



Republic of the Philippines
Supreme Court
Manila

**2019 BAR EXAMINATIONS
POLITICAL AND INTERNATIONAL LAW**

NOVEMBER 3, 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 the 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) *Jus cogens* (2%)**
- (b) Principle of double criminality (2%)**
- (c) Act of State doctrine (2%)**
- (d) Precautionary principle (2%)**

A.2.

Under the United Nations Convention on the Law of the Sea (UNCLOS), what are the rights of the Philippines within the following areas:

- (a) Contiguous zone (2%)**
- (b) Exclusive economic zone (2%)**

A.3.

The Humanitarian Services Society (HSS), an international non-government organization, assisted the displaced families of Tribe X who had to flee their home country in order to escape the systematic persecution conducted against them by their country's ruling regime based on their cultural and religious beliefs. Fearing for their lives, some of these displaced families, with the help of HSS, were able to sail out into the sea on a boat which eventually landed in Palawan. The Philippine Coast Guard intended to push back the boat with 15 passengers. An affiliate of HSS in the Philippines intervened on behalf of these displaced families, claiming that they are refugees under international law and hence, should not be expelled from our territory.

May the displaced families of Tribe X be considered as “refugees” under international law? Explain. (3%)

A.4.

Mrs. W supplies the Philippine National Police (PNP) with uniforms every year. Last month, she and two (2) other officers of the PNP conspired to execute a “ghost purchase” covered by five (5) checks amounting to ₱200,000.00 each, or a total of ₱1,000,000.00. An investigating committee within the PNP, which was constituted to look into it, invited Mrs. W, among others, for an inquiry regarding the anomalous transaction. Mrs. W accepted the invitation but during the committee hearing, she stated that she will not answer any question unless she be provided with the assistance of a counsel. The PNP officials denied her request; hence, she no longer participated in the investigation.

(a) What is a custodial investigation? Under the 1987 Constitution, what are the rights of a person during custodial investigation? (3%)

(b) Was the PNP’s denial of Mrs. W’s request violative of her right to counsel in the proceedings conducted by the PNP? Explain. (2%)

A.5.

At about 5:30 A.M. of September 15, 2019, Police Senior Inspector Officer A of the Manila Police District Station received a text message from an unidentified civilian informer that one Mr. Z would be meeting up later that morning with two (2) potential sellers of drugs at a nearby restaurant. As such, Officer A decided to hang around the said place immediately.

At about 9:15 A.M., two (2) male passengers, named X and Y, who were each carrying a travelling bag, alighted from a bus in front of the restaurant. A transport barker, serving as a lookout for Officer A, signaled to the latter that X and Y were “suspicious-looking.” As the two were about to enter the restaurant, Officer A stopped them and asked about the contents of their bags. Dissatisfied with their response that the bags contained only clothes, Officer A proceeded to search the bags and found packs of *shabu* therein. Thus, X and Y were arrested, and the drugs were seized from them. According to Officer A, a warrantless search was validly made pursuant to the stop and frisk rule; hence, the consequent seizure of the drugs was likewise valid.

(a) What is the stop and frisk rule? (2.5%)

(b) Was the stop and frisk rule validly invoked by Officer A? If not, what is the effect on the drugs seized as evidence? Explain. (2.5%)

A.6.

A committee of the Senate invited Mr. X and Mr. Y, the Secretary of Foreign Affairs and Secretary of Energy, respectively, as resource speakers for an inquiry in aid of legislation. Mr. X refused to attend, arguing that the Senate, not its committee, has the power to compel attendance. Meanwhile, Mr. Y attended the committee hearing but upon being asked about discussions made during a close-door cabinet meeting, he refused to answer invoking executive privilege. The committee members insisted that Mr. Y answer the question pursuant to the right of Congress to information from the executive branch.

(a) Based on his argument, is Mr. X's non-appearance permissible? Explain. (2.5%)

(b) Is Mr. Y's refusal to answer based on executive privilege valid? Explain. (2.5%)

A.7.

The continuing threat to the security of the State in various parts of the country prompted the National Security Adviser of the President to adopt a "Comprehensive National Security Strategy (CNSS)" with the following components:

Component 1: During a state of emergency, the President, in the exercise of his power of general supervision, may delegate to the heads of local government units (LGUs), through an administrative issuance, the power to call-out the Armed Forces of the Philippines (AFP) for a more effective and immediate response to the ground situation; and

Component 2: In declaring Martial Law, the President, in a preemptive action and without waiting for the recommendation of the Secretary of National Defense and the AFP, may rely upon any intelligence information he may have gathered through other sources.

Disturbed by the strategy's supposed infirmities, a concerned citizens' organization raised the constitutionality of the two (2) components of the CNSS before the Supreme Court.

(a) Is component 1 of the CNSS constitutional? Explain. (2.5%)

(b) Is component 2 of the CNSS constitutional? Explain. (2.5%)

A.8.

