11232)

- A. General principles
 - 1. Nationality of corporations
 - a. Place of incorporation test
 - b. Control test
 - c. Grandfather rule
 - 2. Doctrine of separate juridical personality
 - 3. Doctrine of piercing the corporate veil
- B. Stock vs. non-stock corporations
- C. *De facto* corporations and corporations by *estoppel*
- D. Board of Directors and Trustees
 - 1. Basic principles
 - a. Doctrine of centralized management
 - b. Business judgment rule
 - 2. Duties, liabilities, and responsibility for unlawful acts
- E. Powers of corporations
 - 1. How powers are exercised
 - 2. *Ultra vires* doctrine
 - 3. Trust fund doctrine
- F. Stockholders and Members
 - 1. Doctrine of equality of shares
 - 2. Proprietary rights
 - a. Right to dividends
 - b. Right to inspect
 - c. Pre-emptive right
 - d. Right of first refusal
 - 3. Intra-corporate disputes
 - a. Concept
 - b. Individual vs. representative vs. derivative suits
- G. Foreign Corporations
 - 1. What constitutes “doing business”
 - 2. Personality to sue and suability
- H. Mergers and Consolidations
 - 1. Concept
 - 2. Effects and limitations

VI. SECURITIES REGULATION CODE (RA 8799)

- A. Registration requirement; exemptions
- B. Prohibitions on fraud, manipulation, and insider trading
- C. Protection of investors
 - 1. Tender offer rule
 - 2. Rules on proxy solicitation
 - 3. Disclosure rule

VII. BANKING

- A. The New Central Bank Act (RA 7653, as amended by RA 11211)
 - 1. Handling of banks in distress
 - a. Conservatorship
 - b. Closure
 - c. Receivership
 - d. Liquidation
- B. Secrecy of bank deposits (RA 1405, as amended, and RA 6426, as amended)
 - 1. Prohibited acts
 - 2. Exceptions from coverage
 - 3. Garnishment of deposits, including foreign deposits
- C. General Banking Law of 2000 (RA 8791)
 - 1. Nature of bank funds and bank deposits
 - 2. Diligence required of banks
 - 3. Prohibited transactions by bank directors and officers
- D. Philippine Deposit Insurance Corporation Act (RA 3591, as amended)
 - 1. Maximum deposit insurance coverage
 - 2. Meaning of insured deposit
 - 3. Splitting of deposits

VIII. INTELLECTUAL PROPERTY CODE (RA 8293)

- A. Patents
 - 1. Patentable vs. non-patentable inventions
 - 2. Ownership of a patent
 - 3. Grounds for cancellation of a patent
 - 4. Remedy of the true and actual inventor
 - 5. Rights conferred by a patent
 - 6. Limitations on patent rights
 - 7. Patent infringement
- B. Trademarks
 - 1. Marks vs. collective marks vs. trade names
 - 2. Acquisition of ownership
 - a. Concept of actual use
 - b. Effect of registration
 - 3. Non-registrable marks
 - 4. Well-known marks
 - 5. Priority right
 - 6. Rights conferred by registration
 - 7. Cancellation of registration
 - 8. Trademark infringement
 - 9. Unfair competition
- C. Copyrights
 - 1. Copyrightable works
 - 2. Non-copyrightable works
 - 3. Rights conferred by copyright
 - 4. Ownership of a copyright
 - 5. Limitations on copyright
 - 6. Doctrine of fair use
 - 7. Copyright infringement

IX. ANTI-MONEY LAUNDERING ACT (RA 9160, as amended)

- A. Covered institutions and their obligations
- B. Covered and suspicious transactions
- C. Safe harbor provision
- D. When is money laundering committed (including predicate crimes)
- E. Authority to inquire into bank deposits

F. Freezing and forfeiture

X. ELECTRONIC COMMERCE ACT (RA 8792)

- A. Legal recognition of electronic data messages, documents, and signatures
- B. Presumption relating to electronic signatures
- C. Admissibility and evidential weight of electronic data message or electronic document
- D. Obligation of confidentiality

XI. DATA PRIVACY ACT (RA 10173)

- A. Personal vs. sensitive personal information
- B. Scope
- C. Processing of personal information
- D. Rights of data subject

XII. FINANCIAL REHABILITATION, INSOLVENCY, LIQUIDATION and SUSPENSION OF PAYMENTS (RA 10142, FR Rules [A.M. No. 12-12-11-SC], and FLSP Rules [A.M. No.15-04-06-SC])

- A. Basic concepts
 - 1. Rehabilitation
 - 2. Insolvent
 - 3. Liquidation
 - 4. Suspension of payments
- B. Modes of rehabilitation
 - 1. Court-supervised rehabilitation
 - a. Voluntary vs. involuntary
 - b. Commencement order (including stay order)
 - c. Rehabilitation receiver and management committee
 - d. Determination of claims
 - e. Rehabilitation plan
 - i. Concept of feasibility
 - ii. Material financial commitments
 - iii. Liquidation analysis
 - f. Creditor approval and confirmation
 - g. Failure of rehabilitation
 - 2. Pre-negotiated rehabilitation
 - a. How initiated
 - b. Period and effect of approval
 - 3. Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan
 - a. Minimum requirements
 - b. Standstill period
 - c. Cram down effect
- C. Liquidation
 - 1. Voluntary liquidation vs. involuntary liquidation vs. conversion
 - 2. Procedure
 - a. Liquidation order; effects
 - 3. Determination of claims
- D. Suspension of Payments; Suspension of Payment Order
- E. Remedies
 - 1. Motion for reconsideration
 - 2. Petition for *certiorari*

- NOTHING FOLLOWS -