

## REMEDIAL LAW

### 1. General Principles

- 1.1. Concept of remedial law
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- 1.3. Rule-making power of the Supreme Court
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  - 1.4.6. Constitutional and statutory courts
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  - 1.4.8. Principle of judicial hierarchy

**Q (2012):** A wants to file a Petition for Writ of Habeas Data against the AFP in connection with threats to his life allegedly made by AFP intelligence officers. A needs copies of AFP highly classified intelligence reports collected by Sgt. Santos who is from AFP. A can file his petition with:

- a) RTC where AFP is located;
- b) RTC where Sgt. Santos resides;
- c) Supreme Court;
- d) Court of Appeals.

### **SUGGESTED ANSWER:**

d) In accordance with the principle of judicial hierarchy of the courts, A should file the petition with the Court of Appeals.

### **ALTERNATIVE ANSWERS:**

- b) RTC where Sgt. Santos resides
- c) Supreme Court

The petition may be filed with the *Regional Trial Court where the petitioner or respondent resides*, or that which *has jurisdiction over the place where the data or information is gathered*, collected or stored, at the option of the petitioner. The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices. (Sec. 3, A. M. No. 08-1-16-SC, *The Rule on the Writ of Habeas Data*, January 22, 2008).

- 1.4.9. Doctrine of non-interference or doctrine of judicial stability

## 2. Jurisdiction

- 2.1 Over the parties
  - 2.1.1. How jurisdiction over the plaintiff is acquired
  - 2.1.2. How jurisdiction over the defendant is acquired
- 2.2 Over the subject matter
  - 2.2 1. Meaning of jurisdiction over the subject matter
  - 2.2 2. Jurisdiction versus the exercise of jurisdiction
  - 2.2 3. Error of jurisdiction as distinguished from error of judgment

**Q (2012):** Distinguish error of jurisdiction from error of judgment. (5%)

### **SUGGESTED ANSWER:**

An error of judgment is one which the court may commit in the exercise of its jurisdiction. Such an error does not deprive the court of jurisdiction and is correctible only by appeal; whereas an error of jurisdiction is one which the court acts without or in excess of its jurisdiction. Such an error renders an order or judgment void or voidable and is correctible by the special civil action of certiorari. (*Dela Cruz vs. Moir*, 36 Phil, 213; *Cochingyan vs. Claribel*, 76 SCRA 361; *Fortich vs. Corona*, April 24, 1998, 289 SCRA 624; *Artistica Ceramica, Inc. vs. Ciudad Del Carmen Homeowner's Association, Inc.*, G.R. Nos. 167583-84, June 16, 2010).

- 2.2 4. How jurisdiction is conferred and determined
- 2.2 5. Doctrine of primary jurisdiction
- 2.2 6. Doctrine of adherence of jurisdiction
- 2.2 7. Objections to jurisdiction over the subject matter
- 2.2 8. Effect of estoppel on objections to jurisdiction
- 2.3. Over the issues
- 2.4 Over the ~~res~~ property in litigation
- 2.5. Jurisdiction of courts
  - 2.5.1. Supreme Court
  - 2.5.2. Court of Appeals
  - 2.5.3. Court of Tax Appeals
  - 2.5.4. *Sandiganbayan*

**Q(2012):** A criminal case should be instituted and tried in the place where the offense or any of the essential elements took place, except in:

- a) Estafa cases;
- b) Complex crimes;
- c) Cases cognizable by the Sandiganbayan;
- d) Court martial cases.

**SUGGESTED ANSWER:**

- c) Cases cognizable by the Sandiganbayan

Territorial jurisdiction is immaterial in cases falling under the Sandiganbayan's jurisdiction. All public officials who committed an offense which is cognizable by the Sandiganbayan shall be tried before it regardless of the place of commission of the offense. In addition, the court martial is not a criminal court.

**Q(2012):** The Sandiganbayan can entertain a quo warranto petition only in:

- a) Cases involving public officers with salary grade 27 or higher.
- b) Only in aid of its appellate jurisdiction.
- c) As a provisional remedy.
- d) Cases involving "ill gotten wealth".

**SUGGESTED ANSWER:**

- b) Only in aid of its appellate jurisdiction.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes *in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto*, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1,2,14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court. (Sec. 4, R.A. 8249, Act amending P.D. 1606).

**Q (2012):** Sandiganbayan exercises concurrent jurisdiction with the Supreme Court and the Court of Appeals over:

- a) Petitions for Writ of Certiorari and Prohibition;
- b) Petitions for Writ of Habeas Corpus;
- c) Petitions for Quo Warranto;
- d) Petitions for Writ of Amparo and Habeas Corpus.

**SUGGESTED ANSWER:**

- d) Petitions for Writ of Amparo and Habeas Corpus.

The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunction, and other ancillary writs and processes in aid of its appellate jurisdiction: Provided, that the jurisdiction over these petitions shall not be

exclusive of the Supreme Court. (Sec. 2, R.A. 7975 - *An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, amending for that purpose Presidential Decree No. 1606, as amended*).

The petition for writ of amparo may be filed on any day and at any time with the Regional trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts. The writ shall be enforceable anywhere in the Philippines. (Sec. 3, A.M. No. 07-9-12-SC, *The Rule on the Writ of Amparo*, September 25, 2007).

#### 2.5.5. Regional Trial Courts

**Q(2014):** *Prince Chong* entered into a lease contract with *King Kong* over a commercial building where the former conducted his hardware business. The lease contract stipulated, among others, a monthly rental of P50,000.00 for a four (4) -year period commencing on January 1, 2010. On January 1, 2013, *Prince Chong* died. *Kin Il Chong* was appointed administrator of the estate of *Prince Chong*, but the former failed to pay the rentals for the months of January to June 2013 despite *King Kong's* written demands. Thus, on July 1, 2013, *King Kong* filed with the Regional Trial Court (RTC) an action for rescission of contract with damages and payment of accrued rentals as of June 30, 2013. (4%)

(A) Can *Kin Il Chong* move to dismiss the complaint on the ground that the RTC is without jurisdiction since the amount claimed is only P300,000.00?

#### **SUGGESTED ANSWER:**

No, *Kin Il Chong* cannot move to dismiss the Complaint.

An action for rescission of contract with damages and payment of accrued rentals is considered incapable of pecuniary estimation and therefore cognizable by the Regional Trial Court. (*Ceferina De Ungria vs. Honorable Court Of Appeals*, G.R. No. 165777, July 25, 2011, *Peralta, J.*)

#### 2.5.6. Family Courts

**Q(2012):** Cesar, age 16, a habitual offender, was caught in possession of .001 grams of marijuana. He was charged for violation of Sec. 16 of R.A. 9165, The Comprehensive Dangerous Drugs Law. The court which has jurisdiction is:

- a) The MTC;
- b) The RTC;
- c) Special Drugs Court;

d) Family Court.

**SUGGESTED ANSWER:**

d) Family Court

The State is mandated to safeguard the well-being of its citizenry, particularly children from harmful effects of dangerous drugs on their physical and mental well-being and to defend them against acts or omissions detrimental to their development and preservation. Pursuant to this policy and the mandate of Republic Act No. 8369, also known as The Family Courts Act of 1997, the Family Courts are vested with exclusive jurisdiction to hear and decide cases against minors charged with drug-related offenses (A.M. NO. 07-8-2-SC-2, SEC. 2). The objective is to ensure that the rights of children charged with violation of any of the offenses under The Comprehensive Dangerous Drugs Act of 2002 are well protected, and that their interests and those of their family and the community are adequately balanced. (A.M. NO. 07-8-2-SC-2, SEC. 2)

2.5.7. Metropolitan Trial Courts/Municipal Trial Courts

**Q(2012):** A judge of an MTC can hear and decide petitions for habeas corpus or applications for bail where:

- a) The Supreme Court authorizes the MTC.
- b) The judge is the Executive Judge of the MTC.
- c) The judge of the RTC where the case is raffled has retired, was dismissed or had died.
- d) In the absence of all the RTC Judges in the province or city.

**SUGGESTED ANSWER:**

d) In the absence of all the RTC Judges in the province or city.

In the absence of all the Regional Trial Judges in a province or city, any Metropolitan Trial Judge, Municipal Trial Judge, Municipal Circuit Trial Judge may hear and decide petitions for a writ of habeas corpus or applications for bail in criminal cases in the province or city where the absent Regional Trial Judges sit. (*Section 35, Batas Pambansa Blg. 129*).

**Q (2014):** When a Municipal Trial Court (MTC), pursuant to its delegated jurisdiction, renders an adverse judgment in an application for land registration, the aggrieved party's remedy is: (1%)

- (A) ordinary appeal to the Regional Trial Court
- (B) petition for review on *certiorari* to the Supreme Court
- (C) ordinary appeal to the Court of Appeals
- (D) petition for review to the Court of Appeals

**SUGGESTED ANSWER:**

- (C) Ordinary appeal to the Court of Appeals.

Under Section 34, Batas Pambansa Blg. 129, the judgment of the MTC in the exercise of its delegated jurisdiction in land registration cases shall be appealable in the same manner as decisions of the RTC. Thus, an ordinary appeal to the Court of Appeals is the appropriate remedy.

**Q (2014):** *Estrella* was the registered owner of a huge parcel of land located in a remote part of their *barrio* in *Benguet*. However, when she visited the property after she took a long vacation abroad, she was surprised to see that her childhood friend, *John*, had established a vacation house on her property. Both *Estrella* and *John* were residents of the same *barangay*.

To recover possession, *Estrella* filed a complaint for ejectment with the Municipal Trial Court (*MTC*), alleging that she is the true owner of the land as evidenced by her certificate of title and tax declaration which showed the assessed value of the property as P21,000.00. On the other hand, *John* refuted *Estrella*'s claim of ownership and submitted in evidence a Deed of Absolute Sale between him and *Estrella*. After the filing of *John*'s answer, the MTC observed that the real issue was one of ownership and not of possession. Hence, the MTC dismissed the complaint for lack of jurisdiction.

On appeal by *Estrella* to the Regional Trial Court (*RTC*), a full-blown trial was conducted as if the case was originally filed with it. The RTC reasoned that based on the assessed value of the property, it was the court of proper jurisdiction. Eventually, the RTC rendered a judgment declaring *John* as the owner of the land and, hence, entitled to the possession thereof.(4%)

(A) Was the MTC correct in dismissing the complaint for lack of jurisdiction? Why or why not?

**SUGGESTED ANSWER:**

No. The Metropolitan Trial Court was not correct in dismissing the Complaint for lack of jurisdiction.

It is well settled that jurisdiction is determined by the allegations contained in the complaint. The contention of defendant in his Motion to Dismiss has nothing to do in the determination of jurisdiction. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant. (*Medical Plaza Makati Condominium vs. Cullen* [2013], *Peralta, J.*)

Relative thereto, the Municipal Trial Courts have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. (Section 33 of Batas Pambansa Blg. 129) Hence, the Metropolitan Trial Court is not correct in dismissing the complaint for lack of jurisdiction.

Besides, the rules allow provisional determination of ownership in ejectment cases when the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership (Section 16, Rule 70, Rules of Court).

Accordingly, the inferior courts have jurisdiction to resolve questions of ownership only whenever it is necessary to decide the question of possession in an ejectment case. (*Serrano vs. Spouses Gutierrez, G.R. No. 162366, November 10, 2006*)

(B) Was the RTC correct in ruling that based on the assessed value of the property, the case was within its original jurisdiction and, hence, it may conduct a full-blown trial of the appealed case as if it was originally filed with it? Why or why not?

**SUGGESTED ANSWER:**

No. The Regional Trial Court was not correct.

It is settled that forcible entry and unlawful detainer cases are within the exclusive original jurisdiction of the MTC.

Moreover, all cases decided by the Metropolitan Trial Court are generally appealable to the Regional Trial Court irrespective of the amounts involved. (Section 22, B.P. 129)

**ALTERNATIVE ANSWER:**

Assuming that Estrella's action was really for ownership and not for physical possession, the Regional Trial Court is correct in ruling that it was the Court of proper jurisdiction.

If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as

the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings. (Section 8, Rule 40, Rules of Court).

Since the RTC affirmed the dismissal by the MTC of Estrella's complaint on the ground of lack of jurisdiction over the subject matter, without conducting a trial on the merits, the RTC may conduct a full-blown trial of the appealed case from the MTC as if the same was originally filed with it.

#### 2.5.8. *Sharia* Courts

2.6. Over small claims; cases covered by the Rules on Summary Procedure and *Barangay* conciliation

2.7 Totality rule

### 3. Civil Procedure

#### 3.1. Actions

- 3.1.1. Meaning of ordinary civil actions
- 3.1.2. Meaning of special civil actions
- 3.1.3. Meaning of criminal actions
- 3.1.4. Civil actions versus special proceedings
- 3.1.5. Personal actions and real actions
- 3.1.6. Local and transitory actions
- 3.1.7. Actions *in rem*, *in personam* and *quasi in rem*
- 3.1.8. Independent Civil Actions

#### 3.2. Cause of action

- 3.2.1. Meaning of cause of action

**Q (2012):** A bought a Volvo Sedan from ABC Cars for P5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car's upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)

#### **SUGGESTED ANSWER:**

A can file an action for specific performance and damages against ABC Cars since the damage to the Volvo Sedan's upholstery was caused before delivery of the same to A, and therefore prior to the transfer of ownership to the latter. (*Article 1477, New Civil Code*). Under Article 1170 of the New Civil Code, those who contravene the tenor of the obligation are liable for damages. Hence, an action for specific performance against ABC Corporation to deliver the agreed

Volvo Sedan in the contract, free from any damage or defects, with corresponding damages will lie against ABC Cars.

**ALTERNATIVE ANSWER:**

A can sue ABC Cars for specific performance or rescission because the former has contractual relations with latter.

- 3.2.2. Right of action versus cause of action
- 3.2.3. Failure to state a cause of action
- 3.2.4. Test of the sufficiency of a cause of action
- 3.2.5. Splitting a single cause of action and its effects
- 3.2.6. Joinder and mis-joinder of causes of action

**Q(2012):** The following are accurate statements on joinder of causes of action, **except:**

- a) Joinder of actions avoids multiplicity of suits.
- b) Joinder of actions may include special civil actions.
- c) Joinder of causes of action is permissive.
- d) The test of jurisdiction in case of money claims in a joinder of causes of action, is the "totality rule".

**SUGGESTED ANSWER:**

- b) Joinder of actions may include special civil actions.

The rule on joinder of actions under Section 5, Rule 2 of the 1997 Rules of Civil Procedure, as amended, requires that the joinder shall not include special civil actions governed by special rules. (*Roman Catholic Archbishop of San Fernando Pampanga vs. Fernando Soriano Jr., et al., G.R. No. 153829, August 17, 2011, Villarama, Jr., J.*).

**3.3. Parties to civil actions**

- 3.3.1. Real parties-in-interest; indispensable parties; representatives as parties; necessary parties; indigent parties; alternative defendants
- 3.3.2. Compulsory and permissive joinder of parties
- 3.3.3. Misjoinder and non-joinder of parties
- 3.3.4. Class suit
- 3.3.5. Suits against entities without juridical personality
- 3.3.6. Effect of death of party-litigant

**Q(2014):** *Prince Chong* entered into a lease contract with *King Kong* over a commercial building where the former conducted his hardware business. The lease contract stipulated, among others, a monthly rental of P50,000.00 for a four (4) -year period commencing on January 1, 2010. On January 1, 2013, *Prince*

*Chong* died. *Kin II Chong* was appointed administrator of the estate of *Prince Chong*, but the former failed to pay the rentals for the months of January to June 2013 despite *King Kong's* written demands. Thus, on July 1, 2013, *King Kong* filed with the Regional Trial Court (*RTC*) an action for rescission of contract with damages and payment of accrued rentals as of June 30, 2013. (4%)

(B) If the rentals accrued during the lifetime of *Prince Chong*, and *King Kong* also filed the complaint for sum of money during that time, will the action be dismissible upon *Prince Chong's* death during the pendency of the case?

**SUGGESTED ANSWER:**

No, the action will not be dismissible upon Prince Chong's death during the pendency of the case.

When the action is for recovery of money arising from contract, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced under Rule 86. (Section 20, Rule 3 of the Rules of Court)

Relative thereto, since the complaint for sum of money filed by King Kong survives the death of Prince Chong, the case shall not be dismissed and the Court shall merely order the substitution of the deceased defendant. (*Atty. Rogelio E. Sarsaba vs. Fe Vda. De Te, G.R. No. 175910, July 30, 2009*)

3.4. Venue

3.4.1. Venue versus jurisdiction

3.4.2. Venue of real actions

**Q(2012):** A, a resident of Quezon City, wants to file an action against B, a resident of Pasay, to compel the latter to execute a Deed of Sale covering a lot situated in Marikina and that transfer of title be issued to him claiming ownership of the land. Where should A file the case? Explain. (5%)

**SUGGESTED ANSWER:**

A should file the case in Marikina, the place where the real property subject matter of the case is situated. An action for specific performance would still be considered a real action where it seeks the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance of real property. (*Gochan v. Gochan, 423 Phil. 491, 501 (2001)*; *Copioso vs. Copioso, 391 SCRA 325 (2002)*). Since it is a real action, the venue must be in the place where the

real property involved, or a portion thereof, is situated. (*Rule 4, Sec. 1, Rules of Court*).

3.4.3. Venue of personal actions

3.4.4. Venue of actions against non-residents

3.4.5. When the rules on venue do not apply

3.4.6. Effects of stipulations on venue

**Q (2012):** The mortgage contract between X, who resides in Manila, and Y, who resides in Naga, covering land in Quezon provides that any suit arising from the agreement may be filed "nowhere else but in a Makati court". Y must thus sue only in:

- a) Makati;
- b) Makati and/or Naga;
- c) Quezon and/or Makati;
- d) Naga.

**SUGGESTED ANSWER:**

- a) Makati

The rules on venue of actions are merely procedural in character and can be a subject of stipulation. Where the parties have validly agreed in writing before the filing of the action on the exclusive venue of the action, the suit cannot be filed anywhere other than the stipulated venue. (*Rule 4, Sec. 4, Rules of Court*). Since the stipulation between X and Y in the mortgage contract is mandatory and restrictive in character, the venue of the action is only in Makati City.

**ALTERNATIVE ANSWER:**

None of the above. The venue of the action should only be Quezon City, the place where the real property is located.

The rules on venue do not apply to actions involving a mortgage contract such as a petition for extrajudicial foreclosure of mortgage. In *Ochoa vs. Chinabank*, **G.R. No. 192877, March 23, 2011**, the Supreme Court held that the exclusive venue of Makati City, as stipulated by the parties and sanctioned by Section 4, Rule 4 of the Rules of Court, cannot be made to apply to the Petition for Extrajudicial Foreclosure filed by respondent bank because the provisions of Rule 4 pertain to venue of actions, which an extrajudicial foreclosure is not. There is no reason to depart from the doctrinal pronouncement of the Supreme Court.

3.5. Pleadings

**Q(2012):** Atty. A drafts a pleading for his client B wherein B admits certain facts prejudicial to his case. The pleading was never filed but was signed by Atty. A.

Opposing counsel got hold of the pleading and presents the same in court. Which statement is the most accurate?

- a) The prejudicial statements are not admissible because the unfiled document is not considered a pleading.
- b) The prejudicial statements are not admissible because the client did not sign the pleading.
- c) The prejudicial statements are not admissible because these were not made by the client in open court.
- d) The prejudicial statements are not admissible because these were made outside the proceedings.

**SUGGESTED ANSWER:**

a) The prejudicial statements are not admissible because the unfiled document is not considered a pleading

Pleadings are defined as written statements of the respective claims and defenses of the parties *submitted to the court for appropriate judgment. (Rule 6, Sec. 1, Rules of Court)*. Filing is *the act of presenting the pleading or other paper to the clerk of court. (Rule 13, Sec. 2, Rules of Court)*. Since Atty. A and his client B did not file the pleading, and it was merely the opposing counsel which presented the same in court, it should not be considered to have been filed at all, and shall not prejudice Atty. A and his client B. After all, no person may be prejudiced by the acts of unauthorized strangers.

**ALTERNATIVE ANSWER:**

d) The prejudicial statements are not admissible because these were made outside the proceedings.

*The committee considers this as an alternative answer for a more liberal view.*

3.5.1. Kinds of pleadings

- a) Complaint
- b) Answer
  - i. Negative defenses
  - ii. Negative pregnant
  - iii. Affirmative defenses
- c) Counterclaims
  - i. Compulsory counterclaim
  - ii. Permissive counterclaim
  - iii. Effect on the counterclaim when the complaint is dismissed
- d) Cross-claims

- e) Third (fourth, etc.) party complaints

**Q (2012):** Leave of court is always necessary in:

- a) A demurrer to evidence in a civil case.
- b) A demurrer to evidence in a criminal case.
- c) Motion to amend a complaint.
- d) Third party complaint.

**SUGGESTED ANSWER:**

- d) Third party complaint

A third party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. (*Rule 6, Sec. 11, Rules of Court*). In a third party complaint, leave of court is always necessary.

- f) Complaint-in-intervention
- g) Reply

3.5.2. Pleadings allowed in small daim cases and cases covered by the Rules on Summary Procedure

3.5.3. Parts of a pleading

- a) Caption
- b) Signature and address

**Q (2013):** 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.

**SUGGESTED ANSWER**

(E) The above choices are not totally accurate.

Section 3 of Rule 7 provides that the signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

c) Verification and certification against forum shopping

**Q(2012):** When a party or counsel willfully or deliberately commits forum shopping, the initiatory pleading may:

- a) Be cured by amendment of the complaint.
- b) Upon motion, be dismissed with prejudice.
- c) Be summarily dismissed with prejudice as it may constitute direct contempt.
- d) Be stricken from the record.

**SUGGESTED ANSWER:**

c) Be summarily dismissed with prejudice as it may constitute direct contempt.

If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions (*Rule 7, Sec. 5, Rules of Court*)

**Q (2012):** A certificate against Forum-Shopping is not required in:

- a) Petitions for probate of will.
- b) Application for search warrant.
- c) Complaint-in-intervention.
- d) Petition for Writ of Kalikasan.

**SUGGESTED ANSWER:**

b) Application for search warrant.

A certification against forum shopping is not required in an application for search warrant. The Rules of Court, require only initiatory pleadings to be accompanied with a certificate of non-forum shopping omitting any mention of “applications” as in Supreme Court No. 04-94. Hence, the absence of such certification will not

result in the dismissal of the application for search warrant. (*Savage vs. Judge A.B. Taypin, G.R. No. 134217, May 11, 2000*)

**Q (2014):** *Mr. Humpty* filed with the Regional Trial Court (RTC) a complaint against *Ms. Dumpty* for damages. The RTC, after due proceedings, rendered a decision granting the complaint and ordering *Ms. Dumpty* to pay damages to *Mr. Humpty*. *Ms. Dumpty* timely filed an appeal before the Court of Appeals (CA), questioning the RTC decision. Meanwhile, the RTC granted *Mr. Humpty's* motion for execution pending appeal. Upon receipt of the RTC's order granting execution pending appeal, *Ms. Dumpty* filed with the CA another case, this time a special civil action for *certiorari* assailing said RTC order. Is there a violation of the rule against forum shopping considering that two (2) actions emanating from the same case with the RTC were filed by *Ms. Dumpty* with the CA? Explain. (4%)

**SUGGESTED ANSWER:**

No. There is no violence of the rule against forum shopping. The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for *certiorari*; the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration. (*Roberto S. Benedicto vs. Manuel Lacson, G.R. No. 141508, May 5, 2010, Peralta, J.*)

In *Philippines Nails and Wires Corporation vs. Malayan Insurance Company, Inc.*, G.R. No. 143933, February 14, 2003, the Supreme Court held that one party may validly question a decision in a regular appeal and at the same time assail the execution pending appeal via *certiorari* without violating the rule against forum shopping. This is because the merits of the case will not be addressed in the Petition dealing with the execution and vice versa.

Since *Ms. Dumpty* merely filed a special civil action for *certiorari*, the same will not constitute a violation of the rules on forum shopping because the resolution or a favorable judgment thereon will not amount to *res judicata* in the subsequent proceedings between the same parties. (*Roberto S. Benedicto vs. Manuel Lacson, G.R. No. 141508, May 5, 2010, Peralta, J.*)

- i. Requirements of a corporation executing the verification/certification of non-forum shopping
- d) Effect of the signature of counsel in a pleading

3.5.4. Allegations in a pleading

- a) Manner of making allegations
  - i. Condition precedent
  - ii. Fraud, mistake, malice, intent, knowledge and other condition of the mind, judgments, official documents or acts
- b) Pleading an actionable document
- c) Specific denials
  - i. Effect of failure to make specific denials
  - ii. When a specific denial requires an oath

3.5.5. Effect of failure to plead

- a) Failure to plead defenses and objections

**Q (2012):** A court can *motu proprio* dismiss a case on the following grounds, **except:**

- a) Failure to prosecute;
- b) Lack of jurisdiction over the parties;
- c) Litis pendentia;
- d) Prescription.

**SUGGESTED ANSWER:**

- b) Lack of jurisdiction over the parties

A court cannot *motu proprio* dismiss a case on the ground of lack of jurisdiction over the parties because the objection on the said ground can be waived by the failure of the defendant to raise the same in his motion to dismiss or in his answer as an affirmative defense. (*Rule 9, Sec. 1, Rules of Court*).

- b) Failure to plead a compulsory counterclaim and cross-claim

3.5.6. Default

- a) When a declaration of default is proper

**Q (2013):** 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.

**SUGGESTED ANSWER:**

(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.

Under Section 3 of Rule 9, if the defending party fails to answer within the time allowed, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. (*Narciso vs. Garcia, GR No. 196877, November 21, 2012, Abad J.*).

(E) The above choices are all inaccurate

D may not be the correct answer because the Rule provides that if the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Notably, the Rule uses the word "shall and not "may."

b) Effect of an order of default

**Q(2012):** Being declared in default does not constitute a waiver of all rights. However, the following right is considered waived:

- a) Be cited and called to testify as a witness
- b) File a motion for new trial
- c) Participate in deposition taking of witnesses of adverse party
- d) File a petition for certiorari

**SUGGESTED ANSWER:**

b) File a motion for new trial

A party declared in default cannot take part in the trial but is nonetheless entitled to notices of subsequent proceedings. Thus, a party declared in default is not deemed to have waived his right to file a motion for new trial since he had no right to an old trial on the first place.

**ALTERNATIVE ANSWER:**

NO CORRECT ANSWER. The Committee may recommend that the examinee be given full credit for any answer because the question is very tricky.

A party declared in default is not deemed to have waived any of the above-mentioned rights.

A party declared in default loses his standing in Court. He cannot take part in the trial but he is entitled to notices of subsequent proceedings. (*Section 3 (a), Rule 9, Rules of Court*). When a defendant is declared in default, he does not waive any of the above-mentioned rights.

A defendant may still be cited and called to testify as a witness since he will participate in the trial, not as a party but merely as a witness. In fact, it is not a right but rather an obligation of a defendant cited and called to testify as a witness to so appear in court. He may also participate in the deposition taking of witnesses of the adverse party because the same is at the instance of the said adverse party and may not yet be considered as part of the trial. The defendant cannot also be said to have waived his right to file a motion for new trial since this is a remedy available before finality of a judgment declaring a party in default (*BD Long Span Builders vs. R. S. Ampeloquio Realty Development, Inc., G.R. No. 169919, September 11, 2009*). Moreover, a petition for certiorari under Rule 65 is not considered waived because it is still an available remedy, if the declaration of default was tainted with grave abuse of discretion.

In *Martinez v. Republic*, G.R. No. 160895, October 30, 2006, 506 SCRA 134, the Supreme Court has clearly discussed the remedies of a party declared in default in light of the 1964 and 1997 Rules of Court and a number of jurisprudence applying and interpreting said rules. Citing *Lina v. Court of Appeals*, No. L-63397, April 9, 1985, 135 SCRA 637, the High Court enumerated the following remedies, *to wit*: a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec. 3, Rule 18); b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37; c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (*Rule 41, Sec. 2, Rules of Court*) (*Rebecca T. Arquero vs. Court of Appeals*, G.R. No. 168053, Sept. 21, 2011, *Peralta, J.*).

- c) Relief from an order of default

**Q (2012):** A defendant declared in default may, after judgment but before finality, file a:

- a) Petition for Relief from Judgment;

- b) Petition for Certiorari;
- c) Motion for Reconsideration;
- d) Motion to Set Aside Order of Default.

**SUGGESTED ANSWER:**

- c) Motion for Reconsideration

A defendant declared in default may, after judgment but before finality file a Motion for Reconsideration in order to give the Court an opportunity to rectify its mistakes and set aside the previous judgment by default before it attains finality.

