

2013 BAR EXAMINATIONS**REMEDIAL LAW**

October 27, 2013

8:00 A.M.– 12:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains **FOURTEEN (14)** pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are **TEN (10)** Essay Questions numbered **I to X** (with subquestions), and **TWENTY (20)** Multiple Choice Questions (*MCQs*) numbered **I to XX**, to be answered within *four (4) hours*.

The essay portion contains questions that are worth **80%** of the whole examination, while the **MCQ** portion contains questions worth **20%**.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only at the *front*, not the back, page of every sheet in your Examination Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back pages of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial

facts, and to discern the points upon which the question turns. It should show your knowledge and understanding of the pertinent principles and theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, and to reason logically in a lawyer-like manner to a sound conclusion from the given premises.

A mere “Yes” or “No” answer without any corresponding explanation or discussion will not be given any credit. Thus, always briefly but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Examination Notebook.

4. MCQs are to be answered by writing in your Examination Notebook the capital letter (A, B, C, D, or E) corresponding to your chosen answer. *The MCQ answers should begin in the page following the last page of your essay answers.*

There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices. Note that some MCQs may need careful analysis both of the questions and the choices offered.

5. Make sure you do not write *your name* or any *extraneous note/s* or *distinctive marking/s* on your Examination Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the Examination Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE

J. ARTURO D. BRION
Chairman
2013 Bar Examinations

ESSAY QUESTIONS

I.

Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5 Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie's office secretary, Esther, received the summons at Charlie's office.

Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence *ex parte*. Ten days later, Charlie filed his verified answer, raising the defense of full payment with interest.

I(A) Was there proper and valid service of summons on Charlie?
(3%)

I(B) If declared in default, what can Charlie do to obtain relief?
(4%)

II.

Yvonne, a young and lonely OFW, had an intimate relationship abroad with a friend, Percy. Although Yvonne comes home to Manila every six months, her foreign posting still left her husband Dario lonely so that he also engaged in his own extramarital activities. In one particularly exhilarating session with his girlfriend, Dario died. Within 180 days from Dario's death, Yvonne gives birth in Manila to a baby boy.irate relatives of Dario contemplate criminally charging Yvonne for adultery and they hire your law firm to handle the case.

II(A) Is the contemplated criminal action a viable option to bring?
(3%)

II(B) Is a civil action to impugn the paternity of the baby boy feasible, and if so, in what proceeding may such issue be determined? (5%)

III.

While in his Nissan Patrol and hurrying home to Quezon City from his work in Makati, Gary figured in a vehicular mishap along that portion of EDSA within the City of Mandaluyong. He was bumped from behind by a Ford Expedition SUV driven by Horace who was observed using his cellular phone at the time of the collision. Both vehicles - more than 5 years old – no longer carried insurance other than the compulsory third party liability insurance. Gary suffered physical injuries while his Nissan Patrol sustained damage in excess of Php500,000.

III(A) As counsel for Gary, describe the process you need to undertake starting from the point of the incident if Gary would proceed criminally against Horace, and identify the court with jurisdiction over the case. (3%)

III(B) If Gary chooses to file an independent civil action for damages, explain briefly this type of action: its legal basis; the different approaches in pursuing this type of action; the evidence you would need; and types of defenses you could expect. (5%)

IV.

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

IV(A) In one criminal action for qualified theft where you are the defense attorney, you learned that the woman accused has been in detention for six months, yet she has not been to a courtroom nor seen a judge.

What remedy would you undertake to address the situation and what forum would you use to invoke this relief? (3%)

IV(B) In another case, also for qualified theft, the detained young domestic helper has been brought to court five times in the last six months, but the prosecution has yet to commence the presentation of its evidence. You find that the reason for this is the continued absence of the employer-complainant who is working overseas.

What remedy is appropriate and before which forum would you invoke this relief? (3%)

IV(C) Still in another case, this time for illegal possession of dangerous drugs, the prosecution has rested but you saw from the records that the illegal substance allegedly involved has not been identified by any of the prosecution witnesses nor has it been the subject of any stipulation.

Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the remedial steps you propose to undertake. (3%)

IV(D) In one other case, an indigent mother seeks assistance for her 14-year old son who has been arrested and detained for malicious mischief.

