

2015 BAR EXAMINATIONS  
**MERCANTILE LAW**

I.

- A. Nadine has a checking account with Fair & Square Bank. One day, she lost her checkbook and the finder was able to forge her signature and encash the forged check. Will Nadine be able to recover the amount debited from her checking account from Fair & Square Bank? Justify your answer. (3%)**

Yes, Nadine should be able to recover the amount debited from her checking account from Fair and Square Bank. The Bank is supposed to know the signature of its clients. The Bank was thus negligent in not detecting the forgery of Nadine's signature and paying the check. Under the circumstances, there was no negligence on the part of Nadine which would preclude her from invoking forgery. **Philippine National Bank vs Quimpo, 158 SCRA 582**

- B. Is a manager's check as good as cash? Why or why not? (2%)**

Yes, the Supreme Court held in various decisions that a manager's check is good as cash. A manager's check is a check drawn by the bank against itself. It is deemed pre-accepted by the bank from the moment of issuance. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay. By issuing it, the bank in effect commits its total resources, integrity and honor behind the check. ( **Tan vs Court of Appeals, 239 SCRA 310; International Corporate Bank vs Gueco, 351 SCRA 516; Metrobank and Trust Company vs Chiok, GR No. 172652, November 26, 2014**

**Alternative answer**

Manager's check is not legal tender because under Article 1249 of the Civil Code, checks do not produce the effect of payment until encashed or through the fault of the creditor, their value has been impaired. Moreover, under the Central Bank Act, the debtor can not compel the creditor to

accept checks in payment of a debt whether public or private ( Article 60 of RA 7653 )

**C. When can you treat a bill of exchange as a promissory note? (3%)**

A bill of exchange may be treated as a promissory note in the following instances.

1. The drawee is a fictitious person or a person not having the capacity to contract;
2. The drawer and the drawee are one and the same person.
3. Where the instrument is so ambiguous that there is a doubt as to whether the instrument is a bill or a note, the holder may treat it either as a bill or note, at the option of the holder. ( Sections 130 and 17 of the Negotiable Instruments Law

**II.**

**A. Novette entered into a contract for the purchase of certain office supplies. The goods were shipped. While in transit, the goods were insured by Novette. Does she have an insurable interest over the goods even before delivery of the same to her? Explain. (2%)**

Yes, Novette has an insurable interest in the goods. The contract of sale was already perfected and Novette acquired interest thereon although the goods have yet to be delivered.

**B. Will an insurance policy be binding even if the premium is unpaid? What if it were partially paid? (3%)**

As a general rule, the insurance policy is not valid and binding unless the premium thereof has been paid. This is the cash and carry rule under the Insurance Code. Premium is the consideration for the undertaking of the insurer to indemnify the insured against a specified peril. There are exceptions, however, one of them is when there is an agreement allowing the insured to pay the premium in installments and partial payment has been made at the time of the loss. ( **Makati Tuscany Condominium Corporation vs Court of Appeals, 215 SCRA 463**

### III.

#### A. Discuss the three-fold character of a bill of lading. (3%)

A bill of lading is considered a receipt for the goods shipped to the common carrier.

It also serves as the contract by which three parties, namely, the shipper, the carrier and the consignee undertake specific responsibilities and assumed stipulated obligations.

Third, it is the evidence of the existence of the contract of carriage providing for the terms and conditions thereof ( **Keng Hua Paper Products vs Court of Appeals, 286 SCRA 257.**

#### B. What is a “Jason clause” in a charter party? (2%)

The Jason clause derives its name from *The Jason* 225 US 32 ( 1912 ) decided by the US Supreme Court under the Harter Act. By the Jason clause, a shipowner ( provided he had exercised due diligence to make the ship seaworthy and properly manned, equipped and supplied) could claim a general average contribution from cargo, even where the damage was caused by faulty navigation of the vessel, provided that the bill of lading excluded liability for such faults.

NB. This is not a familiar principle in Philippine maritime commerce and the question is not consistent with the norm of asking questions to test the knowledge of entry level lawyers. It is respectfully submitted that the question should be given outright credit in favor of the examinees regardless of their answer.