**ALTERNATIVE ANSWER:**

A defendant declared in default may, after judgment but before finality, file a Motion for New Trial.

It is well-settled that a defendant who has been declared in default has the following remedies, to wit: (1) he may, at any time after discovery of the default but before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense; (2) if judgment has already been rendered when he discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37; (3) if he discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and (4) he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (*B.D. long Span Builders vs. R. S. Ampeloquio Realty Development, Inc., G.R. No. 169919, September 11, 2009*).

**Q(2013):** Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5Million. 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.

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

**SUGGESTED ANSWER:**

If Charlie is declared in default, he has the following remedies to wit:

- 1) he may, at any time after discovery of the default but before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense;
- 2) if judgment has already been rendered when he discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;
- 3) if he discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
- 4) he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (*B.D. Longspan Builders, Inc. v. R.S. Ampeloquio Realty Development*, G.R. No. 169919, September 11, 2009)

NOTE: There are additional remedies to address judgments by default: Motion for Reconsideration (Rule 37), Annulment of Judgment (Rule 47) and Petition for Certiorari (Rule 65).

#### **ALTERNATIVE ANSWER:**

The court committed grave abuse of discretion when it declared the defending party in default despite the latter's filing of an Answer. Thus, a petition for *certiorari* under Rule 65 is the proper remedy.

*In San Pedro Cineplex Properties v. Heirs of Manuel Humada Enano*, G. R. No. 190754, November 17, 2010, the Supreme Court held that where the answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted. Thus, it was error to declare the defending party in default after the Answer was filed. (*See Sablas v. Sablas*, G.R. No. 144568, July 3, 2007).

After all, the defect in the service of summons was cured by Charlie's filing of a verified answer raising only the defense of full payment. The belated filing of the verified Answer amounts to voluntary submission to the jurisdiction of the court and waiver of any defect in the service of summons.

- d) Effect of a partial default
- e) Extent of relief
- f) Actions where default is not allowed

**Q(2012):** A judgment by default can be issued despite an Answer being filed in:

- a) Annulment of marriage.
- b) Legal separation.
- c) Cases where a party willfully fails to appear before the officer who is to take his deposition.
- d) Declaration of nullity of marriage.

**SUGGESTED ANSWER:**

c) Cases where a party willfully fails to appear before the officer who is to take his deposition.

If a party or an officer or managing agent of a party willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25 after proper service of such interrogatories, the court on motion and notice, may strike out all or any part of any pleading of the party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against the party, and in its discretion, order him to pay reasonable expenses incurred by the other, including attorney's fees. (*Rule 29, Sec. 5, Rules of Court*). Hence, even if an Answer was filed by a defendant, a judgment by default can still be issued where a party willfully fails to appear before the officer who is to take his deposition.

In *Arellano vs. Court of First Instance of Sorsogon, Branch I*, 65 SCRA 46, the Supreme Court sustained the order of dismissal for failure of respondent to serve any answer to petitioner Arellano's interrogatories. The dismissal was based on Section 5 of Rule 29 which provides that if a party fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the Court on motion and notice may dismiss the action or render judgment by default even without prior order to serve an answer.

3.5.7. Filing and service of pleadings

- a) Payment of docket fees

**Q (2012):** In real actions, the docket and filing fees are based on:

- a) Fair market value of the property.
- b) Assessed value of the property.
- c) BIR zonal value of the property.
- d) Fair market value of the property and amount of damages claimed.

**SUGGESTED ANSWER:**

**c) BIR zonal value of the property.**

Under Section 7, Rule 141 of the Rules of Court, in cases involving property, the fair market value of the real property in litigation stated in the current tax declaration or current zonal valuation of the bureau of internal revenue, whichever is higher, or if there is none, the stated value of the property in litigation or the value of the personal property in litigation as alleged by the claimant. (As amended by A.M. No. 04-2-04-SC, August 16, 2004)

**ALTERNATIVE ANSWER:**

**b) Assessed value of the property.**

In *Siapno vs. Manalo*, G.R. NO. 132260, August 30, 2005, the Court disregarded the title/denomination of the plaintiff Manalo's amended petition as one for Mandamus with Revocation of Title and Damages; and adjudged the same to be a real action, the filing fees for which should have been computed based on the assessed value of the subject property or, if there was none, the estimated value thereof.

- c) Filing versus service of pleadings
- d) Periods of filing of pleadings
- e) Manner of filing

**Q (2012):** X filed a complaint with the RTC through ABC, a private letter-forwarding agency. The date of filing of the complaint shall be:

- a) The date stamped by ABC on the envelope containing the complaint.
- b) The date of receipt by the Clerk of Court.
- c) The date indicated by the receiving clerk of ABC.
- d) The date when the case is officially raffled.

**SUGGESTED ANSWER:**

- b) The date of receipt by the Clerk of Court.

Under the Rules, the manner of filing of pleadings, appearances, motions, notices, judgments and all other papers shall only be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. (Rule 13, Sec. 3). Nonetheless, if the complaint was filed with the court through a private letter-forwarding agency, the established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing in court, but rather the date of actual receipt by the court, is deemed to be the date of filing of the pleading. (*Benguet Electric Cooperative, Inc vs. National Labor Relations Commission*, G.R. No. 89070 May 18, 1992). Hence, the date of actual receipt by the court is considered as the date of filing of the complaint.

- f) Modes of service
  - i. Personal service
  - ii. Service by mail
  - iii. Substituted service

**Q(2012):** Atty. X fails to serve personally a copy of his motion to Atty. Y because the office and residence of Atty. Y and the latter's client changed and no forwarding addresses were given. Atty. X's remedy is to:

- a) Serve by registered mail;
- b) Serve by publication;
- c) Deliver copy of the motion to the clerk of court with proof of failure to serve;
- d) Certify in the motion that personal service and through mail was impossible.

**SUGGESTED ANSWER:**

- c) Deliver copy of the motion to the clerk of court with proof of failure to serve;

Since the office and place of residence of the Atty. X and the latter's client changed and no forwarding addresses were given, Atty. X can deliver a copy of the motion by way of substituted service, to the clerk of court with proof of failure to serve the motion, both by way of personal service or service by mail. (*Rule 13, Sec. 8, Rules of Court*)

- iv. Service of judgments, final orders or resolutions
- v. Priorities in modes of service and filing
- vi. When service is deemed complete
- vii. Proof of filing and service

**3.5.8. Amendment**

- a) Amendment as a matter of right
- b) Amendments by leave of court
- c) Formal amendment
- d) Amendments to conform to or authorize presentation of evidence

**Q (2012):** With leave of court, a party may amend his pleading if:

- a) There is yet no responsive pleading served.
- b) The amendment is unsubstantial.
- c) The amendment involves clerical errors of defect in the designation of a party.
- d) The amendment is to conform to the evidence.

**SUGGESTED ANSWER:**

d) The amendment is to conform to the evidence.

When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. (*Rule 10, Sec. 5, Rules of Court*)

**Q (2013):** 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.

**SUGGESTED ANSWER:**

C, B or A

(C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.

(B) The court must overrule the objection.

(A) The court must sustain the objection.

Under Section 5 of Rule 10 of the Rules of Civil Procedure, when issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the

presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

The Court may sustain the objection because the evidence introduced by Danny is immaterial, being a matter which was not raised as an issue in the pleading.

On the other hand, the Court can also overrule the objection and allow an amendment of the pleading if doing so would serve the ends of justice.

- e) Different from supplemental pleadings
- f) Effect of amended pleading

### 3.6. Summons

#### 3.6.1. Nature and purpose of summons in relation to actions *in personam*, *in rem* and *quasi in rem*

**Q(2012):** W, a legal researcher in the RTC of Makati, served summons on an amended complaint on Z at the latter's house on a Sunday. The service is invalid because:

- a) It was served on a Sunday.
- b) The legal researcher is not a "proper court officer".
- c) (a) and (b) above
- d) There is no need to serve summons on an amended complaint.

#### **SUGGESTED ANSWERS:**

- b) The legal researcher is not a "proper court officer".

The Rules do not allow a legal researcher to serve summons on an amended complaint. He is not the proper court officer who is duly authorized to serve the summons to the defendants. The question is about validity and not superfluity.

- d) There is no need to serve summons on an amended complaint.

Where the defendants have already appeared before the trial court by virtue of a summons on the original complaint, the amended complaint may be served upon them without need of another summons, even if new causes of action are alleged. (*Vlason Enterprises Corporation vs. Court of Appeals*, G.R. Nos. 121662-64. July 6, 1999)

#### 3.6.2. Voluntary appearance

3.6.3. Personal service

3.6.4. Substituted service

**Q(2013):** Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5Million. 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%)

**SUGGESTED ANSWER:**

No. There is no showing that earnest efforts were exerted to personally serve the summons on the defendant before substituted service was resorted to; hence, the service of summons was improper.

In an action strictly *in personam* like a complaint for a sum of money, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to. (*Manotoc v. Court of Appeals, GR NO. 130974, August 16, 2006, Velasco, J*)

Otherwise stated, it is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service. (*Galura v. Math-Agro Corporation, GR NO. 167230, August 14, 2009, 1<sup>st</sup> Division, Carpio J*).

**ALTERNATIVE ANSWER:**

Yes. If earnest efforts were exerted to serve the summons in person but the same proved futile, then substituted service through defendant's secretary is valid.

In *Gentle Supreme Philippines Inc v. Ricardo Consulta, GR. No. 183182, September 1, 2010*, the Supreme Court held that it is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge.

Consequently, the substituted service of summons to the defendant's secretary in the office is valid.

3.6.5. Constructive service (by publication)

- a) Service upon a defendant where his identity is unknown or his whereabouts are unknown
- b) Service upon residents temporarily outside the Philippines

3.6.6. Extra-territorial service, when allowed

**Q (2013):** 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.

**SUGGESTED ANSWER:**

There is no correct answer.

Under Section 15 of Rule 14 of the Rules of Court, extraterritorial service of summons is applicable, when the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines.

*In Spouses Domingo M. Belen v. Hon. Pablo R. Chavez*, G.R. No. 175334, March 26, 2008, the Supreme Court held that if the resident defendant is temporarily out of the country, any of the following modes of service may be resorted to: (1) substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient.

Hence, extra-territorial service of summons is applicable to all the choices given above.

**ALTERNATIVE ANSWER:**

B. when the action against the non-resident defendant affects the personal status of the plaintiff and the defendant is temporarily outside the Philippines

Under Section 16, Rule 14 of the Rules of Civil Procedure, when any action is commenced against a defendant who ordinarily resides within the Philippines, but *who is temporarily out* of it, service may, by leave of court, be also effected out of the Philippines, as under the preceding section (Section 15, Rule 14). Clearly, a non-resident defendant cannot be considered temporarily outside the Philippines because Section 14, Rule 14 refers to a resident defendant who is only temporarily outside the Philippines.

NOTE: The committee respectfully submits that the examinee should be given full credit for any answer.

3.6.7. Service upon prisoners and minors

3.6.8. Proof of service

**Q(2012):** Proof of service of summons shall be through the following, **except:**

- a) Written return of the sheriff;
- b) Affidavit of the person serving summons;
- c) Affidavit of the printer of the publication;
- d) Written admission of the party served.

**SUGGESTED ANSWER:**

- d) Written admission of the party served.

Proof of service of summons shall be made in writing by the server and shall be sworn to when made by a person other than a sheriff or his deputy. (*Rule 14, Sec. 18, Rules of Court*). If the service has been made by publication, it may be proved by the affidavit of the printer to which a copy of the publication shall be attached, and directed to the defendant by registered mail to his last known address. (*Rule 14, Sec. 19, Rules of Court*).

3.7. Motions

3.7.1. Motions in general

- a) Definition of a motion
- b) Motions versus pleadings
- c) Contents and forms of motions
- d) Notice of hearing and hearing of motions

- e) Omnibus motion rule
- f) Litigated and ~~ex parte~~ motions
- g) ~~Pro forma~~ motions

**Q (2012):** X filed a motion for Bill of Particulars, after being served with summons and a copy of the complaint. However, X's motion did not contain a notice of hearing. The court may therefore:

- a) Require the clerk of court to calendar the motion.
- b) Motu proprio dismiss the motion for not complying with Rule 15.
- c) Allow the parties the opportunity to be heard.
- d) Return the motion to X's counsel for amendment.

**SUGGESTED ANSWER:**

- b) Motu proprio dismiss the motion for not complying with Rule 15.**

A Motion for bill of particulars which does not contain a notice of hearing is considered pro forma. As such, the motion is a useless piece of paper without force and effect which must not be taken cognizance by the Court. (*Preysler, Jr. vs Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010*)

**ALTERNATIVE ANSWER:**

- c) Allow the parties the opportunity to be heard.**

Under Section 2, Rule 12 of the Rules of Court, upon filing of a Motion for Bill of Particulars, the clerk of court must immediately bring it to the attention of the court which may either deny or grant it outright, or allow the parties the opportunity to be heard.

**3.7.2. Motions for bill of particulars**

- a) Purpose and when applied for
- b) Actions of the court
- c) Compliance with the order and effect of noncompliance
- d) Effect on the period to file a responsive pleading

**3.7.3. Motion to dismiss**

- a) Grounds

**Q (2014):** Co Batong, a Taipan, filed a civil action for damages with the Regional Trial Court (RTC) of Parañaque City against Jose Penduko, a news reporter of the Philippine Times, a newspaper of general circulation printed and published in Parañaque City. The complaint alleged, among others, that Jose Penduko wrote malicious and defamatory imputations against Co Batong; that Co Batong's

business address is in Makati City; and that the libelous article was first printed and published in Parañaque City. The complaint prayed that Jose Penduko be held liable to pay P200,000.00, as moral damages; P150,000.00, as exemplary damages; and P50,000.00, as attorney's fees.

Jose Penduko filed a Motion to Dismiss on the following grounds:

The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (MeTC) of Parañaque City.

The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

Are the grounds invoked in the Motion to Dismiss proper? (4%)

(1) The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (MeTC) of Parañaque City.

**FIRST SUGGESTED ANSWER:**

No. The ground invoked in the Motion to Dismiss is not proper.

Under Article 360 of the Revised Penal Code, the civil action for damages in cases of written defamation may be filed separately in the Regional Trial Court where the libelous article was printed and first published, regardless of the amount of damages being claimed.

**SECOND SUGGESTED ANSWER:**

Yes. The ground invoked in the Motion to Dismiss is proper.

In case the claim for damages is the main cause of action, the entire amount of such claim shall be considered in determining the jurisdiction of the court (*Administrative Circular No. 09-94*)

Hence, the full amount of damages including the attorney's fees being claimed shall determine which Court has jurisdiction. (*Sante vs. Hon. Claravall, G.R. No. 173915, February 22, 2010, Villarama, Jr., J.*)

(2) The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

**FIRST SUGGESTED ANSWER:**

The venue is properly laid.

Under the law, the venue for the civil action involving written Defamation shall be the place where the defamatory article was printed and first published. (Article 360, Revised Penal Code)

Since the defamatory article was printed and first published in Parañaque City, the venue of the action is properly laid.

Hence, the dismissal of the Complaint will only be proper if the Complaint failed to allege the residence of the complainant or the place where the libelous article was printed and first published. (*Nocum vs. Tan*, G.R. No. 145022, September 23, 2005)

**SECOND SUGGESTED ANSWER:**

Under the Rules, personal actions may be commenced and tried where the plaintiff resides or any of the principal plaintiffs reside, or where the defendant or any of the defendants reside, at the option of the plaintiff.

Since Co Batong filed the case in a place which is neither his nor Jose Penduko's residence, the venue of the action is improperly laid.

At any rate, instead of dismissing the Complaint, the Court may order Co Batong to simply amend the same in order to allege his place of residence.

b) Resolution of motion

**Q (2012):** After a hearing on a Motion to Dismiss, the court may either dismiss the case or deny the same or:

- a) Defer resolution because the ground relied upon is not indubitable.
- b) Order amendment of the pleading
- c) Conduct a preliminary hearing
- d) None of the above.

**SUGGESTED ANSWER:**

b) Order amendment of the pleading

After the hearing of a motion to dismiss, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading. The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. (*Rule 16, Sec. 3, Rules of Court*).

- c) Remedies of plaintiff when the complaint is dismissed
- d) Remedies of the defendant when the motion is denied

**Q (2014):** *Mr. Avenger* filed with the Regional Trial Court (RTC) a complaint against *Ms. Bright* for annulment of deed of sale and other documents. *Ms. Bright* filed a motion to dismiss the complaint on the ground of lack of cause of action. *Mr. Avenger* filed an opposition to the motion to dismiss.

State and discuss the appropriate remedy/remedies under each of the following situations: **(6%)**

(A) If the RTC grants *Ms. Bright's* motion to dismiss and dismisses the complaint on the ground of lack of cause of action, what will be the remedy/remedies of *Mr. Avenger*?

**SUGGESTED ANSWERS:**

Mr. Avenger can choose any of the following remedies:

1. Mr. Avenger may file a Motion for Reconsideration. If denied, he could file an appeal to the Court of Appeals under Rule 41 since a dismissal based on lack of cause of action (under Rule 33) is appealable.

2. Mr. Avenger may file a Motion for reconsideration. If the same is denied, he could file a Petition for Certiorari under Rule 65 because a dismissal based on *failure to state a cause of action* is considered without prejudice and therefore an interlocutory order which cannot be a subject of an appeal under Rule 41 of the Rules of Court.

3. Mr. Avenger may file a Motion for Reconsideration. If the same is denied, he can simply re-file the complaint because an Order granting a Motion to Dismiss based on failure to state a cause of action is without prejudice to the filing of another Complaint. (Section 5, Rule 16, Rules of Court)

4. Mr. Avenger may amend his Complaint, as a matter of right, since a Motion to Dismiss is not a responsive pleading. (Irene Marcos Araneta vs. Court of Appeals, G.R. No. 154096, August 22, 2008)

(B) If the RTC denies *Ms. Bright's* motion to dismiss, what will be her remedy/remedies?

### **SUGGESTED ANSWERS:**

1. Ms. Bright may file a Motion for Reconsideration. If the same is denied, she could file a special civil action for Certiorari under Rule 65 of the Rules of Court.

An Order denying a Motion to Dismiss is interlocutory because it does not finally dispose of the case, and, in effect, directs the case to proceed until final adjudication by the court. Hence, a special civil action on certiorari is the appropriate remedy. (Section 1, Rule 41, Rules of Court; *Marmo vs. Anacay*, G.R. No.182585, November 27, 2009)

2. Ms. Bright may file an Answer within the balance of the period from the filing of his Motion to Dismiss but not less than five (5) days, and raise affirmative defenses therein. (Sections 4 and 6, Rule 16, Rules of Court)

(C) If the RTC denies *Ms. Bright's* motion to dismiss and, further proceedings, including trial on the merits, are conducted until the RTC renders a decision in favor of *Mr. Avenger*, what will be the remedy/remedies of *Ms. Bright*?

### **SUGGESTED ANSWERS:**

Ms. Bright may avail of the following remedies before the finality of the decision:

1. A motion for reconsideration; (Section 1 Rule 37);
2. A motion for new trial; (Section 1 Rule 37); and
3. Appeal (Rules 40, 41, 42, 43 and 45).

After the finality of the Decision, Ms. Bright can avail of the following:

1. Petition for relief (Rule 38)
2. Annulment of Judgment (Rule 47)
3. Petition for Certiorari (Rule 65)

e) Effect of dismissal of complaint on certain grounds

**Q(2012):** A complaint may be refiled if dismissed on which of the following grounds?

- a) Unenforceable under the Statute of Frauds;
- b) Res Judicata;
- c) Litis Pendencia;
- d) Lack of jurisdiction.

### **SUGGESTED ANSWERS:**

- c) Litis Pendencia
- d) Lack of jurisdiction.

An order granting a motion to dismiss shall bar the refiling of the same action or claim based on the following grounds, namely: res judicata, prescription, claim or demand is paid, waived, abandoned or otherwise extinguished, and the claim on which the action is founded is unenforceable under the statute of frauds. (*Rule 16, Sec. 5, (f), (h) and (i), Rules of Court*). The Rules do not include litis pendencia and lack of jurisdiction.

- f) When grounds pleaded as affirmative defenses
- g) Bar by dismissal
- h) Distinguished from demurrer to evidence under Rule 33

#### 3.8. Dismissal of actions

##### 3.8.1. Dismissal upon notice by plaintiff; two-dismissal rule

**Q(2012):** A complaint may be dismissed by the plaintiff by filing a notice of dismissal:

- a) At anytime after service of the answer.
- b) At anytime before a motion of summary judgment is filed.
- c) At the pre-trial.
- d) Before the complaint is amended.

### **SUGGESTED ANSWER:**

- b) At anytime before a motion of summary judgment is filed.

A complaint may be dismissed by the plaintiff by filing a notice of dismissal *at any time before service of the answer or of a motion for summary judgment*. Upon such notice being filed, the court shall issue an order confirming the dismissal. (*Rule 17, Sec. 1, Rules of Court*)

##### 3.8.2. Dismissal upon motion by plaintiff; effect on existing counterclaim

##### 3.8.3. Dismissal due to the fault of plaintiff

**Q (2012):** X, the designated executor of a will, files a petition for probate of the same. X and his counsel failed to appear without justifiable cause at the hearing on the presentation of evidence and the court therefore dismissed, motu proprio, his petition for failure to prosecute. The effect of the dismissal is:

- a) Not an adjudication upon the merits.
- b) The will can no longer be probated.

- c) It is a dismissal with prejudice.
- d) A bar to a subsequent action on the same cause.

**SUGGESTED ANSWER:**

- c) It is a dismissal with prejudice.

The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, unless otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice. (*See Rule 17, Sec. 3, Rules of Court; Gomez vs. Alcantara, G.R. No. 179556, February 13, 2009*).

3.8.4. Dismissal of counterclaim, cross-claim or third-party complaint

3.9. Pre-trial

- 3.9.1. Concept of pre-trial
- 3.9.2. Nature and purpose
- 3.9.3. Notice of pre-trial

**Q(2012):** The following motions require a notice of hearing served on the opposite party, except:

- a) Motion to Set Case for Pre-trial;
- b) Motion to take deposition;
- c) Motion to correct TSN;
- d) Motion to postpone hearing.

**SUGGESTED ANSWER:**

- a) Motion to Set Case for Pre-trial

After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move ex parte that the case be set for pre-trial. (*Rule 18, Sec. 1, Rules of Court*)

- 3.9.4. Appearance of parties; effect of failure to appear
- 3.9.5. Pre-trial brief; effect of failure to file
- 3.9.6. Distinction between pre-trial in civil case and pre-trial in criminal case
- 3.9.7. Alternative Dispute Resolution (ADR)
  - a) Special Rules of Court on ADR (A.M. No. 07-11-08-SC)

**Q (2012):** Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

**SUGGESTED ANSWER:**

The three stages of diversion are Court-Annexed Mediation (CAM), Judicial Dispute Resolution (JDR), and Appeals Court Mediation (ACM). During CAM, the judge refers the parties to the Philippine Mediation Center (PMC) for the mediation of their dispute by trained and accredited mediators. If CAM fails, the JDR is undertaken by the JDR judge, acting as a mediator-conciliator-early neutral evaluator. The third case is during appeal, where covered cases are referred to ACM.

- 3.10. Intervention
  - 3.10.1. Requisites for intervention
  - 3.10.2. Time to intervene
  - 3.10.3. Remedy for the denial of motion to intervene
- 3.11. Subpoena
  - 3.11.1. *Subpoena duces tecum*
  - 3.11.2. *Subpoena ad testificandum*
  - 3.11.3. Service of *subpoena*
  - 3.11.4. Compelling attendance of witnesses; contempt
  - 3.11.5. Quashing of *subpoena*
- 3.12. Modes of discovery
  - 3.12.1. Depositions pending action; depositions before action or pending appeal
    - a) Meaning of deposition
    - b) Uses; scope of examination

**Q (2012):** The deposition of a witness, whether or not a party, may be used for any purpose if the Court finds the following circumstances are attendant, **EXCEPT:**

- a) When the witness is dead.
- b) When the witness is incarcerated.
- c) When the witness is outside the Philippines and absence is procured by the party offering deposition.
- d) When the witness is 89 years old and bed-ridden.

**SUGGESTED ANSWER:**

c) When the witness is outside the Philippines and absence is procured by the party offering deposition.

The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; (2) that the witness resides at a distance more than one hundred (100) kilometers from the

place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used. (*Rule 23, Sec. 4 (c), Rules of Court*).

- c) When may objections to admissibility be made
- d) When may taking of deposition be terminated or its scope limited

3.12.2. Written interrogatories to adverse parties

**Q (2012):** An objection to any interrogatories may be presented within \_\_\_\_\_ days after service thereof:

- a) 15;
- b) 10;
- c) 5;
- d) 20.

**SUGGESTED ANSWER:**

- b) 10

Objections to any interrogatories may be presented to the court *within ten (10) days after service thereof*, with notice as in case of a motion. Upon filing of the aforementioned objections, the answer to such written interrogatories shall be deferred until the objections are resolved, which shall be at as early a time as is practicable. (*Rule 25, Sec. 3, Rules of Court*).

- a) Consequences of refusal to answer
- b) Effect of failure to serve written interrogatories

3.12.3. Request for admission

**Q(2012):** As a mode of discovery, the best way to obtain an admission from any party regarding the genuineness of any material and relevant document is through a:

- a) Motion for production of documents.
- b) Written interrogatories.
- c) Request for admission under Rule 26.
- d) Request for subpoena duces tecum.

**SUGGESTED ANSWER:**

### **c) Request for admission under Rule 26**

At any time after issues have been joined, a party may file and serve upon *any other party a written request for the admission by the latter of the genuineness of any material and relevant document* described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. (*Rule 26, Sec. 1, Rules of Court*). A request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. Unless it serves that purpose, it is pointless, useless, and a mere redundancy. (*Limos vs. Spouses Odone, G.R. No. 186979, August 11, 2010*).

- a) Implied admission by adverse party
- b) Consequences of failure to answer request for admission

**Q (2012):** Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

### **SUGGESTED ANSWER:**

The plaintiff should file a Motion for Judgment on the Pleadings because the failure of the defendant to answer a request for admission results to an implied admission of all the matters which an admission is requested. Hence, a motion for judgment on the pleadings is the appropriate remedy where the defendant is deemed to have admitted the matters contained in the Request for admission by the plaintiff. (*Rule 34 in connection with Sec. 2, Rule 26, Rules of Court*).

- c) Effect of admission
  - d) Effect of failure to file and serve request for admission
- 3.12.4. Production or inspection of documents or things
  - 3.12.5. Physical and mental examination of persons
  - 3.12.6. Consequences of refusal to comply with modes of discovery
- 3.13. Trial
- 3.13.1. Adjournments and postponements
  - 3.13.2. Requisites of motion to postpone trial
    - a) For absence of evidence
    - b) For illness of party or counsel
  - 3.13.3. Agreed statement of facts
  - 3.13.4. Order of trial; reversal of order
  - 3.13.5. Consolidation or severance of hearing or trial
  - 3.13.6. Delegation of reception of evidence

**Q (2012):** When directed by the judge, a clerk of court can receive evidence addressed by the parties in:

- a) Case where the judge is on leave.
- b) Small claims proceedings.
- c) Cases where the parties agree in writing.
- d) Land registration proceedings.

**SUGGESTED ANSWER:**

- c) Cases where the parties agree in writing.

The Rules provide that the judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or ex parte hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. (*Rule 30, Sec. 9, Rules of Court*).

- 3.13.7. Trial by commissioners
  - a) Reference by consent or ordered on motion
  - b) Powers of the commissioner
  - c) Commissioner's report; notice to parties and hearing on the report
- 3.14. Demurrer to evidence
  - 3.14.1. Ground
  - 3.14.2. Effect of denial
  - 3.14.3. Effect of grant
  - 3.14.4. Waiver of right to present evidence
  - 3.14.5. Demurrer to evidence in a civil case versus demurrer to evidence in a criminal case
- 3.15. Judgments and final orders

**Q(2012):** A judgment "non pro tunc" is one which:

- a) Dismisses a case without prejudice to it being re-filed.
- b) Clarifies an ambiguous judgment or a judgment which is difficult to comply with.
- c) One intended to enter into the record the acts which already have been done, but which do not appear in the records.
- d) Is a memorandum decision.

**SUGGESTED ANSWER:**

- c) One intended to enter into the record the acts which already have been done, but which do not appear in the records.

A nunc pro tunc entry in practice is an entry made now of something which was actually previously done, to have effect as of the former date. Its office is not to supply omitted action by the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake. (*Wilmerding vs. Corbin Banking Co.*, 28 South., 640, 641; 126 Ala., 268). (*Perkins vs. Haywood*, 31 N. E., 670, 672 cited in *Aliviado vs. Proctor and Gamble*, G.G. No. 160506, June 6, 2011).

