

Bar Examination Questionnaire for Remedial Law 2011

1. Anna filed a petition for appointment as regular administrative of her father's estate. Her sister Sophia moved to dismiss the petition on the ground that the parties, as members of the same family, have not exerted earnest effort toward a compromise prior to the filing of the petition. Should the petition be dismissed?

- a. Yes, since such earnest effort is jurisdictional in all estate cases.
- b. No, since such earnest effort is not required in special proceedings.**
- c. Yes, since such earnest effort is required prior to the filing of the case.
- d. No, since such earnest effort toward a compromise is not required in summary proceedings.

2. A pending criminal case, dismissed provisionally, shall be deemed permanently dismissed if not revived after 2 years with respect to offenses punishable by imprisonment.

- a. of more than 12 years.
- b. not exceeding 6 years or a fine not exceeding P1,000.00.
- c. of more than 6 years or fine in excess of P1,000.00.
- d. of more than 6 years.**

3. Angie was convicted of false testimony and served sentence. Five years later, she was convicted of homicide. On appeal, she applied for bail. May the Court of Appeals deny her application for bail on ground of habitual delinquency?

- a. Yes, the felonies are both punishable under the Revised Penal Code.
- b. Yes, her twin convictions indicated her criminal inclinations.
- c. No, the felonies fall under different titles in the Revised Penal Code.**
- d. No, the charges are both bailable.

4. Which of the following is NOT CONSISTENT with the rules governing expropriation proceedings?

- a. The court shall declare the defendant who fails to answer the complaint in default and render judgement against him.**
- b. The court shall refer the case to the Board of Commissioners to determine the amount of just compensation.
- c. The plaintiff shall make the required deposit and forthwith take immediate possession of the property sought to be expropriated.

- d. The plaintiff may appropriate the property for public use after judgment and payment of the compensation fixed in it, despite defendant's appeal.
5. Which of the following is a correct statement of the rule on amendment of the information in a criminal proceeding?
- An amendment that downgrades the offense requires leave of court even before the accused pleads.**
 - Substantial amendments are allowed with leave of court before the accused pleads.
 - Only formal amendments are permissible before the accused pleads.
 - After the plea, a formal amendment may be made without leave of court.
6. Gary who lived in Taguig borrowed P1 million from Rey who lived in Makati under a contract of loan that fixed Makati as the venue of any action arising from the contract. Gary had already paid the loan but Rey kept on sending him letters of demand for some balance. Where is the venue of the action for harassment that Gary wants to file against Rey?
- In Makati since the intent of the party is to make it the venue of any action between them whether based on the contract or not.
 - In Taguig or Makati at the option of Gary since it is a personal injury action.**
 - In Taguig since Rey received the letters of demand there.
 - In Makati since it is the venue fixed in their contract.
7. Which of the following is not within the power of a judicial receiver to perform?
- Bring an action in his name.
 - Compromise a claim.
 - Divide the residual money in his hands among the persons legally entitled to the same.
 - Invest the funds in his hands without court approval**
8. Which of the following precepts forms part of the rules governing small claims?
- Permissive counterclaim is not allowed.**
 - The court shall render its decision within 3 days after hearing.
 - Joinder of separate claims is not allowed.
 - Motion to declare defendant in default allowed.

9. The Metropolitan Trial Court convicted Virgilio and Dina of concubinage. Pending appeal, they applied for bail, claiming they are entitled to it as a matter of right. Is their claim correct?
- No, bail is not a matter of right after conviction.
 - Yes, bail is a matter of right in all cases not involving moral turpitude.
 - No, bail is dependent on the risk of flight.
 - Yes, bail is a matter of right in Metropolitan Trial Court before and after conviction.**
10. As a rule, the judge shall receive the evidence personally. In which of the following circumstances may the court delegate the reception of evidence to the clerk of court?
- When a question of fact arises upon a motion.
 - When the trial of an issue of fact requires the examination of a long account.
 - In default or ex-parte hearings.**
 - Upon motion of a party on reasonable grounds.
11. Which of the following is in accord with the applicable rules on receivership?
- The court may appoint the plaintiff as receiver of the property in litigation over the defendant's objection.
 - A receiver may be appointed after judgment if the judgment obligor refuses to apply his property to satisfy the judgment.**
 - The trial court cannot appoint a receiver when the case is on appeal.
 - The filing of bond on appointment of a receiver is mainly optional.
12. Bearing in mind the distinction between private and public document, which of the following is admissible in evidence without further proof of due execution or genuineness?
- Baptismal certificates.
 - Official record of the Philippine Embassy in Singapore certified by the Vice-Consul with official seal.**
 - Documents acknowledged before a Notary Public in Hong Kong.
 - Unblemished receipt dated December 20, 1985 signed by the promisee, showing payment of a loan, found among the well-kept file of the promissor.