Mayor X and his City Administrator, Y, are political buddies who assumed their respective offices in 2010. Sometime in January 2012, Y proposed to Mayor X the entry into a ₱5,000,000.00 loan agreement with ABC Foundation, a non-stock and non-profit organization in which the two had a long-standing personal involvement. The loan agreement was duly executed in the same year but was never authorized and approved by the *Sangguniang Panlungsod*. It was further found that the same constituted a fraudulent scheme to defraud the City Government.

Meanwhile, Mayor X won another term during the May 2013 Elections and Y continued on as his City Administrator. A year after, or in May 2014, administrative charges for grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service were filed against them before the Office of the Ombudsman. In defense, Mayor X argued that his subsequent re-election in May 2013 absolved him from any administrative liability for any alleged anomalous activity during his first term in office. Y raised the same defense of condonation, having been retained by Mayor X as City Administrator for a second term.

On December 10, 2015, the Ombudsman rendered its ruling in the case, finding both Mayor X and Y administratively liable. Citing the Supreme Court's Decision in *Carpio-Morales v. Court of Appeals* (G.R. Nos. 217126-27), which was initially promulgated on November 10, 2015, the Ombudsman rejected their defense of condonation. With the motions for reconsideration of Mayor X and Y having been denied by the Ombudsman on March 10, 2016, they elevated the matter to the Court of Appeals.

- (a) **Did the Ombudsman err in not giving credence to the defense of condonation as raised by Mayor X? Explain. (2%)**
- (b) **How about Y? Can he validly invoke the condonation doctrine to absolve him of the charge? Explain. (3%)**

A.9.

The unabated rise of criminality and the reported identification of delinquent children loitering in the wee hours of the night prompted City Z to implement a curfew ordinance. Minors unaccompanied or unsupervised on the streets by their parents or guardians between 10:00 P.M. to 5:00 A.M. may be apprehended by law enforcers subject to certain exclusive exceptions. These exceptions are: 1. minors running lawful errands, such as buying of medicines, using of telecommunications facilities for emergency purposes and the like; 2. night school students; and 3. minors working at night. Minors apprehended for violation of the curfew ordinance shall be required to undergo counseling, accompanied by their parents/guardians.

(a) Does the curfew ordinance violate the primary right and duty of parents to rear their children? Explain. (2.5%)

(b) Does the curfew ordinance infringe any of the minors' fundamental rights? Explain. (2.5%)

A.10.

An Information for *Estafa* was filed against the accused, Mr. D. During the course of the trial, Mr. D filed a motion to dismiss for failure to prosecute the case for a reasonable length of time. Opposing the motion, the prosecution argued that its failure to present its witnesses was due to circumstances beyond its control. Eventually, the trial court dismissed the case with finality on the ground that Mr. D's right to speedy trial was violated.

A month after, the same criminal case for *Estafa* was re-filed against Mr. D, prompting him to file a motion to dismiss invoking his right against double jeopardy. The prosecution opposed the motion, arguing that the first criminal case for *Estafa* was dismissed with the express consent of the accused as it was, in fact, upon his own motion. Moreover, it was already able to secure the commitments of its witnesses to appear; hence, it would be prejudicial for the State if the case were to be dismissed without trial.

(a) For double jeopardy to attach, what requisites must exist? (2%)

(b) Rule on Mr. D's present motion. (3%)

- 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.

Atty. G ran for Governor of the Province of Pampanga, while his close friend, Atty. M, ran for Mayor of the Municipality of Guagua, Pampanga. They both won convincingly. Eventually, the losing candidates timely filed election protests. The losing gubernatorial candidate, Mr. A, filed his protest before the Regional Trial Court of Pampanga (RTC), whereas the losing mayoralty candidate, Mr. B, filed his protest before the Municipal Trial Court of Guagua, Pampanga (MTC).

- (a) What are the term limits for the positions of Atty. G and Atty. M? (1%)**
- (b) Does the RTC have jurisdiction over the case filed by Mr. A? Explain. (2%)**
- (c) Does the MTC have jurisdiction over the case filed by Mr. B? Explain. (2%)**

B.12.

W, the incumbent Congressman of the Province of Albay, decided to run for Governor. He filed his certificate of candidacy (CoC) for Governor without resigning from his post and continued exercising his duties as Congressman, such as attending plenary sessions and committee hearings in the House of Representatives. One of W's fiercest critics, X, claimed that W should not be dispensing the functions of a Congressman since he is deemed *ipso facto* resigned as such upon his filing of a CoC for Governor of Albay.

- (a) Is X's argument correct? Explain. (2.5%)**
- (b) Assuming that W is instead, an incumbent Undersecretary of the Department of National Defense, what is the effect of the filing of his CoC for the position of Governor of Albay to said post? Explain. (2.5%)**

B.13.