**Are common carriers liable for injuries to passengers even if they have observed ordinary diligence and care? Explain. (2%)**

Yes, common carriers are liable to injuries to passengers even if the carriers observed ordinary diligence and care because the obligation imposed upon them by law is to exercise extra-ordinary diligence. Common carriers are

bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons with a due regard for all the circumstances ( **Article 1755 of the Civil Code** )

#### IV.

**A. Maine Den, Inc. opened an irrevocable letter of credit with Fair / Bank, in connection with Maine Den, Inc.'s importation of spare parts for its textile mills. The imported parts were released to Maine Den, Inc. after it executed a trust receipt in favor of Fair Bank. When Maine Den, Inc. was unable to pay its obligation under the trust receipt, Fair Bank sued Maine Den, Inc. for estafa under the Trust Receipts Law. The court, how dismissed the suit. Was the dismissal justified? Why or why not? (3%)**

The dismissal of the complaint for estafa is justified. Under recent jurisprudence, the Supreme Court held that transactions referred to in relation to trust receipts mainly involved sales and if the entruster knew even before the execution of the alleged trust receipt agreement that the goods subject of the trust receipt were never intended by the trustee for resale or for the manufacture of items to be sold, the agreement is not a trust receipt transaction but a simple loan, notwithstanding the label. In this case, the object of the trust receipt, spare parts for textile mills , were for the use of the trustee and never intended for sale. As such, the transaction is a simple loan. **Ng vs People of the Philippines, GR No. 173905, April 23, 2010; Land Bank vs Perez, GR No. 166884, June 13, 2012 and Hur Ting Yang vs People of the Philippines, GR Nio. 195117, August 14, 2013**

**B. Will the principle of res perit domino apply in trust receipt transaction ?**

No. This is because the loss of the goods, documents or instruments which are the subject of a trust receipt pending their disposition, irrespective of whether or not it was due to the fault or negligence of the trustee, shall not extinguish the trustee's obligation to the entruster for the value thereof.

Also, while the entruster is made to appear as owner of the goods covered by the trust receipt, such ownership is only a legal fiction to enhance the entruster's security interest over the goods. **Section 10 of PD 115; Rosario Textile Mills Corp vs. Home Bankers Savings and Trust Company, 462 SCRA 88**

V.

- A. **A standby letter of credit was issued by ABC Bank to secure the obligation of X Company to Y Company. Under the standby letter of credit, if there is failure on the part of X Company to perform its obligation, then Y Company will submit to ABC Bank a certificate of default (in the form prescribed under the standby letter of credit) and ABC Bank will have to pay Y Company the defaulted amount.**

**Subsequently, Y Company submitted to ABC Bank a certificate of default notwithstanding the fact that X Company was not in default. Can ABC Bank refuse to honor the certificate of default? Explain. (3%)**

No. Under the doctrine of independence in a letter of credit, the obligation of the issuing bank to pay the beneficiary is distinct and independent from the main and originating contract underlying the letter of credit. Such obligation to pay does not depend on the fulfillment or non-fulfillment of the originating contract. It arises upon tender of the stipulated documents under the letter of credit. In the present case, the tender of the certificate of default entitles Y to payment under the standby letter of credit notwithstanding the fact that X Company was not in default. This is without prejudice to the right of X Company to proceed against Y Company under the law on contracts and damages. **Insular Bank of Asia and America vs Intermediate Appellate Court 167 SCRA 450.**

**Alternative answer .**

Under the fraud exception principle, the beneficiary may be enjoined from collecting on the letter of credit in case of fraudulent abuse of credit. The issuance of a certificate of default despite the fact that X company is not in default constitutes fraudulent abuse of credit. **Transfield Philippines vs Luzon Hydro Corporation, 443 SCRA 307.**

- B. Is the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce applicable to commercial letters of credit issued by a domestic bank even if not expressly mentioned in such letters of credit? What is the basis for your answer? (3%)**

Yes, the Supreme Court held that the observance of the Uniform Customs and Practice in the Philippines is justified by Article 2 of the Code of Commerce which enunciates that in the absence of any particular provision in the Code of Commerce, commercial transaction shall be governed by usage and customs generally observed. **Bank of the Philippine Islands vs De Reny Fabric Industries, Inc. 35 SCRA 253**

VI.

