



Republic of the Philippines
Supreme Court
Manila

2019 BAR EXAMINATIONS
REMEDIAL LAW

NOVEMBER 24, 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 ESTELITA 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 on **Booklet I.**

A.1.

ABC Homeowners Association, Inc. sued Mr. X before the Regional Trial Court (RTC) for collection of unpaid association dues. Mr. X filed a motion to dismiss solely on the ground of lack of jurisdiction, asserting that the Housing and Land Use Regulatory Board has exclusive jurisdiction over disputes among homeowners and their associations. The RTC denied Mr. X's motion, maintaining that it has jurisdiction over the case. This prompted Mr. X to file a petition for *certiorari* under Rule 65 of the Rules of Court before the Supreme Court, alleging grave abuse of discretion on the part of the RTC in denying his motion to dismiss.

- (a) Is Mr. X's chosen remedy of *certiorari* and direct recourse to the Supreme Court proper? Explain. (2.5%)**
- (b) Assuming that Mr. X's motion was instead granted by the RTC, what is the proper remedy of ABC Homeowners Association, Inc. to challenge the RTC ruling? Explain. (2.5%)**

A.2.

Ms. A filed a complaint for damages against Ms. B, alleging that Ms. B negligently caused the demolition of her house's concrete fence, the top half of which fell on the front portion of Ms. A's car and permanently damaged its engine. In her answer, Ms. B denied any personal liability for the damage caused to Ms. A's car, averring that she merely acquiesced to the advice of her contractor, XYZ Construction Co., to have the concrete fence demolished. Thus, damages, if any, should be collected from it.

Thereafter, Ms. A filed a motion for judgment on the pleadings, alleging that Ms. B's statement in her answer is actually a negative pregnant. Ms. B opposed the motion, reiterating her defense in her answer which purportedly rendered judgment on the pleadings improper. Ms. B also moved for the dismissal of the case on the ground of non-joinder of XYZ Construction Co., which she alleged is an indispensable party to the case.

- (a) Is Ms. A's motion for judgment on the pleadings proper? Explain. (3%)**
- (b) Is XYZ Construction Co. an indispensable or a necessary party? Explain. (3%)**



(c) Assuming that XYZ Construction Co. is an indispensable party, is its non-joinder a ground for the dismissal of the case? Explain. (3%)

A.3.

Mr. C sued Mr. D for reconveyance of property and damages, claiming that Mr. D, through fraud and forgery, was able to obtain the title to Lot No. 1234, which was previously registered in Mr. C's name. The complaint was filed before the Regional Trial Court.

Instead of filing an answer, Mr. D moved to dismiss the complaint on the ground of lack of cause of action. In opposition, Mr. C argued that lack of cause of action is not a ground for a motion to dismiss as the ground provided under Section 1 (g), Rule 16 of the Rules of Court is failure to state a cause of action.

Distinguish the concepts of lack of cause of action and failure to state a cause of action. Based on this distinction, is Mr. C's opposition tenable? Explain. (5%)

A.4.

Mrs. E filed a complaint for sum of money against Mr. F in the amount of ₱1,000,000.00 before the Regional Trial Court (RTC). After due proceedings, the RTC ruled in favor of Mrs. E, and since no appeal was interposed thereto, the ruling became final and executory as evinced by an Entry of Judgment dated July 2, 2012. However, Mrs. E was unable to immediately move for the execution of said judgment because she had a work engagement overseas.

On June 29, 2017, Mrs. E returned to the country and, on the same day, filed a motion for the issuance of a writ of execution before the RTC. On July 7, 2017, the RTC granted the motion, and consequently, issued a writ of execution in Mrs. E's favor.

Was the RTC's issuance of the writ of execution procedurally infirm? Explain. (3%)

A.5.