Who are the impeachable officers under the 1987 Constitution? Briefly explain the process of impeaching them thereunder. (5%)

B.14.

A proposal to change a provision of the 1987 Constitution has been put forth as follows:

Original Text: "The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them."

Proposed Text: "The Philippines is a democratic and socialist State. Sovereignty resides in the party and all government authority emanates from it."

- (a) Is this an amendment or a revision? Explain. (2.5%)**
- (b) Briefly explain the process to revise the 1987 Constitution. (2.5%)**

B.15.

R was elected as Municipal Councilor for three (3) consecutive terms. Before the end of the third term, Vice Mayor S died, rendering his post vacant. Since R was the highest-ranking Municipal Councilor, he assumed the office of the Vice Mayor. One of his constituents, T, assailed R's assumption of office, arguing that elections should have been conducted to fill in the vacancy following the death of Vice Mayor S.

- (a) Is T's contention correct? Explain. (2.5%)**
- (b) Assuming that R validly assumed S's post, at the end of R's term as Vice Mayor, may he run, once more, for the position of Municipal Councilor? Or is he proscribed to do so under the Local Government Code? Explain. (2.5%)**

B.16.

Under the 1987 Constitution, to whom does each duty/power/privilege/prohibition/disqualification apply:

- (a) The authority to keep the general accounts of the Government and for such period provided by law, preserve the vouchers and other supporting documents pertaining thereto. (1%)**
- (b) The power to allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish**

farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (1%)

- (c) The authority to provide for the standardization of compensation of government officials and employees. (1%)**
- (d) The sole power to declare the existence of a state of war. (1%)**
- (e) The power to ratify treaties and international agreements. (1%)**

B.17.

In 2014, Congress enacted an appropriation law containing a provision that gives individual legislators the discretion to determine, post-enactment, how much funds would go to a specific project or beneficiary which they themselves also determine. Consequently, disbursements were made in the interim pursuant thereto.

Eventually, Mr. Z filed a petition questioning the constitutionality of the statutory provision on the ground that it violates the separation of powers principle. On the other hand, certain Congressmen argued that there was nothing wrong with the provision because, after all, the power to appropriate belongs to Congress.

- (a) Rule on the arguments of the parties. (2.5%)**
- (b) Assuming that the provision is declared unconstitutional, should the disbursements made pursuant thereto be returned in light of the doctrine of operative fact? Explain. (2.5%)**

B.18.

A was appointed by the President as a Commissioner of the Commission on Elections (COMELEC) while Congress was not in session. Pending confirmation of his appointment by the Commission on Appointments, A started to perform his official functions in the COMELEC, such as attending *en banc* sessions, hearing election protests, signing Resolutions, issuing Orders, and appearing before Congress during budget hearings. Atty. B questioned before the Supreme Court the exercise of official functions by A, stating that his *ad interim* appointment is not a permanent appointment but a temporary one pending confirmation by the Commission on Appointments, and thus, prohibited under Article IX-C of the 1987 Constitution which states that “[i]n no case shall any Member [of the COMELEC] be appointed or designated in a temporary or acting capacity.”

- (a) **Is Atty. B's contention correct? Explain. (2.5%)**
- (b) **If the Commission on Appointments by-passed the confirmation of A, can he still be reappointed by the President? Explain. (2.5%)**

B.19.

Candidate X, a naturalized Filipino citizen, ran for Congressman for the Lone District of Batanes. After a close electoral contest, he won by a slim margin of 500 votes. His sole opponent, Y, filed an election protest before the Commission on Elections (COMELEC), claiming that X should be disqualified to run for said position because he is not a natural-born citizen. While the case was pending, X was proclaimed by the Provincial Election Supervisor of Batanes as the duly elected Congressman of the province.

- (a) **Distinguish between natural-born and naturalized citizens under the 1987 Constitution. (2%)**
- (b) **Is X qualified to run for Congress? Explain. (1%)**
- (c) **Did X's proclamation divest the COMELEC of its jurisdiction to decide the case and vest the House of Representatives Electoral Tribunal (HRET) jurisdiction to hear the case? Explain. (2%)**

B.20.

H, a naturalized American citizen who later became a dual citizen under Republic Act No. 9225 (the Citizenship Retention and Re-acquisition Act), decided to run for Congress and thus, filed a certificate of candidacy (CoC). A citizen argued that H is ineligible for the position because of his status as a dual citizen. H responded that his act of filing a CoC amounted to his renunciation of foreign citizenship, rendering him eligible for the position.

- (a) **Was H's filing of a CoC sufficient to renounce foreign citizenship? Explain. (2.5%)**
- (b) **Assuming that H is a dual citizen because his parents are Filipino citizens and he was born in California, USA, was his filing of a CoC sufficient to renounce his foreign citizenship? Explain. (2.5%)**

- END OF PART II -

Nothing follows