

# REMEDIAL LAW

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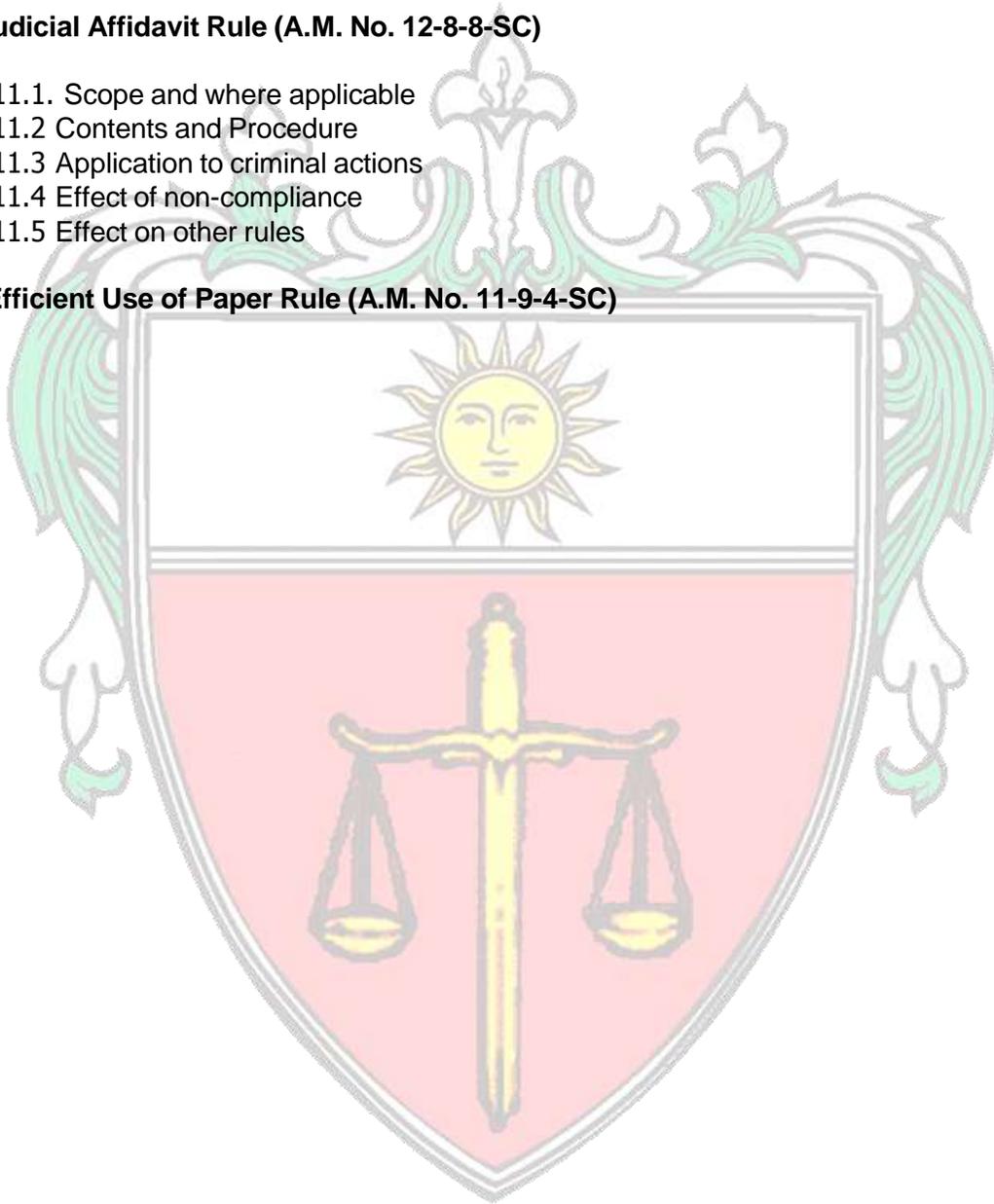
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- 11.1. Scope and where applicable
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## **12. Efficient Use of Paper Rule (A.M. No. 11-9-4-SC)**



## **I. General Principles**

### **A. Concept of remedial law**

X's action for sum of money against Y amounting to P80,000.00 accrued before the effectivity of the rule providing for shortened procedure in adjudicating claims that do not exceed P100,000.00. X filed his action after the rule took effect. Will the new rule apply to his case? (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) No since what applies is the rule in force at the time the cause of action accrued.
- (B) No, since new procedural rules cover only cases where the issues have already been joined.
- (C) Yes, since procedural rules have retroactive effect.
- (D) Yes, since procedural rules generally apply prospectively to pending cases.