**Q (2012):** A decision or resolution of a division of the Supreme Court when concurred in by \_\_\_\_\_ members, who actually took part in the deliberation on the issues in a case and voted thereon, is a decision or resolution of the Supreme Court.

- a) Three (3);
- b) Five (5);
- c) Eight (8);
- d) Ten (10).

**SUGGESTED ANSWER:**

- a) Three (3)

Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc. (*Article VIII, Sec. 4, 1987 Constitution*)

**Q (2012):** If the Supreme Court en banc is equally divided in opinion covering an original action, the case shall be:

- a) Re-raffled to a division.
- b) Original action shall be dismissed.
- c) The judgment appealed from shall be official.
- d) Again deliberated upon.

**SUGGESTED ANSWER:**

- b) Original action shall be dismissed.

Where the court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (*Rule 56, Sec. 7, Rules of Court*)

**Q (2014):** An order of the court requiring a retroactive re -dating of an order, judgment or document filing be entered or recorded in a judgment is: **(1%)**

- (A) *pro hac vice*
- (B) *non pro tunc*
- (C) *confession relictæ verificatione*
- (D) *nolle prosequi*

**SUGGESTED ANSWER:**

- (B) *non pro tunc*

The object of a judgment nunc pro tunc is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply non-action by the court, however erroneous the judgment may have been. (*Filipinas Faroil Processing vs Dejapa, G.R. No. 167332, February 7, 2011, Peralta, J.*)

3.15.1. Judgment without trial

3.15.2. Contents of a judgment

**Q(2012):** RTC decides an appeal from the MTC involving a simple collection case. The decision consists of only one page because it adopted by direct reference the findings of fact and conclusions of law set forth in the MTC decision. Which statement is most accurate?

- a) The RTC decision is valid because it was issued by a court of competent jurisdiction.
- b) The RTC decision is valid because it expedited the resolution of the appeal.
- c) The RTC decision is valid because it is a memorandum decision recognized by law.

d) The RTC decision is valid because it is practical and convenient to the judge and the parties.

**SUGGESTED ANSWER:**

c) The RTC decision is valid because it is a memorandum decision recognized by law.

A memorandum decision can be welcomed as an acceptable method of dealing expeditiously with the case load of the courts of justice. The phrase Memorandum Decision appears to have been introduced in this jurisdiction not by that law but by Section 24 of the Interim Rules and Guidelines of BP Blg. 129, reading as follows:

Sec.24. *Memorandum decisions* - The judgment or final resolution of a court in appealed cases may adopt by reference the findings of fact and conclusions of law contained in the decision or final order appealed from. (*Francisco vs. Perm Skul, G.R. No. 81006, May 12, 1989.*)

3.15.3. Judgment on the pleadings

**Q (2012):** One of the exemptions to the general rule that evidence not formally offered shall not be considered is:

- a) In judgment on the pleadings.
- b) Evidence in land registration proceedings.
- c) Evidence lost/destroyed due to force majeure after being marked, identified and described in the record.
- d) Documentary evidence proving a foreign judgment.

**SUGGESTED ANSWER:**

- a) In judgment on the pleadings.

Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. (*Rule 34, Sec. 1, Rules of Court*). Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence aliunde. (*Philippine National Bank vs. Marelo V. Aznar, et.al, G.R. No. 171805, May 30, 2011, Leonardo-De Castro, J.*). The court therefore may be allowed to render judgment based merely on the pleadings without need of trial and formal offer of evidence.

**ALTERNATIVE ANSWER:**

b) Evidence in land registration proceedings.

The Rules of Court shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient (*Rule 1, Sec. 4, Rules of Court*). (*Government Service Insurance System (GSIS) vs. Dinnah Villaviza et. al., G.R. No. 180291, July 27, 2010, Mendoza, J.*). In one case, the Supreme Court sustained the Court of Appeals when it denied an application for naturalization on the basis of documents not formally offered in evidence during the trial. The High Court noted that the procedure in Sec. 34 of Rule 132 providing that the Court shall consider no evidence which has not been formally offered, does not apply to naturalization proceeding conformably to Section 4, Rule 1 of the Rules of Court. (*Ong Chia vs Republic, 328 SCRA ZA9 (2001)*). Applying the same principle, we should not also apply the said rule on evidence in land registration proceedings. After all, in one case, the Supreme Court already made it clear that the liberal construction principle does not apply in land registration cases because it is not governed by the Rules of Court. (*Bienvenido Castillo vs. Republic of the Philippines, G.R. No. 182980, June 22, 2011, Carpio, J.*).

3.15.4. Summary judgments

- a) For the claimant
- b) For the defendant
- c) When the case not fully adjudicated
- d) Affidavits and attachments

3.15.5. Judgment on the pleadings versus summary judgments

**Q (2014):** *Plaintiff* filed a complaint denominated as *accion publiciana*, against *defendant*. In his answer, *defendant* alleged that he had no interest over the land in question, except as lessee of Z. *Plaintiff* subsequently filed an affidavit of Z, the lessor of *defendant*, stating that Z had sold to *plaintiff* all his rights and interests in the property as shown by a deed of transfer attached to the affidavit. Thus, *plaintiff* may ask the court to render: (1%)

- (A) summary judgment
- (B) judgment on the pleadings
- (C) partial judgment
- (D) judgment by default

**SUGGESTED ANSWER:**

- (B) Judgment on the pleadings

When the Answer fails to tender an issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate. (*Eugenio Basbas vs. Beata Sayson*, G.R. No. 172660, August 24, 2011)

**ALTERNATIVE ANSWER:**

(A) Summary judgment

A summary judgment is proper provided that the issue raised is not genuine. A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial. (*Eugenio Basbas vs. Beata Sayson*, G.R. No. 172660, August 24, 2011)

- 3.15.6. Rendition of judgments and final orders
- 3.15.7. Entry of judgment and final order
- 3.16. Post-judgment remedies
  - 3.16.1. Motion for new trial or reconsideration
    - a) Grounds

**Q(2012):** Which of the following statements is incorrect?

- a) A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished.
- b) In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence.
- c) A demurrer to evidence may be filed without leave of court in a criminal case.
- d) None of the above.

**SUGGESTED ANSWER:**

d) None of the above.

A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished. (*Rule 117, Sec. 6 in relation to Section 3*). In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence. (*Rule 53, Sec. 1, Rules of Court*). A demurrer to evidence may be filed without leave of court in a criminal case. (*Rule 119, Sec. 23, Rules of Court*)

- b) When to file

**Q(2012):** Under Rule 52, a Second Motion for Reconsideration is a prohibited pleading. However, where may such Motion be allowed?

- a) The Sandiganbayan;
- b) The Office of the President;
- c) The Supreme Court;
- d) None of the above.

**SUGGESTED ANSWER:**

- c) The Supreme Court

Under Rule 52, a second Motion for Reconsideration is a prohibited pleading. However, the Supreme Court en banc may entertain the same in the higher interest of justice upon a vote of at least two-thirds of its actual membership. There is reconsideration *'in the highest interest of justice'* when the assailed decision is not only legally erroneous but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. (*Sec. 3, Rule 15, Internal Rules of the Supreme Court*). In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc. (*Aliviado vs. Proctor and Gamble Phils., Inc., et. al, G.R. No. 160506, June 6, 2011, Del Castillo, J.*).

**Q (2013):** 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 extraordinary 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.

**SUGGESTED ANSWER:**

- (B) Only in the presence of extraordinary persuasive reasons and only after obtaining express leave from the ruling court.

A second motion for reconsideration is allowed but only when there are extraordinary persuasive reasons and only after an express leave shall have

been obtained” (*Suarez vs. Judge Dilag, AM. No. RTJ-06-2014 August 16, 2011; League of Cities v. COMELEC, G.R. No. 176951, June 28, 2011*)

- d) Denial of the motion; effect
- e) Grant of the motion; effect
- f) Remedy when motion is denied, fresh 15-day period rule

### 3.16.2. Appeals in general

**Q(2013):** Findings of fact are generally not disturbed by the appellate court except in cases \_\_\_\_\_ (1%)

- (A) where the issues 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.

### **SUGGESTED ANSWER:**

D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case.

In *Miranda vs. People, GR No. 176298, January 25, 2012*, the Supreme Court explained that absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, the Court should give deference to the trial court’s appreciation of the facts and of the credibility of witnesses.

- a) Judgments and final orders subject to appeal
- b) Matters not appealable
- c) Remedy against judgments and orders which are not appealable
- d) Modes of appeal
  - i. Ordinary appeal
  - ii. Petition for review
  - iii. Petition for review on *certiorari*

**Q (2012):** Where and how will you appeal the following:

- (1) An order of execution issued by the RTC. (1%)

**SUGGESTED ANSWER:**

A petition for certiorari under Rule 65 before the Court of Appeals

**ALTERNATIVE ANSWER:**

The mode of elevation may be either by appeal (writ of error or certiorari), or by a special civil action of certiorari, prohibition, or mandamus. (*Banaga v. Majaducon cited in General Milling Corporation-Independent Labor Union vs. General Milling Corporation, G.R. No. 183122, June 15, 2011, Perez, J.*).

(2) Judgment of RTC denying a petition for Writ of Amparo. (1%)

**SUGGESTED ANSWER:**

Any party may appeal from the final judgment or order to the Supreme Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court. The period of appeal shall be five (5) working days from the date of notice of the adverse judgment, and the appeal may raise questions of fact or law or both. (*Sec.19, Rule on the Writ of Amparo, A.M. No. 07-9-12-SC, 25 September 2007*).

(3) Judgment of MTC on a land registration case based on its delegated jurisdiction. (1%)

**SUGGESTED ANSWER:**

The appeal should be filed with the Court of Appeals by filing a Notice of Appeal within 15 days from notice of judgment or final order appealed from. (*Sec. 34, Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691, March 25, 1994*)

(4) A decision of the Court of Tax Appeal's First Division. (1%)

**SUGGESTED ANSWER:**

The decision of the Court of Tax Appeals Division may be appealed to the CTA *en banc*.

The decisions of the Court of Tax Appeals are no longer appealable to the Court of Appeals. Under the modified appeal procedure, the decision of a division of the CTA may be appealed to the CTA *en banc*. The decision of the CTA *en banc* may in turn be directly appealed to the Supreme Court by way of a petition for review on certiorari under Rule 45 on questions of law. (*Section 11, R.A. 9282, March 30, 2004*).

- e) Issues to be raised on appeal

**Q (2014):** *Goodfeather Corporation*, through its President, *Al Pakino*, filed with the Regional Trial Court (RTC) a complaint for specific performance against *Robert White*. Instead of filing an answer to the complaint, *Robert White* filed a motion to dismiss the complaint on the ground of lack of the appropriate board resolution from the Board of Directors of *Goodfeather Corporation* to show the authority of *Al Pakino* to represent the corporation and file the complaint in its behalf. The RTC granted the motion to dismiss and, accordingly, it ordered the dismissal of the complaint. *Al Pakino* filed a motion for reconsideration which the RTC denied. As nothing more could be done by *Al Pakino* before the RTC, he filed an appeal before the Court of Appeals (CA). *Robert White* moved for dismissal of the appeal on the ground that the same involved purely a question of law and should have been filed with the Supreme Court (SC). However, *Al Pakino* claimed that the appeal involved mixed questions of fact and law because there must be a factual determination if, indeed, *Al Pakino* was duly authorized by *Goodfeather Corporation* to file the complaint. Whose position is correct? Explain. (4%)

**SUGGESTED ANSWER:**

Al Pakino is correct in claiming that the appeal involved mixed questions of fact and law.

There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. On the other hand, there is a question of fact, when the doubt or difference arises as to the truth or falsehood of alleged facts. (*Mirant Philippines Corporation vs. Sario*, G.R. No. 197598, November 21, 2012)

Since the complaint was dismissed due to the alleged lack of appropriate board resolution from the Board of Directors of Goodfeather Corporation, the appeal will necessarily involve a factual determination of the authority to file the Complaint for the said Corporation. Hence, the appeal before the Court of Appeals is correct.

**ALTERNATIVE ANSWER:**

Al Pakino and Robert White are incorrect.

An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by the Rules to be appealable.

It is well-settled that an order dismissing an action without prejudice cannot be a subject of appeal (Section 1, Rule 41, Rules of Court)

Since a dismissal based on alleged lack of appropriate board resolution is considered without prejudice which cannot be a subject of an appeal, the appropriate remedy is a special civil action under Rule 65 of the Rules of Court.

**Q (2014):** Which of the following decisions may be appealed directly to the Supreme Court (SC)? (Assume that the issues to be raised on appeal involve purely questions of law) (1%)

- (A) Decision of the Regional Trial Court (*RTC*) rendered in the exercise of its appellate jurisdiction
- (B) Decision of the RTC rendered in the exercise of its original jurisdiction
- (C) Decision of the Civil Service Commission
- (D) Decision of the Office of the President

**SUGGESTED ANSWER:**

(B) Decision of the RTC rendered in the exercise of its original jurisdiction.

Section 2, Rule 41 of the Rules of Court provides the three (3) modes of appeal, which are as follows:

**Section 2. *Modes of appeal.* —**

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law. (*The Heirs of Nicolas S. Cabigas vs. Melba L. Limbaco*, G.R. No. 175291, July 27, 2011)

Clearly, the decision of the Regional Trial Court in the exercise of its original jurisdiction is appealable to the Supreme Court under Rule 45 on pure questions of law.

- f) Period of appeal
- g) Perfection of appeal
- h) Appeal from judgments or final orders of the MTC

**Q (2014):** *Mr. Boaz* filed an action for ejectment against *Mr. Jachin* before the Metropolitan Trial Court (*MeTC*). *Mr. Jachin* actively participated in every stage of the proceedings knowing fully well that the MeTC had no jurisdiction over the action. In his mind, *Mr. Jachin* was thinking that if the MeTC rendered judgment against him, he could always raise the issue on the jurisdiction of the MeTC. After trial, the MeTC rendered judgment against *Mr. Jachin*. What is the remedy of *Mr. Jachin*? (1%)

- (A) File an appeal
- (B) File an action for nullification of judgment
- (C) File a motion for reconsideration
- (D) File a petition for *certiorari* under Rule 65

**SUGGESTED ANSWER:**

- (A) File an appeal

An appeal from a judgment or final order of a Municipal Trial Court may be taken to the Regional Trial Court (Section 1, Rule 40, Rules of Court).

Moreover, under Rule 41 of the Rules of Court, decisions of the Metropolitan Trial Court in the exercise of its original jurisdiction can be appealed to the Regional Trial Court.

Besides, a Motion for Reconsideration is prohibited under the Rules on Summary Procedure.

- i) Appeal from judgments or final orders of the RTC
- j) Appeal from judgments or final orders of the CA
- k) Appeal from judgments or final orders of the CTA
- l) Review of final judgments or final orders of the Comelec
- m) Review of final judgments or final orders of the Ombudsman
- n) Review of final judgments or final orders of the NLRC
- o) Review of final judgments or final orders of quasi-judicial agencies

**Q(2012):** The Energy Regulatory Commission (ERC) promulgates a decision increasing electricity rates by 3%. KMU appeals the decision by way of petition for review. The appeal will therefore:

- a) Stay the execution of ERC decision.
- b) Shall not stay the ERC decision unless the Court of Appeals directs otherwise.
- c) Stay the execution of the ERC decision conditioned on KMU posting a bond.
- d) Shall not stay the ERC decision.

**SUGGESTED ANSWER:**

b) Shall not stay the ERC decision unless the Court of Appeals directs otherwise.

KMU's appeal of the decision of the Energy Regulations Commission shall not stay the decision increasing the electricity rates by 3%, unless the Court of Appeals shall direct otherwise upon such terms as it may deem just. (*Rule 43, Sec.12, Rules of Court*)

3.16.3. Relief from judgments, orders and other proceedings

- a) Grounds for availing of the remedy
- b) Time to file petition
- c) Contents of petition

3.16.4. Annulment of judgments or final orders and resolutions

- a) Grounds for annulment

**Q (2014):** *Tom Wallis* filed with the Regional Trial Court (RTC) a Petition for Declaration of Nullity of his marriage with *Debi Wallis* on the ground of psychological incapacity of the latter. Before filing the petition, *Tom Wallis* had told *Debi Wallis* that he wanted the annulment of their marriage because he was already fed up with her irrational and eccentric behaviour. However, in the petition for declaration of nullity of marriage, the correct residential address of *Debi Wallis* was deliberately not alleged and instead, the residential address of their married son was stated. Summons was served by substituted service at the address stated in the petition. For failure to file an answer, *Debi Wallis* was declared *in default* and *Tom Wallis* presented evidence *ex- parte*. The RTC rendered judgment declaring the marriage null and void on the ground of psychological incapacity of *Debi Wallis*. Three (3) years after the RTC judgment was rendered, *Debi Wallis* got hold of a copy thereof and wanted to have the RTC judgment reversed and set aside. If you are the lawyer of *Debi Wallis*, what judicial remedy or remedies will you take? Discuss and specify the ground or grounds for said remedy or remedies. (5%)

**SUGGESTED ANSWER:**

*Debi Wallis* may file a Petition for Annulment of Judgment under Rule 47 of the Rules of Court, on the grounds of lack of jurisdiction, extrinsic fraud and denial of the right to due process. (*Leticia Diona vs. Romeo Balange*, G.R. No. 173589, January 7, 2013)

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. The purpose of such action is to have the final and executory judgment set aside so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the appellant and is based on the grounds of extrinsic fraud, and lack of jurisdiction. (*Alaban vs. Court of Appeals*, G.R. No. 156021, September 23, 2005)

Relative thereto, the act of *Tom Wallis* in deliberately keeping *Debi Wallis* away from the Court, by intentionally alleging a wrong address in the complaint constitutes extrinsic fraud.

Moreover, the failure of the Court to acquire jurisdiction over the person of the respondent, being an indispensable party, necessitates the annulment of judgment of the Regional Trial Court.

Likewise, there is denial of the right to due process when *Debi Wallis* was not given an opportunity to be heard in the case. Hence, the judgment rendered by the RTC may be annulled by the Court of Appeals under Rule 47 of the Rules of Court.

Moreover, it is evident that the ordinary remedies of new trial, petition for relief or other appropriate remedies are no longer available through no fault of Debi Wallis because she was able to obtain a copy of the Decision only three (3) years after the same was rendered by the Trial Court.

At any rate, the Court erred in declaring the defendant in default because there is no default in a Petition for declaration of nullity of marriage (Section 3, Rule 9, Rules of Court). Thus, a Petition for Certiorari under Rule 65 of the Rules of Court could have been an appropriate remedy within the reglementary period allowed by the Rules.

- b) Period to file action
- c) Effects of judgment of annulment

3.16.5. Collateral attack of judgments

3.17. Execution, satisfaction and effect of judgments

3.17.1. Difference between finality of judgment for purposes of appeal; for purposes of execution

3.17.2. When execution shall issue

- a) Execution as a matter of right
- b) Discretionary execution

3.17.3. How a judgment is executed

- a) Execution by motion or by independent action
- b) Issuance and contents of a writ of execution
- c) Execution of judgments for money  
(ft Execution of judgments for specific acts)

**Q (2012):** An example of a special judgment is one which orders:

- a) The defendant to deliver and reconvey personal property to the plaintiff.
- b) Defendant to execute a Deed of Sale in favor of plaintiff.
- c) Defendant to paint a mural for the plaintiff.
- d) Defendant to vacate the leased premises.

**SUGGESTED ANSWER:**

- c) Defendant to paint a mural for the plaintiff.

A special judgment is one which requires the performance of any act other than the payment of money, or the sale or delivery of a real or personal property. A disobedience to such judgment is an indirect contempt, and the judgment is executed by contempt proceedings. (*Sura vs. Martin*, 26 SCRA 286; *Barrete vs. Amila*, 230 SCRA 219; *Magallanes vs. Sarita*, 18 SCRA 575; *Moslem vs. Soriano*, 124 SCRA 190; *People vs. Pascual*, 12326-CR, February 14, 1974). A

judgment ordering the defendant to paint a mural for the plaintiff is considered a special judgment.

3.18. Provisional remedies

3.18.1. Nature of provisional remedies

3.18.2. Jurisdiction over provisional remedies

3.18.3. Preliminary attachment

**Q (2012):** Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)

**SUGGESTED ANSWER:**

Preliminary Attachment is a provisional remedy under Rule 57 of the Rules of Court. It may be sought at the commencement of an action or at any time before entry judgment where property of an adverse party may be attached as security for the satisfaction of any judgment, where this adverse party is about to depart from the Philippines, where he has intent to defraud or has committed fraud, or is not found in the Philippines. An affidavit and a bond is required before the preliminary attachment issues. It is discharged upon the payment of a counterbond.

Garnishment is a manner of satisfying or executing judgment where the sheriff may levy debts, credits, royalties, commissions, bank deposits, and other personal property not capable of manual delivery that are in the control or possession of third persons and are due the judgment obligor. Notice shall be served on third parties. The third party garnishee must make a written report on whether or not more garnishees, the judgment obligor must indicate who shall be required to deliver the amount due. [Rule 39, Sec. 9 (c) ]

Levy on execution is a manner of satisfying or executing judgment where the sheriff may sell property of the judgment obligor if he is unable to pay all or part of the obligation in cash, certified bank check or any other manner acceptable to the obligee. If the obligor does not chose which among his property may be sold, the sheriff shall sell personal property first and then real property second. He must sell only so much of the personal or real property as is sufficient to satisfy judgment and other lawful fees. [Rule 39, sec. 9 (b)]

Warrant of seizure is normally applied for with a search warrant, in criminal cases. The warrant of seizure must particularly describe the things to be seized. While it is true that the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder, yet the description is required to be specific only insofar as the circumstances will ordinarily allow. An application for search and seizure warrant shall be filed with the following: (a) Any court within whose territorial jurisdiction a crime was

committed. (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

Warrant of distraint and levy is remedy available to local governments and the BIR in tax cases to satisfy deficiencies or delinquencies in inheritance and estate taxes, and real estate taxes. Distraint is the seizure of personal property to be sold in an authorized auction sale. Levy is the issuance of a certification by the proper officer showing the name of the taxpayer and the tax, fee, charge or penalty due him. Levy is made by writing upon said certificate the description of the property upon which levy is made.

- a) Grounds for issuance of writ of attachment
- b) Requisites
- c) Issuance and contents of order of attachment; affidavit and bond

**Q (2014):** As a rule, courts may not grant an application for provisional remedy without complying with the requirements of notice and hearing. These requirements, however, may be dispensed with in an application for: **(1%)**

- (A) writ of preliminary injunction
- (B) writ for preliminary attachment
- (C) an order granting support *pendente lite*
- (D) a writ of replevin

### **SUGGESTED ANSWERS:**

1. (B) Writ for preliminary attachment

Under Section 2, Rule 57 of the Rules of Court, preliminary attachment may be issued ex parte or upon motion with notice and hearing.

2. (D) A writ of replevin

Under Section 3, Rule 60, the Court shall issue an order and the corresponding writ of replevin, upon the filing of such affidavit and approval of the bond. There are no requirements of prior notice and hearing.

**Q (2014):** *Bayani*, an overseas worker based in Dubai, issued in favor of *Agente*, a special power of attorney to sell his house and lot. *Agente* was able to sell the

property but failed to remit the proceeds to *Bayani*, as agreed upon. On his return to the Philippines, *Bayani*, by way of a demand letter duly received by *Agente*, sought to recover the amount due him. *Agente* failed to return the amount as he had used it for the construction of his own house. Thus, *Bayani* filed an action against *Agente* for sum of money with damages. *Bayani* subsequently filed an *ex-parte* motion for the issuance of a writ of preliminary attachment duly supported by an affidavit. The court granted the *ex-parte* motion and issued a writ of preliminary attachment upon *Bayani*'s posting of the required bond. *Bayani* prayed that the court's sheriff be deputized to serve and implement the writ of attachment. On November 19, 2013, the Sheriff served upon *Agente* the writ of attachment and levied on the latter's house and lot. On November 20, 2013, the Sheriff served on *Agente* summons and a copy of the complaint. On November 22, 2013, *Agente* filed an *Answer with Motion to Discharge the Writ of Attachment* alleging that at the time the writ of preliminary attachment was issued, he has not been served with summons and, therefore, it was improperly issued. (4%)

(A) Is *Agente* correct?

**SUGGESTED ANSWER:**

No, *Agente* is not correct.

Section 2 Rule 57 provides that a writ of attachment may be issued *ex parte* or upon motion with notice and hearing by the Court in which the action is pending.

Under the Rules, the applicant of the writ is only required to (i) submit an affidavit; and (ii) post a bond before the court can validly issue the writ of attachment. The Rules do not require prior service of summons for the proper issuance of a writ of attachment. (*Sofia Torres vs. Nicanor Satsatin*, G.R. No. 166759, November 25, 2009, *Peralta*, J.)

Accordingly, the issuance of the writ of attachment is valid notwithstanding the absence of a prior service of summons to *Agente*.

(B) Was the writ of preliminary attachment properly executed?

**SUGGESTED ANSWER:**

No. The writ of preliminary attachment was not properly executed.

Although a writ of attachment may issue even before summons is served upon the defendant, the same, however, may not bind and affect the defendant

until jurisdiction over his person is obtained. (*Davao Light and Power Co., Inc. vs. Court of Appeals*, [204 SCRA 343])

Thus, the writ of preliminary attachment must only be served simultaneous or at least after the service of summons to the defendant. (*Sofia Torres vs. Nicanor Satsatin*, G.R. No. 166759, November 25, 2009, Peralta, J.)

**ALTERNATIVE ANSWER:**

No. The Writ of attachment was not properly executed.

Under Section 2 of Rule 57, the Court may only require the Sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution.

In the case, the Sheriff attached the house and lot of Agente which is exempted from attachment and execution. (Section 13, Rule 39 of the Rules of Court)

- d) Rule on prior or contemporaneous service of summons

**Q (2012):** A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. B moves to lift the attachment. Rule on this. (5%)

**SUGGESTED ANSWER:**

I will grant the motion since no levy on attachment pursuant to the writ shall be enforced unless it is preceded or contemporaneously accompanied by service of summons. There must be prior or contemporaneous service of summons with the writ of attachment. (*Rule 57, Sec. 5, Rules of Court*).

- e) Manner of attaching real and personal property; when property attached is claimed by third person
  - f) Discharge of attachment and the counter-bond
  - g) Satisfaction of judgment out of property attached
- 3.18.4. Preliminary injunction
- a) Definitions and differences: preliminary injunction and temporary restraining order; *status quo ante* order
  - b) Requisites
  - c) Kinds of injunction

- d) When writ may be issued
- e) Grounds for issuance of preliminary injunction
- f) Grounds for objection to, or for the dissolution of injunction or restraining order
- g) Duration of a Temporary Restraining Order (TRO)
- h) In relation to R.A. No. 8975, ban on issuance of TRO or writ of injunction in cases involving government infrastructure projects

**Q(2012):** Preliminary Prohibitive Injunction will not lie:

- a) To enjoin repeated trespass on land.
- b) In petitions for certiorari and mandamus.
- c) To restrain implementation of national government infrastructure project.
- d) To restrain voting of disputed shares of stock.

**SUGGESTED ANSWER:**

- c) To restrain implementation of national government infrastructure project.

No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, and natural resource development projects and public utilities operated by the Government (*Section 1, P.D. 1818*)

**Q(2012):** The Court of Appeals cannot issue a temporary restraining order in the following cases, **except**:

- a) Bidding and awarding of a project of the national government.
- b) Against any freeze order issued by the AMLC under the anti-money laundering law.
- c) Against infrastructure projects like the SLEX extension.
- d) Against the DAR in the implementation of the CARL Law

**SUGGESTED ANSWER:**

- a) Bidding and awarding of a project of the national government.

