



Republic of the Philippines
Supreme Court
Manila

2019 BAR EXAMINATIONS
MERCANTILE LAW

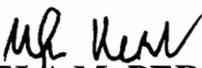
NOVEMBER 17, 2019

8:00 A.M. – 12:00 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.


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 the following terms:

- (a) Trust fund doctrine (2%)**
- (b) Unfair competition (2%)**
- (c) Insurable interest in property (2%)**
- (d) Splitting of deposits (2%)**

A.2.

In May 2018, ABC Corp. entered into a merchandising contract which terms and conditions were totally lopsided in favor of the counterparty, XYZ, Inc. As a result, ABC Corp. suffered tremendous financial losses.

A year after, or in May 2019, Mr. X became a stockholder of ABC Corp. Learning about the circumstances surrounding the merchandising contract, Mr. X filed a derivative suit against ABC Corp.'s directors to claim damages on behalf of ABC Corp. due to their mismanagement.

- (a) What is a derivative suit? (2%)**
- (b) Was Mr. X's filing of a derivative suit proper? Explain. (3%)**

A.3.

In June 2018, DEF Corp. sent notices to its stockholders informing them of the corporation's issuance of new shares of stock. The notice included a reminder that, pursuant to DEF Corp.'s Articles of Incorporation, any stockholder who fails to exercise his or her pre-emptive right within three (3) weeks from receipt of notice would be considered to have waived the same.

Ms. Z, a stockholder of DEF Corp., failed to exercise her pre-emptive right within the said period. However, she claimed that she did not validly waive her right to do so because a waiver must be expressed in writing.

- (a) Explain the concept of pre-emptive right under the Corporation Code. (2%)
- (b) Is Ms. Z's contention correct? Explain. (3%)

A.4.

In 2016, X Corp. obtained a loan worth ₱50,000,000.00 from J Bank, which was secured by a third-party mortgage executed by Y, Inc. in favor of X Corp. Since X Corp. was not able to settle its loan obligation to J Bank when it fell due, and despite numerous demands, J Bank foreclosed the mortgaged properties. The properties were sold in a foreclosure sale for ₱35,000,000.00, thereby leaving a ₱15,000,000.00 deficiency. For failure of X Corp. to pay said deficiency, J Bank filed a complaint for sum of money against X Corp., its President, Mr. P, and Y, Inc.

With respect to Mr. P, J Bank argued that he should be held solidarily liable together with X Corp. because he signed the loan document on behalf of X Corp. in his capacity as President. On the other hand, J Bank contended that Y, Inc. should also be held solidarily liable because the shareholdings of both corporations are identically owned and their operations are controlled by the same people; hence, Y, Inc. is a mere alter ego of X Corp.

- (a) Should Mr. P be held liable? Explain. (2.5%)
- (b) Should Y, Inc. be held liable? Explain. (2.5%)

A.5.

Mr. Y filed a case captioned as "Injunction with Prayer for *Status Quo* Order, Temporary Restraining Order and Damages" against Z Company to prohibit the latter from selling shares which Mr. Y purportedly bought from Z Company. Mr. Y alleged that the subscription for the said shares was already partly paid by him, but the subject shares were nonetheless being offered for sale by Z Company to the corporation's other stockholders.

- (a) Is the case filed by Mr. Y against Z Company considered an intra-corporate dispute? Explain. (2.5%)
- (b) Assuming that it was Z Company which instead filed a case against Mr. Y in order to collect the unpaid balance of his stock subscriptions, is the case considered an intra-corporate dispute? Explain. (2.5%)

A.6.

In January 2016, Mr. H was issued a life insurance policy by XYZ Insurance Co., wherein his wife, Mrs. W, was designated as the sole beneficiary. Unbeknownst to XYZ Insurance Co., however, Mr. H had been previously diagnosed with colon cancer, the fact of which Mr. H had concealed during the entire time his insurance policy was being processed.