### **B. Substantive law vis-à-vis remedial law**

### **C. Nature of Philippine courts**

#### **1. Principle of judicial hierarchy**

Give brief answers to the following (2017 BAR EXAMS):

(a) What is the doctrine of hierarchy of courts? (2%)

#### **SUGGESTED ANSWER**

(a) The doctrine of hierarchy of courts, as a rule, requires that recourse must be first made to the lower-ranked courts exercising concurrent jurisdiction with a higher court (Dio v. Subic Bay Marine Exploration, Inc., G.R. No. 189532, June 11, 2014).

Which of the following NOT TRUE regarding the doctrine of judicial hierarchy? (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

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

### **2. Doctrine of non-interference or doctrine of judicial stability**

A judicial compromise has the effect of \_\_\_\_\_ and is immediately executory and is not appealable. (2012 BAR EXAMS)

**SUGGESTED ANSWER**

1. Estoppel;
2. Conclusiveness of judgment;
3. Res Judicata;
4. Stare decisis.

What is the doctrine of judicial stability or non-interference? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Once jurisdiction has attached to a court, it cannot be deprived of it by subsequent happenings or events.
- (B) Courts will not hear and decide cases involving issues that come within the jurisdiction of administrative tribunals.
- (C) No court has the authority to interfere by injunction with the judgment of another court of coordinate jurisdiction.
- (D) A higher court will not entertain direct resort to it unless the redress sought cannot be obtained from the appropriate court

**II. Jurisdiction**

**A. Over the parties**

**1. How jurisdiction over the plaintiff is acquired**

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a Complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of P19,700.00. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York. Brigido filed a motion to dismiss the complaint on the following grounds:

[A] The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; xxx (2009 BAR EXAMS)

**SUGGESTED ANSWER**

The first ground raised lacks merit because jurisdiction over the person of a plaintiff is acquired by the court upon the filing of plaintiffs complaint therewith. Residency or citizenship is not a requirement for filing a complaint, because plaintiff thereby submits to the jurisdiction of the court.

**2. How jurisdiction over the defendant is acquired**

## **B. Over the subject matter**

### **1. Error of jurisdiction as distinguished from error of judgment**

### **2. How jurisdiction is conferred and determined**

### **3. Objections to jurisdiction over the subject matter**

### **4. Effect of estoppel on objections to jurisdiction**

Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan. (2009 BAR EXAMS)

(A) May the action prosper? Explain.

#### **SUGGESTED ANSWER**

NO, the action may not prosper, because under Rep. Act No. 7691, exclusive original jurisdiction in civil actions which involve title to, or possession of real property or any interest therein is determined on the basis of the assessed value of the land involved, whether it should be P20,000 in the rest of the Philippines, outside of the Manila with courts of the first level or with the-Regional Trial Court. The assessed value of the parcel of land in Pampanga is different from the assessed value of the land in Bulacan. What is involved is not merely a matter of venue, which is waivable, but of a matter of jurisdiction.

However, the action may prosper if jurisdiction is not in issue, because venue can be waived.

#### **ALTERNATIVE ANSWER**

YES, if the defendant would not file a motion to dismiss on ground of improper venue and the parties proceeded to trial.

(B) Will your answer be the same if the action was for foreclosure of the mortgage over the two parcels of land? Why or why not?

#### **SUGGESTED ANSWER**

NO, the answer would not be the same. The foreclosure action should be brought in the proper court of the province where the land or any part thereof is situated, either in Pampanga or in Bulacan. Only one foreclosure action need be filed unless each parcel of land is covered by distinct mortgage contract.

In foreclosure suit, the cause of action is for the violation of the terms and conditions of the mortgage contract; hence, one foreclosure suit per mortgage contract violated is necessary.

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X X X

The RTC does not have jurisdiction over the subject matter of the action involving real property with an assessed value of P19,700.00; exclusive and original jurisdiction is with the Municipal Trial Court where the defendant resides. (2009 Bar Question)

**SUGGESTED ANSWER**

The second ground raised is also without merit because the subject of the litigation, Rescission of Contract, is incapable of pecuniary estimation the exclusive original jurisdiction to which is vested by law in the Regional Trial Courts. The nature of the action renders the assessed value of the land involved irrelevant.