There is no law which prohibits the Court of Appeals from issuing a temporary restraining order on the bidding and awarding of a project of the national government. On the contrary, there are laws which expressly prohibit the Court of Appeals from issuing a temporary restraining order against any of the following: (i) freeze order issued by the AMLC under the anti-money laundering

law, except the Supreme Court. (*R. A. 10167, Sec. 10*); (ii) infrastructure projects like the SLEX extension because only the Supreme Court can issue the same. (*Sec. 10, R. A. No. 10167 and R. A. No. 8975*); and (iii) DAR in the implementation of the CARL Law. (*Sec. 55, R. A. No. 6657*)

- i) Rule on prior or contemporaneous service of summons in relation to attachment

3.18.5. Receivership

- a) Cases when receiver may be appointed
- b) Requisites
- c) Requirements before issuance of an order
- d) General powers of a receiver
- e) Two kinds of bonds
- f) Termination of receivership

3.18.6. ~~Replevin~~

- a) When may writ be issued
- b) Requisites
- c) Affidavit and bond; redelivery bond
- d) Sheriff's duty in the implementation of the writ; when property is claimed by third party

3.19. Special civil actions

3.19.1. Nature of special civil actions

3.19.2. Ordinary civil actions versus special civil actions

3.19.3. Jurisdiction and venue

3.19.4. Interpleader

- a) Requisites for interpleader

**Q(2012):** In which of the following is Interpleader improper?

- a) In an action where defendants' respective claims are separate and distinct from each other.
- b) In an action by a bank where the purchaser of a cashier's check claims it was lost and another person has presented it for payment.
- c) In an action by a lessee who does not know where to pay rentals due to conflicting claims on the property.
- d) In an action by a sheriff against claimants who have conflicting claims to a property seized by the sheriff in foreclosure of a chattel mortgage.

**SUGGESTED ANSWER:**

- a) In an action where defendants' respective claims are separate and distinct from each other.

Under the Rules, whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in

the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. (*Rule 62, Sec. 1, Rules of Court*). Undoubtedly, if the defendants' respective claims are separate and distinct from each other, an action for interpleader is not proper.

b) When to file

3.19.5. Declaratory reliefs and similar remedies

a) Who may file the action

b) Requisites of action for declaratory relief

c) When court may refuse to make judicial declaration

**Q(2012):** In a declaratory relief action, the court may refuse to exercise its power to declare rights and construe instruments in what instance/s?

a) When a decision would not terminate the controversy which gave rise to the action.

b) In an action to consolidate ownership under Art. 1607 of the Civil Code.

c) To establish legitimate filiation and determine hereditary rights.

d) (a) and (c) above

**SUGGESTED ANSWER:**

a) When a decision would not terminate the controversy which gave rise to the action.

The court, may *motu proprio* or upon motion, refuse to exercise the power to declare rights and to construe instruments *in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action*, or in any case where the declaration or construction is not necessary and proper under the circumstances (*Rule 63, Sec. 5, Rules of Court*).

d) Conversion to ordinary action

e) Proceedings considered as similar remedies

i. Reformation of an instrument

ii. Consolidation of ownership

iii. Quieting of title to real property

3.19.6. Review of judgments and final orders or resolution of the Comelec and COA

a) Application of Rule 65 under Rule 64

b) Distinction in the application of Rule 65 to judgments of the Comelec and COA and the application of Rule 65 to other tribunals, persons and officers

3.19.7. *Certiorari*, prohibition and *mandamus*

**Q(2013):** 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.

**SUGGESTED ANSWER:**

(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.

Under Section 4, Rule 46 of the Revised Rules of Civil Procedure, the court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction. (n)

- a) Definitions and distinctions
  - i. *Certiorari* distinguished from appeal by *certiorari*
  - ii. Prohibition and *mandamus* distinguished from injunction

**Q (2012):** A files a Complaint against B for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B's Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge "unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office", B files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)

**SUGGESTED ANSWER:**

No, mandamus will not lie. The proper remedy is a petition for prohibition. (*Serana vs. Sandiganbayan*, G.R. No. 162059, January 22, 2008). The dismissal of the case based on improper venue is not a ministerial duty. Mandamus does

not lie to compel the performance of a discretionary duty. (*Nilo Paloma vs. Danilo Mora*, G.R. No. 157783, September 23, 2005).

- b) Requisites
- c) When petition for *certiorari*, prohibition and *mandamus* is proper

**Q(2012):** Choose the most accurate phrase to complete the statement: Mandamus will lie:

- a) To compel a judge to consolidate trial of two cases pending before different branches of the court.
- b) To compel a judge to reduce his decision in writing.
- c) To direct a probate court to appoint a particular person as regular administrator.
- d) To compel a judge to grant or deny an application for preliminary injunction.

**SUGGESTED ANSWER:**

- b) To compel a judge to reduce his decision in writing.

The 1987 Constitution no less commands that “[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.” (*Art. VIII, Sec. 14, 1987 Constitution*). Relative thereto, the Rules of Court also require a judgment or final order to be in writing, personally and directly prepared by the judge stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court. (*Rule 36, Sec. 1, Rules of Court*). (*Lenido Lumanog and Augusto Santos vs. People*, G.R. No. 182555, September 7, 2010, Villarama, Jr., J.). Evidently, mandamus will lie to compel a judge to perform his ministerial duty to reduce his decision in writing.

- d) Injunctive relief

**Q(2012):** In Petition for Certiorari, the Court of Appeals issues a Writ of Preliminary Injunction against the RTC restraining the latter from trying a crucial case. The Court of Appeals should therefore:

- a) Decide the main case within 60 days.
- b) Decide the certiorari petition within 6 months.
- c) Decide the main case or the petition within 60 days.
- d) Decide the main case or the petition within 6 months from issue of the preliminary injunction.

**SUGGESTED ANSWER:**

d) Decide the main case or the petition within 6 months from issue of the preliminary injunction.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ. (*Rule 58, Sec. 5, as amended by A.M. NO. 07-7-12-SC*)

e) Exceptions to filing of motion for reconsideration before filing petition

**Q (2013):** 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.

**SUGGESTED ANSWER:**

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.

In *Nemia Castro v. Rosalyn and Jamir Guevarra*, GR No. 192737, April 25, 2012, the Supreme Court held that a motion for reconsideration is a condition precedent for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.

In *Saint Martin Funeral Homes v. NLRC*, GR No. 130866, September 16, 1998, the Supreme Court ruled that petitions for *certiorari* under Rule 65 against

decisions of final order of the NLRC should be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.

**ALTERNATIVE ANSWER:**

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.

In *Beatriz Siok Ping Tang v. Subic Bay Distribution*, GR No. 162575, December 15, 2010, the Supreme Court held that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

- f) Reliefs petitioner is entitled to
- g) Actions/omissions of MTC/RTC in election cases

**Q(2012):** In election cases involving an act or omission of an MTC or RTC, a certiorari petition shall be filed with:

- a) The Court of Appeals
- b) The Supreme Court
- c) The COMELEC
- d) The Court of Appeals or the COMELEC both having concurrent jurisdiction

**SUGGESTED ANSWER:**

- c) The COMELEC

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC (*Amendments to Rules 41, 45, 58 and 65 of the Rules of Court*) provides that in election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (*Galang vs. Hon. Geronimo, G.R. NO. 192793, February 22, 2011*).

- h) When and where to file petition
- i) Effects of filing of an unmeritorious petition
- 3.19.8. *Quo warrant*o
  - a) Distinguish from *quo warrant*o in the Omnibus Election Code
  - b) When government may commence an action against individuals
  - c) When individual may commence an action
  - d) Judgment in *quo warrant*o action
  - e) Rights of a person adjudged entitled to public office
- 3.19.9. Expropriation
  - a) Matters to allege in complaint for expropriation
  - b) Two stages in every action for expropriation
  - c) When plaintiff can immediately enter into possession of the real property, in relation to R.A. No. 8974
  - d) New system of immediate payment of initial just compensation
  - e) Defenses and objections
  - f) Order of expropriation
  - g) Ascertainment of just compensation
  - h) Appointment of commissioners; commissioner's report; court action upon commissioner's report
  - i) Rights of plaintiff upon judgment and payment
  - j) Effect of recording of judgment
- 3.19.10. Foreclosure of real estate mortgage
  - a) Judgment on foreclosure for payment or sale
  - b) Sale of mortgaged property; effect

**Q(2013):** 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 executor.
- (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.

### **SUGGESTED ANSWER:**

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.

Under Section 2 of Rule 68, if upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

- c) Disposition of proceeds of sale
- d) Deficiency judgment
  - i. Instances when court cannot render deficiency judgment
- e) Judicial foreclosure versus extrajudicial foreclosure
- f) Equity of redemption versus right of redemption

**Q(2012):** Equity of Redemption is the right of the mortgagor to redeem the mortgaged property after default in the performance of the conditions of the mortgage, before the sale or the confirmation of sale in a (n):

- a) Extrajudicial foreclosure of mortgage.
- b) Judicial foreclosure of mortgage.
- c) Execution sale.
- d) Foreclosure by a bank.

### **SUGGESTED ANSWER:**

- b) Judicial foreclosure of mortgage.

Equity of redemption exists in case of judicial foreclosure of a mortgage. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, in accordance with Rule 68, or even after the foreclosure sale but prior to its confirmation. (*Spouses Rosales vs. Spouses Alfonso, G.R. No. 137792, August 12, 2003*)

#### 3.19.11. Partition

- a) Who may file complaint; who should be made defendants
- b) Matters to allege in the complaint for partition
- c) Two stages in every action for partition

- d) Order of partition and partition by agreement
  - e) Partition by commissioners; appointment of commissioners, commissioner's report; court action upon commissioner's report
  - f) Judgment and its effects
  - g) Partition of personal property
  - h) Prescription of action
- 3.19.12.        Forcible entry and unlawful detainer

**Q(2012):** A defendant who fails to file a timely Answer or responsive pleading will not be declared in default in:

- a) Probate proceedings where the estate is valued at P 100,000;
- b) Forcible entry cases;
- c) Collection case not exceeding P 100,000;
- d) Violation of rental law.

**SUGGESTED ANSWERS:**

- b) Forcible entry cases;

Under the Rules on Summary Procedure, if the defendant fails to file an Answer to the complaint within a period of Ten (10) days from receipt thereof, the court, may motu proprio, or on motion of the plaintiff, render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. (*Sec. 6, Revised Rules of Summary Procedure*). There is no declaration of default under the Rules on Summary Procedure.

- c) Collection case not exceeding P 100,000;

A collection case not exceeding P100,000.00 is governed by the Law on Small Claims which does not vest the Court the power and authority to declare a defendant in default.

**Q (2013):** 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 reasons/s for your actions. (7%)

### **SUGGESTED ANSWER:**

As counsel of spouses Juan, I will file a special civil action for Forcible Entry. The Rules of Court provide that a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth may at any time within 1 year after such withholding of possession bring an action in the proper Municipal Trial Court where the property is located. This action which is summary in nature seeks to recover the possession of the property from the defendant which was illegally withheld by the latter. (*Section 1, Rule 70, Rules of Court*)

An ejectment case is designed to restore, through summary proceedings, the physical possession of any land or building to one who has been illegally deprived of such possession, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. (*Heirs of Agapatio T. Olarte and Angela A. Olarte et al. v. Office of the President of the Philippines et al., G.R. No. 177995, June 15, 2011, VILLARAMA, JR., J.*)

In *Abad v. Farrales, GR No. 178635, April 11, 2011*, the Supreme Court held that two allegations are indispensable in actions for forcible entry to enable first level courts to acquire jurisdiction over them: first, that the plaintiff had prior physical possession of the property; and, second, that the defendant deprived him of such possession by means of force, intimidation, threats, strategy, or stealth.

However, before instituting the said action, I will first endeavor to amicably settle the controversy with the informal settlers before the appropriate Lupon or Barangay Chairman. If there is no agreement reached after mediation and conciliation under the Katarungang Pambarangay Law, I will secure a certificate to file action and file the complaint for ejectment before the MTC of Tagaytay City where the property is located since ejectment suit is a real action regardless of the value of the property to be recovered or claim for unpaid rentals. (BP 129 and Rule 4, Section 1 of the Revised Rules on Civil Procedure).

In the aforementioned complaint, I will allege that Spouses Juan had prior physical possession and that the dispossession was due to force, intimidation and stealth. The complaint will likewise show that the action was commenced within a period of one (1) year from unlawful deprivation of possession, and that Spouses Juan is entitled to restitution of possession together with damages and costs.

**Q (2014):** *Landlord*, a resident of Quezon City, entered into a lease contract with *Tenant*, a resident of Marikina City, over a residential house in Las Piñas City. The lease contract provided, among others, for a monthly rental of ₱25,000.00, plus ten percent (10%) interest rate in case of non-payment on its due date.

Subsequently, *Landlord* migrated to the United States of America (*USA*) but granted in favor of his sister *Maria*, a special power of attorney to manage the property and file and defend suits over the property rented out to *Tenant*. *Tenant* failed to pay the rentals due for five (5) months.

*Maria* asks your legal advice on how she can expeditiously collect from *Tenant* the unpaid rentals plus interests due. **(6%)**

**SUGGESTED ANSWERS:**

**(A)** What judicial remedy would you recommend to *Maria*?

I will advise *Maria* to immediately send a letter to the tenant demanding the immediate payment of the unpaid rentals plus interests due. If the tenant refuses, *Maria* can avail any of the following remedies:

(1) A complaint under A.M. No. 08-8-7-SC or the Rules of Procedure for Small claims cases. *Maria* should nonetheless waive the amount in excess of ₱100,000 in order for her to avail of the remedy under the said Rules.

(2) A complaint for collection of sum of money under the Rules on Summary Procedure, since *Maria* is only claiming the unpaid rentals and interest due from tenant.

(3) If the tenant refuses or is unable to pay the rentals within 1 year from receipt of the last demand to vacate and pay, I would advise *Maria* to file an action for Unlawful Detainer.

**(B)** Where is the proper venue of the judicial remedy which you recommended?

1. If *Maria* decides to file a complaint for collection of sum of money under the Rules of Summary Procedure or Small Claims, the venue is the residence of the plaintiff or defendant, at the election of the plaintiff (Section 2, Rule 4, Rules of Court). Hence, it may be in Quezon City or Marikina City, at the option of *Maria*.

2. If *Maria* files an action for Unlawful detainer, the same shall be commenced and tried in the Municipal Trial Court of the municipality or city wherein the real property involved, or a portion thereof, is situated (Section 1, Rule 4 of the Rules of Court). Therefore, the venue is Las Pinas City.

**(C)** If *Maria* insists on filing an ejectment suit against *Tenant*, when do you reckon the one (1)-year period within which to file the action?

The reckoning point for determining the one-year period within which to file the action is the receipt of the last demand to vacate and pay (Section 2, Rule 70 of the Rule of Court).

3.19.13. Contempt

a) Kinds of contempt

**Q(2012):** A person may be charged with direct contempt of court when:

- a) A person re-enters a property he was previously ejected from.
- b) A person refuses to attend a hearing after being summoned thereto.
- c) He attempts to rescue a property in custodia legis.
- d) She writes and submits a pleading containing derogatory, offensive or malicious statements.

**SUGGESTED ANSWER:**

d) She writes and submits a pleading containing derogatory, offensive or malicious statements.

A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court. (*Rule 71, Sec. 1, Rules of Court*). In *Surigao Mineral Reservation Board vs. Cloribel*, 31 SCRA 1, the Supreme Court held that disrespectful, abusive and abrasive language, offensive personalities, unfounded accusations or intemperate words tending to obstruct, embarrass or influence the court in administering justice or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose and on the contrary constitutes direct contempt or contempt in *facie curiae*.

- b) Purpose and nature of each
- c) Remedy against direct contempt; penalty
  - d) Remedy against indirect contempt; penalty
  - e) How contempt proceedings are commenced

**Q(2012):** A charge for indirect contempt committed against an RTC judge may be commenced through:

- a) A written charge requiring respondent to show cause filed with the Court of Appeals.

- b) An order of the RTC Judge requiring respondent to show cause in the same RTC.
- c) Verified petition filed with another branch of the RTC.
- d) Verified petition filed with a court of higher or equal rank with the RTC.

**SUGGESTED ANSWER:**

- b) An order of the RTC Judge requiring respondent to show cause in the same RTC.

The proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an *order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt*. It may also be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned (*Rule 71, Sec. 4, Rules of Court*)

- f) Acts deemed punishable as indirect contempt

**Q(2012):** Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of indirect contempt. If you were X's lawyer, what would you do? Why? (5%)

**SUGGESTED ANSWER:**

If I were X's lawyer, I would file a petition for certiorari under Rule 65. The judge should not have acted on Y's motion to declare X in contempt. The charge of indirect contempt is initiated through a verified petition. (*Rule 71, Sec. 4, Rules of Court*). The writ was not directed to X but to the sheriff who was directed to deliver the property to Y. As the writ did not command the judgment debtor to do anything, he cannot be guilty of the facts described in Rule 71 which is "disobedience of or resistance to a lawful writ, process, order, judgment, or command of any court." The proper procedure is for the sheriff to oust X availing of the assistance of peace officers pursuant to Section 10(c) of Rule 39 (*Lipa vs. Tutaan, L-16643, 29 September 1983; Medina vs. Garcés, L-25923, July 15, 1980; Pascua vs. heirs of Segundo Simeon, 161 SCRA 1; Patagan et. al. vs. Panis, G.R. No. 55630, April 8, 1988*).

- g) When imprisonment shall be imposed
- h) Contempt against quasi-judicial bodies

**Q(2013):** 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 proceedings resides
- (E) charging entity or agency elects to initiate the action

**SUGGESTED ANSWER:**

- (C) act of contempt was committed

Under Section 12 of Rule 71, unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor.

**4. Special Proceedings**

**Q(2012):** Which of the following is not a Special Proceeding?

- a) Absentees;
- b) Escheat;
- c) Change of First Name;
- d) Constitution of Family Home;

**SUGGESTED ANSWERS:**

- c) Change of First Name;
- d) Constitution of Family Home;

Under R.A. 9048, as amended by R.A. 10172, the correction of First Name can now be done administratively before the Local Civil Registrar where the record sought to be corrected is kept or the nearest Philippine Consulate. Hence, it is no longer considered a special proceeding since the provisions of Rules 103 and 108 do not apply anymore in the change of First name of a person. Similarly, the rules on Constitution of the Family Home have already been repealed by Articles 152-162 of the Family Code. Under Article 153 of the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. Consequently, there is no need to constitute a family home either judicially or extra-judicially. Hence, it is no longer considered a special proceeding.

### **ALTERNATIVE ANSWER:**

All the above-mentioned actions are considered Special Proceedings because they are remedies which seek to establish a status, right or a particular fact. (*Rule 1, Sec. 2 (c), Rules of Court*).

- 4.1. Settlement of estate of deceased persons, venue and process
  - 4.1. 1. Which court has jurisdiction
  - 4.1. 2. Venue in judicial settlement of estate
  - 4.1. 3. Extent of jurisdiction of probate court
  - 4.1.4. Powers and duties of probate court
- 4.2. Summary settlement of estates
  - 4.2.1. Extrajudicial settlement by agreement between heirs, when allowed
  - 4.2.2. Two-year prescriptive period
  - 4.2.3. Affidavit of self-adjudication by sole heir
  - 4.2.4. Summary settlement of estates of small value, when allowed
  - 4.2.5. Remedies of aggrieved parties after extrajudicial settlement of estate
- 4.3. Production and probate of will
  - 4.3.1. Nature of probate proceeding
  - 4.3.2. Who may petition for probate; persons entitled to notice

**Q (2012):** What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

### **SUGGESTED ANSWER:**

The jurisdictional facts in a petition for probate are: (1) that a person died leaving a will; (2) in case of a resident, that he resided within the territorial jurisdiction of the court; and (3) in the case of a non-resident, that he left an estate within such territorial jurisdiction.

The jurisdictional facts shall be contained in a petition for allowance of will.

- 4.4. Allowance or disallowance of will

**Q(2014):** *Johnny*, a naturalized citizen of the United States of America (USA) but formerly a Filipino citizen, executed a notarial will in accordance with the laws of the State of California, USA. *Johnny*, at the time of his death, was survived by his niece *Anastacia*, an American citizen residing at the condominium unit of *Johnny* located at Fort Bonifacio, Taguig City; a younger brother, *Bartolome*, who manages *Johnny's* fish pond in Lingayen, Pangasinan; and a younger sister, *Christina*, who manages *Johnny's* rental condominium units in Makati City. *Johnny's* entire estate which he inherited from his parents is valued at ₱200

million. *Johnny* appointed *Anastacia* as executrix of his will.(4%)

(A) Can *Johnny*'s notarial will be probated before the proper court in the Philippines?

**SUGGESTED ANSWER:**

Yes. *Johnny*'s notarial will can be probated before the proper court in the Philippines.

A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by law of the place where he resides, or according to the formalities observed in his country (*Palaganas vs. Palaganas, G.R. No. 169144, January 26, 2011, Abad, J.*)

- 4.4.1. Contents of petition for allowance of will
- 4.4. 2. Grounds for disallowing a will
- 4.4. 3. Reprobate
  - a) Requisites before a will proved abroad would be allowed in the Philippines

- 4.4.4. Effects of probate

- 4.5. Letters testamentary and of administration
  - 4.5.1. When and to whom letters of administration granted

**Q (2014):** *Johnny*, a naturalized citizen of the United States of America (USA) but formerly a Filipino citizen, executed a notarial will in accordance with the laws of the State of California, USA. *Johnny*, at the time of his death, was survived by his niece *Anastacia*, an American citizen residing at the condominium unit of *Johnny* located at Fort Bonifacio, Taguig City; a younger brother, *Bartolome*, who manages *Johnny*'s fish pond in Lingayen, Pangasinan; and a younger sister, *Christina*, who manages *Johnny*'s rental condominium units in Makati City. *Johnny*'s entire estate which he inherited from his parents is valued at ₱200 million. *Johnny* appointed *Anastacia* as executrix of his will.(4%)

(B) Is *Anastacia* qualified to be the executrix of *Johnny*'s notarial will?

**SUGGESTED ANSWER:**

Yes. *Anastacia* is qualified.

Under the rules, the following persons are incompetent to serve as executor or administrator: (a) a minor; (b) not a resident of the Philippines; and (c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason

of conviction of an offense involving moral turpitude. (Section 1, Rule 78, Rules of Court)

While Anastacia is an American citizen, she is nonetheless a resident of the Philippines.

Accordingly, Anastacia is not disqualified because there is no prohibition against an alien residing in the Philippines to serve as an executor of an estate.

- 4.5. 2. Order of preference
- 4.5. 3. Opposition to issuance of letters testamentary; simultaneous filing of petition for administration

**Q (2012):** In settlement proceedings, appeal may be taken from an:

- a) Order appointing a special administrator;
- b) Order appointing an administrator;
- c) Order of an administrator to recover property of the estate;
- d) Order to include or exclude property from the estate.

**SUGGESTED ANSWER:**

- b) Order appointing an administrator

An order appointing a regular administrator is appealable (See *Sy Hong Eng vs. Sy Liac Suy*, 8 Phil., 594). An order of a CFI appointing an administrator of a deceased person's estate has been held to be a final determination of the rights of the parties thereunder, and is appealable. (*Intestate Estate of Luis Morales et. al. vs. Sicat*, L-5236, May 5, 1953). On the other hand, an Order appointing a special administrator is interlocutory in nature and a mere incident in the judicial proceedings, hence not appealable. (*Rule 109, Sec. 1, Rules of Court*) (*Samson vs. Samson*, 102 Phil. 735; *Tan vs. Gedorio, Jr.*, G.R. No. 166520, March 14, 2008).

- 4.5. 4. Powers and duties of executors and administrators; restrictions on the powers
- 4.5. 5. Appointment of special administrator

**Q(2012):** A special administrator may be appointed by a court when:

- a) The executor cannot post a bond.
- b) The executor fails to render an account.
- c) Regular administrator has a claim against estate he represents.

- d) A Motion for Reconsideration is filed with respect to a decision disallowing probate of a will.

**SUGGESTED ANSWER:**

- c) Regular administrator has a claim against estate he represents.

If the executor or administrator has a claim against the estate that he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator (*Rule 86, Sec. 8, Rules of Court*).

- 4.5. 6. Grounds for removal of administrator

- 4.6. Claims against the estate

**Q(2012):** If the judgment debtor dies after entry of judgment, execution of a money judgment may be done by:

- a) Presenting the judgment as a claim for payment against the estate in a special proceeding.
- b) Filing a claim for the money judgment with the special administrator of the estate of the debtor.
- c) Filing a claim for the money judgment with the debtor's successor in interest.
- d) Move for substitution of the heirs of the debtor and secure a writ of execution.

**SUGGESTED ANSWER:**

- a) Presenting the judgment as a claim for payment against the estate in a special proceeding

If death occurs after judgment has already been entered, the final judgment shall be enforced as money claim against the estate of the deceased defendant without the necessity of proving the same. (*Paredes vs. Moya, 61 SCRA 526, 530, 1970*).

- 4.6.1. Time within which claims shall be filed; exceptions
- 4.6.2. Statute of non-claims

**Q(2012):** The statute of "non-claims" requires that:

- a) Claims against the estate be published by the creditors.
- b) Money claims be filed with the clerk of court within the time prescribed by the rules.

- c) Claims of an executor or administrator against the estate be filed with the special administrator.
- d) Within two (2) years after settlement and distribution of the estate, an heir unduly deprived of participation in the estate may compel the re-settlement of the estate.

**SUGGESTED ANSWER:**

b) Money claims be filed with the clerk of court within the time prescribed by the rules.

After the Court has granted letters testamentary or administration, it shall immediately issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of court. (*Rule 86, Sec. 1, Rules of Court*). The Notice shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. (*Rule 86, Sec. 2, Rules of Court*).

4.6.3. Claim of executor or administrator against the estate

4.6.4. Payment of debts

4.7. Actions by and against executors and administrators

4.7.1. Actions that may be brought against executors and administrators

4.7.2. Requisites before creditor may bring an action for recovery of property fraudulently conveyed by the deceased

4.8. Distribution and partition

4.8.1. Liquidation

4.8.2. Project of partition

4.8.3. Remedy of an heir entitled to residue but not given his share

4.8.4. Instances when probate court may issue writ of execution

4.9. Trustees

4.9.1. Distinguished from executor/administrator

4.9.2. Conditions of the bond

4.9.3. Requisites for the removal and resignation of a trustee

4.9.4. Grounds for removal and resignation of a trustee

4.9.5. Extent of authority of trustee

4.10. Escheat

4.10.1. When to file

4.10.2. Requisites for filing of petition

4.10.3. Remedy of respondent against petition; period for filing a claim

**Q (2012):** A person entitled to the estate of a deceased person escheated in favor of the State has:

- a) 5 years from date of judgment to file a claim.
- b) 2 years from date of judgment to file a claim.
- c) 5 years from date of registration of the judgment to file a claim.
- d) 2 years from date of registration of the judgment to file a claim.

**SUGGESTED ANSWER:**

- a) 5 years from date of judgment to file a claim.

A person entitled to the estate of a deceased person escheated in favor of the State has a period of five (5) years from the date of such judgment within which to file a claim thereto with the court. A claim not made within said time shall be forever barred. If the claim is meritorious, such person shall have possession of and title to the same, or if sold, the municipality or city shall be accountable to, him for the proceeds, after deducting reasonable charges for the care of the estate. (*Rule 91, Sec. 4, Rules of Court*).

- 4.11. Guardianship
  - 4.11.1. General powers and duties of guardians
  - 4.11.2. Conditions of the bond of the guardian
  - 4.11.3. Rule on guardianship over minor

**Q (2012):** In default of parents, the court may appoint a guardian for a minor giving first preference to:

- a) An older brother or sister who is over 18 years old.
- b) The actual custodian over 21 years old.
- c) A paternal grandparent
- d) An uncle or aunt over 21 years old.

**SUGGESTED ANSWER:**

**c) A paternal grandparent**

In default of parents or a court-appointed guardian, the court may appoint a guardian of the person or property, or both, of a minor, observing as far as practicable, the following order of preference: (a) the surviving grandparent. In case several grandparents survive, the court shall select any of them taking into account all relevant considerations; (b) the oldest brother or sister of the minor over twenty-one years of age, unless unfit or disqualified; (c) the actual custodian of the minor over twenty-one years of age, unless unfit or disqualified; and (d) any other person, who in the sound discretion of the court, would serve the best interests of the minor. (*SEC. 6, A.M. NO. 03-02-05-SC 2003-05-01, Rule on Guardianship of Minors*).

- 4.12. Adoption
  - 4.12.1. Distinguish domestic adoption from inter-country adoption
  - 4.12.2. Domestic Adoption Act
    - a) Effects of adoption
    - b) Instances when adoption may be rescinded
    - c) Effects of rescission of adoption
  - 4.12.3. Inter-country adoption
    - a) When allowed
    - b) Functions of the RTC
    - c) "Best interest of the minor" standard
- 4.13. Writ of *habeas corpus*
  - 4.13.1. Contents of the petition
  - 4.13.2. Contents of the return
  - 4.13.3. Distinguish peremptory writ from preliminary citation
  - 4.13.4. When not proper/applicable
  - 4.13.5. When writ disallowed/discharged
  - 4.13.6. Distinguish from writ of *amparo* and *habeas data*
  - 4.13.7. Rules on Custody of Minors and Writ of *Habeas Corpus* in relation to Custody of Minors (A.M. No. 03-04-04-SC)
- 4.14. Writ of *Amparo* (A.M. No. 07-9-12-SC)
  - 4.14.1. Coverage
  - 4.14.2. Distinguish from *habeas corpus* and *habeas data*
  - 4.14.3. Differences between *amparo* and search warrant
  - 4.14.4. Who may file
  - 4.14.5. Contents of return
  - 4.14.6. Effects of failure to file return
  - 4.14.7. Omnibus waiver rule
  - 4.14.8. Procedure for hearing
  - 4.14.9. Institution of separate action
  - 4.14.10. Effect of filing of a criminal action
  - 4.14.11. Consolidation
  - 4.14.12. Interim reliefs available to petitioner and respondent

**Q (2012):** Under the Rules on the Writ of Amparo, interim relief orders may be issued by the Court **except:**

- a) Production order;
- b) Witness protection order;
- c) Hold departure order;
- d) Temporary protection order.