- A. DEF Corporation has retained surplus profits in excess of 100% of its paid-in capital stock. However, it is unable to declare dividends, because it had entered into a loan agreement with a certain creditor wherein the declaration of dividends is not allowed without the consent of such creditor. If DEF Corporation cannot obtain this consent, will it be justified in not declaring dividends to its stockholders? Explain. (3%)**

Yes. Stock corporations are prohibited from retaining surplus profits in excess of 100% of their paid-in capital stock except among others, when the corporation is prohibited under any loan agreement with any financial institution or creditor; whether local or foreign, from declaring dividends without the consent of the creditor and such consent has not been secured. ( Section 43 of the Corporation Code )

- B. What is “watered stock” and what is the legal consequence of the issuance of such stock? (3%)**

Watered stocks are stocks issued for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value. Any director or officer of a corporation consenting to the issuance of watered stocks or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary shall be solidarily liable with the stockholder concerned to the corporation and its creditors for the difference between the fair

value received at the time of issuance of the stock and the par or issued value of the same. **Section 65 of the Corporation Code**

## VII.

- A. A foreign company has been exporting goods to a Philippine company for several years now. When the Philippine company failed to pay the latest exportation, the foreign company sued to collect in the Philippines. The Philippine company interposed the defense that the foreign company was doing business in the Philippines without a license; hence, could not sue before a Philippine court. Is this defense tenable? Explain your answer. (3%)**

The defense is not tenable. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country can not be deemed as doing business in the importing country. Thus, the foreign company may sue in the Philippines despite lack of license to do business in the Philippines. ( **B. Van Zuiden Bros Ltd. Vs GTVL Manufacturing Industries 523 SCRA 233**

### **B. Define:**

- 1. Doctrine of apparent authority (2%)**

By the doctrine of apparent authority, the corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority and it holds him out to the public as possessing the power to do those acts. **Advance Paper Corporation vs Arma Traders Corporation, GR No. 176897, December 11, 2013**

- 2. Trust fund doctrine (2%)**

By the trust fund doctrine subscriptions to the capital stock of a corporation constitute a fund to which the creditors have the right to look for satisfaction of their claims. The scope of the doctrine encompasses not only the capital stock but also other property and assets generally regarded in equity as a trust fund for the payment

of corporate debts **Halley vs Printwell, GR No. 157549, May 30, 2011; Ong vs Tiu, 401 SCRA 1**

VIII.

- A. Bam filed an action to enjoin SN Company's Board of Directors from selling a parcel of land registered in the corporation's name, to compel the corporation to recognize Bam as a stockholder with 50 shares, to allow him to inspect the corporate books, and to claim damages against the corporation and its officers. Subsequently, the corporation and the individual defendants moved to dismiss the complaint since the corporation's certificate of registration was revoked by the SEC during the pendency of Bam's case on the ground of non-compliance with reportorial requirements.**

**The special commercial court granted the motion and reasoned that only an action for liquidation of assets can be maintained when a corporation has been dissolved and Bam cannot seek reliefs which in effect lead to the continuation of the corporation's business. The court also ruled that it lost jurisdiction over the intra-corporate controversy upon the dissolution of the corporation.**

**a) Was the court correct? (3%)**

The court is not correct. An action to be recognized as a stockholder and to inspect corporate documents is an intra-corporate dispute which does not constitute a continuation of business. The dissolution of the corporation simply prohibits it from continuing its business. Moreover, under Section 145 of the Corporation Code, no right or remedy in favor of or against any corporation, its stockholders, members, directors and officers shall be removed or impaired by the subsequent dissolution of the corporation.

The dissolution does not automatically convert the parties into strangers or change their intra corporate relationship. Neither does it terminate existing causes of action which arose because of the

corporate ties of the parties. The cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation. **Aguirre vs FQB +7, Inc. GR no. 170770, January 9, 2013**

- b) Four years later, SN Company files an action against Bam to recover corporate assets allegedly held by the latter for liquidation. Will this action prosper? (3%)**

The action cannot prosper because the corporation has no more legal capacity to sue after three years from its dissolution. **Alabang Development Corporation vs Alabang Hills Village Association, GR no. 187456, June 2, 2014**

IX.

- A. Able Corporation sold securities to 21 non-qualified buyers during a 15-month period, without registering the securities with the Securities and Exchange Commission. Did Able Corporation violate the Securities Regulation Code? Explain. (2%)**

Yes because under the SRC securities shall not be sold or offered to be sold to the public within the Philippines unless the securities are registered with and approved by the Securities and Exchange Commission. Public means 20 or more investors. The fact that the securities were sold during a 15 month period is immaterial.

However, the sale of securities to less than 20 investors if done during a 12 month period is an exempt transaction under the Securities Regulation Code.

- B. Securities issued by the Philippine government are “exempt securities” and, therefore, need not be registered with the Securities and Exchange Commission prior to their sale or offering to the public in the Philippines. What is the rationale behind this exemption? (2%)**

The rationale for the exemption is that the public is amply protected even without the registration of the securities to be issued by the government since the government is presumed to be always solvent.