Would an application for bail be the appropriate remedy or is there another remedy available? Justify your chosen remedy and outline the appropriate steps to take. (3%)

V.

The spouses Juan reside in Quezon City. With their lottery winnings, they purchased a parcel of land in Tagaytay City for P100,000.00. In a recent trip to their Tagaytay property, they were surprised to see hastily assembled shelters of light materials occupied by several families of informal settlers who were not there when they last visited the property three (3) months ago.

To rid the spouses' Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (7%)

VI.

While leisurely walking along the street near her house in Marikina, Patty unknowingly stepped on a garden tool left behind by CCC, a construction company based in Makati. She lost her balance as a consequence and fell into an open manhole. Fortunately, Patty suffered no major injuries except for contusions, bruises and scratches that did not require any hospitalization. However, she lost self-esteem, suffered embarrassment and ridicule, and had bouts of anxiety and bad dreams about the accident. She wants vindication for her uncalled for experience and hires you to act as counsel for her and to do whatever is necessary to recover at least Php100,000 for what she suffered.

What action or actions may Patty pursue, against whom, where (court and venue), and under what legal basis? (7%)

VII.

You are the defense counsel of Angela Bituin who has been charged under RA 3019 (*Anti-Graft and Corrupt Practices Act*) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

VII(A) What “before-trial” remedy would you invoke in Angela’s behalf to address the fact that she had not been investigated at all, and how would you avail of this remedy? (4%)

VII(B) What “during-trial” remedy can you use to allow an early evaluation of the prosecution evidence without the need of presenting defense evidence; when and how can you avail of this remedy? (4%)

VIII.

On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

VIII(A) Where should Police Inspector Masigasig bring the felon for criminal processing? To Silang, Cavite where he is bound; to Makati where the bus actually was when the felonies took place; or back to Valenzuela where he is stationed? Which court has jurisdiction over the criminal cases? (3%)

VIII(B) May the charges of robbery and illegal possession of firearm be filed directly by the investigating prosecutor with the appropriate court without a preliminary investigation? (4%)

IX.

For over a year, Nenita had been estranged from her husband Walter because of the latter's suspicion that she was having an affair with Vladimir, a *barangay kagawad* who lived in nearby Mandaluyong. Nenita lived in the meantime with her sister in Makati. One day, the house of Nenita's sister inexplicably burned almost to the ground. Nenita and her sister were caught inside the house but Nenita survived as she fled in time, while her sister tried to save belongings and was caught inside when the house collapsed.

As she was running away from the burning house, Nenita was surprised to see her husband also running away from the scene. Dr. Carlos, Walter's psychiatrist who lived near the burned house and whom Walter medically consulted after the fire, also saw Walter in the vicinity some minutes before the fire. Coincidentally, Fr. Platino, the parish priest who regularly hears Walter's confession and who heard it after the fire, also encountered him not too far away from the burned house.

Walter was charged with arson and at his trial, the prosecution moved to introduce the testimonies of Nenita, the doctor and the priest-confessor, who all saw Walter at the vicinity of the fire at about the time of the fire.

IX(A) May the testimony of Nenita be allowed over the objection of Walter? (3%)

IX(B) May the testimony of Dr. Carlos, Walter's psychiatrist, be allowed over Walter's objection? (3%)

IX(C) May the testimony of Fr. Platino, the priest-confessor, be allowed over Walter's objection? (3%)

X.

As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counseling and the notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this practice and location, he did not have big-time clients but enjoyed heavy patronage assisting walk-in clients.

X(A) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases? (3%)

X(B) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (4%)

MULTIPLE CHOICE QUESTIONS

I. In a complaint filed by the plaintiff, what is the effect of the defendant's failure to file an answer within the reglementary period? (1%)

- (A) The court is allowed to render judgment *motu proprio* in favor of the plaintiff.
- (B) The court *motu proprio* may declare the defendant in default, but only after due notice to the defendant.
- (C) The court may declare the defendant in default but only upon motion of the plaintiff and with notice to the defendant.
- (D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant's failure to answer.
- (E) The above choices are all inaccurate.