**C. Over the issues**

**D. Over the *res* or property in litigation**

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In foreclosure suit, the cause of action is for the violation of the terms and conditions of the mortgage contract; hence, one foreclosure suit per mortgage contract violated is necessary.

**E. Jurisdiction of courts**

**1. Supreme Court**

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

**SUGGESTED ANSWER**

- a. re-raffled to a division.
- b. original action shall be dismissed.
- c. The judgment appealed from shall be official.
- d. again deliberated upon.

**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. (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- e. three (3);
- f. five(S);
- g. eight (8);
- h. ten (10).

**2. Court of Appeals**

**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 Good feather 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 file an appeal before the Court of Appeals (CA). Robert White moved for dismissal of the appeal in 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. (2014 BAR EXAMS)

**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 v. 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.

**3. Sandiganbayan**

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? (2014 BAR EXAMS)**

**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 charge 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 indicated 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 indicated 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 v. Henry T. Go*, G.R. No. 168539, March 25, 2014).

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

**SUGGESTED ANSWER**

- 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.

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

**SUGGESTED ANSWER**

- e. cases involving public officers with salary grade 27 or higher.
- f. only in aid of its appellate jurisdiction.
- g. as a provisional remedy.
- h. cases involving "ill gotten wealth".

**The judgment in a criminal case may be promulgated by the following, except by: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**Q: TRUE or FALSE. In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of habeas corpus. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

FALSE. The Sandiganbayan may grant petitions for Habeas corpus only in aid of its appellate jurisdiction (RA 7975, as amended by RA 8249), not in the exercise of "original" jurisdiction.

**4. Regional Trial Courts**

**What trial court outside Metro Manila has exclusive original jurisdiction over the following cases? Explain briefly your answers. (2017 BAR EXAMS)**

**(a) An action filed on November 13, 2017 to recover the possession of an apartment unit being occupied by the defendant by mere tolerance of the plaintiff, after the**

**former ignored the last demand to vacate that was duly served upon and received by him on July 6, 2016. (2.5%)**

**SUGGESTED ANSWER**

It depends. The instant action is an accion publiciana considering that more than a year has lapsed from the date of last demand (Natalia Realty, Inc. v. CA, G.R. No. 126462, November 12, 2002; Penta Pacific Realty Corporation v. Ley Construction and Development Corporation, G.R. No. 161589, November 24, 2014). Thus, if the assessed value of the apartment unit does not exceed P20,000.00, the Municipal Trial Court has the exclusive original jurisdiction over the action (Penta Pacific Realty Corporation, supra; BP Big. 129, Sec. 33). On the other hand, if the assessed value of the apartment unit exceeds P20,000.00, the Regional Trial Court has the exclusive original jurisdiction over the action (Penta Pacific Realty Corporation, supra; BP Blg. 129, Sec. 19). The allegation of the assessed value of the apartment unit must be found in the complaint, otherwise the action should be dismissed for lack of jurisdiction because the trial court is not thereby afforded the means of determining from the allegations of the pleading whether jurisdiction over the subject matter of the action pertains to it or to another court (Penta Pacific Realty Corporation, supra).

**(b) A complaint in which the principal relief sought is the enforcement of a seller's contractual right to repurchase a lot with an assessed value of P15,000.00. (2.5%)**

**SUGGESTED ANSWER**

The Regional Trial Court has the jurisdiction over an action in which the principal relief sought is the enforcement of a seller's contractual right to repurchase a lot. Since said action is one for specific performance to enforce a contractual right, it is incapable of pecuniary estimation and therefore cognizable by the Regional Trial Court (Surviving Heirs of Bautista v. Linda, G.R. No. 208232, March 10, 2014; BP Big. 129, Sec. 19).