**SUGGESTED ANSWER:**

- c) Hold departure order;**

**Under the Rules on the Writ of Amparo, upon filing of the petition or at any time before final judgment, the court, justice or judge may grant any of the following interim relief orders: (a) Temporary Protection Order; (b) Inspection Order; (c) Production Order; and (d) Witness Protection Order. It does not include a Hold Departure Order. (Sec. 14 (a) (b) (c) (d), A.M. No. 07-9-12-SC)**

4.14.13. Quantum of proof in application for issuance of writ of *amparo*

4.15. Writ of ~~Habeas Data~~ (A.M. No. 08-1-16-SC)

**Q (2012):** A wants to file a Petition for Writ of Habeas Data against the AFP in connection with threats to his life allegedly made by AFP intelligence officers. A needs copies of AFP highly classified intelligence reports collected by Sgt. Santos who is from AFP. A can file his petition with:

- a) RTC where AFP is located;
- b) RTC where Sgt. Santos resides;
- c) Supreme Court;
- d) Court of Appeals.

**SUGGESTED ANSWER:**

**d)** In accordance with the principle of judicial hierarchy of the courts, A should file the petition with the Court of Appeals.

**ALTERNATIVE ANSWERS:**

- b) RTC where Sgt. Santos resides**
- c) Supreme Court**

The petition may be filed with the *Regional Trial Court where the petitioner or respondent resides*, or that which *has jurisdiction over the place where the data or information is gathered*, collected or stored, at the option of the petitioner. The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices. (Sec. 3, A. M. No. 08-1-16-SC, *The Rule on the Writ of Habeas Data*, January 22, 2008).

- 4.15.1. Scope of writ
- 4.15.2. Availability of writ
- 4.15.3. Distinguished from *habeas corpus* and *amparo*
- 4.15.4. Contents of the petition
- 4.15.5. Contents of return
- 4.15.6. Instances when petition may be heard in chambers
- 4.15.7. Consolidation
- 4.15.8. Effect of filing of a criminal action

- 4.15.9. Institution of separate action
- 4.15.10. Quantum of proof in application for issuance of writ of *amparo*
- 4.16. Change of name
  - 4.16.1. Differences under Rule 103, R.A. No. 9048 and Rule 108
  - 4.16.2. Grounds for change of name

**Q (2014):** A was adopted by B and C when A was only a toddler. Later on in life, A filed with the Regional Trial Court (RTC) a petition for change of name under Rule 103 of the Rules of Court, as he wanted to reassume the surname of his natural parents because the surname of his adoptive parents sounded offensive and was seriously affecting his business and social life. The adoptive parents gave their consent to the petition for change of name. May A file a petition for change of name? If the RTC grants the petition for change of name, what, if any, will be the effect on the respective relations of A with his adoptive parents and with his natural parents? Discuss. (4%)

**SUGGESTED ANSWER:**

1. A should be allowed to change his surname because the reasons he invoked are proper and reasonable under the circumstances. Besides, his adoptive parents have agreed on the change of his surname.

In a case with similar facts, *Republic v. Wong*, G.R. No. 97906, May 21, 1992, the Supreme Court allowed Maximo Wong to change his name to Maximo Alcala, Jr. Maximo was the natural child of Spouses Maximo Alcala, Sr. and Segundina Y. Alcala. When he was adopted by Spouses Hoong Wong and Concepcion Ty, his name was changed to Maximo Wong. Upon reaching the age of 22, he filed a petition to change his name to Maximo Alcala, Jr. It was averred that his use of the surname Wong embarrassed and isolated him from his relatives and friends, as the same suggests a Chinese ancestry when in truth and in fact he is a Muslim Filipino residing in a Muslim community, and he wants to erase any implication whatsoever of alien nationality; that he is being ridiculed for carrying a Chinese surname, thus hampering his business and social life; and that his adoptive mother does not oppose his desire to revert to his former surname.

Undoubtedly, A should be allowed to file a Petition for change of his surname.

**ALTERNATIVE ANSWER:**

1. No. A cannot file a petition for change of name because the reasons he invoked do not fall among the grounds that would justify the filing of a petition for change of name, *to wit*:

(a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce;

(b) when the change results as a legal consequence, as in legitimation;

(c) when the change will avoid confusion;

(d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage;

(e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and

(f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest (*Republic v. Court of Appeals*, G.R. No. 97906, May 21, 1992)."

Moreover, the touchstone for the grant of a change of name is that there be "proper and reasonable cause" for which the change is sought. To justify a request for change of name, petitioner must show not only some proper or compelling reason therefore but also that he will be prejudiced by the use of his true and official name. (*Republic v. Court of Appeals*, G.R. No. 97906, May 21, 1992)

Besides, the State has an interest in the name of a person and that names cannot be changed to suit merely the convenience of the bearers (*In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, G.R. No. 148311, March 31, 2005; *In Re: Petition For Change Of Name And/Or Correction/Cancellation Of Entry In Civil Registry Of Julian Lin Carulasan Wang*, G.R. No. 159966, March 30, 2005)

In the case at bar, the only reason advanced by A for the change of his surname is that it is offensive and it seriously affects his business and social life.

Accordingly, A's reasons are not considered proper and compelling that would justify the filing of his Petition for change of name.

2. Assuming that the court allows A to reassume the use of the surname of his biological parents, there will be no effect on the respective relations of A with his adoptive parents and his natural parents.

Until and unless the adoption is rescinded by the court, the paternity and filiation which exist by reason of adoption subsists.

Ergo, the grant of A's Petition for change of name will have no effect on the respective relations of A with his adoptive and natural parents.

After all, the change of name does not define or effect change in one's existing family relations or in the rights and duties flowing therefrom. It does not alter one's legal capacity, civil status or citizenship; what is altered is only the

name. (*Republic v. Court of Appeals*, G.R. No. 97906, May 21, 1992)

4.17. Absentees

4.17.1. Purpose of the rule

4.17.2. Who may file; when to file

4.18. Cancellation or correction of entries in the Civil Registry

4.18.1. Entries subject to cancellation or correction under Rule 108, in relation to R.A. No. 9048

**Q (2014):** *Mary Jane* met *Shiela May* at the recruitment agency where they both applied for overseas employment. They exchanged pleasantries, including details of their personal circumstances. Fortunately, *Mary Jane* was deployed to work as front desk receptionist at a hotel in Abu Dhabi where she met *Sultan Ahmed* who proposed marriage, to which she readily accepted. Unfortunately for *Shiela May*, she was not deployed to work abroad, and this made her envious of *Mary Jane*.

*Mary Jane* returned to the Philippines to prepare for her wedding. She secured from the National Statistics Office (NSO) a Certificate of No Marriage. It turned out from the NSO records that *Mary Jane* had previously contracted marriage with *John Starr*, a British citizen, which she never did. The purported marriage between *Mary Jane* and *John Starr* contained all the required pertinent details on *Mary Jane*. *Mary Jane* later on learned that *Shiela May* is the best friend of *John Starr*.

As a lawyer, *Mary Jane* seeks your advice on her predicament.

What legal remedy will you avail to enable *Mary Jane* to contract marriage with *Sultan Ahmed*? (4%)

**SUGGESTED ANSWER:**

I will file a Petition for correction or cancellation of entry under Rule 108 of the Rules of Court.

A Petition for correction or cancellation of entry under Rule 108 may be filed by *Mary Jane* because what she sought to be corrected is only the record of such marriage in the Civil Registry Office in order to reflect the truth as set forth by the evidence, and not the nullification of marriage as there was no marriage on the first place. (*Republic of the Philippines vs. Merlinda L. Olaybar*, G.R. No. 189538, February 10, 2014, *Peralta, J.*)

**ALTERNATIVE ANSWER:**

I will file a Petition for declaration of nullity of marriage.

A petition for correction or cancellation of an entry in the civil registry cannot substitute an action to invalidate a marriage. A direct action for declaration of nullity or annulment of marriage is necessary to prevent the circumvention of the jurisdiction of the Family Courts (RA 8369), and the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws.

Accordingly, a trial court has no jurisdiction to nullify marriages in a special proceeding for cancellation or correction of entry under Rule 108 of the Rules of Court. The validity of marriage can only be questioned in a direct action to nullify the same. (*Minoru Fujiki vs. Maria Paz Galela Marinay*, G.R. No. 196049, June 26, 2013)

- 4.19. Appeals in special proceedings
  - 4.19.1. Judgments and orders for which appeal may be taken
  - 4.19.2. When to appeal
  - 4.19.3. Modes of appeal
  - 4.19.4. Rule on advance distribution

## **5. Criminal Procedure**

- 5.1. General matters
  - 5.1.1. Distinguish jurisdiction over subject matter from jurisdiction over person of the accused
  - 5.1.2. Requisites for exercise of criminal jurisdiction
  - 5.1.3. Jurisdiction of criminal courts

**Q (2012):** The MTC, acting as an Environmental Court, has original and exclusive jurisdiction over the following, **except:**

- a) Criminal offenses punishable under the Chain Saw Act (R.A. 9175)
- b) Violation of the NIPAS Law (R.A. 7586)
- c) Violation of the Mining Laws
- d) Violation of Anti-Pollution Laws

### **SUGGESTED ANSWER:**

- a) Criminal offenses punishable under the Chain Saw Act (R.A. 9175)

The Metropolitan Trial Court (MTC) exercises exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine. (*BP 129, Sec. 32*). Relative thereto, R.A. 9175 or otherwise known as the Chain Saw Act of 2002, penalizes any person who is found to be in possession of a chain saw and uses the same to cut trees and timber in forest land or elsewhere except as authorized by the Department *with imprisonment of six (6) years and one (1) day to eight (8) years* or a fine of not less than Thirty thousand pesos (P30,000.00) but not more than Fifty thousand

pesos (P50,000.00) or both at the discretion of the court. Clearly, the court which has jurisdiction over violations of the Chain Saw Act is the Regional Trial Court, and not the MTC, acting as an Environmental Court.

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

A) Police Inspector Masigasig should bring the felon to the nearest police station or jail in Makati City where the bus actually was when the felonies took place. In cases of warrantless arrest, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (*Section 5, Rule 113, Rules of Criminal Procedure*)

Moreover, where an offense is committed in a public vehicle while in the course of its trip, the criminal action shall be instituted and tried in the court of any Municipality or territory where such vehicle passed during its trip, including the place of its departure and arrival. (*Section 15 (b), Rule 110, Rules of Criminal Procedure*). Consequently, the criminal case for robbery and illegal possession of firearms can be filed in Regional Trial Court of Makati City or on any of the places of departure or arrival of the bus.

5.1.4. When injunction may be issued to restrain criminal prosecution

5.2. Prosecution of offenses

5.2.1. Criminal actions, how instituted

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

A) As counsel for Gary, I will first have him medically examined in order to ascertain the gravity and extent of the injuries he sustained from the accident. Second, I will secure an accurate police report relative to the mishap unless Horace admits his fault in writing, and request Gary to secure a car damage estimate from a car repair shop. Third, I will ask him to execute his Sinumpaang Salaysay. Thereafter, I will use his Sinumpaang Salaysay or prepare a Complaint-affidavit and file the same in the Office of the City Prosecutor of Mandaluyong City. (*Sections 1 and 15, Rule 110, Rules of Criminal Procedure*)

This being a case of simple negligence and the penalty for the offense does not exceed six months imprisonment, the court with original and exclusive jurisdiction is the Metropolitan Trial Court of Mandaluyong City.

**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%)

B) An independent civil action is an action which is entirely distinct and separate from the criminal action. Such civil action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence. Section 3 of Rule 111 allows the filing of an independent civil action by the offended party based on Article 33 and 2176 of the New Civil Code.

The different approaches that the plaintiff can pursue in this type of action are, as follows:

- (a) File the independent civil action and prosecute the criminal case separately.
- (b) File the independent civil action without filing the criminal case.
- (c) File the criminal case without need of reserving the independent civil action.

Aside from the testimony of Gary, the pieces of evidence that would be required in an independent civil action are the medical report and certificate regarding the injuries sustained by Gary, hospital and medical bills including receipt of payments made, police report and proof of the extent of damage sustained by his car, and the Affidavit of witnesses who saw Horace using his cellular phone at the time the incident happened.

I will also present proof of employment of Gary such as his pay slip in order to prove that he was gainfully employed at the time of the mishap, and as a result of the injuries he suffered, he was not able to earn his usual income thereof. I will also present the attending Doctor of Gary to corroborate and authenticate the contents of the medical report and abstract thereof. The evidence required to hold defendant Horace liable is only preponderance of evidence.

The types of defenses that may be raised against this action are fortuitous event, force majeure or acts of God. The defendant can also invoke contributory negligence as partial defense. Moreover, the defendant can raise the usual defenses that the: (a) plaintiff will be entitled to double compensation or recovery, and (b) defendant will be constrained to litigate twice and therefore suffer the cost of litigation twice.

5.2.2. Who may file them, crimes that cannot be prosecuted *de officio*

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

A) No. Section 5 of Rule 110 provides that the crimes of adultery and concubinage shall not be prosecuted except upon complaint filed by the offended spouse. Since the offended spouse is already dead, then the criminal action for Adultery as contemplated by offended party's relatives is no longer viable.

Moreover, it appears that the adulterous acts of Yvonne were committed abroad. Hence, the contemplated criminal action is not viable as the same was committed outside the jurisdiction of the Philippine courts.

**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%)

**SUGGESTED ANSWER:**

B) Yes, under Article 171 of the Family Code, the heirs of the husband may impugn the filiation of the child in the following cases:

- a) If the husband should die before the expiration of the period fixed for bringing his action;
- b) If he should die after the filing of the complaint, without having desisted therefrom; or
- c) If the child was born after the death of the husband.

Since Dario is already dead when the baby boy was born, his heirs have the right to impugn the filiation of the child.

Consequently, the heirs may impugn the filiation either by a direct action to impugn such filiation or raise the same in a special proceeding for settlement of the estate of the decedent. In the said proceeding, the Probate court has the power to determine questions as to who are the heirs of the decedent (*Reyes v. Ysip, et al.*, 97 Phil. 11; *Jimenez v. IAC*, 184 SCRA 367)

Incidentally, the heirs can also submit the baby boy for DNA testing (*AM. No. 6-11-5-SC, Rules on DNA Evidence*) or even blood-test in order to determine paternity and filiation.

In *Jao v. Court of Appeals*, GR. No. L-49162, July 28, 1987, the Supreme Court held that blood grouping tests are conclusive as to non-paternity, although inconclusive as to paternity. The fact that the blood type of the child is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and that of the alleged father are cross matched, then the child *cannot* possibly be that of the alleged father.

**ALTERNATIVE ANSWER:**

B. No. There is no showing in the problem of any ground that would serve as a basis for an action to impugn the paternity of the baby boy.

In *Concepcion v. Almonte*, G.R. No. 123450, August 31, 2005 citing *Cabatania v. Court of Appeals*, the Supreme Court held that the law requires that every reasonable presumption be made in favor of legitimacy. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of

illegitimacy. The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception.

To overthrow this presumption on the basis of Article 166 (1)(b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary.

Hence, a child born to a husband and wife during a valid marriage is presumed legitimate. Thus, the child's legitimacy may be impugned only under the strict standards provided by law. (*Herrera v. Alba*, GR No. 148220, June 15, 2005)

Note: The Family Code is not covered by the 2013 Bar Examination Syllabus for Remedial Law.

5.2.3. Criminal actions, when enjoined

5.2.4. Control of prosecution

**Q (2012):** After the DOJ Secretary granted accused's Petition for Review, the prosecution filed a motion to withdraw the Information before the trial court. The judge therein denied the same. The trial prosecutor manifested before the judge that he can no longer prosecute the case because he is only an alter ego of the DOJ Secretary who ordered him to withdraw the Information. The case should therefore be prosecuted by:

- a) A DOJ state prosecutor.
- b) Private prosecutor, if any.
- c) Trial prosecutor of the pairing court.
- d) The same trial prosecutor who manifested his inability to prosecute the case.

**SUGGESTED ANSWER:**

- d) The same trial prosecutor who manifested his inability to prosecute the case.

All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of a public prosecutor. (*Rule 110, Sec. 5, Rules of Court*). The trial prosecutor assumes full discretion and control over a case. Accordingly, the same trial prosecutor who manifested his inability should prosecute the case.

5.2.5. Sufficiency of complaint or information

- 5.2.6. Designation of offense
- 5.2.7. Cause of the accusation
- 5.2.8. Duplicity of the offense; exception
- 5.2.9. Amendment or substitution of complaint or information

**Q(2013):** 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 high 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 higher to a lower offense and adds another accused
- (E) All the above choices are inaccurate.

**SUGGESTED ANSWER:**

(C) Downgrades the nature of the offense from a higher to a lower offense or excludes any accused

Under Section 14 of Rule 110 of the Rules of Criminal Procedure, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court.

- 5.2.10. Venue of criminal actions
- 5.2.11. Intervention of offended party

- 5.3. Prosecution of civil action
  - 5.3.1. Rule on implied institution of civil action with criminal action
  - 5.3.2. When civil action may proceed independently

**Q (2013):** 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.

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%)

**SUGGESTED ANSWER:**

An independent civil action is an action which is entirely distinct and separate from the criminal action. Such civil action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence. Section 3 of Rule 111 allows the filing of an independent civil action by the offended party based on Article 33 and 2176 of the New Civil Code.

The different approaches that the plaintiff can pursue in this type of action are, as follows:

- (a) File the independent civil action and prosecute the criminal case separately.
- (b) File the independent civil action without filing the criminal case.
- (c) File the criminal case without need of reserving the independent civil action.

Aside from the testimony of Gary, the pieces of evidence that would be required in an independent civil action are the medical report and certificate regarding the injuries sustained by Gary, hospital and medical bills including receipt of payments made, police report and proof of the extent of damage sustained by his car, and the Affidavit of witnesses who saw Horace using his cellular phone at the time the incident happened.

I will also present proof of employment of Gary such as his pay slip in order to prove that he was gainfully employed at the time of the mishap, and as a result of the injuries he suffered, he was not able to earn his usual income thereof. I will also present the attending Doctor of Gary to corroborate and authenticate the contents of the medical report and abstract thereof. The evidence required to hold defendant Horace liable is only preponderance of evidence.

The types of defenses that may be raised against this action are fortuitous event, force majeure or acts of God. The defendant can also invoke contributory negligence as partial defense. Moreover, the defendant can raise the usual defenses that the: (a) plaintiff will be entitled to double compensation or recovery, and (b) defendant will be constrained to litigate twice and therefore suffer the cost of litigation twice.

5.3.3. When separate civil action is suspended

5.3.4. Effect of death of the accused or convict on civil action

#### 5.3.5. Prejudicial question

**Q (2014):** *Solomon* and *Faith* got married in 2005. In 2010, *Solomon* contracted a second marriage with *Hope*. When *Faith* found out about the second marriage of *Solomon* and *Hope*, she filed a criminal case for bigamy before the Regional Trial Court (RTC) of Manila sometime in 2011.

Meanwhile, *Solomon* filed a petition for declaration of nullity of his first marriage with *Faith* in 2012, while the case for bigamy before the RTC of Manila is ongoing. Subsequently, *Solomon* filed a motion to suspend the proceedings in the bigamy case on the ground of prejudicial question. He asserts that the proceedings in the criminal case should be suspended because if his first marriage with *Faith* will be declared null and void, it will have the effect of exculpating him from the crime of bigamy. Decide. (4%)

#### **SUGGESTED ANSWER:**

The motion filed by Solomon should be denied.

The elements of prejudicial question are: (1) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and (2) the resolution of such issue determines whether or not the criminal action may proceed.

In order for a prejudicial question to exist, the civil action must precede the filing of the criminal action. (*Dreamwork Construction, Inc. vs. Janiola, G.R. No. 184861, June 30, 2009, Velasco, J.*)

Since the criminal case for bigamy was filed ahead of the civil action for declaration of nullity of marriage, there is no prejudicial question.

At any rate, the outcome of the civil case for annulment has no bearing upon the determination of the guilt or innocence of the accused in the criminal case for bigamy because the accused has already committed the crime of bigamy when he contracted the second marriage without the first marriage having being declared null and void.

Otherwise stated, he who contracts marriage during the subsistence of a previously contracted marriage runs the risk of being prosecuted for bigamy.

#### 5.3.6. Rule on filing fees in civil action deemed instituted with the criminal action

#### 5.4. Preliminary investigation

##### 5.4.1. Nature of right

##### 5.4.2. Purposes of preliminary investigation

- 5.4.3. Who may conduct determination of existence of probable cause
- 5.4.4. Resolution of investigation prosecutor
- 5.4.5. Review

**Q (2012):** After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused's petition for review, reversed the investigating prosecutor's finding of probable cause. Upon order of the DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

"Based on the review by the DOJ Secretary of the findings of the investigating prosecutor during the preliminary investigation, the Court agrees that there is no sufficient evidence against the accused to sustain the allegation in the information. The motion to withdraw Information is, therefore, granted."

If you were the private prosecutor, what should you do? Explain. (5%)

**SUGGESTED ANSWER:**

If I were the private prosecutor, I would file a petition for certiorari under Rule 65 with the Court of Appeals (*Cerezo vs. People, G.R. No. 185230, June 1, 2011*). It is well-settled that when the trial court is confronted with a motion to withdraw an Information (*on the ground of lack of probable cause to hold the accused for trial based on a resolution of the DOJ Secretary*), the trial court has the duty to make an independent assessment of the merits of the motion. It may either agree or disagree with the recommendation of the Secretary. Reliance alone on the resolution of the Secretary would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. The court must itself be convinced that there is indeed no sufficient evidence against the accused. Otherwise, the judge acted with grave abuse of discretion if he grants the Motion to Withdraw Information by the trial prosecutor. (*Harold Tamargo vs. Romulo Awingan et. al. G.R. No. 177727, January 19, 2010*).

**ALTERNATIVE ANSWER:**

If I were the private prosecutor, I would file a Motion for Reconsideration of the Order of the trial court. If the same has been denied, I would file a petition for review on certiorari under Rule 45 on pure question of law, which actually encompasses both the criminal and civil aspects thereof. The filing of the petition is merely a continuation of the appellate process.

- 5.4.6. When warrant of arrest may issue
- 5.4.7. Cases not requiring a preliminary investigation

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

Yes. Since the offender was arrested in flagrante delicto without a warrant of arrest, an inquest proceeding should be conducted and thereafter a case may be filed in court even without the requisite preliminary investigation.

Under Section 6, Rule 112, Rules of Criminal Procedure, when a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules.

5.4.8. Remedies of accused if there was no preliminary investigation

**Q(2012):** W was arrested in the act of committing a crime on October 1, 2011. After an inquest hearing, an information was filed against W and his lawyer learned of the same on October 5, 2011. W wants to file a motion for preliminary investigation and therefore he has only up to \_\_\_\_\_ to file the same.

- a) October 20, 2011;
- b) October 10, 2011;
- c) November 15, 2011;
- d) October 16, 2011.

**SUGGESTED ANSWER:**

- b)      October 10, 2011

When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, he may ask a preliminary investigation with the same right to adduce evidence in his defense within five (5) days from the time he learns of the filing of the complaint or information in court. (*Rule 112, Sec. 7, Rules of Court*)

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

A) I will file a Motion for the conduct of preliminary investigation or reinvestigation and the quashal or recall of the warrant of arrest in the Court where the case is pending with an additional prayer to suspend the arraignment. Under *Section 6 of Rule 112* of the Rules of Court, after filing of the complaint or information in court without a preliminary investigation, the accused may within five days from the time he learns of its filing ask for a preliminary investigation with the same right to adduce evidence in his defense.

Moreover, *Section 26, Rule 114* of the Rules of Criminal Procedure provides that an application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

**ALTERNATIVE ANSWER:**

I will file a Motion to Quash on the ground that the Sandiganbayan has no jurisdiction over the person of the accused. (*Section 3, Rule 117 of the Rules of Criminal Procedure*).

The Sandiganbayan has exclusive original jurisdiction over violations of RA 3019 (Anti-graft and Corrupt Practices law) where one or more of the accused are officials occupying the enumerated positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense. (*Sec. 4, RA 8249*).

In *Bondoc vs. Sandiganbayan, GR No. 71163-65, November 9, 1990*, the Supreme Court held that before the Sandiganbayan may lawfully try a private individual under PD 1606, the following requisites must be established: (a) he must be charged with a public officer/employee; and (b) he must be tried jointly. Since the aforementioned requisites are not present, the Sandiganbayan has no jurisdiction.

#### 5.4.9. Inquest

**Q (2012):** X was arrested, en flagrante, for robbing a bank. After an investigation, he was brought before the office of the prosecutor for inquest, but unfortunately no inquest prosecutor was available. May the bank directly file the complaint with the proper court? If in the affirmative, what document should be filed? (5%)

#### **SUGGESTED ANSWER:**

Yes, the bank may directly file the complaint with the proper court. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person (*Section 6, Rule 12 of the Revised Rules of Criminal Procedure*).

#### 5.5. Arrest

##### 5.5.1. Arrest, how made

**Q (2013):** 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%)

#### **SUGGESTED ANSWER:**

A) Police Inspector Masigasig should bring the felon to the nearest police station or jail in Makati City where the bus actually was when the felonies took place. In cases of warrantless arrest, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. (*Section 5, Rule 113, Rules of Criminal Procedure*)

Moreover, where an offense is committed in a public vehicle while in the course of its trip, the criminal action shall be instituted and tried in the court of any Municipality or territory where such vehicle passed during its trip, including the place of its departure and arrival. (*Section 15 (b), Rule 110, Rules of Criminal Procedure*). Consequently, the criminal case for robbery and illegal possession of

firearms can be filed in Regional Trial Court of Makati City or on any of the places of departure or arrival of the bus.

5.5.2. Arrest without warrant, when lawful

5.5.3. Method of arrest

- a) By officer with warrant
- b) By officer without warrant
- c) By private person

5.5.4. Requisites of a valid warrant of arrest

5.5.5. Determination of probable cause for issuance of warrant of arrest

5.5.6. Distinguish probable cause of fiscal from that of a judge

5.6. Bail

5.6.1. Nature

**Q(2012):** X was charged for murder and was issued a warrant of arrest. X remains at large but wants to post bail. X's option is to:

- a) File a motion to recall warrant of arrest;
- b) Surrender and file a bail petition;
- c) File a motion for reinvestigation;
- d) File a petition for review with the DOJ.

**SUGGESTED ANSWER:**

- b) Surrender and file a bail petition

Bail is the security given for the release of a person in the custody of the law (*Rule 114, Sec. 1, Rules of Court*). The Rules use the word, “custody” to signify that bail is only available for someone who is under the custody of the law. Hence, X should first surrender before he could be allowed to post bail.

**Q (2012):** A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail saying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

**SUGGESTED ANSWER:**

No, the court may not entertain his petition as he has not yet been placed on arrest. A must be “literally” placed under the custody of the law before his petition for bail could be entertained by the court (*Miranda vs. Tuliao, G.R. No. 158763, March 31, 2006*).

### **ALTERNATIVE ANSWER:**

Yes, a person is deemed to be under the custody of the law either when he has been arrested or has surrendered himself to the jurisdiction of the court. The accused who is confined in a hospital may be deemed to be in the custody of the law if he clearly communicates his submission to the court while he is confined in a hospital. (*Paderanga v. Court of Appeals*, G.R. No. 115407, August 28, 1995).

**Q (2014):** A was charged before the Sandiganbayan with a crime of plunder, a non-bailable offense, where the court had already issued a warrant for his arrest. Without A being arrested, his lawyer filed a *Motion to Quash Arrest Warrant and to Fix Bail*, arguing that the allegations in the information did not charge the crime of plunder but a crime of malversation, a bailable offense. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the accused and that the accused should be under the custody of the court since the crime charged was non-bailable. The accused's lawyer counter-argued that the court can rule on the motion even if the accused was at-large because it had jurisdiction over the subject matter of the case. According to said lawyer, there was no need for the accused to be under the custody of the court because what was filed was a *Motion to Quash Arrest and to Fix Bail*, not a *Petition for Bail*.