II. Which of the following is admissible? (1%)

- (A) The affidavit of an affiant stating that he witnessed the execution of a deed of sale but the affiant was not presented as a witness in the trial.
- (B) The extrajudicial admission made by a conspirator against his co-conspirator after the conspiracy has ended.
- (C) The testimony of a party's witness regarding email messages the witness received from the opposing party.
- (D) The testimony of a police officer that he had been told by his informants that there were sachets of shabu in the pocket of the defendant.
- (E) None of the above.

III. Leave of court is required to amend a complaint or information before arraignment if the amendment _____. (1%)

- (A) upgrades the nature of the offense from a lower to a higher offense and excludes any of the accused
- (B) upgrades the nature of the offense from a lower to a higher offense and adds another accused
- (C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused
- (D) downgrades the nature of the offense from a higher to a lower offense and adds another accused
- (E) All the above choices are inaccurate.

IV. A Small Claims Court _____. (1%)

- (A) has jurisdiction over ejectment actions
- (B) has limited jurisdiction over ejectment actions
- (C) does not have any jurisdiction over ejectment actions
- (D) does not have original, but has concurrent, jurisdiction over ejectment actions
- (E) has only residual jurisdiction over ejectment actions

V. Character evidence is admissible _____. (1%)

- (A) in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged
- (B) in criminal cases – the prosecution may prove the bad moral character of the accused to prove his criminal predisposition
- (C) in criminal cases under certain situations, but not to prove the bad moral character of the offended party
- (D) when it is evidence of the good character of a witness even prior to his impeachment as witness
- (E) In none of the given situations above.

VI. When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (1%)

- (A) After the decision has become final and executory.
- (B) At any time after the failure of the defendant to pay the judgment amount.
- (C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.
- (D) The mortgaged property is never sold at public auction.
- (E) The mortgaged property may be sold but not in any of the situations outlined above.

VII. The signature of counsel in the pleading constitutes a certification that _____ . (1%)

- (A) both client and counsel have read the pleading, that to the best of their knowledge, information and belief there are good grounds to support it, and that it is not interposed for delay
- (B) the client has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
- (C) the counsel has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay
- (D) the counsel has read the pleading, that based on his personal information, there are good grounds to support it, and that it is not interposed for delay
- (E) The above choices are not totally accurate.

VIII. Which among the following is a requisite before an accused may be discharged to become a state witness? (1%)

- (A) The testimony of the accused sought to be discharged can be substantially corroborated on all points.
- (B) The accused does not appear to be guilty.
- (C) There is absolute necessity for the testimony of the accused whose discharge is requested.
- (D) The accused has not at any time been convicted of any offense.
- (E) None of the above.

IX. Which of the following distinguishes a motion to quash from a demurrer to evidence? (1%)

- (A) A motion to quash a complaint or information is filed before the prosecution rests its case.
- (B) A motion to quash may be filed with or without leave of court, at the discretion of the accused.
- (C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.
- (D) The grounds for a motion to quash are also grounds for a demurrer to evidence.
- (E) The above choices are all wrong.

X. Which among the following is not subject to mediation for judicial dispute resolution? (1%)

- (A) The civil aspect of B.P. Blg. 22 cases.
- (B) The civil aspect of theft penalized under Article 308 of the Revised Penal Code.
- (C) The civil aspect of robbery.
- (D) Cases cognizable by the *Lupong Tagapamayapa* under the *Katarungang Pambarangay* Law.
- (E) None of the above.

XI. What is the effect of the pendency of a special civil action under Rule 65 of the Rules of Court on the principal case before the lower court? (1%)

- (A) It always interrupts the course of the principal case.
- (B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.
- (C) The lower court judge is given the discretion to continue with the principal case.
- (D) The lower court judge will continue with the principal case if he believes that the special civil action was meant to delay proceedings.
- (E) Due respect to the higher court demands that the lower court judge temporarily suspend the principal case.

XII. Findings of fact are generally not disturbed by the appellate court except in cases _____. (1%)

- (A) where the issue is the credibility of the witness
- (B) where the judge who heard the case is not the same judge who penned the decision
- (C) where the judge heard several witnesses who gave conflicting testimonies
- (D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case
- (E) None of the above.