13. Ramon witnessed the commission of a crime but he refuses to testify for fear of his life despite a subpoena being served on him. Can the court punish him for contempt?
- No, since no person can be compelled to be a witness against another.
 - Yes, since public interest in justice requires his testimony.**
 - No, since Ramon has a valid reason for not testifying.
 - Yes, since litigants need help in presenting their cases.
14. The right to intervene is not absolute. In general, it CANNOT be allowed where
- the intervenor has a common interest with any of the parties.
 - it would enlarge the issues and expand the scope of the remedies.**
 - the intervenor fails to put up a bond for the protection of the other parties.
 - the intervenor has a stake in the property subject of the suit.
15. Which of the following grounds for dismissal invoked by the court will NOT PRECLUDE the plaintiff from refiling his action?
- Res judicata
 - Lack of jurisdiction over the subject matter.**
 - Unenforceability under the Statutes of Fraud.
 - Prescription.
16. When may a co-owner NOT demand the partition of the thing owned in common?
- When the creditor of one of the co-owners has attached the property.
 - When the property is essentially indivisible.**
 - When related co-owners agreed to keep the property within the family.
 - When a co-owner uses the property as his residence.
17. The city prosecutor of Manila filed, upon Soledad's complaint, a criminal action for estafa against her sister, Wella, before the RTC of Manila for selling to Victor a land that she previously sold to Soledad. At the same time Soledad filed a civil action to annul the second sale before the RTC of Quezon City. May the Manila RTC motu proprio suspend the criminal action on ground of prejudicial question?
- Yes, if it may be clearly inferred that complainant will not object to the suspension of the criminal case.

- b. **No, the accused must file a motion to suspend the action based on prejudicial question.**
- c. Yes, if it finds from the record that such prejudicial question exists.
- d. Yes, if it is convinced that due process and fair trial will be better served if the criminal case is suspended.

18. Which of the following conforms to the applicable rule on replevin?

- a. The applicant must file a bond executed to the adverse party in an amount equal to the value of the property as determined by the court
- b. **The property has been wrongfully detained by the adverse party.**
- c. The applicant has a contingent claim over the property object of the writ
- d. The plaintiff may apply for the writ at any time before judgment.

19. Gerry sued XYZ Bus Co. and Rico, its bus driver, for injuries Gerry suffered when their bus ran off the road and hit him. Of the two defendants, only XYZ Bus Co. filed an answer, alleging that its bus ran off the road because one of its wheels got caught in an open manhole, causing the bus to swerve without the driver's fault. Someone had stolen the manhole cover and the road gave no warning of the danger it posed. On Gerry's motion and over the objection of XYZ Bus Co., the court declared Rico, the bus driver, in default and rendered judgment ordering him to pay P50,000 in damages to Gerry. Did the court act correctly?

- a. **No, since the court should have tried the case against both defendants upon the bus company's answer.**
- b. No, the court should have dropped Rico as defendant since the moneyed defendant is the bus company.
- c. Yes, the court can, under the rules, render judgment against the defendant declared in default
- d. Yes, since, in failing to answer, Rico may be deemed to have admitted the allegations in the complaint.

20. Which of the following has NO PLACE in an application for a replevin order? A statement

- a. that the property is wrongfully detained by the adverse party.
- b. that the property has not been distrained for a tax assessment or placed under custodia legis.
- c. **of the assessed value of the property**
- d. that the applicant owns or has a right to the possession of the property.

21. In which of the following instances is the quantum of evidence ERRONEOUSLY applied?

- a. in Writ of Amparo cases, substantial evidence.
- b. to satisfy the burden of proof in civil cases, preponderance of evidence.
- c. to overcome a disputable presumption, clear and convincing evidence.
- d. to rebut the presumptive validity of a notarial document, substantial evidence.**

22. The accused jumps bail and fails to appear on promulgation of judgment where he is found guilty. What is the consequence of his absence?

- a. Counsel may appeal the judgment in the absence of the accused.
- b. The judgment shall be promulgated in his absence and he loses his right of appeal.**
- c. The promulgation of the judgment shall be suspended until he is brought to the jurisdiction of the court
- d. The judgment shall be void.

23. What should the court sheriff do if a third party serves on him an affidavit of claim covering the property he had levied?

- a. Ask the judgment obligee to file a court-approved indemnity bond in favor of the third- party claimant or the sheriff will release the levied property.**
- b. Ask the judgment obligee to file a court-approved bond for the sheriffs protection in case he proceeds with the execution.
- c. Immediately lift the levy and release the levied property.
- d. Ask the third-party claimant to support his claim with an indemnity bond in favor of the judgment obligee and release the levied property if such bond is filed.

24. Which of the following is NOT REGARDED as a sufficient proof of personal service of pleadings?

- a. Official return of the server.
- b. Registered mail receipt**
- c. Written admission of the party served.
- d. Affidavit of the server with a statement of the date, place and manner of service.

25. A sued B for ejectment Pending trial, B died, survived by his son, C. No substitution of party defendant was made. Upon finality of the judgment against B, may the same be enforced against C?

- a. **Yes, because the case survived B's death and the effect of final judgment in an ejectment case binds his successors in-interest**
- b. No, because C was denied due process.
- c. Yes, because the negligence of B's counsel in failing to ask for substitution, should not prejudice A.
- d. No, because the action did not survive B's death.

26. What is the proper remedy to secure relief from the final resolutions of the Commission On Audit?

- a. Petition for review on certiorari with the Supreme Court
- b. Special civil action of certiorari with the Court of Appeals.
- c. **Special civil action of certiorari with the Supreme Court**
- d. Appeal to the Court of Appeals.

27. Which of the following is a duty enjoined on the guardian and covered by his bond?

- a. **Provide for the proper care, custody, and education of the ward.**
- b. Ensure the wise and profitable investment of the ward's financial resources.
- c. Collect compensation for his services to the ward.
- d. Raise the ward to become a responsible member of society.

28. Berto was charged with and convicted of violating a city ordinance against littering in public places punishable by imprisonment of one month or a fine of P1,000.00. But the city mayor pardoned him. A year later, he was charged with violating a city ordinance against jaywalking which carried the same penalty. Need Berto post bail for such offense?