**C. Why is the Securities Regulation Code called a “truth in securities law”?  
(2%)**

The Securities Regulation Code is called a “ truth in securities law “ because it requires the issuer to make full and fair disclosure of information about securities being sold or offered to be sold within the Philippines and penalizes manipulative and fraudulent acts, devices and schemes.

X.

**Mr. and Mrs. Reyes invested their hard-earned savings in securities issued by LEAD Bank. After discovering that the securities sold to them were not registered with the SEC in violation of the Securities Regulation Code, the spouses Reyes filed a complaint for nullity of contract and for recovery of a sum of money with the RTC. LEAD Bank moved to dismiss the case on the ground that it is the SEC that has primary jurisdiction over actions involving violations of the Securities Regulation Code. If you were the judge, how would you rule on the motion to dismiss? (3%)**

The motion should be denied. Civil suits falling under the SRC ( like liability for selling unregistered securities ) are under the exclusive original jurisdiction of the RTC and hence, need not be first filed before the SEC unlike criminal cases, wherein the latter body exercises primary jurisdiction. **Pua vs Citibank, GR no. 180064, September 16, 2013**

XI.

**A. Why is the Bangko Sentral ng Pilipinas considered a lender of last resort?  
(2%)**

It is considered the lender of last resort because it lends to banks and similar institutions under financial distress when they have no other means to raise funds.

**B. Distinguish a conservator from a receiver of a bank. (2%)**

A conservator is appointed if a bank or quasi-bank is in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of creditors and depositors. The conservator shall take charge of the assets and liabilities of the bank and exercise management and exercise other powers to restore the bank's viability. The conservatorship shall not exceed one year.

A receiver is appointed generally if the realizable value of the bank's assets as determined by BSP is less than its liabilities. The receiver shall take charge of the assets and liabilities of the institution and administer the same for the benefit of its creditors. The receiver shall determine within 90 days whether the bank can be rehabilitated, otherwise, he shall recommend the closure of the institution.

**C. What is insider trading? (2%)**

Insider trading is the buying or selling by securities by an insider while in the possession of a material non-public information.

XII.

- A. Raymond invested his money in securities issued by the Philippine government, through his bank. Subsequently, the Bureau of Internal Revenue asked his bank to disclose his investments. His bank refused the request for disclosure on the ground that the investments are confidential under the Secrecy of Bank Deposits Law (Republic Act No. 1405, as amended). Is the bank's refusal justified? Defend your answer. (2%)**

It is justified. Under RA 1405, investment in bonds issued by the Philippine government are also absolutely confidential and may not be examined, inquired or looked into by any person, government official, bureau or office save for the exceptions provided by law. None of the exceptions apply in the present case..

- B. First Bank received an order of garnishment over a client's peso and dollar deposits in First Bank. Should First Bank comply with that order? Explain. (3%)**

First Bank should comply with the order of garnishment over a client's peso deposits because there is nothing in RA 1405 that places bank deposits beyond the reach of judgment creditor. And the disclosure of information on bank deposits pursuant to the writ of garnishment is only incidental to the execution process. **PCIB vs Court of Appeals 193 SCRA 452.**

The dollar deposits, however, are exempt from garnishment or court order under the Foreign Currency Act ( RA 6426 ). Thus, the bank should not comply with this part of the garnishment.

### XIII.

- A. A commercial bank wants to acquire shares in a cement manufacturing company. Do you think it can do that? Why or why not? (2%)**

A commercial bank can not acquire shares in a cement manufacturing company because a commercial bank can only invest in the equity of allied undertakings, meaning, undertakings related to banking. ( Section 30 of RA 8791 )

- B. A court found the interest charged by a bank as excessive and unconscionable and struck down the contractual stipulation on interest. If you were the judge, what would you impose as the applicable interest rate? State your legal basis. (2%)**

I will impose legal rate of interest which is currently set at 6% per annum

- C. What is the single borrower's limit? (2%)**

Under the single borrower's limit, the total amount of loans, credit accommodations and guarantee that the bank may extend to any person shall not exceed 25% of the bank's net worth. While the law sets the ceiling at 20% of the bank's networth, it also empowers the BSP to modify the ceiling. The current SBL as set by BSP is 25% of the Bank's net worth.