Mrs. G defaulted in the payment of her loan obligation with Z Bank. As such, Z Bank extra-judicially foreclosed Mrs. G's mortgaged property and sold it at public auction where it emerged as the highest bidder. Eventually, a certificate of sale was issued in Z Bank's favor, and title to the property was later consolidated under the bank's name.

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Claiming that Z Bank used fraudulent machinations in increasing the interest and penalty charges on the loan, thereby making it impossible for her to pay, Mrs. G filed before the Regional Trial Court (RTC) a complaint for cancellation of consolidation of ownership over a real property with prayer for the issuance of a writ of preliminary injunction against Z Bank. Immediately thereafter, the RTC issued an *ex parte* writ of preliminary injunction enjoining Z Bank from disposing of the foreclosed property or taking possession thereof.

Did the RTC err in issuing the writ of preliminary injunction *ex parte*? Explain. (3%)

A.6.

Mr. H filed a complaint against Mr. I to recover the amount of ₱500,000.00 based on their contract of services. In his answer, Mr. I admitted that he has yet to pay Mr. H for his services based on their contract but nevertheless, interposed a counterclaim alleging that Mr. H still owed him rental arrearages for the lease of his apartment also amounting to ₱500,000.00.

It has come to Mr. H's attention that Mr. I did not pay any filing fees when he filed his answer. As such, Mr. H moved to dismiss the counterclaim. In response to Mr. H's motion, Mr. I averred that the non-payment of filing fees was purely based on inadvertence and that the said filing fees had already been paid as of date, as evinced by the official receipt issued by the clerk of court therefor.

- (a) **What is the nature of Mr. I's counterclaim? Is the payment of filing fees required for such counterclaim to prosper? Explain. (3%)**
- (b) **Should Mr. I's counterclaim be dismissed? Explain. (3%)**

A.7.

As a result of an anonymous complaint, Mr. J, a local public official, was held administratively liable for Grave Misconduct by the Office of the Ombudsman (Ombudsman) in Administrative Case No. 1234. As such, he was imposed the penalty of dismissal from service. The Ombudsman also found probable cause to indict him for violation of Section 3 (b) of Republic Act No. 3019, or the "Anti-Graft and Corrupt Practices Act," in Criminal Case No. 4321. Mr. J moved for the reconsideration of the Ombudsman's Joint Decision but was denied.

Unperturbed, Mr. J filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals (CA), assailing the Ombudsman's Joint Decision in Administrative Case No. 1234 and Criminal Case No. 4321. However, the CA dismissed the petition outright, holding that such petition constitutes an improper remedy to assail the administrative and criminal aspects of the aforementioned Ombudsman ruling.

Was the CA's dismissal of Mr. J's petition correct? Explain. (5%)

A.8.

Ms. A filed a petition for a writ of *amparo*, claiming that she was being threatened by Mr. B, her ex-boyfriend, with whom she has a child out of wedlock, named C. Ms. A alleged that since she started dating someone else, Mr. B began stalking her, parking his car on the street outside her house, and watching her house until the wee hours of the morning. She thus feared for her life.

- (a) Is Ms. A entitled to a writ of *amparo*? Explain. (2.5%)
- (b) Assuming that Mr. B took away C without Ms. A's knowledge and consent, what is the proper remedy for Ms. A to immediately recover C's custody? Explain. (2.5%)

A.9.

Ms. N initiated a special proceeding for the correction of entries in the civil registry under Rule 108 of the Rules of Court before the Regional Trial Court (RTC), impleading only the Local Civil Registrar therein. In her petition, Ms. N sought to change the entry in her birth certificate with respect to the date of her parents' marriage from "May 22, 1992" to "not married." The Office of the Solicitor General opposed the petition, arguing that Ms. N's parents should have been impleaded in the proceeding. In response, Ms. N argued that this was not necessary since it was an entry in her own birth certificate which she intended to change. Hence, it was a matter personal to her, and as such, the participation of her parents in the case could be dispensed with.

Is Ms. N's position correct? Explain. (3%)

A.10.