- a. Yes, his previous conviction requires posting of bail for the present charge.
- b. Yes, since he may be deemed to have violated the terms of his pardon.
- c. No, because he is presumed innocent until proven otherwise.
- d. **No, one charged with the violation of a city ordinance is not required to post bail, notwithstanding a previous pardon.**

29. Which of the following claims survive the death of the defendant and need not be presented as a claim against the estate?

- a. Contingent money claims arising from contract
- b. Unenforced money judgment against the decedent, with death occurring before levy on execution of the property.
- c. Claims for damages arising from quasi-delict**
- d. Claims for funeral expenses.

30. In a case, the prosecutor asked the medical expert the question, "Assuming that the assailant was behind the deceased before he attacked him, would you say that treachery attended the killing?" Is this hypothetical question permissible?

- a. No, since it asks for his legal opinion.**
- b. Yes, but conditionally, subject to subsequent proof that the assailant was indeed behind the deceased at that time.
- c. Yes, since hypothetical questions may be asked of an expert witness.
- d. No, since the medical expert has no personal knowledge of the fact

31. The city prosecutor charged Ben with serious physical injuries for stabbing Terence. He was tried and convicted as charged. A few days later, Terence died due to severe infection of his stab wounds. Can the prosecution file another information against Ben for homicide?

- a. Yes, since Terence's death shows irregularity in the filing of the earlier charge against him.
- b. No, double jeopardy is present since Ben had already been convicted of the first offense.
- c. No, there is double jeopardy since serious physical injuries is necessarily included in the charge of homicide.
- d. Yes, since supervening event altered the kind of crime the accused committed.**

32. Arvin was caught in flagrante delicto selling drugs for P200,000.00. The police officers confiscated the drugs and the money and brought them to the police station where they prepared the inventory duly signed by police officer Oscar Moreno. They were, however, unable to take pictures of the items. Will this deficiency destroy the chain of custody rule in the drug case?

- a. No, a breach of the chain of custody rule in drug cases, if satisfactorily explained, will not negate conviction.**
- b. No, a breach of the chain of custody rule may be offset by presentation in court of the drugs.
- c. Yes, chain of custody in drug cases must be strictly observed at all times to preserve the integrity of the confiscated items.
- d. Yes, compliance with the chain of custody rule in drug cases is the only way to prove the accused's guilt beyond reasonable doubt

33. A sued B in the RTC of Quezon City, joining two causes of action: for partition of real property and breach of contract with damages. Both parties reside in Quezon City but the real property is in Manila. May the case be dismissed for improper venue?

- a. Yes, since causes of action pertaining to different venues may not be joined in one action.

- b. **No, since causes of action pertaining to different venues may be joined In the RTC If one of die causes of action falls within its jurisdiction.**
 - c. Yes, because special civil action may not be joined with an ordinary civil action.
 - d. No, since plaintiff may unqualifiedly join in one complaint as many causes of action as he has against opposing party.
34. What is the doctrine of judicial stability or non interference?
- a. Once jurisdiction has attached to a court, it can not be deprived of it by subsequent happenings or events.
 - b. Courts will not hear and decide cases involving issues that come within the jurisdiction of administrative tribunals.
 - c. **No court has the authority to Interfere by injunction with the judgment of another court of coordinate jurisdiction.**
 - d. A higher court will not entertain direct resort to it unless the redress sought cannot be obtained from the appropriate court.
35. Which of the following admissions made by a party in the course of judicial proceedings is a judicial admission?
- a. Admissions made in a pleading signed by the party and his counsel intended to be filed.
 - b. An admission made in a pleading in another case between the same parties.
 - c. **Admission made by counsel in open court**
 - d. Admissions made in a complaint superseded by an amended complaint
36. What defenses may be raised in a suit to enforce a foreign judgment?
- a. That the judgment is contrary to Philippine procedural rules.
 - b. None, the judgment being entitled to full faith and credit as a matter of general comity among nations.
 - c. That the foreign court erred in the appreciation of the evidence.
 - d. **That extrinsic fraud afflicted the judgment**
37. Cindy charged her husband, George, with bigamy for a prior subsisting marriage with Teresa. Cindy presented Ric and Pat, neighbors of George and Teresa in Cebu City, to prove, first, that George and Teresa cohabited there and, second, that they established a reputation as husband and wife. Can Cindy prove the bigamy by such evidence?
- a. Yes, the circumstantial evidence is enough to support a conviction for bigamy.
 - b. No, at least one direct evidence and two circumstantial evidence are required to support a conviction for bigamy.
 - c. **No, the circumstantial evidence is not enough to support a conviction for bigamy.**
 - d. No, the circumstantial evidence cannot overcome the lack of direct evidence in any criminal case.
38. To prove payment of a debt, Bong testified that he heard Ambo say, as the latter was handing over money to Tessie, that it was in payment of debt Is Bong's testimony admissible in evidence?

- a. Yes, since what Ambo said and did is an independently relevant statement
- b. No, since what Ambo said and did was not in response to a startling occurrence.
- c. No, since Bong's testimony of what Ambo said and did is hearsay.
- d. **Yes, since Ambo's statement and action, subject of Bong's testimony, constitutes a verbal act**

39. Considering the qualifications required of a would-be witness, who among the following is INCOMPETENT to testify?

- a. A person under the influence of drugs when the event he is asked to testify on took place.
- b. **A person convicted of perjury who will testify as an attesting witness to a will.**
- c. A deaf and dumb.
- d. A mental retardate.