(A) If you are the Sandiganbayan, how will you rule on the motion?  
(3%)

### **SUGGESTED ANSWER:**

I will grant the Motion to quash the warrant of arrest but I will deny the Motion to fix bail.

A motion to fix bail is essentially an application for bail. (*People vs. Bucalon*, [G.R. No. 176933](#), October 2, 2009)

Relative thereto, bail is the security for the release of the person in the custody of the law. (Section 1 Rule 114 of the Rules of Court)

The Rules use the word "custody" to signify that bail is only available for someone who is under the custody of the law. (*Peter Paul Dimatulac vs. Hon. Sesinando Villon*, G.R. No. 127107, October 12, 1998)

Hence, A cannot seek any judicial relief if he does not submit his person to the jurisdiction of the Sandiganbayan.

On the other hand, the Sandiganbayan may grant the Motion to quash the warrant of arrest.

It is well settled that adjudication of a motion to quash a warrant of arrest requires neither jurisdiction over the person of the accused nor custody of law over the body of the accused.

Otherwise stated, an accused can invoke the processes of the court even though there is neither jurisdiction over his person nor he is under the custody of the law. (*Jose C. Miranda vs. Virgilio M. Tuliao, G.R. No. 158763, March 31, 2006*)

Thus, Sandiganbayan may grant the Motion to quash the warrant of arrest.

#### **ALTERNATIVE ANSWER:**

I will grant the Motions to quash the warrant of arrest and fix bail.

Well settled is the rule that there are two (2) ways of acquiring jurisdiction over the person of the accused, namely: (i) arrest by virtue of a warrant; and (ii) voluntary appearance of the accused. (*People vs. Arturo Lara, G.R. No. 199877, August 13, 2012*)

In filing the aforementioned Motions, the accused sought affirmative reliefs from the Sandiganbayan. Thus, he is deemed to have voluntarily submitted himself to the jurisdiction of said Court.

Hence, the Sandiganbayan may validly grant the said Motions in favor of the accused.

(B) If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake? (2%)

#### **SUGGESTED ANSWER:**

The accused may file a Motion for Reconsideration. If the same is denied, the accused may resort to a Petition for Certiorari under Rule 65 directly to the Supreme Court.

#### 5.6.2. When a matter of right; exceptions

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

Yes. An application for bail is an appropriate remedy to secure provisional liberty of the 14-year old boy. Under the Rules, bail is a matter of right before or even after conviction before the Metropolitan Trial Court which has jurisdiction over the crime of malicious mischief. (*Section 4, Rule 114 of the Rules of Criminal Procedure*).

**ALTERNATIVE ANSWER:**

Under RA 9344 or otherwise known as the Juvenile Justice and Welfare Act of 2006 as amended by RA 10630, a child in conflict with the law has the right to bail and recognizance or to be transferred to a youth detention home/youth rehabilitation center. Thus:

Where a child is detained, the court shall order:

- (a) the release of the minor on recognizance to his/her parents and other suitable person;
- (b) the release of the child in conflict with the law on bail; or
- (c) the transfer of the minor to a youth detention home/youth rehabilitation center. The court shall not order the detention of a child in a jail pending trial or hearing of his/her case (*Sections 5 and 35, RA 9344*)

Conversely, a petition for habeas corpus under Rule 102 may also be considered an appropriate remedy if the court has ordered the detention of a child pending trial or hearing of his case. The writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. (*IN THE MATTER OF THE PETITION OF HABEAS CORPUS OF EUFEMIA E. RODRIGUEZ, filed by EDGARDO E. VELUZ v. LUISA R. VILLANUEVA and TERESITA R. PABELLO, G.R. No. 169482, January 29, 2008, CORONA, J.*).

Since minors fifteen (15) years of age and under are not criminally responsible, the child may not be detained to answer for the alleged offense. The arresting authority has the duty to immediately release the child to the custody of

his parents or guardians or in their absence to the child's nearest relative (Section 20, Republic Act 9344).

Following the hierarchy of courts, the Petition must be filed in the Regional Trial Court having jurisdiction over the place where the child is being detained.

Note: R.A. 9344 is not covered by the 2013 Bar Examination Syllabus for Remedial Law.

5.6.3. When a matter of discretion

5.6.4. Hearing of application for bail in capital offenses

**Q (2014):** A was charged with murder in the lower court. His *Petition for Bail* was denied after a summary hearing on the ground that the prosecution had established a strong evidence of guilt. No *Motion for Reconsideration* was filed from the denial of the *Petition for Bail*. During the reception of the evidence of the accused, the accused reiterated his petition for bail on the ground that the witnesses so far presented by the accused had shown that no qualifying aggravating circumstance attended the killing. The court denied the petition on the grounds that it had already ruled that: (i) the evidence of guilt is strong; (ii) the resolution for the *Petition for Bail* is solely based on the evidence presented by the prosecution; and (iii) no Motion for Reconsideration was filed from the denial of the *Petition for Bail*. (6%)

(A) If you are the Judge, how will you resolve the incident?

**SUGGESTED ANSWER:**

If I were the Judge, I would grant the second Petition for Bail.

Under Section 7, Rule 114, Rules of Court, no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

In this case, the evidence of guilt for the crime of murder is not strong, as shown by the prosecution's failure to prove the circumstances that will qualify the crime to, and consequently convict the accused of, murder.

Accordingly, the accused should be allowed to post bail because the evidence of his guilt is not strong. (*Section 13, Article 3, 1987 Constitution*)

Besides, it is settled that an Order granting bail is merely interlocutory which cannot attain finality. (*Pobre vs. People, G.R. No. 141805, July 8, 2005*)

**ALTERNATIVE ANSWER:**

If I were the Judge, I would deny the second Petition for Bail.

Since the accused was already given the opportunity to present evidence in the summary hearing of his application for bail, and the Court has already ruled that the evidence of the prosecution is strong, his failure to file a motion for reconsideration of the denial of his petition for bail will render the aforesaid Order final and executory, which can no longer be altered therefore during the hearing on the merits.

Be that as it may, the Court's ruling that the resolution for the Petition for Bail should be based solely on the evidence presented by the Prosecution is misplaced.

(B) Suppose the accused is convicted of the crime of homicide and the accused filed a Notice of Appeal, is he entitled to bail?

**SUGGESTED ANSWER:**

Yes. The accused is entitled to bail subject to the discretion of the Court.

Under Section 5, Rule 114, Rules of Court, the appellate Court may allow him to post bail because the Trial Court in convicting him, changed the nature of the offense from non-bailable to bailable.

Be that as it may, the denial of bail pending appeal is a matter of wise discretion since after conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional right to bail ends. (*Jose Antonio Leviste vs. Court of Appeals, G.R. No. 189122, [March 17, 2010](#)*)

**ALTERNATIVE ANSWER:**

No. An accused originally charged with murder, though eventually convicted by the trial court for homicide only, is not entitled to bail during the pendency of the appeal, for the reason that, during the review of his appeal, the appellate court may still find him guilty of the more serious charge of murder. (*Obosa vs. Court of Appeals, G.R. No. 114350, January 16, 1997*)

- 5.6.5. Guidelines in fixing amount of bail
  - 5.6.6. Bail when not required
  - 5.6.7. Increase or reduction of bail
  - 5.6.8. Forfeiture and cancellation of bail
  - 5.6.9. Application not a bar to objections in illegal arrest, lack of or irregular preliminary investigation
  - 5.6.10. Hold departure order & Bureau of Immigration watchlist
- 5.7. Rights of the accused

#### 5.7.1. Rights of accused at the trial

**Q(2013):** 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.

#### **SUGGESTED ANSWER:**

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.

Section 17, Article III of the 1987 Constitution provides that no person shall be compelled to be a witness against himself. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. (*People vs. Casinillo*, 213 SCRA 777 [1992];

In *Beltran vs. Samson*, G.R. No. 32025, September 23, 1929, the Supreme Court held that for the purposes of the constitutional privilege, there is a similarity between one who is compelled to produce a document, and one who is compelled to furnish a specimen of his handwriting, for in both cases, the witness is required to furnish evidence against himself. In this case, the purpose of the fiscal, who requested the handwriting of the witness, was to compare and determine whether the accused wrote the documents believed to be falsified. Thus, the right against self-incrimination may be invoked by a witness who was compelled to furnish his handwriting for comparison.

In *Gonzales vs. Secretary of Labor*, the Supreme Court held that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for an incriminating answer is

propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and generally speaking, at that time only, the claim of privilege may properly be imposed." (*Bagadiong vs. Gonzales, GR No. L-25966, December 28, 1979, De Castro J.*)

**ALTERNATIVE ANSWER:**

(B) No, her right against self-incrimination is waived as soon as she became a witness.

The right against self-incrimination may be waived expressly or impliedly. Thus, when Maria took the witness stand, she is deemed to have waived her right against self-incrimination.

5.7.2. Rights of persons under custodial investigation

**Q(2012):** An accused's custodial rights, e.g., right to counsel and right to remain silent, is available:

- a) At preliminary investigation.
- b) At police line-up for identification purposes.
- c) At ultra-violet examination to determine presence of ultra violet powder on accused's hands.
- d) At one-on-one confrontation with eyewitness.

**SUGGESTED ANSWER:**

- a) At preliminary investigation.

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (*Article III, Sec. 12 (1), 1987 Constitution*). These guaranteed rights are available in all kinds of investigation including a preliminary investigation. In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof. (*Rules of Court, Rule 112, Section 1*). (*Metropolitan Bank and Trust Company vs. Rogelio Reynado, et. al., G.R. No. 164538, August 9, 2010, Del Castillo, J.*). The right to have a preliminary investigation conducted before being bound over to trial for a criminal

offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process." (*Sales vs. Sandiganbayan*, G.R. No. 143802, November 16, 2001). Applying the foregoing constitutional and procedural precepts, there is no doubt that the custodial rights are available during the preliminary investigation.

#### **ALTERNATIVE ANSWER:**

There are some authorities however, who believe that the custodial rights do not apply during preliminary investigation. They opine that Preliminary investigation is a summary proceeding and merely inquisitorial in nature. Hence, the accused cannot yet invoke the full exercise of his rights including the right to counsel. Moreover, a *preliminary investigation* is not a part of a trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence (*Albaña vs. Belo*, G.R. No. 158734, October 2, 2009, *Leonardo-De Castro, J.*). In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not even required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. (*George Miller vs. Secretary Hernando B. Perez*, G.R. No. 165412, May 30, 2011, *Villarama, Jr.*). Ergo, the custodial rights of accused are not available during the preliminary investigation.

c) At ultra-violet examination to determine presence of ultra violet powder on accused's hands.

The custodial rights of an accused are already available at the time an ultra-violet examination to determine presence of ultra violet powder on his hands is being conducted.

There is a custodial investigation when a person is taken under the custody of the law or otherwise deprived of his freedom of action in any significant way. "Custodial investigation is the stage "where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating." (*People vs. Sunga*, G.R. No. 126029, March 27, 2003). Otherwise stated, a custodial investigation begins when the investigation starts to focus on a particular suspect. Among the rights guaranteed to a suspect is that he must continuously have a counsel assisting him from the very start of that interrogation (*People vs. Morial, et. al.*, G.R. No. 129295, April 15, 2001). Clearly, when an accused is compelled to undergo ultra-violet examination to determine the presence of ultra violet powder on his hands, it is no longer a mere general inquiry but rather a custodial investigation which focuses on him as a suspect in the commission of

the crime. Therefore, for all intents and purposes, he is entitled to exercise his Constitutional safeguard and guaranteed rights to counsel and to remain silent.

5.8. Arraignment and plea

5.8.1. Arraignment and plea, how made

**Q (2012):** The case of R, who is under detention, was raffled to the RTC on March 1. His arraignment should be set not later than:

- a) March 4;
- b) March 16;
- c) March 30;
- d) March 11.**

**SUGGESTED ANSWER:**

- d) March 11

The arraignment of R should be set not later than March 11. Under Section 1, Rule 116 of the Rules of Court, the accused shall be arraigned within ten (10) days from the date of the raffle.

5.8.2. When should plea of not guilty be entered

5.8.3. When may accused enter a plea of guilty to a lesser offense

**Q(2012):** At arraignment, X pleads not guilty to a Robbery charge. At the pre-trial, he changes his mind and agrees to a plea bargaining, with the conformity of the prosecution and offended party, which downgraded the offense to theft. The Court should therefore:

- a) Render judgment based on the change of plea.
- b) Allow the withdrawal of the earlier plea and arraign X for theft and render judgment.
- c) Receive evidence on the civil liability and render judgment.
- d) Require the prosecution to amend the information.

**SUGGESTED ANSWERS:**

- b) Allow the withdrawal of the earlier plea and arraign X for theft and render judgment.
- c) Receive evidence on the civil liability and render judgment.

The Court should allow the withdrawal of the earlier plea and arraign X for theft and render judgment without need of an amendment of the complaint or

information. (*Rule 116, Sec. 2, Rules of Court*). Be that as it may, the Court has to receive evidence on the civil liability which is impliedly instituted with the criminal action before it renders a judgment against X. (*Rule 111, Sec. 1, Rules of Court*).

- 5.8.4. Accused pleads guilty to capital offense, what the court should do
- 5.8.5. Searching inquiry
- 5.8.6. Improvident plea
- 5.8.7. Grounds for suspension of arraignment

**Q(2012):** An accused may move for the suspension of his arraignment if:

- a) A motion for reconsideration is pending before the investigating prosecutor.
- b) Accused is bonded and his bondsman failed to notify him of his scheduled arraignment.
- c) A prejudicial question exists.
- d) There is no available public attorney.

**SUGGESTED ANSWER:**

- c) A prejudicial question exists.

Under Section 11, Rule 16 of the Rules of Criminal Procedure, upon motion of the proper party, the arraignment shall be suspended in the following cases: (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose; (b) There exists a prejudicial question; and (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided* that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (*Rule 116, Sec. 11, Rules of Court*).

5.9. Motion to quash

**Q (2012):** X, an undersecretary of DENR, was charged before the Sandiganbayan for malversation of public funds allegedly committed when he was still the Mayor of a town in Rizal. After arraignment, the prosecution moved that X be preventively suspended. X opposed the motion arguing that he was now occupying a position different from that which the Information charged him and therefore, there is no more possibility that he can intimidate witnesses and hamper the prosecution. Decide. Suppose X files a Motion to Quash challenging

the validity of the Information and the Sandiganbayan denies the same, will there still be need to conduct a pre-suspension hearing? Explain. (5%)

**SUGGESTED ANSWER:**

There is no necessity for the court to conduct pre-suspension hearing. Under Section 13 of RA No. 3019, an incumbent public officer against whom any criminal prosecution under a valid information for graft-related crime such as malversation is pending in court, shall be suspended from office. The word “office”, from which the public officer charged shall be preventively suspended, could apply to any office, which he might currently be holding and not necessarily the particular office under which he was charged. The preventive suspension of the following public officers was sustained: (1) a mayor, who was charged with acts committed as a government auditor of the Commission on Audit (*Bayot vs. Sandiganbayan*, G.R. No. L-61776 to L-61861, March 23, 1984); (2) a public officer, who was already occupying the office of governor and not the position of municipal mayor that he held previously when charged with having violated the Anti-Graft Law (*Deloso vs. Sandiganbayan*, G.R. No. 86899, May 15, 1989); and (3) a Vice-Governor, whose suspension is predicated on his acts supposedly committed while still a member of the Sangguniang Bayan (*Libanan vs. Sandiganbayan*, G.R. No. 112386, June 14, 1994). Thus, the DENR undersecretary can be preventively suspended even though he was a mayor, when he allegedly committed malversation.

Settled is the rule that where the accused files a motion to quash the information or challenges the validity thereof, show-cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information (*Luciano, vs. Mariano*, G.R. N L-32950, July 30, 1971). Since a pre-suspension hearing is basically a due process requirement, when an accused public official is given an adequate opportunity to be heard on his possible defenses against the mandatory suspension under R.A. No. 3019, then an accused would have no reason to complain that no actual hearing was conducted (*Miguel vs. The Honorable Sandiganbayan*, G.R. no. 172035. July 4, 2012). In the facts given, the DENR Undersecretary was already given opportunity to question the validity of the Information for malversation by filing a motion to quash, and yet, the Sandiganbayan sustained its validity. There is no necessity for the court to conduct pre-suspension hearing to determine for the second time the validity of the information for purpose of preventively suspending the accused.

**ALTERNATIVE ANSWER:**

The argument that X should not be suspended as he now holds an office different from that charged in the Information is unavailing. Under Section 3(e) of RA 3019, a

public officer may be charged before the Sandiganbayan for "causing undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." The Supreme Court has held that Section 13 of RA 3019 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Preventive suspension is mandatory regardless of the respondent's change in position

**Q (2014):** The Ombudsman, after conducting the requisite preliminary investigation, found probable cause to charge *Gov. Matigas* in conspiracy with *Carpintero*, a private individual, for violating Section 3(e) of Republic Act (RA) No. 3019 (*Anti-Graft and Corrupt Practices Act*, as amended). Before the information could be filed with the Sandiganbayan, *Gov. Matigas* was killed in an ambush. This, notwithstanding, an information was filed against *Gov. Matigas* and *Carpintero*.

At the Sandiganbayan, *Carpintero* through counsel, filed a Motion to Quash the Information, on the ground of lack of jurisdiction of the Sandiganbayan, arguing that with the death of *Gov. Matigas*, there is no public officer charged in the information.

Is the motion to quash legally tenable? (4%)

**SUGGESTED ANSWER:**

No. The Motion to quash is not legally tenable.

While it is true that by reason of the death of *Gov. Matigas*, there is no longer any public officer with whom he can be charged for violation of R.A. 3019, it does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged.

The only thing extinguished by the death of *Gov. Matigas* is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and *Carpintero*.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy. (*People of the Philippines vs. Henry T. Go*, G.R. No. 168539, March 25, 2014, *Peralta, J.*)

5.9.1. Grounds

5.9.2. Distinguish from demurrer to evidence

**Q (2013):** 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 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.

**SUGGESTED ANSWER:**

(C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.

Under Section 4 of Rule 117, if the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Section 5 of Rule 117 also provides that if the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

5.9.3. Effects of sustaining the motion to quash

**Q(2012):** Which of the following statements is incorrect?

- a) A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished.

- b) In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence.
- c) A demurrer to evidence may be filed without leave of court in a criminal case.
- d) None of the above.

**SUGGESTED ANSWER:**

- d) None of the above.

A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished. (*Rule 117, Sec. 6 in relation to Section 3*). In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence. (*Rule 53, Sec. 1, Rules of Court*). A demurrer to evidence may be filed without leave of court in a criminal case. (*Rule 119, Sec. 23, Rules of Court*)

5.9.4. Exception to the rule that sustaining the motion is not a bar to another prosecution

5.9.5. Double jeopardy

**Q (2014):** *McJolly* is a trouble-maker of sorts, always getting into brushes with the law. In one incident, he drove his Humvee recklessly, hitting a pedicab which sent its *driver* and *passengers* in different directions. The *pedicab driver* died, while two (2) of the *passengers* suffered slight physical injuries. Two (2) Informations were then filed against *McJolly*. One, for *Reckless Imprudence Resulting in Homicide and Damage to Property*, and two, for *Reckless Imprudence Resulting in Slight Physical Injuries*. The latter case was scheduled for arraignment earlier, on which occasion *McJolly* immediately pleaded guilty. He was meted out the penalty of public censure. A month later, the case for reckless imprudence resulting in homicide was also set for arraignment. Instead of pleading, *McJolly* interposed the defense of double jeopardy. Resolve. (4%)

**SUGGESTED ANSWER:**

*Mcjolly* correctly interposed the defense of double jeopardy.

Reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes, such that conviction or acquittal of such quasi-offense already bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts. (*Ivler vs. Hon. Modesto-San Pedro, G.R. No. 172716, November 17, 2010*)

Hence, the conviction of *Mcjolly* for Reckless Imprudence resulting to Slight Physical Injuries bars his subsequent prosecution for Reckless Imprudence resulting to Homicide and Damage to Property.

5.9.6. Provisional dismissal

5.10. Pre-trial

- 5.10.1. Matters to be considered during pre-trial
- 5.10.2. What the court should do when prosecution and offended party agree to the plea offered by the accused
- 5.10.3. Pre-trial agreement
- 5.10.4. Non-appearance during pre-trial
- 5.10.5. Pre-trial order
- 5.10.6. Referral of some cases for court annexed mediation and judicial dispute resolution

**Q (2013):** 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.

**SUGGESTED ANSWER**

- (C) The civil aspect of robbery

Under A.M. No. 04-1-12-SC-PhilJA, all of the above, except for Robbery is subject to JDR, *to wit*:

This pilot-test shall apply to the following cases:

- (1) All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;
- (2) Cases cognizable by the *Lupong Tagapamayapa* and those cases that may be referred to it by the judge under Section 408. Chapter VII of the Republic Act No. 7160, otherwise known as the 1991 Local Government Code;
- (3) The civil aspect of BP 22 cases;
- (4) The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code; and
- (5) The civil aspect of *Estafa*, Libel, and Theft

Moreover, robbery is considered a grave felony punishable by imprisonment of more than the six-years (*Article 294, Par. 5, Revised Penal Code*).

Under A.M. No. 11-1-6-SC-PHILJA dated January 11, 2001, only the civil aspect of less grave felonies punishable by correctional penalties not exceeding six years imprisonment are required to undergo Court-Annexed Mediation (CAM) and be subject of Judicial Dispute Resolution (JDR) proceedings. Hence, the civil aspect of robbery is not subject to mediation or Judicial Dispute Resolution (JDR).

#### 5.11. Trial

5.11.1. Instances when presence of accused is required by law

5.11.2. Requisite before trial can be suspended on account of absence of witness

5.11.3. Trial *in absentia*

5.11.4. Remedy when accused is not brought to trial within the prescribed period

**Q(2012):** After a plea of not guilty is entered, the accused shall have \_\_\_\_\_ days to prepare for trial.

- a) 15;
- b) 10;
- c) 30;
- d) None of the above.

#### **SUGGESTED ANSWER:**

- a) 15;

After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order. (*Rule 119, Sec. 1, Rules of Court*)

**Q (2013):** 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%)

### **SUGGESTED ANSWER:**

A) Section 7, Rule 119 provides, if the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime but has no means to post bail, or, is charged with a non-bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

(a) Shall promptly undertake to obtain the presence of the prisoner for trial or cause a notice to be served on the person having custody of the prisoner requiring such person to so advise the prisoner of his right to demand trial.

(b) Upon receipt of that notice, the custodian of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. If at anytime thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to sent promptly to the public attorney.

X X X X

Moreover, Section 1 (e), Rule 116 provides, when the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference of his case shall be held within ten (10) days after arraignment.

On the other hand, if the accused is not under preventive detention, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. (*Section 1 (g), Rule 116*)

Since the accused has not been brought for arraignment within the limit required in the aforementioned Rule, the Information may be dismissed upon motion of the accused invoking his right to speedy trial (*Section 9, Rule 119*) or to a speedy disposition of cases (*Section 16, Article III, 1987 Constitution*).

### **ALTERNATIVE ANSWER:**

A Petition for Mandamus is also feasible.

In *People v. Lumanlaw, GR. No. 164953, February 13, 2006*, the Supreme Court held that “a writ of mandamus may be issued to control the exercise of discretion when, in the performance of duty, there is undue delay that can be characterized as a grave abuse of discretion resulting in manifest injustice. Due to the unwarranted delays in the conduct of the arraignment of petitioner, he has

indeed the right to demand -- through a writ of mandamus -- expeditious action from all officials tasked with the administration of justice. Thus, he may not only demand that his arraignment be held but, ultimately, that the information against him be dismissed on the ground of the violation of his right to speedy trial.”

Ergo, a writ of mandamus is available to the accused to compel a dismissal of the case.

**ALTERNATIVE ANSWER:**

The appropriate remedy of the detained accused is to apply for bail since qualified theft is bailable, and she is entitled to bail before conviction in the Regional Trial Court (Section 4, Rule 114 of the Rules of Criminal Procedure).

NOTE: Unless the aggregate value of the property stolen is P500,000 and above she will not be entitled to bail, as a matter of right, because the penalty for the offense is reclusion perpetua pursuant to Memorandum Order No. 177.

**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%)

**SUGGESTED ANSWER:**

B) I will file a motion to dismiss the information in the court where the case is pending on the ground of denial of the accused right to speedy trial (*Section 9, Rule 119; TAN v. PEOPLE, G.R. No. 173637, April 21, 2009, Third Division, Chico-Nazario, J.*). This remedy can be invoked, at any time, before trial and if granted will result to an acquittal. Since the accused has been brought to Court five times and in each instance it was postponed, it is clear that her right to a Speedy Trial has been violated.

Moreover, I may request the court to issue *Subpoena Duces Tecum and Ad Testificandum* to the witness, so in case he disobeys same, he may be cited in contempt.

I may also file a motion to order the witness employer-complainant to post bail to secure his appearance in court. (*Section 14, Rule 119*)

**ALTERNATIVE ANSWER:**

I will move for the dismissal of the case for failure to prosecute. The grant of the motion will be with prejudice unless the court says otherwise. The Motion will be filed with the Court where the action is pending.

5.11.5. Requisites for discharge of accused to become a state witness

**Q (2013):** 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.

**SUGGESTED ANSWER**

(C) There is absolute necessity for the testimony of the accused whose discharge is requested.

Under Section 17 of Rule 119 of the Rules of Criminal Procedure, when two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and

- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (*PEOPLE V. FELICIANO ANABE Y CAPILLAN, G.R. NO. 179033, SEPTEMBER 6, 2010, CARPIO MORALES, J.*).

5.11.6. Effects of discharge of accused as state witness

5.11.7. Demurrer to evidence

**Q(2012):** Which of the following statements is incorrect?

- a) A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished.
- b) In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence.
- c) A demurrer to evidence may be filed without leave of court in a criminal case.
- d) None of the above.

**SUGGESTED ANSWER:**

- d) None of the above.

A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished. (*Rule 117, Sec. 6 in relation to Section 3*). In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence. (*Rule 53, Sec. 1, Rules of Court*). A demurrer to evidence may be filed without leave of court in a criminal case. (*Rule 119, Sec. 23, Rules of Court*)

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

No. I will not proceed with the presentation of defense evidence. I will first file a motion for leave to file demurrer to evidence within five (5) days from the

time the prosecution has rested its case. If the Motion is granted, I will file a demurrer to evidence within a non-extendible period of ten (10) days from notice on the ground of insufficiency of evidence. In the alternative, I may immediately file a demurrer to evidence without leave of court. (*Section 23, Rule 119, Rules of Criminal Procedure*)

In *People v. De Guzman*, GR No. 186498, March 26, 2010, the Supreme Court held that in a prosecution for violation of the Dangerous Drugs Act, the existence of the dangerous drug is a condition sine qua non for conviction. The dangerous drug is the very corpus delicti of the crime.

Similarly, in *People v. Sitco*, GR No. 178202, May 14, 2010, the High Court held that in prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.

#### 5.12. Judgment

5.12.1. Requisites of a judgment

5.12.2. Contents of judgment

5.12.3. Promulgation of judgment; instances of promulgation of judgment *in absentia*

**Q(2012):** P failed to appear at the promulgation of judgment without justifiable cause. The judgment convicted P for slight physical injuries. Judgment may therefore be promulgated in the following manner:

- a) By the reading of the judgment in the presence of only the judge.
- b) By the clerk of court in the presence of P's counsel.
- c) By the clerk of court in the presence of a representative of P.
- d) By entering the judgment into the criminal docket of the court.

#### **SUGGESTED ANSWER:**

- d) By entering the judgment into the criminal docket of the court.

If P fails to appear at the promulgation of judgment without justifiable cause, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. (*Rule 120, Sec. 6, Rules of Court*)

**Q(2012):** The judgment in a criminal case may be promulgated by the following, **except** by:

- a) A Sandiganbayan justice in cases involving anti-graft laws.

- b) A Clerk of Court of the court which rendered judgment.
- c) An Executive Judge of a City Court if the accused is detained in another city.
- d) Any judge of the court in which it was rendered.

**SUGGESTED ANSWER:**

- a) A Sandiganbayan justice in cases involving anti-graft laws.

The Sandiganbayan is a special court of the same level as the Court of Appeals (CA), and possessing all the inherent powers of a court of justice, with functions of a trial court. It is a collegial court. x x x The members of the graft court act on the basis of consensus or majority rule. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding cases. (*Edgar Payumo et al. vs. Hon. Sandiganbayan et al., G.R. No. 151911, July 25, 2011, Mendoza, J.*). Thus, a Sandiganbayan justice alone may not promulgate judgment in a criminal case involving anti-graft laws.