In January 2019, Mr. H unfortunately committed suicide. Due to her husband's death, Mrs. W, as beneficiary, filed a claim with XYZ Insurance Co. to recover the proceeds of the late Mr. H's life insurance policy. However, XYZ Insurance Co. resisted the claim, contending that: 1. the policy is void *ab initio* because Mr. H fraudulently concealed or misrepresented his medical condition, *i.e.*, his colon cancer; and 2. as an insurer in a life insurance policy, it cannot be held liable in case of suicide.

Rule on each of XYZ Insurance Co.'s contentions. (5%)

A.7.

Ms. J offered to sell her car to Ms. K, an interested buyer. Consequently, Ms. J emailed Ms. K a copy of the proposed Deed of Sale covering the same. After agreeing to its terms, Ms. K printed and then signed the emailed copy of the Deed of Sale. She then faxed it to Ms. J who signed the faxed copy.

Is the copy of the Deed of Sale faxed by Ms. K to Ms. J considered an electronic document under the Electronic Commerce Act? Explain. (2%)

A.8.

KLM Printers, Inc. operated a small outlet located at the ground floor of a university building in Quezon City. It possessed soft copies of certain textbooks on file, and would print "book-alikes" of these textbooks (or in other words, reproduced the entire textbooks) upon order and for a fee. It would even display samples of such "book-alikes" in its stall for sale to the public.

Upon learning of KLM Printers, Inc.'s activities, the authors of the textbooks filed a suit against it for copyright infringement. In its defense, KLM Printers, Inc. invoked the doctrine of fair use, contending that the "book-alikes" are being used for educational purposes by those who avail of them.

(a) What is the doctrine of fair use? (2%)

(b) Is KLM Printers, Inc.'s invocation of the doctrine of fair use proper in this case? Explain. (3%)

A.9.

X Pharmaceuticals, Inc. has been manufacturing the antibiotic ointment *Marvelopis*, which is covered by a patent expiring in the year 2020. In January 2019, the company filed an application for a new patent for *Disilopis*, which, although constituting the same substance as *Marvelopis*, is no longer treated as an antibiotic but is targeted and marketed for a new use, *i.e.*, skin whitening.

(a) What are the three (3) requisites of patentability under the Intellectual Property Code? (3%)

(b) Should X Pharmaceuticals, Inc.'s patent application for *Disilopis* be granted? Explain. (2%)

A.10.

In 2005, W Hotels, Inc., a multinational corporation engaged in the hospitality business, applied for and was able to register its trademark "W" with the Intellectual Property Office of the Philippines (IPO) in connection with its hotels found in different parts of the world.

In 2009, a Filipino corporation, RST Corp., filed before the IPO a petition for cancellation of W Hotels, Inc.'s "W" trademark on the ground of non-use, claiming that W Hotels, Inc. failed to use its mark in the Philippines because it is not operating any hotel in the country which bears the "W" trademark.

In its defense, W Hotels, Inc. maintained that it has used its "W" trademark in Philippine commerce, pointing out that while it did not have any hotel establishment in the Philippines, it should still be considered as conducting its business herein because its hotel reservation services, albeit for its hotels abroad, are made accessible to Philippine residents through its interactive websites prominently displaying the "W" trademark. W Hotels, Inc. also presented proof of actual booking transactions made by Philippine residents through such websites.

Is W Hotels, Inc.'s defense against the petition for cancellation of trademark tenable? Explain. (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.

W Medical, Inc. operated a full-service hospital named WMed. Using its stockholders' advances and a mortgage loan from Bank X, W Medical, Inc. commenced the construction of a new 11-storey WMed Annex Building. Unfortunately, due to financial constraints, only seven (7) floors were constructed and the WMed Annex Building remained unfinished.

Despite the non-completion of the WMed Annex Building, W Medical, Inc. continued its operations and earned modest revenues. While W Medical, Inc.'s assets are more than its liabilities and it is able to turn a monthly profit, it could not pay its loan installments to Bank X as they fall due.