40. Arthur, a resident foreigner sold his car to Bren. After being paid but before delivering the car, Arthur replaced its original sound system with an inferior one. Bren discovered the change, rejected the car, and demanded the return of his money. Arthur did not comply. Meantime, his company reassigned Arthur to Singapore. Bren filed a civil action against Arthur for contractual fraud and damages. Upon his application, the court issued a writ of preliminary attachment on the grounds that (a) Arthur is a foreigner; (b) he departed from the Philippines; and (c) he was guilty of fraud in contracting with Bren. Is the writ of preliminary attachment proper?

- a. No, Arthur is a foreigner living abroad; he is outside the court's jurisdiction.
- b. **Yes, Arthur committed fraud in changing the sound system and its components before delivering the car bought from him.**
- c. Yes the timing of his departure is presumptive evidence of intent to defraud.
- d. No, since it was not shown that Arthur left the country with intent to defraud Bren.

41. What is the movant's remedy if the trial court incorrectly denies his motion to dismiss and related motion for reconsideration?

- a. Answer the complaint
- b. File an administrative action for gross ignorance of the law against the trial judge.
- c. **File a special civil action of certiorari on ground of grave abuse of discretion.**
- d. Appeal the orders of denial.

42. During trial, plaintiff offered evidence that appeared irrelevant at that time but he said he was eventually going to relate to the issue in the case by some future evidence. The defendant objected. Should the trial court reject the evidence in question on ground of irrelevance?

- a. No, it should reserve its ruling until the relevance is shown.
- b. Yes, since the plaintiff could anyway subsequently present the evidence anew.
- c. Yes, since irrelevant evidence is not admissible.
- d. **No, it should admit it conditionally until its relevance is shown.**

43. Ben testified that Jaime, charged with robbery, has committed bag-snatching three times on the same street in the last six months. Can the court admit this testimony as evidence against Jaime?

- a. No, since there is no showing that Ben witnessed the past three robberies.
- b. Yes, as evidence of his past propensity for committing robbery.
- c. Yes, as evidence of a pattern of criminal behavior proving his guilt of the present offense.
- d. **No, since evidence of guilt of a past crime is not evidence of guilt of a present crime.**

44. What is the right correlation between a criminal action and a petition for Writ of Amparo both arising from the same set of facts?

- a. When the criminal action is filed after the Amparo petition, the latter shall be dismissed.
- b. The proceeding in an Amparo petition is criminal in nature.
- c. No separate criminal action may be instituted after an Amparo petition is filed.
- d. **When the criminal action is filed after the Amparo petition, the latter shall be consolidated with the first**

45. Alex filed a petition for writ of amparo against Melba relative to his daughter Toni's involuntary disappearance. Alex said that Melba was Toni's employer, who, days before Toni disappeared, threatened to get rid of her at all costs. On the other hand, Melba countered that she had nothing to do with Toni's disappearance and that she took steps to ascertain Toni's whereabouts. What is the quantum of evidence required to establish the parties' respective claims?

- a. For Alex, probable cause; for Melba, substantial evidence.
- b. For Alex, preponderance of evidence; for Melba, substantial evidence.
- c. For Alex, proof beyond reasonable doubt; for Melba, ordinary diligence.
- d. **For both, substantial evidence.**

46. In which of the following situations is the declaration of a deceased person against his interest NOT ADMISSIBLE against him or his successors and against third persons?

- a. Declaration of a joint debtor while the debt subsisted.
- b. Declaration of a joint owner in the course of ownership.
- c. **Declaration of a former co-partner after the partnership has been dissolved.**
- d. Declaration of an agent within the scope of his authority.

47. Defendant Dante said in his answer: "1. Plaintiff Perla claims that defendant Dante owes her P4,000 on the mobile phone that she sold him; 2. But Perla owes Dante P6,000 for the dent on his car that she borrowed." How should the court treat the second statement?

- a. A cross claim

- b. A compulsory counterclaim
 - c. A third party complaint
 - d. A permissive counterclaim**
48. How will the court sheriff enforce the demolition of improvements?
- a. He will give a 5-day notice to the judgment obligor and, if the latter does not comply, the sheriff will have the improvements forcibly demolished.
 - b. He will report to the court the judgment obligor's refusal to comply and have the latter cited in contempt of court
 - c. He will demolish the improvements on special order of the court obtained at the judgment obligee's motion.**
 - d. He will inform the court of the judgment obligor's noncompliance and proceed to demolish the improvements.
49. When may the bail of the accused be cancelled at the instance of the bondsman?
- a. When the accused jumps bail.
 - b. When the bondsman surrenders the accused to the court**
 - c. When the accused fails to pay his annual premium on the bail bond.
 - d. When the accused changes his address without notice to the bondsman.
50. Which of the following MISSTATES a requisite for the issuance of a search warrant?
- a. The warrant specifically describes the place to be searched and the things to be seized.
 - b. Presence of probable cause.
 - c. The warrant issues in connection with one specific offense.
 - d. Judge determines probable cause upon the affidavits of the complainant and his witnesses.**
51. Ranger Motors filed a replevin suit against Bart to recover possession of a car that he mortgaged to it Bart disputed the claim. Meantime, the court allowed, with no opposition from the parties, Midway Repair Shop to intervene with its claim against Bart for unpaid repair bills. On subsequent motion of Ranger Motors and Bart, the court dismissed the complaint as well as Midway Repair Shop's intervention. Did the court act correctly?
- a. No, since the dismissal of the intervention bars the right of Bart to file a separate action.
 - b. Yes, intervention is merely collateral to the principal action and not an independent proceeding.
 - c. Yes, the right of the intervenor is merely in aid of the right of the original party, which in this case had ceased to exist
 - d. No, since having been allowed to Intervene, the intervenor became a party to the action, entitled to have the issue it raised tried and decided.**
52. The accused was convicted for estafa thru falsification of public document filed by one of two offended parties. Can the other offended party charge him again with the same crime?