XIII. Contempt charges made before persons, entities, bodies and agencies exercising quasi-judicial functions against the parties charged, shall be filed with the Regional Trial Court of the place where the _____. (1%)

- (A) person, entity or agency exercising quasi-judicial function is located
- (B) person who committed the contemptuous act resides
- (C) act of contempt was committed
- (D) party initiating the contempt proceeding resides
- (E) charging entity or agency elects to initiate the action

XIV. When may a party file a second motion for reconsideration of a final judgment or final order? (1%)

- (A) At anytime within 15 days from notice of denial of the first motion for reconsideration.
- (B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.
- (C) A party is not allowed to file a second motion for reconsideration of a final judgment or final order.
- (D) A party is allowed as a matter of right to file a second motion for reconsideration of a judgment or final order.
- (E) None of the above.

XV. In an original action for *certiorari*, prohibition, *mandamus*, or *quo warranto*, when does the Court of Appeals acquire jurisdiction over the person of the respondent? (1%)

- (A) Upon the service on the respondent of the petition for *certiorari*, prohibition, *mandamus* or *quo warranto*, and his voluntary submission to the jurisdiction of the Court of Appeals.
- (B) Upon service on the respondent of the summons from the Court of Appeals.
- (C) Upon the service on the respondent of the order or resolution of the Court of Appeals indicating its initial action on the petition.
- (D) By respondent's voluntary submission to the jurisdiction of the Court of Appeals.
- (E) Under any of the above modes.

XVI. Extra-territorial service of summons is proper in the following instances, except _____. (1%)

- (A) when the non-resident defendant is to be excluded from any interest on a property located in the Philippines
- (B) when the action against the non-resident defendant affects the personal status of the plaintiff and the defendant is temporarily outside the Philippines
- (C) when the action is against a non-resident defendant who is formerly a Philippine resident and the action affects the personal status of the plaintiff
- (D) when the action against the non-resident defendant relates to property within the Philippines in which the defendant has a claim or lien
- (E) All of the above.

XVII. When is attachment improper in criminal cases? (1%)

- (A) When the accused is about to abscond from the Philippines.
- (B) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a broker, in the course of his employment as such.
- (C) When the accused is about to conceal, remove, or dispose of his property.
- (D) When the accused resides outside the jurisdiction of the trial court.

XVIII. Maria was accused of libel. While Maria was on the witness stand, the prosecution asked her to write her name and to sign on a piece of paper, apparently to prove that she authored the libelous material. Maria objected as writing and signing her name would violate her right against self-incrimination. Was Maria's objection proper? (1%)

- (A) No, she can be cross examined just like any other witness and her sample signature may be taken to verify her alleged authorship of the libelous statements.
- (B) No, her right against self-incrimination is waived as soon as she became a witness.
- (C) No, this privilege may be invoked only by an ordinary witness and not by the accused when she opts to take the witness stand.
- (D) The objection was improper under all of A, B, and C.
- (E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.

XIX. Danny filed a complaint for damages against Peter. In the course of the trial, Peter introduced evidence on a matter not raised in the pleadings. Danny promptly objected on the ground that the evidence relates to a matter not in issue. How should the court rule on the objection? (1%)

- (A) The court must sustain the objection.
- (B) The court must overrule the objection.
- (C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.
- (D) The court, in its discretion, may order that the allegation in the pleadings which do not conform to the evidence presented be stricken out.
- (E) The matter is subject to the complete discretion of the court.

XX. The Labor Arbiter, ruling on a purely legal question, ordered a worker's reinstatement and this ruling was affirmed on appeal by the NLRC whose decision, under the Labor Code, is final. The company's recourse under the circumstances is to _____. (1%)

- (A) file a motion for reconsideration and if denied, file a petition for review with the Court of Appeals on the pure legal question the case presents.
- (B) file a motion for reconsideration and if denied, appeal to the Secretary of Labor since a labor policy issue is involved.
- (C) file a motion for reconsideration and if denied, file a petition for *certiorari* with the Court of Appeals on the ground of grave abuse of discretion by the NLRC.
- (D) file a motion for reconsideration and if denied, file a petition for review on *certiorari* with the Supreme Court since a pure question of law is involved.
- (E) directly file a petition for *certiorari* with the Court of Appeals since a motion for reconsideration would serve no purpose when a pure question of law is involved.