- (a) What is the concept of “insolvency” under the Financial Rehabilitation and Insolvency Act (FRIA)? May W Medical, Inc. be considered “insolvent” under the FRIA? Explain. (3%)**
- (b) Assuming that W Medical, Inc. is considered “insolvent”, may it file a petition for suspension of payments under the FRIA? Explain. (2%)**
- (c) Assuming that W Medical, Inc. is considered “insolvent”, what are the legally recognized modes of rehabilitation it may opt to avail of? (3%)**
- (d) If W Medical, Inc. files a petition for rehabilitation before the court, is it possible for the rehabilitation proceedings to be converted into one for liquidation? Explain. (2%)**

B.12.

EFG, Inc. is indebted to Bank Y in the amount of ₱50,000,000.00. The loan was secured by a suretyship agreement issued by Z Insurance Co.

Due to EFG, Inc.'s default, Bank Y filed a case against Z Insurance Co. as surety. There is also a pending criminal case for violation of the Bouncing Checks Law against the President of EFG, Inc., Mr. P, who signed the check as signatory for the company.

Unable to meet its obligations as they fell due, EFG, Inc. filed a petition for rehabilitation. Finding the petition sufficient in form and substance, the court issued a Commencement Order, which was thereafter published.

(a) Should the case filed against Z Insurance Co. be suspended in light of the Commencement Order? Explain. (2.5%)

(b) Should the criminal case filed against Mr. P be suspended in light of the Commencement Order? Explain. (2.5%)

B.13.

Enumerate at least two (2) rights of a data subject under the Data Privacy Act. (2%)

B.14.

ABC Corp. is a company which shares are listed in the Philippine Stock Exchange. In 2015, 25% of ABC Corp.'s shareholdings were acquired by XYZ, Inc., while 40% of the same were acquired by RST, Inc., both of which are non-listed private corporations. Meanwhile, the remaining 35% of ABC Corp.'s shareholdings are held by the public.

In 2018, or three years (3) after it acquired its 25% stake in ABC Corp., XYZ, Inc. sought to obtain an additional 12% shareholding in ABC Corp. by purchasing some of the shares owned by RST, Inc. therein. The new acquisition will not, however, result in XYZ, Inc. gaining majority control of ABC Corp.'s Board.

Is XYZ, Inc. required to conduct a tender offer? Explain. (3%)

B.15.

Mr. P, the President of JKL, Inc. which shares are listed in the Philippine Stock Exchange, was notified that the corporation has just been awarded a ₱5,000,000,000.00 construction contract by a reputable private company. Before this information could be disclosed to the public, Mr. P called his stockbroker to purchase 20,000 shares of JKL, Inc. He also mentioned the transaction to his brother, Mr. B. Mr. B, who was not involved at all in the business of JKL, Inc., also bought 50,000 shares of JKL, Inc. because of the tip disclosed to him by Mr. P.

(a) Is the information disclosed by Mr. P to Mr. B considered as material nonpublic information for purposes of insider trading? Explain. (2%)

(b) Should Mr. P and Mr. B be held liable for insider trading? Explain. (3%)

B.16.

Mayor J has two (2) bank accounts: 1. a Peso savings account with Bank P; and 2. a U.S. Dollar savings account with Bank D.

In 2018, Mayor J's former business partner, Mr. K, filed a civil case for collection of sum of money against him.

In the same year, a criminal case for Direct Bribery under the Revised Penal Code was filed against Mayor J. It was alleged in the Information that in exchange for the expeditious approval of various permits and licenses, Mayor J received kickbacks which amounts were deposited to his bank accounts.

(a) In the event Mayor J is held ultimately liable in the civil case filed by Mr. K, may Mayor J's bank accounts in Bank P and Bank D be subject to garnishment? Explain. (2.5%)

(b) Assuming that the prosecution in the criminal case sought from the court an inquiry of Mayor J's bank accounts in Bank P and Bank D, may a bank inquiry order be issued? Explain. (2.5%)

B.17.