- a. Yes, since the wrong done the second offended party is a separate crime.
- b. No, since the offense refers to the same series of act, prompted by one criminal intent.
- c. Yes, since the second offended party is entitled to the vindication of the wrong done him as well.
- d. No, since the second offended party is in estoppel, not having joined the first criminal action.

53. Henry testified that a month after the robbery Asiong, one of the accused, told him that Carlos was one of those who committed the crime with him. Is Henry's testimony regarding what Asiong told him admissible in evidence against Carlos?

- a. No, since it is hearsay.
- b. No, since Asiong did not make the statement during the conspiracy.**
- c. Yes, since it constitutes admission against a co-conspirator.
- d. Yes, since it part of the res gestae.

54. Dorothy filed a petition for a writ of habeas corpus against her husband, Roy, to get from him custody of their 5 year old son, Jeff. The court granted the petition and required Roy to turn over Jeff to his mother. Roy sought reconsideration but the court denied it. He filed a notice of appeal five days from receipt of the order denying his motion from reconsideration. Did he file a timely notice of appeal?

- a. No, since he filed it more than 2 days after receipt of the decision granting the petition.
- b. No, since he filed it more than 2 days after receipt of the order denying his motion for reconsideration.**
- c. Yes, since he filed it within 15 days from receipt of the denial of his motion for reconsideration.
- d. Yes, since he filed it within 7 days from receipt of the denial of his motion for reconsideration.

55. Angel Kubeta filed a petition to change his first name "Angel." After the required publication but before any opposition could be received, he filed a notice of dismissal. The court confirmed the dismissal without prejudice. Five days later, he filed another petition, this time to change his surname "Kubeta." Again, Angel filed a notice of dismissal after the publication. This time, however, the court issued an order, confirming the dismissal of the case with prejudice. Is the dismissal with prejudice correct?

- a. Yes, since such dismissal with prejudice is mandatory.
- b. No, since the rule on dismissal of action upon the plaintiffs notice does not apply to special proceedings.
- c. No, since change of name does not involve public interest and the rules should be liberally construed.
- d. Yes, since the rule on dismissal of action upon the plaintiffs notice applies and the two cases involve a change in name.**

56. A complaint without the required "verification"

- a. shall be treated as unsigned.**

- b. lacks a jurisdictional requirement
- c. is a sham pleading.
- d. is considered not filed and should be expunged.

57. The decisions of the Commission on Elections or the Commission on Audit may be challenged by

- a. petition for review on certiorari filed with the Supreme Court under Rule 45.
- b. petition for review on certiorari filed with the Court of Appeals under Rule 42.
- c. appeal to the Supreme Court under Rule 54.
- d. **special civil action of certiorari under Rule 65 filed with the Supreme Court**

58. Which of the following states a correct guideline in hearing applications for bail in capital offenses?

- a. **The hearing for bail in capital offenses is summary; the court does not sit to try the merits of the case.**
- b. The prosecution's conformity to the accused's motion for bail is proof that its evidence of his guilt is not strong.
- c. The accused, as applicant for bail, carries the burden of showing that the prosecution's evidence of his guilt is not strong.
- d. The prosecution must have full opportunity to prove the guilt of the accused.

59. Apart from the case for the settlement of her parents' estate, Betty filed an action against her sister, Sigma, for reconveyance of title to a piece of land. Betty claimed that Sigma forged the signatures of their late parents to make it appear that they sold the land to her when they did not, thus prejudicing Betty's legitime. Sigma moved to dismiss the action on the ground that the dispute should be resolved in the estate proceedings. Is Sigma correct?

- a. **Yes, questions of collation should be resolved in the estate proceedings, not in a separate civil case.**
- b. No, since questions of ownership of property cannot be resolved in the estate proceedings.
- c. Yes, in the sense that Betty needs to wait until the estate case has been terminated.
- d. No, the filing of the separate action is proper; but the estate proceeding must be suspended meantime.

60. What is the consequence of the unjustified absence of the defendant at the pre-trial?

- a. The trial court shall declare him as in default
- b. The trial court shall immediately render judgment against him.
- c. **The trial court shall allow the plaintiff to present evidence ex-parte.**
- d. The trial court shall expunge his answer from the record.

61. What is the remedy of the accused if the trial court erroneously denies his motion for preliminary investigation of the charge against him?

- a. Wait for judgment and, on appeal from it, assign such denial as error.