Distinguish the following:

- (a) Writ of *kalikasan* and writ of continuing *mandamus* (3%)
- (b) Warrant to Search, Seize, and Examine Computer Data (WSSECD) and Warrant to Examine Computer Data (WECD) (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 on 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 on **Booklet II.**

B.11.

Mr. X filed a complaint for sum of money against his old friend, Mr. Y. In order to ensure that Mr. Y would not be able to file a responsive pleading and much more, participate in the case, Mr. X paid off Mr. Y's counsel, Atty. Z, who deliberately let the case proceed as such without his client's knowledge. Eventually, judgment was rendered on March 1, 2016 in Mr. X's favor, a copy of which was received by Atty. Z on April 4, 2016. Bothered by his conscience, Atty. Z brought the copy of the decision to Mr. Y on June 1, 2016, thereby surprising the latter and causing him grief. Meanwhile, the decision became final and executory in due course on April 19, 2016.

Thereafter, Mr. Y took steps in vindicating his rights, which culminated on August 15, 2016 when he, as represented by a new counsel, filed a petition for annulment of judgment before the Court of Appeals (CA) on the ground of extrinsic fraud. The CA dismissed the petition on the ground that Mr. Y failed to submit a satisfactory explanation as to why he directly resorted to a petition for annulment of judgment, when he could have filed a petition for relief from judgment.

(a) What are the differences between a petition for relief from judgment and a petition for annulment of judgment in terms of grounds and periods to file? (3%)

(b) Was the CA's dismissal of Mr. Y's petition for annulment of judgment proper? Explain. (2%)

B.12.

Ms. R received a subpoena *ad testificandum* from a Regional Trial Court (RTC) directing her to appear and testify in a case. Despite notice and without any sufficient justification, Ms. R failed to appear.

This prompted the RTC to issue a show-cause order directing Ms. R to explain, within ten (10) days, why she should not be cited for contempt for her non-appearance despite receipt of the subpoena. Ms. R, however, did not file her comment. After due hearing with notice to the parties, the RTC cited her in indirect contempt, and consequently, ordered her arrest.

Ms. R moved to quash the warrant issued for her arrest, claiming that a formal charge should have been filed against her, and that the same should have been

docketed and prosecuted as a separate case against her. She thus claimed that since this procedure was not followed, the order citing her in contempt is null and void.

(a) Is Ms. R's contention tenable? Explain. (3%)

(b) What is the proper mode of appeal should Ms. R decide to assail her contempt citation? Will the filing of such appeal automatically result in the suspension of the execution of judgment? Explain. (2%)

B.13.

In a neighborhood bicycle race, Mr. A bumped the bicycle of one of his competitors, Mr. B, in order to get ahead. This caused the latter to lose control of the bike which hit the concrete pavement and sent Mr. B crashing headfirst into the sidewalk. By the time the organizers got to him, Mr. B was dead.

Law enforcement authorities who witnessed the incident arrested Mr. A without a warrant, and immediately brought him to the inquest prosecutor for the conduct of an inquest. Thereafter, an Information for Homicide was filed by the inquest prosecutor without the conduct of a preliminary investigation. The next day Mr. A requested for the conduct of a preliminary investigation.

(a) Is the inquest prosecutor's filing of the Information without the conduct of preliminary investigation proper? (2.5%)

(b) Is Mr. A's request permissible? Explain. (2.5%)

B.14.

Mr. P was charged with Plunder before the Sandiganbayan along with several government officials. Before his arraignment, he filed a petition for bail. This was objected to by the prosecution which insisted that he should first be arraigned before he applies for bail, considering that grant of bail will result in the accused fleeing the court's jurisdiction.

(a) When is bail a matter of right before conviction? (2%)

(b) Is the objection of the prosecution valid? Explain. (3%)



B.15.