On the other hand, a judgment in the regular court is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court. If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. (*Rule 120, Sec. 6, Rules of Court*)

**Q (2012):** At the promulgation of judgment, P, who is bonded, failed to appear without justifiable cause. In order for P not to lose his remedies under the Rules, he must:

- a) Within 15 days from receipt of a copy of the decision, file a Motion for Reconsideration.
- b) Within 15 days from the promulgation, surrender to the court and file a motion for leave to avail of remedies.
- c) Notify his bondsman within 15 days so that his bail will not be confiscated.
- d) File a petition for certiorari.

**SUGGESTED ANSWER:**

- b)** Within 15 days from the promulgation, surrender to the court and file a motion for leave to avail of remedies.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (*Rule 120, Sec. 6, Rules of Court*) (*Pascua vs. Court of Appeals, 348 SCRA 197; People vs. De Grano, G.R. No. 167710, June 5, 2009, Peralta, J.*).

5.12.4. When does judgment become final (four instances)

**Q(2012):** A judgment of conviction in a criminal case becomes final when:

- a) Accused orally waived his right to appeal.
- b) Accused was tried in absentia and failed to appear at the promulgation.
- c) Accused files an application for probation.
- d) *Reclusion perpetua* is imposed and the accused fails to appeal.

**SUGGESTED ANSWER:**

- c) Accused files an application for probation

A judgment of conviction in a criminal case becomes final when the accused after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation (*Rule 120, Sec. 7, Rules of Court*).

5.13. New trial or reconsideration

5.13.1. Grounds for new trial

5.13.2. Grounds for reconsideration

**Q(2014):** *Ludong, Balatong, and Labong* were charged with murder. After trial, the court announced that the case was considered submitted for decision. Subsequently, the Clerk of Court issued the notices of promulgation of judgment which were duly received. On promulgation day, *Ludong* and his lawyer appeared. The lawyers of *Balatong* and *Labong* appeared but without their clients and failed to satisfactorily explain their absence when queried by the court. Thus, the judge ordered the Clerk of Court to proceed with the reading of the judgment convicting all the accused. With respect to *Balatong* and *Labong*, the judge ordered that the judgment be entered in the criminal docket and copies be furnished their lawyers. The lawyers of *Ludong, Balatong, and Labong* filed within the reglementary period a Joint Motion for Reconsideration. The court favorably granted the motion of *Ludong* downgrading his conviction from murder

to homicide but denied the motion as regards *Balatong* and *Labong*. (4%)

(A) Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

**SUGGESTED ANSWER:**

The Court is not correct in taking cognizance of the Joint Motion for Reconsideration.

Section 6, Rule 120 of the Rules of Court provides that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available against the judgment and the court shall order his arrest.

Henceforth, the Court erred when it entertained the joint Motion for Reconsideration with respect to accused *Balatong* and *Labong* who were not present during the promulgation of the judgment. The Court should have merely considered the joint motion as a motion for reconsideration that was solely filed by *Ludong*. (*People vs. De Grano, G.R. No. 167710, June 5, 2009, Peralta, J.*)

**ALTERNATIVE ANSWER:**

The Court is correct in taking cognizance of the Joint Motion for Reconsideration with respect to *Ludong* who was present during the promulgation of judgment.

However, as regards accused *Balatong* and *Labong*, the Court erred because they lost their remedies against the judgment when they failed to appear during the promulgation thereof.

(B) Can *Balatong* and *Labong* appeal their conviction in case *Ludong* accepts his conviction for homicide?

**SUGGESTED ANSWER:**

No, *Balatong* and *Ludong* cannot appeal their conviction because they lost their right to appeal from the judgment when they failed to appear during the promulgation of judgment.

Be that as it may, if they surrendered and filed a Motion for Leave to avail of their post judgment remedies within fifteen (15) days from promulgation of judgment, and they have proven that their absence at the scheduled promulgation was for a justifiable cause, they may be allowed to avail of said remedies within Fifteen (15) days from notice thereof. (*People vs. De Grano,*

G.R. No. 167710, June 5, 2009, Peralta, J.)

- 5.13.3. Requisites before a new trial may be granted on ground of newly-discovered evidence
- 5.13.4. Effects of granting a new trial or reconsideration
- 5.13.5. Application of ~~Neyes~~ doctrine in criminal cases
- 5.14. Appeal
  - 5.14.1. Effect of an appeal
  - 5.14.2. Where to appeal
  - 5.14.3. How appeal taken
  - 5.14.4. Effect of appeal by any of several accused
  - 5.14.5. Grounds for dismissal of appeal
- 5.15. Search and seizure
  - 5.15.1. Nature of search warrant

**Q (2012):** The validity of a search warrant is \_\_\_\_\_ days:

- a) 15;
- b) 30;
- c) 60;
- d) 120;

**SUGGESTED ANSWER:**

NO CORRECT ANSWER. The Committee recommends that the examinee be given a full credit for any answer to the question.

*Validity of search warrant.*—A search warrant shall be *valid for ten (10) days from its date*. Thereafter, it shall be void. (*Rule 126, Sec. 10, Rules of Court*).

**Q(2012):** Which of the following is true?

- a) Summons expires after 5 days from issue.
- b) Writ of Execution expires after 10 days from issue.
- c) Search Warrant expires after 20 days from issue.
- d) Subpoena expires after 30 days from issue.

**SUGGESTED ANSWER:**

The Committee recommends that the examinee be given full credit for any answer to the question.

**ALTERNATIVE ANSWER:**

c) Search Warrant expires after 20 days from issue.

According to the Committee, this is the most logical answer because search warrant expires 10 days after its issuance.

5.15.2. Distinguish from warrant of arrest

5.15.3. Application for search warrant, where filed

**Q (2012):** A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, Laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he applies for a search warrant in any Laguna court, their plan might leak out.

a. Where can he file an application for search warrant? (2%)

**SUGGESTED ANSWER:**

PDEA Director Shabunot may file an application for search warrant in any court within the judicial region where the crime was committed. (*Rule 126, Sec. 2(b)*).

**ALTERNATIVE ANSWER:**

PDEA Director Shabunot may file an application for search warrant before the Executive Judge and Vice Executive Judges of the Regional Trial Courts of Manila or Quezon Cities. (*A.M. No. 99-10-09-SC, January 25, 2000*).

b. What documents should he prepare in his application for search warrant? (2%)

**SUGGESTED ANSWER:**

He should prepare a petition for issuance of a search warrant and attach therein sworn statements and affidavits.

5.15.4. Probable cause

5.15.5. Personal examination by judge of the applicant and witnesses

**Q(2012):** Describe the procedure that should be taken by the judge on an application for search warrant. (2%)

**SUGGESTED ANSWER:**

The judge must, before issuing the warrant, examine personally in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (*Rule 126, Sec. 5, Rules of Court*). If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by the Rules. (*Rule 126, Sec.6, Rules of Court*).

5.15.6. Particularity of place to be searched and things to be seized

**Q (2012):** Suppose the judge issues a search warrant worded in this way:

PEOPLE OF THE PHILIPPINES  
Plaintiff

- versus -

Criminal Case No. 007  
for  
Violation of R.A. 9165

Ho Pia and Sio Pao,  
Accused.

X-----X

TO ANY PEACE OFFICER

Greetings:

It appearing to the satisfaction of the undersigned after examining under oath PDEA Director shabunot that there is probable cause to believe that violations of Section 18 and 16 of R.A. 9165 have been committed and that there are good and sufficient reasons to believe that Ho Pia and Sio Pao have in their possession or control, in a two (2) door apartment with an iron gate located at Jupiter St., Sta. Cruz, Laguna, undetermined amount of "shabu" and drug manufacturing implements and paraphernalia which should be seized and brought to the undersigned,

You are hereby commanded to make an immediate search, at any time in the day or night, of the premises above described and forthwith seize and take possession of the abovementioned personal property, and bring said property to the undersigned to be dealt with as the law directs.

Witness my hand this 1<sup>st</sup> day of March, 2012.

(signed)  
Judge XYZ

a. Cite/enumerate the defects, if any, of the search warrant. (3%)

**SUGGESTED ANSWER:**

1. The search warrant failed to particularly describe the place to be searched and the things to be seized (*Rule 126, Sec. 4, Rules of Court*).

2. The search warrant commanded the immediate search, at any time in the day or night. The general rule is that a search warrant must be served in the day time (*Rule 126, Sec. 8, Revised Rules on Criminal Procedure*), or that portion of the twenty-four hours in which a man's person and countenance are distinguishable (*17 C.J. 1134*). By way of exception, a search warrant may be made at night when it is positively asserted in the affidavit that the property is on the person or in the place ordered to be searched (*Alvares vs. CFI of Tayabas, 64 Phil. 33*). There is no showing that the exception applies.

b. Suppose the search warrant was served on March 15, 2012 and the search yielded the described contraband and a case was filed against the accused in RTC, Sta. Cruz, Laguna and you are the lawyer of Sio Pao and Ho Pia, what will you do? (3%)

**SUGGESTED ANSWER:**

If I were the lawyer of Sio Pao and Ho Pia, I would file a Motion to Quash the search warrant for having been served beyond its period of validity. (*Rule 126, Sec. 14, Rules of Court*). A search warrant shall be valid only for ten (10) days from its date. Thereafter, it shall be void. (*Rule 126, Sec. 10, Revised Rules of Court*).

c. Suppose an unlicensed armalite was found in plain view by the searchers and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals? Explain your answer. (3%)

**SUGGESTED ANSWER:**

No, the Court should not order the return of the unlicensed armalite because it is contraband or illegal per se. (*PDEA vs. Brodett, G.R. No. 196390, September 28, 2011*). The possession of an unlicensed armalite found in plain view is *mala prohibita*. The same should be kept in *custodia legis*.

**Q (2014):** A search warrant was issued for the purpose of looking for unlicensed firearms in the house of *Ass-asin*, a notorious gun for hire. When the police served the warrant, they also sought the assistance of *barangay tanods* who were assigned to look at other portions of the premises around the house. In a *nipa* hut thirty (30) meters away from the house of *Ass-asin*, a *Barangay tanod* came upon a kilo of marijuana that was wrapped in newsprint. He took it and this was later used by the authorities to charge *Ass-asin* with illegal possession of marijuana. *Ass-asin* objected to the introduction of such evidence claiming that it was illegally seized. Is the objection of *Ass-asin* valid? (4%)

**SUGGESTED ANSWER:**

The objection is valid.

The search warrant specifically designates or describes the house of the accused as the place to be searched. Incidentally, the marijuana was seized by Barangay Tanods thirty (30) meters away from the house of the accused.

Since the confiscated items were found in a place other than the one described in the search warrant, it can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of petitioner's constitutional guaranty against unreasonable searches and seizure. (*Ruben Del Castillo vs. People of the Philippines*, G.R. No. 185128, January 30, 2012, *Peralta, J.*)

Besides, the search is also illegal because the marijuana confiscated in the nipa hut was wrapped in a newsprint. Therefore, the same cannot be considered validly seized in plain view. (*Abraham Miclat vs. People of the Philippines*, G.R. No. 176077, August 31, 2011, *Peralta, J.*)

5.15.7. Personal property to be seized

5.15.8. Exceptions to search warrant requirement

- a) Search incidental to lawful arrest
- b) Consented search
- c) Search of moving vehicle
- d) Check points; body checks in airport
- e) Plain view situation
- f) Stop and frisk situation
- g) Enforcement of custom laws
- h) Remedies from unlawful search and seizure

**Q (2012):** When a Motion to Quash search warrant is denied, the best remedy is:

- a) Appeal the denial order.
- b) File a motion to suppress evidence.

- c) File an injunction suit.
- d) File a certiorari petition.

**SUGGESTED ANSWER:**

- b) File a motion to suppress evidence.

When a motion to quash search warrant is denied, the best remedy is to file a motion to suppress evidence since they are alternative and not cumulative remedies. (*Regalado, Remedial law Compendium, 2004 Edition, Tenth Edition, page 662*).

**ALTERNATIVE ANSWER:**

- d) File a certiorari petition.

In *Santos vs. Pryce Gases Inc.*, GR 165122, November 23, 2007, the Supreme Court held that the special civil action for certiorari is the proper recourse in assailing the quashal of the search warrant. The trial court's unwarranted reversal of its earlier finding of probable cause constituted grave abuse of discretion. Hence, the Supreme Court had allowed direct recourse to it or even to the Court of Appeals via a special civil action for certiorari from a trial court's quashal of a search warrant.

5.16. Provisional remedies

- 5.16.1. Nature
- 5.16.2. Kinds of provisional remedies

**Q(2013):** 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.

**SUGGESTED ANSWER:**

- D) When the accused resides outside the jurisdiction of the trial court.

Under Section 2 of Rule 127, when the civil action is properly instituted in the criminal action as provided in Rule 111, the offended party may have the

property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:

- (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 public officer, officer of a corporation, attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
- (c) When the accused has concealed, removed, or disposed of his property, or is about to do so; and
- (d) When the accused resides outside the Philippines.

## 6. Evidence

- 6.1. General principles
  - 6.1.1. Concept of evidence
  - 6.1.2. Scope of the Rules on Evidence
  - 6.1.3. Evidence in civil cases versus evidence in criminal cases
  - 6.1.4. Proof versus evidence
  - 6.1.5. *Factum probans* versus *factum probandum*
  - 6.1.6. Admissibility of evidence
    - a) Requisites for admissibility of evidence
    - b) Relevance of evidence and collateral matters
    - c) Multiple admissibility
    - d) Conditional admissibility
    - e) Curative admissibility
    - f) Direct and circumstantial evidence
    - g) Positive and negative evidence
    - h) Competent and credible evidence
  - 6.1.7. Burden of proof and burden of evidence
  - 6.1.8. Presumptions
    - a) Conclusive presumptions

**Q(2012):** Under the Rules on Evidence, the following is a conclusive presumption and therefore cannot be contradicted by evidence.

- a) A person intends the ordinary consequences of his voluntary act.
- b) Official duty has been regularly performed.
- c) A tenant cannot deny his landlord's title during the tenancy period.
- d) A writing is truly dated.

### SUGGESTED ANSWER:

c) A tenant cannot deny his landlord's title during the tenancy period.

The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them (*Rule 131, Sec. 2, Rules of Court*).

- b) Disputable presumptions
- 6.1.9. Liberal construction of the rules of evidence
- 6.1.10. Quantum of evidence (weight and sufficiency of evidence)
  - a) Proof beyond reasonable doubt
  - b) Preponderance of evidence
  - c) Substantial evidence
  - d) Clear and convincing evidence
- 6.2. Judicial notice and judicial admissions
  - 6.2.1. What need not be proved
  - 6.2.2. Matters of judicial notice
    - a) Mandatory

**Q (2012):** A court may take judicial notice of:

- a) The Twitter account of President Aquino.
- b) A Committee Report issued by the Congressional Committee on Labor Relations.
- c) The effects of taking aspirin everyday.
- d) The arbitral award issued by International Court of Arbitration.

**SUGGESTED ANSWER:**

b) A Committee Report issued by the Congressional Committee on Labor Relations.

A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (*Rule 129, Sec. 1, Rules of Court*).

- b) Discretionary
- 6.2.3. Judicial admissions
  - a) Effect of judicial admissions
  - b) How judicial admissions may be contradicted
- 6.2.4. Judicial notice of foreign laws, law of nations and municipal ordinance
- 6.3. Object (real) evidence
  - 6.3.1. Nature of object evidence

- 6.3.2. Requisites for admissibility
- 6.3.3. Categories of object evidence
- 6.3.4. Demonstrative evidence
- 6.3.5. View of an object or scene
- 6.3.6. Chain of custody, in relation to Section 21 of the Comprehensive Dangerous Drugs Act of 2002

**Q(2012):** PDEA agents conducted a search on a house abandoned by its owners in Quezon City. The search, in order to be valid, must be made in the presence of:

- a) Any relative of the owner of the house.
- b) The Director of the PDEA and a member of the media.
- c) The Barangay Chairman and a Barangay Tanod.
- d) Any elected Quezon City official.

**SUGGESTED ANSWER:**

- d) Any elected Quezon City official.

Under the “chain of custody” principle, the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel, a representative from media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (SEC. 21 (1), RA 9165).

**Q (2012):** Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (5%)

**SUGGESTED ANSWER:**

In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the *accused, to the police, to the forensic chemist, and finally to the court.* (*People vs Sitco*, G.R. No. 178202, May 14, 2010, **Velasco, Jr., J.**). Ergo, the existence of the dangerous drug is a condition sine qua non for conviction. (*People v. De Guzman Y Danzil*, G.R. No. 186498, March 26, 2010 *Nachura J.*). The failure to establish, through convincing proof, that the integrity of the seized items has been adequately

preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused (*People vs. De Guzman Y Danzil*). Nonetheless, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs when: (1) such non-compliance is attended by justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of the proviso. (*People v. Dela Cruz, G.R. No. 177222, October 29, 2008, 570 SCRA 273*).

**ALTERNATIVE ANSWER:**

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. Thus, non-compliance by the apprehending/ buy-bust team with Sec. 21 of RA 9165 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. (*People vs. Mantalaba, G.R. No. 186227, July 20, 2011*).

6.3.7. Rule on DNA Evidence (A.M. No. 06-11-5-SC)

- a) Meaning of DNA
- b) Applicable for DNA testing order
- c) Post-conviction DNA testing; remedy

**Q (2012):** C, a convict, was able to get favorable results of a post-conviction DNA testing showing that C could not have committed the crime. To gain freedom, C may:

- a) File a petition for Writ of Habeas Corpus before the court of origin.
- b) Apply for full pardon.
- c) File a Motion to annul judgment of conviction on the ground of fraud.
- d) File a Motion for new trial under Rule 121.

**SUGGESTED ANSWER:**

- a) File a petition for Writ of Habeas Corpus before the court of origin.

The convict or the prosecution may file a petition for a writ of habeas corpus in the court of origin if the results of the post-conviction DNA testing are favorable to the convict. In case the court, after due hearing, finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause. A

similar petition may be filed either in the Court of Appeals or the Supreme Court, or with any member of said courts, which may conduct a hearing thereon or remand the petition to the court of origin and issue the appropriate orders. (*Sec. 10, Rule on DNA Evidence*).

- d) Assessment of probative value of DNA evidence and admissibility
- e) Rules on evaluation of reliability of the DNA testing methodology

6.4. Documentary evidence

6.4.1. Meaning of documentary evidence

6.4.2. Requisites for admissibility

**Q(2012):** A private document may be considered as evidence when it is sequentially:

- a) Marked, identified, authenticated.
- b) Identified, marked and offered in evidence.
- c) Marked, identified, authenticated and offered in evidence.
- d) Marked, authenticated and offered in evidence.

**SUGGESTED ANSWER:**

- c) Marked, identified, authenticated and offered in evidence.

Before any private document offered as authentic is received in evidence, its *due execution and authenticity* must be proved. (*Rule 132, Sec. 20*). The private document must be marked during the pre-marking of exhibits. It must be identified and authenticated by a witness, and thereafter offered, as the court shall not consider any evidence which has not been formally offered. (*Rule 132, Sec. 34*). In addition, the private document must also be admitted by the court in order to be considered as evidence.

6.4.3. Best Evidence Rule

- a) Meaning of the rule
- b) When applicable
- c) Meaning of original
- d) Requisites for introduction of secondary evidence

6.4.4. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

- a) Scope; coverage; meaning of electronic evidence; electronic data message
- b) Probative value of electronic documents or evidentiary weight; method of proof
- c) Authentication of electronic documents and electronic signatures

**Q(2012):** A private electronic document's authenticity may be received in evidence when it is proved by:

- a) Evidence that it was electronically notarized.

- b) Evidence that it was digitally signed by the person who purportedly signed the same.
- c) Evidence that it contains electronic data messages.
- d) Evidence that a method or process was utilized to verify the same.

**SUGGESTED ANSWER:**

b) Evidence that it was digitally signed by the person who purportedly signed the same.

Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by evidence that it had been digitally signed by the person purported to have signed the same. (*Rule 5, Sec. 2 (a), Rules on Electronic Evidence*).

- d) Electronic documents ~~via~~ ~~is~~ ~~the~~ hearsay rule
- e) Audio, photographic, video and ephemeral evidence

**Q(2012):** Under the Rules of Electronic Evidence, "ephemeral electronic conversation" refers to the following, **except**:

- a) Text messages;
- b) Telephone conversations;
- c) Faxed document;
- d) Online chatroom sessions;

**SUGGESTED ANSWER:**

- c) Faxed document

An "*ephemeral electronic communication*" refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communications, the evidence of which is not recorded or retained (Sec. 1(k), Rule 2). A facsimile transmission is not considered as an electronic evidence under the Electronic Commerce Act. In *MCC Industrial Sales Corporation v. Ssangyong Corporation*, the Supreme Court concluded that the terms "*electronic data message*" and "*electronic document*," as defined under the Electronic Commerce Act of 2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence. (*Torres vs. PAGCOR, G.R. No. 193531, December 14, 2011*).

6.4.5. *Parol* Evidence Rule

- a) Application of the *parol* evidence rule

**Q(2012):** The Parole Evidence Rule applies to:

- a) Subsequent agreements placed on issue.
- b) Written agreements or contractual documents.
- c) Judgment on a compromise agreement.
- d) Will and testaments.

**SUGGESTED ANSWER:**

- b) Written agreements or contractual documents.

The parole evidence rule, embodied in Section 9, Rule 130 of the Rules of Court holds that when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. (*Leighton Contractors Phils., Inc., vs. CNP Industries, Inc., G.R. No. 160972, March 9, 2010*). Evidently, parole evidence only applies to written agreements or contractual documents.

**ALTERNATIVE ANSWER:**

- d) Will and testaments.

Parol Evidence Rule applies because the term "Agreement" includes wills. (*Rule 130, Sec. 9 (e), Rules of Court*).

**Q (2014):** Parole evidence is an: (1%)

- (A) agreement not included in the document
- (B) oral agreement not included in the document
- (C) agreement included in the document
- (D) oral agreement included in the document

**SUGGESTED ANSWER:**

- (B) Oral agreement not included in the document

Under Section 9 of Rule 130 of the Rules of Court, when the terms of an agreement are reduced in writing, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents of the said written agreement. (*Financial Building Corporation vs. Rudlin International Corporation, G.R. No. 164186, October 4, 2010*)

- b) When *parol* evidence can be introduced
- c) Distinctions between the best evidence rule and *parol* evidence rule
- 6.4.6. Authentication and proof of documents
  - a) Meaning of authentication
  - b) Public and private documents
  - c) When a private writing requires authentication; proof of a private writing
  - d) When evidence of authenticity of a private writing is not required (ancient documents)
  - e) How to prove genuineness of a handwriting
  - f) Public documents as evidence; proof of official record
  - g) Attestation of a copy
  - h) Public record of a public document
  - i) Proof of lack of record
  - j) How a judicial record is impeached k) Proof of notarial documents
  - l) How to explain alterations in a document m) Documentary evidence in an unofficial language

#### 6.5. Testimonial evidence

- 6.5.1. Qualifications of a witness
- 6.5.2. Competency versus credibility of a witness

**Q(2012):** Correctly complete the sentence: A lone witness \_\_\_\_\_.

- a) Is credible only if corroborated.
- b) Is never credible.
- c) May be believed even if not corroborated.
- d) Is always credible.

#### **SUGGESTED ANSWER:**

- c) May be believed even if not corroborated

The testimony of a lone prosecution witness, as long as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt.” (*People vs Layson, G.R. No. 105689 February 23, 1994*). Thus, a lone witness may be believed even if not corroborated.

- 6.5.3. Disqualifications of witnesses
  - a) By reason of mental capacity or immaturity
  - b) By reason of marriage
  - c) By reason of death or insanity of adverse party
  - d) By reason of privileged communications

**Q(2013):** 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%)

**SUGGESTED ANSWER:**

No. Nenita may not be allowed to testify against Walter.

Under the *Marital Disqualification Rule*, during their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (*Section 22, Rule 130, Rules on Evidence*). The foregoing exceptions cannot apply since it only extends to a criminal case of one spouse against the other or the latter's direct ascendants or descendants. Clearly, Nenita is not the offended party and her sister is not her direct ascendant or descendant for her to fall within the exception.

**ALTERNATIVE ANSWER:**

Yes. Nenita may be allowed to testify against Walter.

It is well-settled that the marital disqualification rule does not apply when the marital and domestic relations between the spouses are strained.

In *Alvarez v. Ramirez*, GR No. 143439, October 14, 2005, the Supreme Court citing *People v. Castañeda*, 271 SCRA 504, held that the act of private

respondent in setting fire to the house of his sister-in-law Susan Ramirez, knowing fully well that his wife was there, and in fact with the alleged intent of injuring the latter, is an act totally alien to the harmony and confidences of marital relation which the disqualification primarily seeks to protect. The criminal act complained of had the effect of directly and vitally impairing the conjugal relation. It underscored the fact that the marital and domestic relations between her and the accused-husband have become so strained that there is no more harmony, peace or tranquility to be preserved. Hence, the identity is non-existent. In such a situation, the security and confidences of private life which the law aims to protect are nothing but ideals which through their absence, merely leave a void in the unhappy home. Thus, there is no reason to apply the Marital Disqualification Rule.

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

**SUGGESTED ANSWER:**

B) Yes. The testimony of Walter's psychiatrist may be allowed. The privileged communication contemplated under *Sec. 24 (c) Rule 130 of the Rules on Evidence* involves only persons authorized to practice medicine, surgery or obstetrics. It does not include a Psychiatrist. Moreover, the privileged communication applies only in civil cases and not in a criminal case for arson.

Besides, the subject of the testimony of Dr. Carlos was not in connection with the advice or treatment given by him to Walter, or any information he acquired in attending to Walter in a professional capacity. The testimony of Dr. Carlos is limited only to what he perceived at the vicinity of the fire and at about the time of the fire.

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

**SUGGESTED ANSWER:**

C) Yes. The Priest can testify over the objection of Walter. The disqualification requires that the same were made pursuant to a religious duty enjoined in the course of discipline of the sect or denomination to which they belong and must be confidential and penitential in character, e.g., under the seal of confession. (*Sec. 24 (d) Rule 130, Rules on Evidence*)

Here, the testimony of Fr. Platino was not previously subject of a confession of Walter or an advice given by him to Walter in his professional character. The testimony was merely limited to what Fr. Platino perceived "at the vicinity of the fire and at about the time of the fire." Hence, Fr. Platino may be allowed to testify.

6.5.4. Examination of a witness

- a) Rights and obligations of a witness
- b) Order in the examination of an individual witness
  - i. Direct examination
  - ii. Cross examination

**Q (2012):** Witness A was examined on direct examination by the prosecutor. The defense counsel however employed dilatory tactics and was able to secure numerous postponements of A's cross examination. A suffered a stroke and became incapacitated. His uncompleted testimony may therefore be:

- a) Ordered stricken from the record.
- b) Allowed to remain in the record.
- c) Held in abeyance until he recovers.
- d) Not be given any probative weight.

**SUGGESTED ANSWER:**

- a) Ordered stricken from the record.

The uncompleted testimony of A should be ordered stricken from the record because A has not been cross-examined by the defense. Consequently, it stands to reason that the striking out of the A's testimony altogether wiped out the required authentication for the prosecution's exhibits. They become inadmissible unless the court, in its discretion, reopens the trial upon a valid ground and permits the rectification of the mistakes. (*Spouse Dela Cruz vs. Papa, G.R. No. 185899, December 8, 2010*).

- b) Allowed to remain in the record.

The uncompleted testimony of A should be allowed to remain on the record since it was due to the fault of the defense that they were not able to exercise their right to cross-examine the witness. The defense should be penalized for employing dilatory tactics which resulted in the witness' eventual incapacity to testify.

- iii. Re-direct examination
- iv. Re-cross examination
- v. Recalling the witness
- c) Leading and misleading questions
- d) Methods of impeachment of adverse party's witness
- e) How the witness is impeached by evidence of inconsistent statements (laying the predicate)
- f) Evidence of the good character of a witness
- g) Judicial Affidavit Rule (A.M. No. 12-8-8-SC)

6.5.5. Admissions and confessions

a) ~~Res inter alios acta~~ rule

**Q (2014):** A vicarious admission is considered an exception to the hearsay rule. It, however, does not cover: (1%)

- (A) admission by a conspirator
- (B) admission by a privy
- (C) judicial admission
- (D) adoptive admission

**SUGGESTED ANSWER:**

(C) judicial admission

Judicial Admission is not covered by the Rule on vicarious admission which are considered exceptions to the Res Inter Alios Acta Rule.