- b. None since such order is final and executory.
 - c. Ask for reconsideration; if denied, file petition for certiorari and prohibition.**
 - d. Appeal the order denying the motion for preliminary investigation.
62. Which of the following renders a complaint for unlawful detainer deficient?
- a. The defendant claims that he owns the subject property.
 - b. The plaintiff has tolerated defendant's possession for 2 years before demanding that he vacate it
 - c. The plaintiff's demand is for the lessee to pay back rentals or vacate.**
 - d. The lessor institutes the action against a lessee who has not paid the stipulated rents.
63. In a judicial foreclosure proceeding, under which of the following instances is the court NOT ALLOWED to render deficiency judgment for the plaintiff?
- a. If the mortgagee is a banking institution.
 - b. if upon the mortgagor's death during the proceeding, the mortgagee submits his claim in the estate proceeding.
 - c. If the mortgagor is a third party who is not solidarity liable with the debtor.**
 - d. If the mortgagor is a non-resident person and cannot be found in the Philippines.
64. In which of the following cases is the plaintiff the real party in interest?
- a. A creditor of one of the co-owners of a parcel of land, suing for partition
 - b. An agent acting in his own name suing for the benefit of a disclosed principal
 - c. Assignee of the lessor in an action for unlawful detainer**
 - d. An administrator suing for damages arising from the death of the decedent
65. The defendant in an action for sum of money filed a motion to dismiss the complaint on the ground of improper venue. After hearing, the court denied the motion. In his answer, the defendant claimed prescription of action as affirmative defense, citing the date alleged in the complaint when the cause of action accrued. May the court, after hearing, dismiss the action on ground of prescription?
- a. Yes, because prescription is an exception to the rule on Omnibus Motion.**
 - b. No, because affirmative defenses are barred by the earlier motion to dismiss.
 - c. Yes, because the defense of prescription of action can be raised at anytime before the finality of judgment.
 - d. No, because of the rule on Omnibus Motion.
66. What is the effect of the failure of the accused to file a motion to quash an information that charges two offenses?
- a. He may be convicted only of the more serious offense.
 - b. He may in general be convicted of both offenses.**
 - c. The trial shall be void.
 - d. He may be convicted only of the lesser offense.

67. Which of the following is a correct application of the rules involved in consolidation of cases?

- a. Consolidation of cases pending in different divisions of an appellate court is not allowed.
- b. The court in which several cases are pending involving common questions of law and facts may hear initially the principal case and suspend the hearing in the other cases.**
- c. Consolidation of cases pending in different branches or different courts is not permissible.
- d. The consolidation of cases is done only for trial purposes and not for appeal.

68. Summons was served on "MCM Theater," a business entity with no juridical personality, through its office manager at its place of business. Did the court acquire jurisdiction over MCM Theater's owners?

- a. Yes, an unregistered entity like MCM Theater may be served with summons through its office manager.**
- b. No, because MCM has no juridical personality and cannot be sued.
- c. No, since the real parties in interest, the owners of MCM Theater, have not been served with summons.
- d. Yes since MCM, as business entity, is a de facto partnership with juridical personality.

69. Fraud as a ground for new trial must be extrinsic as distinguished from intrinsic. Which of the following constitutes extrinsic fraud?

- a. Collusive suppression by plaintiffs counsel of a material evidence vital to his cause of action.**
- b. Use of perjured testimony at the trial.
- c. The defendant's fraudulent representation that caused damage to the plaintiff.
- d. Use of falsified documents during the trial.

70. Upon review, the Secretary of Justice ordered the public prosecutor to file a motion to withdraw the information for estafa against Sagun for lack of probable cause. The public prosecutor complied. Is the trial court bound to grant the withdrawal?

- a. Yes, since the prosecution of an action is a prerogative of the public prosecutor.
- b. No, since the complainant has already acquired a vested right in the information.
- c. No, since the court has the power after the case is filed to itself determine probable cause.**
- d. Yes, since the decision of the Secretary of Justice in criminal matters is binding on courts.

71. Unexplained or unjustified non-joinder in the Complaint of a necessary party despite court order results in

- a. the dismissal of the Complaint.
- b. suspension of proceedings.
- c. contempt of court
- d. waiver of plaintiff's right against the unpleaded necessary party.**

72. Which of the following CANNOT be disputably presumed under the rules of evidence?
- That the thing once proved to exist continues as long as is usual with things of that nature.
 - That the law has been obeyed.
 - That a writing is truly dated.
 - That a young person, absent for 5 years, It being unknown whether he still lives, is considered dead for purposes of succession.**
73. Which of the following is NOT REQUIRED in a petition for mandamus?
- The act to be performed is not discretionary.
 - There is no other adequate remedy in the ordinary course of law.
 - The respondent neglects to perform a clear duty under a contract**
 - The petitioner has a clear legal right to the act demanded.
74. When is the defendant entitled to the return of the property taken under a writ of replevin?
- When the plaintiffs bond is found insufficient or defective and is not replaced.**
 - When the defendant posts a redelivery bond equal to the value of the property seized.
 - When the plaintiff takes the property and disposes of it without the sheriffs approval.
 - When a third party claims the property taken yet the applicant does not file a bond in favor of the sheriff.
75. Character evidence is admissible
- in criminal cases, the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged.**
 - in criminal cases, the prosecution may prove the bad moral character of the accused to prove his criminal predisposition.
 - in criminal cases, the bad moral character of the offended party may not be proved.
 - when it is evidence of the good character of a witness even prior to impeachment.
76. X's action for sum of money against Y amounting to P80,000.00 accrued before the effectivity of the rule providing for shortened procedure in adjudicating claims that do not exceed P100,000.00. X filed his action after the rule took effect. Will the new rule apply to his case?
- No since what applies is the rule in force at the time the cause of action accrued.
 - No, since new procedural rules cover only cases where the issues have already been joined.
 - Yes, since procedural rules have retroactive effect
 - Yes, since procedural rules generally apply prospectively to pending cases.**
77. A motion for reconsideration of a decision is pro forma when
- it does not specify the defects in the judgment.**
 - it is a second motion for reconsideration with an alternative prayer for new trial.