In an Information filed before the Regional Trial Court (RTC), Mr. C was charged with Carnapping for supposedly taking the motorcycle of Mr. O and joyriding with it around the city. When Mr. C was arraigned, he entered a plea of “not guilty” to the charge. After the prosecution rested its case, Mr. C proceeded to file a demurrer to evidence. The demurrer was denied by the RTC.

(a) Would Mr. C be allowed to present evidence in his defense after the denial of his demurrer? Explain. (2%)

(b) Assuming that the demurrer was granted by the RTC and the prosecution’s motion for reconsideration thereto is denied, what is the prosecution’s further procedural recourse? Explain. (3%)

B.16.

Mr. W was charged with raping his neighbor’s seventeen (17)-year old daughter, AAA. When he was arraigned, Mr. W expressed his desire to plead “guilty,” provided that his sentence be substantially reduced. Both AAA’s mother and the prosecutor were amenable to the proposal. Consequently, the judge entered a plea of guilty for Mr. W and sentenced him to serve a reduced straight penalty of only ten (10) years of imprisonment, as agreed upon.

(a) Did the judge properly enter a plea of guilty for Mr. W? Explain. (2%)

(b) Assuming that Mr. W was once more charged with the crime of Rape committed against AAA based on the same incident, may Mr. W validly invoke the defense of double jeopardy through a motion to quash and will such motion prosper? Explain. (3%)

B.17.

In a case for specific performance and damages, plaintiff Q presented photocopies of the contracts he had executed with defendant R for the purpose of establishing their existence. Defendant R’s counsel objected to the admission of said photocopies, invoking the best evidence rule.

(a) Should the objection of defendant R’s counsel be sustained? Explain. (3%)

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(b) Assuming that the best evidence rule applies, under what circumstances will the photocopies be admissible in evidence? (2%)

B.18.

In a case for Attempted Parricide brought against Mr. M by his wife, Mrs. N, their son, C, was called as a witness for the prosecution. Mr. M's counsel objected, invoking the filial privilege rule.

Meanwhile, in a separate case for Serious Physical Injuries also brought against Mr. M, but this time by his son, C, Mrs. N was called to testify against Mr. M. Mr. M's counsel objected, invoking the marital disqualification rule.

Should the objections of Mr. M's counsel in both cases be sustained? Explain. (5%)

B.19.

A criminal complaint for Theft was filed against Mr. T by his employer for allegedly stealing company property. During trial, the prosecutor called Mr. T's former supervisor, Mr. V, to the stand and attempted to question him on similar incidents also involving Mr. T with his previous employer. Mr. T's counsel objected to the question, invoking the rule on *res inter alios acta*. In response, the prosecutor argued that the question should be allowed since he was trying to establish Mr. T's habit of stealing things from the workplace.

(a) Should the objection of Mr. T's counsel be sustained? Explain. (2.5%)

(b) Assuming that the prosecution presents evidence on the bad moral character of Mr. T, may the same be admitted in the present case? Explain. (2.5%)

B.20.

AAA, a ten (10)-year old minor, was sleeping inside her room when she was awakened by her uncle, Mr. G, who was reeking of alcohol and was already on top of her. After Mr. G succeeded in having carnal knowledge of AAA, the former immediately left the latter's room. Thereafter, AAA rushed into the room of her mother, MMM, and spontaneously and frantically reported the incident. Eventually, Mr. G was arrested and was indicted for the crime of Rape.

During trial, MMM was presented as a witness to testify on what AAA reported to her and AAA's gestures and disposition at that time. Mr. G's counsel objected to MMM's testimony on the ground that it is hearsay evidence. The prosecutor countered that the subject of MMM's testimony may be admitted as an independently relevant statement and as part of the *res gestae*.

- (a) **May MMM's testimony be admitted on the ground that it constitutes an independently relevant statement? Explain. (2.5%)**

- (b) **May AAA's statement to MMM be admitted on the ground of *res gestae*? Explain. (2.5%)**

- END OF PART II -
Nothing follows