### XIV.

**A. Differentiate trademark, copyright and patent from each other. (6%)**

1. As to definition :
  - a. Trademark is any visible sign capable of distinguishing goods
  - b. Copyright is an incorporeal right granted by statute to the author or creator of original literary and artistic works whereby he is invested for a limited period of time with the right carry out, authorize and prevent the reproduction, distribution, transformation, rental, public performance and other forms of communication of his work to the public.
  - c. Patent is any technical solution of any problem in any field of human activity which is new, requires an inventive step and industrially applicable.
2. As to object
  - a. The object of trademark are goods
  - b. The object of copyright are original literary and artistic works
  - c. The object of patent is invention
3. As to term
  - a. The term of trademark is ten years
  - b. The term of copyright is generally 50 years
  - c. The term of patent is 20 years from application
4. As to how acquired
  - a. Trademark is acquired through registration and use
  - b. Copyright is acquired from the moment of creation
  - c. Patent is acquired through application with the IPO

**B. What is the doctrine of equivalents? (2%)**

Under the doctrine of equivalents, infringement of patent occurs when a device appropriates a prior invention by incorporating its innovative concept and albeit with some modifications and change performs the same function in substantially the same way to achieve the same result. **Godines vs Court of Appeals, 226 SCRA 338**

**C. In what ways would a case for infringement of trademark be different from a case for unfair competition? (3%)**

1. In infringement of trademark, prior registration of the trademark is a prerequisite to the action whereas in unfair competition trademark registration is not necessary
2. Trademark infringement is the unauthorized use of the registered trademark while unfair competition is the passing off one's goods as those of another
3. In infringement of trademark, fraudulent intent is unnecessary whereas in unfair competition fraudulent intent is essential ( Delmonte Corporation vs Court of Appeals, 181 SCRA 410 )

**XV.**

**CHEN, Inc., a Taiwanese company, is a manufacturer of tires with the mark Light Year. From 2009 to 2014, Clark Enterprises, a Philippine- registered corporation, imported tires from CHEN, Inc. under several sales contracts and sold them here in the Philippines. In 2015, CHEN, Inc. filed a trademark application with the Intellectual Property Office (IPO) for the mark Light Year to be used for tires. The IPO issued CHEN, Inc. a certificate of registration (COR) for said mark. Clark Enterprises sought the cancellation of the COR and claimed it had a better right to register the mark Light Year. CHEN, Inc. asserted that it was the owner of the mark and Clark Enterprises was a mere distributor. Clark Enterprises argued that there was no evidence on record that the tires it imported from CHEN, Inc. bore the mark Light Year and Clark Enterprises was able to prove that it was the first to use the mark here in the Philippines. Decide the case. (4%)**

While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of trademark. Such ownership of the trademark confers the right to register the trademark. Since Chen owns the trademark as evidenced by its actual and continuous use prior to the Clark Enterprises, then it is the one entitled to the registration of the trademark. The fact that Clark was the first one to use the mark here in the Philippines will not matter. Chen's prior actual use of the trademark even in another country bars Clark from applying for the registration of the same trademark.

Also, a mere distributor does not own the trademark to the goods he distributes and his right over the trademark can not prevail over the owner. **E.Y Industrial Sales vs. Shien Dar Electricity and Machinery, GR no. 184850, October 20, 2010; Ecole de Cuisine Manille vs Renaud Cointreau, GR 185830, June 5, 2013**

XVI.

**A. On the anti-money laundering laws:**

- 1. What is the distinction between a “covered transaction report” and a “suspicious transaction report”? (2%)**

A covered transaction report involves transaction/s in cash or other equivalent monetary instrument involving a total amount in excess of 500k within one banking day while suspicion transaction report involves transactions with covered institutions regardless of the amounts involved made under any of the suspicious circumstances enumerated by law.

- 2. Does the Anti-Money Laundering Council have the authority to freeze deposits? Explain. (2%)**

No. The authority to freeze deposits is lodged with and based upon the order of the Court of Appeals. ( Section 10 of RA 9160 as amended )

**B. On foreign investments:**

- 1. A foreign company has a distributor in the Philippines. The latter acts in his own name and account. Will this distributorship be considered as doing business by the foreign company in the Philippines? (3%)**

The appointment of a distributor in the Philippines is not sufficient to constitute doing business unless it is under the full control of the foreign corporation. If the distributor is an independent entity doing business for its own name and account, the latter can not be considered as doing

business. **Steel Case vs Design International Selection, GR No 171995, April 18, 2012**

- 2. ABC Corporation was organized in Malaysia but has a branch in the Philippines. It is entirely owned by Filipino citizens. Can you consider ABC Corporation a Philippine national? (2%)**

Yes it is a considered a Philippine national as long as it is registered as doing business in the Philippines under the Corporation Code ( Section 1 of RA 7042, as amended by Section 1 of RA 8179 )

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