- c. it reiterates the issues already passed upon but invites a second look at the evidence and the arguments.
 - d. its arguments in support of the alleged errors are grossly erroneous.
78. Which of the following correctly states the rule on foreclosure of mortgages?
- a. The rule on foreclosure of real estate mortgage is suppletorily applicable to extrajudicial foreclosures.
 - b. In judicial foreclosure, an order of confirmation is necessary to vest all rights in the purchaser.**
 - c. There is equity of redemption in extra-judicial foreclosure.
 - d. A right of redemption by the judgment obligor exists in judicial foreclosure.
79. The information charges PNP Chief Luis Santos, (Salary Grade 28), with "taking advantage of his public position as PNP Head by feloniously shooting JOSE ONA, inflicting on the latter mortal wounds which caused his death. Based solely on this allegation; which court has jurisdiction over the case?
- a. Sandiganbayan only
 - b. Sandiganbayan or Regional Trial Court
 - c. Sandiganbayan or Court Martial
 - d. Regional Trial Court only**
80. Distinguish between conclusiveness of judgment and bar by prior judgment.
- a. Conclusiveness of judgment bars another action based on the same cause; bar by prior judgment precludes another action based on the same issue.
 - b. Conclusiveness of judgment bars only the defendant from questioning it; bar by prior judgment bars both plaintiff and defendant
 - c. Conclusiveness of judgment bars all matters directly adjudged; bar by prior judgment precludes all matters that might have been adjudged.**
 - d. Conclusiveness of judgment precludes the filing of an action to annul such judgment; bar by prior judgment allows the filing of such an action.
81. Which of the following matters is NOT A PROPER SUBJECT of judicial notice?
- a. Persons have killed even without motive.
 - b. Municipal ordinances in the municipalities where the MCTC sits.
 - c. Teleconferencing is now a way of conducting business transactions.
 - d. British law on succession personally known to the presiding judge.**
82. The RTC of Malolos, Branch 1, issued a writ of execution against Rene for P20 million. The sheriff levied on a school building that appeared to be owned by Rene. Marie, however, filed a third party claim with the sheriff, despite which, the latter scheduled the execution sale. Marie then filed a separate action before the RTC of Malolos, Branch 2, which issued a writ of preliminary injunction enjoining the sheriff from taking possession and proceeding with the sale of the levied property. Did Branch 2 correctly act in issuing the injunction?
- a. Yes, since the rules allow the filing of the independent suit to check the sheriff's wrongful act in levying on a third party's property.**
 - b. Yes, since Branch 2, like Branch 1, is part of the RTC of Malolos.

- c. No, because the proper remedy is to seek relief from the same court which rendered the judgment
 - d. No, since it constitutes interference with the judgment of a co-equal court with concurrent
83. What is the effect and ramification of an order allowing new trial?
- a. The court's decision shall be held in suspension until the defendant could show at the reopening of trial that it has to be abandoned.
 - b. The court shall maintain the part of its judgment that is unaffected and void the rest
 - c. The evidence taken upon the former trial, if material and competent, shall remain in use.**
 - d. The court shall vacate the judgment as well as the entire proceedings had in the case.
84. Which of the following is sufficient to disallow a will on the ground of mistake?
- a. An error in the description of the land devised in the will.
 - b. The inclusion for distribution among the heirs of properties not belonging to the testator.
 - c. The testator intended a donation intervivos but unwittingly executed a will.**
 - d. An error in the name of the person nominated as executor.
85. As a rule, the estate shall not be distributed prior to the payment of all charges to the estate. What will justify advance distribution as an exception?
- a. The estate has sufficient residual assets and the distributees file sufficient bond.**
 - b. The specific property sought to be distributed might suffer in value.
 - c. An agreement among the heirs regarding such distribution.
 - d. The conformity of the majority of the creditors to such distribution.
86. A party aggrieved by an interlocutory order of the Civil Service Commission (CSC) filed a petition for certiorari and prohibition with the Court of Appeals. May the Court of Appeals take cognizance of the petition?
- a. Yes, provided it raises both questions of facts and law.
 - b. No, since the CSC Chairman and Commissioners have the rank of Justices of the Court of Appeals.
 - c. No, since the CSC is a Constitutional Commission.
 - d. Yes, since the Court of Appeals has jurisdiction over the petition concurrent with the Supreme Court**
87. Which of the following is appealable?
- a. An order of default against the defendant.
 - b. The denial of a motion to dismiss based on improper venue.
 - c. The dismissal of an action with prejudice.**
 - d. The disallowance of an appeal.
88. Which of the following is NOT REQUIRED of a declaration against interest as an exception to the hearsay rule?
- a. The declarant had no motive to falsify and believed such declaration to be true.

- b. The declarant is dead or unable to testify.
- c. The declaration relates to a fact against the interest of the declarant
- d. **At the time he made said declaration he was unaware that the same was contrary to his aforesaid interest**

89. To prove the identity of the assailant in a crime of homicide, a police officer testified that, Andy, who did not testify in court, pointed a finger at the accused in a police lineup. Is the police officer's testimony regarding Andy's identification of the accused admissible evidence?