Several public officials were charged before the Sandiganbayan for violation of the Anti-Graft and Corrupt Practices Act involving the anomalous award of a multi-billion contract to Corporation Z. The Information alleged that each of the accused received kickbacks from Corporation Z in exchange for the dispensation of certain bidding requirements, and that the said kickbacks were deposited to the accused's respective bank accounts in the Philippines. Upon request of the Office of the Ombudsman, the Compliance and Investigation Staff of the Anti-Money Laundering Council (AMLC) conducted an intelligence database search. The search revealed that there were remittances to the bank accounts of the accused with six (6) different banks.

(a) May the AMLC examine the bank accounts of the accused-public officials even without seeking a prior court order? Explain. (2.5%)

(b) May a court order be issued *ex parte* for the freezing of the bank accounts of the accused-public officials upon application of the AMLC? If so, in what instance may this be done and which court can issue such order? Explain. (2.5%)

B.18.

Mrs. T maintained a checking account with Bank U. While Mrs. T was abroad, she left her checkbook inside her office drawer, which she kept under lock and key. However, Mrs. T's long-time secretary, Ms. S, knew where the checkbook was hidden. Ms. S then broke the lock on the office drawer, took one of Mrs. T's blank checks, and succeeded to encash ₱200,000.00 from Bank U by imitating Mrs. T's signature. As soon as Mrs. T returned from abroad and discovered the incident, she immediately reported the matter to Bank U, seeking that the transaction be reversed. However, the bank refused, contending that Mrs. T should bear the loss arising from the forgery.

(a) Is the imitation of Mrs. T's signature considered as a material alteration under the Negotiable Instruments Law? Explain. (2.5%)

(b) Is Bank U's contention tenable? Explain. (2.5%)

B.19.

LMN, Inc. operates a beach resort in a secluded island off the coast of Puerto Princesa City, Palawan. It operates three (3) motorized boats to ferry its guests from the city proper to the island resort and vice-versa. During one rainy morning, the guests were informed that the ferry services for that day were cancelled due to a storm forecast. In order to appease the apparent dismay of most of the guests who will miss their flight back to Manila, the boat captain of one of LMN, Inc.'s motorized boats decided to push through with its trip back to the city. Shortly after the boat sailed, the storm hit and the winds and waves became stronger, causing engine trouble to the boat. Unfortunately, the boat capsized and sank, resulting in the death of one of the passengers, Mr. X.

This prompted Mr. X's heirs to file a complaint for damages against LMN, Inc., which they alleged to be a common carrier. In its defense, LMN, Inc. maintained that it is not a common carrier because its boats are not available to the general public but only ferry resort guests and employees.

(a) May LMN, Inc. be considered a common carrier? Explain. (3%)

(b) Assuming LMN, Inc. is a common carrier, may it be absolved from liability on the ground of fortuitous event? Explain. (2%)

B.20.

F Corp., a corporation engaged in the export of fertilizers, entered into a sale of its products with Mr. P. In this relation, Bank C, F Corp.'s bank, received an irrevocable letter of credit, payable on sight, issued by Bank I for the account of its client, Mr. P, in the amount of ₱1,000,000.00 to cover the purchase price of the sale. In the letter of credit, Bank C was designated as the confirming bank.

After being presented the required documents under the letter of credit, Bank C issued in favor of F Corp. a cashier's check in the amount of ₱1,000,000.00.

Bank C then informed Bank I of the payment made pursuant to the letter of credit. Thereafter, Bank C transmitted the documents presented by F Corp. to Bank I and sought to be reimbursed for the amount it paid to F Corp.

Bank I, however, refused to reimburse Bank C for the reason that it received an e-mail coming from Mr. P that the latter will not make any payment to Bank I in relation to the letter of credit because the products shipped to him by F Corp. were of substandard quality.

(a) Is Bank I's refusal to reimburse Bank C warranted? Explain. (3%)

(b) Assuming that the documents submitted by F Corp. were proven to be actually forged but were nonetheless accepted by Bank C as sufficient, may Bank I refuse Bank C's claim for reimbursement? Explain. (2%)

- END OF PART II -
Nothing follows