Under the Res Inter Alios Acta Rule, the rights of a party cannot be prejudiced by the act, declaration or omission of another (Section 38, Rule 130, Rules of Court).

It is not only rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers, and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him. (5 Moran, p. 237 1980 ed.)

The exceptions are admission by co-partner or agent (section 29); admission by conspirator (Sec. 30); admission by privies; (sec.31); which are collectively classified by Senator Salonga as "vicarious admissions." (Vide Gilbert, Sec. 332; page 398 Remedial Law V; Herrera)

b) Admission by a party

**Q(2012):** Which of the following statements is not accurate?

- a) A plea of guilty later withdrawn is admissible in evidence against the accused who made the plea.
- b) An unaccepted offer of a plea of guilty to a lesser offense is inadmissible in evidence against the accused.
- c) An offer to pay or payment of medical expenses arising from injury is not evidence or proof of civil/criminal liability for the injury.
- d) In civil cases, an offer of compromise by the accused is admissible as an implied admission of guilt.

**SUGGESTED ANSWER:**

d) In civil cases, an offer of compromise by the accused is admissible as an implied admission of guilt.

In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. (*Rule 130 Sec. 27, Rules of Court*).

**ADDITIONAL ANSWER:**

a) A plea of guilty later withdrawn is admissible in evidence against the accused who made the plea.

A plea of guilty later withdrawn is not admissible in evidence against the accused who made the plea (*Rule 130, Sect. 27, Rules of Court*).

- c) Admission by a third party
- d) Admission by a co-partner or agent
- e) Admission by a conspirator
- f) Admission by privies
- g) Admission by silence
- h) Confessions

**Q (2014):** While passing by a dark uninhabited part of their *barangay*, PO2 Asintado observed shadows and heard screams from a distance. PO2 Asintado hid himself behind the bushes and saw a man beating a woman whom he recognized as his neighbor, Kulasa. When Kulasa was already in agony, the man stabbed her and she fell on the ground. The man hurriedly left thereafter.

PO2 Asintado immediately went to Kulasa's rescue. Kulasa, who was then in a state of hysteria, kept mentioning to PO2 Asintado "*Si Rene, gusto akong patayin! Sinaksak niya ako!*" When PO2 Asintado was about to carry her, Kulasa refused and said "*Kaya ko. Mababaw lang to. Habulin mo si Rene.*"

The following day, Rene learned of Kulasa's death and, bothered by his conscience, surrendered to the authorities with his counsel. As his surrender was broadcasted all over media, Rene opted to release his statement to the press which goes:

"I believe that I am entitled to the presumption of innocence until my guilt is proven beyond reasonable doubt. Although I admit that I performed acts that may take one's life away, I hope and pray that justice will be served the right way. God bless us all.

(Sgd.)

Rene”

The trial court convicted *Rene* of homicide on the basis of *PO2 Asintado's* testimony, *Kulasa's* statements, and *Rene's* statement to the press. On appeal, *Rene* raises the following error:

1. The trial court erred in holding that *Rene's* statement to the press was a confession which, standing alone, would be sufficient to warrant conviction. Resolve. (4%)

**SUGGESTED ANSWER:**

The trial court did not err in holding that *Rene's* statement to the press is a confession. *Rene's* confessions to the media were properly admitted because statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. (*People vs. Hipona, G.R. No. 185709, February 18, 2010*)

**ALTERNATIVE ANSWER:**

The trial court erred in considering *Rene's* statement as a confession.

Confession contemplates a categorical acknowledgement of guilt made by an accused in a criminal case in any exculpatory statement or explanation. (*People v. Aquino, L-3240, April 21, 1952, 91 Phil. 910*).

A second look of *Rene's* Statement to the press would readily show that there was no categorical admission of the commission of the offense. Hence, it is not considered a confession that will warrant his conviction.

After all, it is well settled that an extra-judicial confession made by an accused, shall not be a sufficient ground for conviction, unless corroborated by evidence of corpus delicti. (Section 3, Rule 133, Rules of Court)

- i) Similar acts as evidence
- 6.5.6. Hearsay Rule
  - a) Meaning of hearsay

**Q(2012):** When caught, X readily admitted to the Forestry Ranger that he cut the trees. Such a statement may be admitted and is not necessarily hearsay because:

- a) It is a judicial admission of guilt.
- b) It shows the statement was true.

- c) It will form part of the circumstantial evidence to convict.
- d) It proves that such a statement was made.

**SUGGESTED ANSWER:**

- d) It proves that such a statement was made.

The statement of X may be admitted under the concept of independently relevant statement, or statements which are on the very facts in issue or those which are circumstantial evidence thereof. It is offered in evidence only to prove the tenor thereof, or the fact that such a statement was made, and not to prove the truth of the facts asserted therein. Hence, the hearsay rule does not apply. (*People vs. Gaddi*, 170 SCRA 649).

- b) Reason for exclusion of hearsay evidence
- c) Exceptions to the hearsay rule
  - i. Dying declaration

**Q(2012):** X was shot by Y in the course of a robbery. On the brink of death, X told W, a barangay tanod, that it was Y who shot and held him up. In the trial for robbery with homicide, X's declaration can be admitted only as a dying declaration:

- a) To prove robbery.
- b) To prove homicide.
- c) To prove robbery and homicide.
- d) To prove the "corpus delicti".

**SUGGESTED ANSWER:**

- b) To prove homicide.

A dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death. (*People vs. Jay Mandy Maglian*, G.R. No. 189834, March 30, 2011, *Velasco, Jr., J.*). Clearly, the dying declaration can only be offered in a case in which the subject of inquiry involves the declarant's death, and necessarily the same can only be admitted to prove the cause and the surrounding circumstances of such death. Be that as it may, the dying declaration may be offered as part of the *res gestae* in the crime of robbery.

**ALTERNATIVE ANSWER:**

c) To prove robbery and homicide.

The former rule was that dying declaration was admissible only in criminal prosecutions for homicide, murder or parricide wherein the declarant is the victim (*People vs. Lara, 54 Phil. 96*). As amended, the Rule now provides for such admissibility in any case as long as the requisites concur. (*Regalado, Remedial Law Compendium, Vol. II, 2008 Edition, Page 781*).

**Q(2013):** 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.

**SUGGESTED ANSWER:**

C, D or E

(C) The testimony of a party's witness regarding email messages the witness received from the opposing party.

The E-mail messages are considered electronic data message or electronic document under the Rules on Electronic Evidence and therefore admissible as evidence.

The terms "electronic data message" and "electronic document" are defined in the Rules on Electronic Evidence. Thus:

(g) "*Electronic data message*" refers to information generated, sent, received or stored by electronic, optical or similar means.

(h) "*Electronic document*" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or

output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term “electronic document” may be used interchangeably with electronic data message”.(Section 1, (g), (h) Rule 2, AM No. 01-7-01-SC, *Rules on Electronic Evidence*)

In *MCC Industrial Sales Corporation vs. Ssangyong Corporation*, GR No. 170633, the Supreme Court held that R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000, considers an electronic data message or an electronic document as the functional equivalent of a written document for evidentiary purposes. The Rules on Electronic Evidence regards an electronic document as admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws, and is authenticated in the manner prescribed by the said Rules. An electronic document is also the equivalent of an original document under the Best Evidence Rule, if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

(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.

If the testimony is being offered for the purpose of establishing that such statements were made, then the testimony is admissible as independent relevant statement.

The Doctrine on independent relevant statement holds that conversations communicated to a witness by a third person may be admitted as proof, regardless of their truth or falsity, that they were actually made. (*Republic v. Heirs of Alejaga Sr.*, GR No. 146030, December 3, 2002)

The doctrine of independently relevant statements is an exception to the hearsay rule. It refers to the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply; hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact. The witness who testifies thereto is competent because he heard the same, as this is a matter of fact derived from his own perception, and the purpose is to prove either that the statement was made or the tenor thereof. (*People v. Malibiran*, G.R. No. 178301, April 24, 2009, *Austria-Martinez J.*).

(E) None of the above

The problem does not clearly provide the purposes for which the evidence under (C) and (D) are being offered.

Moreover, all of the choices above cannot be admitted to prove the truth of the contents thereof for the reason that the evidence is not competent. For letter (A), the affiant is not presented, and hence hearsay. Letter (B), the admission was made after the termination of the conspiracy and extrajudicial, hence there is no application of the Res Inter Alios Acta rule. Letter (C) is also not allowed as under the Electronic Evidence Rule, the output readable by sight is the best evidence to prove the contents thereof. Letter (D) is hearsay since the affiant does not have personal knowledge.

**Q (2014):** A foreign *dog* trained to sniff dangerous drugs from packages, was hired by *FDP Corporation*, a door to door forwarder company, to sniff packages in their depot at the international airport. In one of the routinary inspections of packages waiting to be sent to the United States of America (*USA*), the *dog* sat beside one of the packages, a signal that the package contained dangerous drugs. Thereafter, the guards opened the package and found two (2) kilograms of cocaine. The *owner* of the package was arrested and charges were filed against him. During the trial, the prosecution, through the trainer who was present during the incident and an expert in this kind of field, testified that the *dog* was highly trained to sniff packages to determine if the contents were dangerous drugs and the sniffing technique of these highly trained dogs was accepted worldwide and had been successful in dangerous drugs operations. The prosecution moved to admit this evidence to justify the opening of the package. The accused objected on the grounds that: (i) the guards had no personal knowledge of the contents of the package before it was opened; (ii) the testimony of the trainer of the *dog* is hearsay; and (iii) the accused could not cross-examine the *dog*. Decide. (4%)

**FIRST SUGGESTED ANSWER:**

The objections of the accused should be overruled.

An evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules. (Section 3, Rule 128 Rules of Court)

Under Section 36, Rule 130 of the Rules of Court, a witness can testify only to those which he knows of his personal knowledge and derived from his own perception.

The contention that the guards had no personal knowledge of the contents of the package before it was opened is without merit. The guards can testify as to the facts surrounding the opening of the package since they have personal knowledge of the circumstances thereof, being physically present at the time of its discovery.

On the other hand, the testimony of the trainer of the dog is not hearsay based on the following grounds:

a. he has personal knowledge of the facts in issue, having personally witnessed the same;

b. hearsay merely contemplates an out-of-court declaration of a person which is being offered to prove the truthfulness and veracity of the facts asserted therein;

c. he is an expert witness, hence, his testimony may constitute an exception to the hearsay rule;

d. the accused has the opportunity to cross-examine him; and

e. testimony of a witness as to statements made by nonhuman declarants does not violate the rule against hearsay. The law permits the so-called “nonhuman evidence” on the ground that machines and animals, unlike humans, lack a conscious motivation to tell falsehoods, and because the workings of machines can be explained by human witnesses who are then subject to cross-examination by opposing counsel. (City of Webster Groves vs. Quick, 323 S.W. 2d 386 [Mo. 1959]; Buck vs. State, 138 P. 2d 115 [Okla. 1943]; page 581, 1999 Edition Remedial Law Volume V, Herrera)

Conversely, the accused may not argue that he cannot cross-examine the dog as the Constitutional right to confrontation refers only to witnesses.

As alluded, the human witnesses who have explained the workings of the non-human evidence is the one that should be cross-examined. Hence, the contention of the accused that he could not cross-examine the dog is misplaced.

Ergo, there is no doubt that the evidence of the prosecution is admissible for being relevant and competent.

## **SECOND SUGGESTED ANSWER:**

The evidence for the prosecution is admissible.

In *People of the Philippines vs. Hedishi Suzuki*, G.R. No. 120670, October 23, 2003, the Supreme Court held that search conducted by the airport authorities as reasonable and, therefore, not violative of any constitutional rights. “Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to

recognize as reasonable. Such recognition is implicit in airport security procedures.”

Moreover, in the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked, since the Constitution, in laying down the principles of the government and fundamental liberties of the people, does not govern relationships between individuals.

Undoubtedly, the package which contains two (2) kilograms of cocaine is considered validly seized even in the absence of a search warrant. (*People of the Philippines vs. Andre Marti*, G.R. No. 81561, January 18, 1991)

**NOTE:**

The Committee respectfully suggests that the examinees be given utmost consideration and liberality.

- ii. Declaration against interest
- iii. Act or declaration about pedigree
- iv. Family reputation or tradition regarding pedigree
- v. Common reputation
- vi. Part of the *res gestae*

**Q (2014):** While passing by a dark uninhabited part of their *barangay*, PO2 Asintado observed shadows and heard screams from a distance. PO2 Asintado hid himself behind the bushes and saw a man beating a woman whom he recognized as his neighbor, *Kulasa*. When *Kulasa* was already in agony, the man stabbed her and she fell on the ground. The man hurriedly left thereafter.

PO2 Asintado immediately went to *Kulasa*’s rescue. *Kulasa*, who was then in a state of hysteria, kept mentioning to PO2 Asintado “*Si Rene, gusto akong patayin! Sinaksak niya ako!*” When PO2 Asintado was about to carry her, *Kulasa* refused and said “*Kaya ko. Mababaw lang to. Habulin mo si Rene.*”

The following day, *Rene* learned of *Kulasa*’s death and, bothered by his conscience, surrendered to the authorities with his counsel. As his surrender was broadcasted all over media, *Rene* opted to release his statement to the press which goes:

“I believe that I am entitled to the presumption of innocence until my guilt is proven beyond reasonable doubt. Although I admit that I performed acts that may take one’s life away, I hope and pray that justice will be served the right way. God bless us all.

(Sgd.)

Rene”

The trial court convicted *Rene* of homicide on the basis of *PO2 Asintado’s* testimony, *Kulasa’s* statements, and *Rene’s* statement to the press. On appeal, *Rene* raises the following errors:

The trial court erred in giving weight to *PO2 Asintado’s* testimony, as the latter did not have any personal knowledge of the facts in issue, and violated *Rene’s* right to due process when it considered *Kulasa’s* statements despite lack of opportunity for her cross-examination. Resolve. (4%)

**SUGGESTED ANSWER:**

The trial court did not err in giving weight to *PO2 Asintado’s* testimony.

While a witness can only testify as to those facts which he has personal knowledge, the Rules provide that a statement made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances, is an exception being part of res gestae. (*Belbis, Jr., vs. People, 2012, Peralta, J.*)

In the case, the statements made by *PO2 Asintado* constitutes part of res gestae since the same were made without any opportunity to fabricate and while a startling occurrence was actually taking place.

In addition, the statement of *PO2 Asintado* may fall within the purview of the doctrine of independent relevant statement, where only the fact that such statements were made is relevant, and the truth and falsity thereof is immaterial. (*People vs. Malibiran, G.R. No. 178301, April 24, 2009*)

On the other hand, *Kulasa’s* statements are also admissible as part of res gestae since the same were made under the influence of a startling event and without any opportunity to concoct or devise a falsehood.

- vii. Entries in the course of business
- viii. Entries in official records
- ix. Commercial lists and the like
- x. Learned treatises
- xi. Testimony or deposition at a former trial

6.5.7. Opinion rule

- a) Opinion of expert witness
  - b) Opinion of ordinary witness
- 6.5.8. Character evidence
- a) Criminal cases

**Q(2013):** 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.

**SUGGESTED ANSWER:**

A) In criminal cases– the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged

Under Section 51, Rule 130 of the Rules of Court, the accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged. (*Section 51 (a) (1) Rule 130, Rules on Evidence*)

- b) Civil cases
- 6.5.9. Rule on Examination of a Child Witness (A.M. No. 004-07-SC)
- a) Applicability of the rule
  - b) Meaning of "child witness"

**Q(2012):** Under the Rules on Examination of a child witness, a child witness is one:

- a) Who is 18 years of age or below at the time of testifying.
- b) Who is below 18 years of age at the time of the incident/crime to be testified on.
- c) Who is below 18 years of age at the time of the giving of testimony.
- d) Who is 18 years of age in child abuse cases.

**SUGGESTED ANSWER:**

c) Who is below 18 years of age at the time of the giving of testimony.

A “child witness” is any person who at the time of giving testimony is below the age of eighteen (18) years. (Sec. 4, *Rules on Examination of a Child Witness*).

- c) Competency of a child witness
- d) Examination of a child witness
- e) Live-link TV testimony of a child witness
- f) Videotaped deposition of a child witness
- g) Hearsay exception in child abuse cases
- h) Sexual abuse shield rule
- i) Protective orders

6.6. Offer and objection

- 6.6.1. Offer of evidence
- 6.6.2. When to make an offer
- 6.6.3. Objection

**Q (2012):** A narrative testimony is usually objected to but the court may allow such testimony if:

- a) It would expedite trial and give the court a clearer understanding of the matters related;
- b) The witness is of advanced age;
- c) The testimony relates to family genealogy;
- d) The witness volunteers information not sought by the examiner.

**SUGGESTED ANSWER:**

- a) It would expedite trial and give the court a clearer understanding of the matters related;

There is no legal principle which prevents a witness from giving his testimony in a narrative form if he is requested to do so by counsel. A witness may be allowed to testify by narration if it would be the best way of getting at what he knew or could state concerning the matter at issue. It would expedite the trial and would perhaps furnish the court a clearer understanding of the matters related as they occurred. (People vs. Calixto, G.R. No. 92355, January 24, 1991).

**ALTERNATIVE ANSWER:**

- b) The witness is of advanced age;

The Rules allow persons of tender age to testify in a narrative form because they cannot cope with the technicalities of examination of witnesses. The same rule should be applied to witnesses of advanced age.

**Q(2012):** Immediately after the witness had been sworn in to testify, without any formal offer of his testimony, Atty. A started asking questions on direct examination to the witness. The court may still consider his testimony if:

- a) The formal offer is done after the direct testimony.
- b) The opposing counsel did not object.
- c) The witness is an expert witness.
- d) The opposing counsel offered to stipulate on the testimony given.

**SUGGESTED ANSWER:**

- b) The opposing counsel did not object.

While it is true that Atty. A failed to offer the questioned testimony when he called his witness on the stand, the opposing counsel waived this procedural error by failing to object at the appropriate time, i.e., when the ground for objection became reasonably apparent the moment the witness was called to testify without any prior offer having been made by the proponent.” (*Catuirra vs. Court of Appeals, G.R. No. 105813 September 12, 1994*)

6.6.4. Repetition of an objection

6.6.5. Ruling

**Q (2012):** Counsel A objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection Sustained". Can Counsel B ask for a reconsideration of the ruling? Why? (5%)

**SUGGESTED ANSWER:**

Yes, Counsel B may ask the Judge to specify the ground/s relied upon for sustaining the objection and thereafter move its reconsideration thereof. (*Rule 132, Sec. 38, Rules of Court*).

6.6.6. Striking out of an answer

6.6.7. Tender of excluded evidence

**7. Revised Rules on Summary Procedure**

- 7.1. Cases covered by the rule
- 7.2. Effect of failure to answer
- 7.3. Preliminary conference and appearances of parties

**Q(2012):** In a criminal case for violation of a city ordinance, the court may issue a warrant of arrest:

- a) For failure of the accused to submit his counter-affidavit.

- b) After finding probable cause against the accused.
- c) For failure of the accused to post bail.
- d) For non-appearance in court whenever required.

**SUGGESTED ANSWER:**

- d) For non-appearance in court whenever required.

The criminal case for violation of a city ordinance is governed by the Revised Rules on Summary Procedure. Under the said Rule, the court shall not order the arrest of the accused except for failure to appear whenever required. (*Sec.16, 1991 Revised Rules on Summary Procedure*). Accordingly, the court may issue a warrant of arrest for non-appearance of the accused whenever required in a criminal case for infraction of a city ordinance.

**8. Katarungang Pambarangay Law (P.D. No. 1508; R.A. 7610, as amended)**

**8.1. Cases covered**

**Q(2012):** The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall:

- a) Not interrupt any prescriptive period.
- b) Interrupt the prescriptive period for 90 days.
- c) Interrupt the prescriptive period for 60 days.
- d) Interrupt the prescriptive period not exceeding 60 days.

**SUGGESTED ANSWER:**

- d) Interrupt the prescriptive period not exceeding 60 days.

The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall interrupt the prescriptive periods for offenses and cause of action under existing laws for a period not exceeding Sixty (60) days from the filing of the complaint with the punong barangay. (*Sec. 410, Local Government Code*).

- 8.2. Subject matter for amicable settlement
- 8.3. Venue
- 8.4. When parties may directly go to court

**Q(2012):** X and Y, both residents of Bgy. II, Sampaloc, Manila entered into a P 100,000 loan agreement. Because Y defaulted, X sued Y for collection and the complainant prayed for issuance of preliminary attachment. Y moved to dismiss the complaint because there was no Barangay conciliation. The court should therefore:

- a) Dismiss X's complaint for prematurity.
- b) Dismiss X's complaint for lack of cause of action.
- c) Deny Y's motion because it is exempt from Barangay conciliation.
- d) Deny Y's motion because of the amount of the loan.

**SUGGESTED ANSWER:**

- c) Deny Y's motion because it is exempt from Barangay conciliation.

As a general rule, no complaint, petition, action or proceeding involving any matter within the authority of the Lupon shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. However, the parties may go directly to the court in actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite. (*Sec.6, P.D. 1508, Katarungang Pambarangay Law*). Since X's complaint against Y involves collection of sum of money with prayer for issuance of preliminary attachment, there is no need for prior barangay conciliation, and therefore the Court should deny Y's Motion to Dismiss.

8.5. Execution

**Q(2012):** Under the Katarungan Pambarangay rules, the execution of an amicable settlement or arbitration award is started by filing a motion for execution with the Punong Barangay, who may issue a notice of execution in the name of the Lupon Tagapamayapa. Execution itself, however, will be done by:

- a) A court-appointed sheriff.
- b) Any Barangay Kagawad.
- c) Punong Barangay.
- d) Any member of the Pangkat ng Tagapagsundo.

**SUGGESTED ANSWER:**

- c) Punong Barangay

The Punong Barangay shall issue a notice of execution in the name of the Lupon Taga-pamayapa and that if the execution be for the payment of money, the party obliged is allowed a period of five (5) days to make a voluntary payment, failing which, the Punong Barangay shall take possession of sufficient personal property located in the barangay. (*Sections 5 and 6, Article VII, Implementing Rules and Regulations of the Katarungang Pambarangay Rule*).

8.6. Repudiation

**9. Rule of Procedure for Small Claims Cases (A.M. No. 08-8-7-SC)**

9.1. Scope and applicability of the rule

**Q (2012):** The Rule on Small Claims is applicable to:

- a) Claims for unpaid rentals of P100,000 or less, with prayer for ejectment.
- b) Enforcement of a barangay amicable settlement involving a money claim of P50,000 after one (1) year from date of settlement.
- c) Action for damages arising from a quasi-delict amounting to P100,000.
- d) Action to collect on a promissory note amounting to P105,000 where plaintiff expressly insists in recovering only P100,000.

**SUGGESTED ANSWER:**

- c) Action for damages arising from a quasi-delict amounting to P100,000.

The Rule on Small Claims shall be applied in all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 of the Revised Rules Of Criminal Procedure. These claims or demands may be for damages arising from fault or negligence. (*Sec. 4, A.M. No. 08-8-7-SC, The Rule of Procedure for Small Claims Cases*).

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

Patty may avail any of the following remedies:

a) She may file a complaint for damages arising from fault or negligence under the Rules on Small Claims against CCC Company before the MTC of Marikina City where she resides or Makati City where the defendant corporation is holding office, at her option. (*AM No. 8-8-7-SC in relation to Section 2, Rule 4, Rules of Court*).

b) She may also file an action to recover moral damages based on quasi-delict under Article 2176 of the New Civil Code. The law states that, whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict.

Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Since moral damages are incapable of pecuniary estimation, Patty should file the action before the Regional Trial Court of Marikina City where she resides or Makati City, where the defendant corporation is holding office, at her option (Section 19(1), B.P. 129).

c) Patty can also file a civil action for damages against the City of Marikina for maintaining an open manhole where she unfortunately fell. Under *Article 2189 of the Civil Code*, provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. The proper court having jurisdiction over the case is the Metropolitan Trial Court of Marikina City because the claim is at least Php 100,000 for as long as the aggregate of the claims for damages does not exceed Php 400,000.

**Q(2013):** 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

**SUGGESTED ANSWER:**

- (C) does not have any jurisdiction over ejectment actions

Under Section 4 of AM No. 8-8-7-SC, Rules of Procedure of Small claims, Small claims court shall have jurisdiction over all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 of the Revised Rules Of Criminal Procedure. It does not include ejectment actions. Moreover, the action allowed under the Rules on Small claims refers only to money owed under a lease contract. It does not necessarily refer to an ejectment suit.

At any rate, Section 33 of Batas Pambansa Bilang 129, as amended by Section 3 of R.A. 7691, as well as Section 1, Rule 70 of the Rules of Court, clearly provides that forcible entry and unlawful detainer cases fall within the exclusive jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts (*Estel vs. Recaredo Diego, SR. and Recaredo Diego, JR., GR No. 174082, January 16, 2012, Peralta J.*).

- 9.2. Commencement of small claims action; response
- 9.3. Prohibited pleadings and motions
- 9.4. Appearances

**Q (2013):** 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%)

**SUGGESTED ANSWER:**

A) Atty. Novata may provide legal assistance to his clients by giving counseling and guidance in the preparation and accomplishment of the necessary documents and Affidavits to initiate or defend a small claims action including the compilation and notarization of the aforementioned documents, if necessary.

- 9.5. Hearing; duty of the judge
- 9.6. Finality of judgment

**Q(2013):** 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%)

**SUGGESTED ANSWER:**

Atty. Novata may file a Petition for Certiorari under Rule 65 of the Rules of Court before the RTC since a decision in small claims cases is final and unappealable (Sec. 23, Am no. 8-8-7 SC, Rules of Procedure for Small Claims Cases). The petition for certiorari should be filed before the RTC conformably to the Principle of Judicial Hierarchy.

**10. Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC)**

- 10.1. Scope and applicability of the rule
- 10.2. Civil procedure
  - 10.2.1. Prohibition against temporary restraining order and preliminary injunction
  - 10.2.2. Pre-trial conference; consent decree
  - 10.2.3. Prohibited pleadings and motions
  - 10.2.4. Temporary Environmental Protection Order (TEPO)
  - 10.2.5. Judgment and execution; reliefs in a citizen's suit
  - 10.2.6. Permanent Environmental Protection Order; writ of continuing *mandamus*
  - 10.2.7. Strategic lawsuit against public participation
- 10.3. Special proceedings
  - 10.3.1. Writ of *Kalasan*
  - 10.3.2. Prohibited pleadings and motions
  - 10.3.3. Discovery measures
  - 10.3.4. Writ of continuing *mandamus*
- 10.4. Criminal procedure
  - 10.4.1. Who may file
  - 10.4.2. Institution of criminal and civil action
  - 10.4.3. Arrest without warrant, when valid
  - 10.2.4. Strategic lawsuit against public participation

**Q(2012):** The Director of the BFAR launches an intensified campaign against illegal fishpen operators situated in Laguna de Bay. The illegal fishpen operators file a Section 3 (e), R.A. 3019 (causing undue injury or benefit) case against the BFAR Director before the Sandiganbayan. The Director's best remedy before Sandiganbayan is:

- a) File a Motion to Quash based on lack of jurisdiction over the person.
- b) File a Motion to Quash for non-exhaustion of administrative remedies.
- c) File a Motion to Dismiss because the complaint is a SLAPP suit.
- d) Move for suspension of proceedings because of a pre-judicial question.

**SUGGESTED ANSWER:**

c) File a Motion to Dismiss because the complaint is a SLAPP suit.

The Director of the BFAR may file an answer interposing as a defense that the case is a Strategic lawsuit against public participation (SLAPP) and attach supporting documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit. The Director who is seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law are legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim. (*Rule 6, Sec. 2, A.M. No. 09-6-8-SC, Rules of Procedure for Environmental Cases*).

- 10.4.5. Procedure in the custody and disposition of seized items
- 10.4.6. Bail
- 10.4.7. Arraignment and plea
- 10.4.8. Pre-trial
- 10.4.9. Subsidiary liabilities
- 10.5. Evidence
- 10.6.
  - 10.5.1. Precautionary principle

**Q (2012):** What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (5%)

**SUGGESTED ANSWER:**

Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat. In its essence, the precautionary principle calls for the exercise of caution in the face of risk and uncertainty (*Sec. 4 [f], Rule 1, Part 1, and Rule 20, A.M. NO. 09-6-8-SC, Rules of Procedure for Environmental Cases*).

- 10.5.2. Documentary evidence

**11. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)**

- 11.1. Scope and where applicable
  - 11.2 Contents and Procedure
  - 11.3 Application to criminal actions
  - 11.4 Effect of non-compliance
- 11.5 Effect on other rules

**11.6 Efficient Use of Paper Rule (A.M. No. 11-9-4-SC)**