- a. Yes, since it is based on his personal knowledge of Andy's identification of the accused.
- b. Yes, since it constitutes an independently relevant statement
- c. No, since the police had the accused identified without warning him of his rights.
- d. **No, since the testimony is hearsay.**

90. In which of the following cases is the testimony in a case involving a deceased barred by the Survivorship Disqualification Rule or Dead Man Statute?

- a. **Testimony against the heirs of the deceased defendant who are substituted for the latter.**
- b. The testimony of a mere witness who is neither a party to the case nor is in privity with the latter.
- c. The testimony of an oppositor in a land registration case filed by the decedent's heirs.
- d. The testimony is offered to prove a claim less than what is established under a written document signed by the decedent.

91. The prosecution moved for the discharge of Romy as state witness in a robbery case it filed against Zoilo, Amado, and him. Romy testified, consistent with the sworn statement that he gave the prosecution. After hearing Romy, the court denied the motion for his discharge. How will denial affect Romy?

- a. His testimony shall remain on record.
- b. **Romy will be prosecuted along with Zoilo and Amado.**
- c. His liability, if any, will be mitigated.
- d. The court can convict him based on his testimony.

92. In proceedings for the settlement of the estate of deceased persons, the court in which the action is pending may properly

- a. pass upon question of ownership of a real property in the name of the deceased but claimed by a stranger.
- b. **pass upon with the consent of all the heirs the issue of ownership of estate asset, contested by an heir if no third person is affected.**
- c. rule on a claim by one of the heirs that an estate asset was held in trust for him by the deceased.
- d. rescind a contract of lease entered into by the deceased before death on the ground of contractual breach by the lessee.

93. Which of the following stipulations in a contract will supersede the venue for actions that the rules of civil procedure fix?

- a. In case of litigation arising from this contract of sale, the preferred venue shall be in the proper courts of Makati.
- b. Should the real owner succeed in recovering his stolen car from buyer X, the latter shall have recourse under this contract to seller Y exclusively before the proper Cebu City court.
- c. Venue in case of dispute between the parties to this contract shall solely be in the proper courts of Quezon City.**
- d. Any dispute arising from this contract of sale may be filed in Makati or Quezon City.

94. Allan was riding a passenger jeepney driven by Ben that collided with a car driven by Cesar, causing Allan injury. Not knowing who was at fault, what is the best that Allan can do?

- a. File a tort action against Cesar.
- b. Await a judicial finding regarding who was at fault
- c. Sue Ben for breach of contract of carriage.
- d. Sue both Ben and Cesar as alternative defendants.**

95. A surety company, which provided the bail bond for the release of the accused, filed a motion to withdraw as surety on the ground of the accused's non-payment of the renewal premium. Can the trial court grant the withdrawal?

- a. No, since the surety's undertaking is not annual but lasts up to judgment.**
- b. Yes, since surety companies would fold up otherwise.
- c. No, since the surety company technically takes the place of the accused with respect to court attendance.
- d. Yes, since the accused has breached its agreement with the surety company.

96. To prove that Susan stabbed her husband Elmer, Rico testified that he heard Leon running down the street, shouting excitedly, "Sinasaksak daw ni Susan ang asawa niya! (I heard that Susan is stabbing her husband!)" Is Leon's statement as narrated by Rico admissible?

- a. No, since the startling event had passed.
- b. Yes, as part of the res gestae.
- c. No, since the excited statement is itself hearsay.**
- d. Yes, as an independently relevant statement

97. Which of the following NOT TRUE regarding the doctrine of judicial hierarchy?

- a. It derives from a specific and mandatory provision of substantive law.**
- b. The Supreme Court may disregard the doctrine in cases of national interest and matters of serious implications.
- c. A higher court will not entertain direct recourse to it if redress can be obtained in the appropriate courts.
- d. The reason for it is the need for higher courts to devote more time to matters within their exclusive jurisdiction.

98. Plaintiff Manny said in his complaint: "3. On March 1,2001 defendant Letty borrowed P1 million from plaintiff Manny and made a promise to pay the loan within six months." In her answer, Letty alleged: "Defendant Letty specifically denies the allegations in paragraph 3 of the

complaint that she borrowed PI million from plaintiff Manny on March 1, 2001 and made a promise to pay the loan within six months." Is Letty's denial sufficient?

- a. Yes, since it constitutes specific denial of the loan.
- b. Yes, since it constitutes positive denial of the existence of the loan.
- c. **No, since it fails to set forth the matters defendant relied upon in support of her denial.**
- d. No, since she fails to set out in par. 2 of her answer her special and affirmative defenses.

99. When may an information be filed in court without the preliminary investigation required in the particular case being first conducted?

- a. **Following an inquest, in cases of those lawfully arrested without a warrant.**
- b. When the accused, while under custodial investigation, informs the arresting officers that he is waiving his right to preliminary investigation.
- c. When the accused fails to challenge the validity of the warrantless arrest at his arraignment
- d. When the arresting officers take the suspect before the judge who issues a detention order against him.

100. In a civil action involving three separate causes of action, the court rendered summary judgment on the first two causes of action and tried the third. After the period to appeal from the summary judgment expired, the court issued a writ of execution to enforce the same. Is the writ of execution proper?

- a. **No, being partial, the summary judgment is interlocutory and any appeal from it still has to reckon with the final judgment.**
- b. Yes since, assuming the judgment was not appealable, the defendant should have questioned it by special civil action of certiorari.
- c. No, since the rules do not allow a partial summary judgment
- d. No, since special reason is required for execution pending rendition of a final decision in the case.

- NOTHING FOLLOWS -