**Santa filed against Era in the RTC of Quezon City an action for specific performance praying for the delivery of a parcel of land subject of their contract of sale. Unknown to the parties, the case was inadvertently raffled to an RTC designated as a special commercial court. Later, the RTC rendered judgment adverse to Era, who, upon realizing that the trial court was not a regular RTC, approaches you and wants you to file a petition to have the judgment annulled for lack of jurisdiction.**

**What advice would you give to Era? Explain your answer. (4%) (2017 BAR EXAMS)**

**SUGGESTED ANSWER**

I will advise Era that a petition to have the judgment annulled for lack of jurisdiction has no basis. In Gonzales v. GJH Land, Inc. (G.R. No. 202664, November 10, 2015), the Supreme Court ruled that the fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the imprimatur of statutory law, i.e. Batas Pambansa Blg. 129. The designation of Special Commercial Court was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's exercise of jurisdiction.

This designation was not made by statute but only by an internal Supreme Court rule under its authority to promulgate rules governing matters of procedure.

### **ALTERNATIVE ANSWER**

I will advise Era that a petition for annulment of judgment is untenable. I will tell Era that the available post-judgment remedies could be any of the following depending upon the date of his receipt of the judgment: Motion for Reconsideration, Appeal, Petition for Relief from Judgment, or Certiorari.

The Regional Trial Court, despite its having been designated as a Special Commercial Court remains possessed of authority as a court of general jurisdiction to pass upon all kinds of cases, whether civil or criminal. The Constitution vests not only in the Supreme Court, but in all Regional Trial Courts, the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law (*Jesus C. Garcia v. The Hon. Ray Alan T. Dillon*, G.R. No. 179267, June 25, 2013). The designation of the court as a special commercial court is an internal arrangement for lower courts that could be allowed by the Supreme Court, with the Office of the Court Administrator as the implementing arm, with the purpose of giving priority to commercial cases on top of the trial court's regular cases.

### **State at least five (5) civil cases that fall under the exclusive original jurisdiction of the Regional Trial Courts (RTC's). (2016 BAR EXAMS)**

#### **SUGGESTED ANSWER**

The Regional Trial Courts *inter alia* shall exercise exclusive original jurisdiction in the following civil cases:

- (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
- (2) In all civil actions which involve the title to, or possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (P50,000), except actions or forcible entry and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;
- (3) In all actions in admiralty and maritime jurisdiction where the demand or claim exceeds three hundred thousand pesos (P300,000.00) or, in Metro Manila, where such demand or claim exceeds Four hundred thousand pesos (P400,000.00);
- (4) In all matters of probate, both testamentary and intestate, where the gross value of the estate exceeds Three hundred thousand pesos (P300,000.00), in probate matters in Metro Manila, where such gross value exceeds Four Hundred thousand pesos (400,000.00);
- (5) In all actions involving the contract of marriage and marital relations;
- (6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;

(7) In all civil actions and special proceedings falling within the exclusive original jurisdiction of a Juvenile and Domestic Relations Court and of the Court of Agrarian Relations as now provided by law; and

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (P300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the abovementioned items exceeds Four Hundred thousand pesos (P400,000.00) (Section 1, Section 19 of Batas Pambansa Blg.129, otherwise known as the (Judiciary Reorganization Act of 1980).

**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. (2014 BAR EXAMS)**

**a. Was the MTC correct in dismissing the complaint for lack of jurisdiction? Why or why not?**

**SUGGESTED ANSWER**

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 v. Cullen, G.R. No. 181416, November 11, 2013*). Relative thereto, the Municipal Trial Courts have exclusive original jurisdiction over cases of forcible entry and unlawful detainer (*Section 33, B.P. 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 (*Sec. 16, Rule 70*). Accordingly, the inferior courts have jurisdiction to resolve questions of ownership whenever it is necessary to decide the question of possession in an ejectment case. (*Serreno v. 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**

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 MTC are generally appealable to the RTC irrespective of the amounts involved (Sec. 22, B.P. 129)

**On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of Century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading. B Lines filed a Motion to Dismiss upon the ground that the Regional Trial Court has exclusive original jurisdiction over "all actions in admiralty and maritime" claims. In his Reply, A contended that while the action is indeed "admiralty and maritime" in nature, it is the amount of the claim, not the nature of the action, that governs jurisdiction. Pass on the Motion to Dismiss. (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The Motion to Dismiss is without merit and therefore should be denied. Courts of the first level have jurisdiction over civil actions where the demand is for sum of money not exceeding P300, 000.00 or in Metro-Manila, P400, 000.00, exclusive of Interest, damages, attorney's fees, litigation expenses and, costs: this jurisdiction includes admiralty and marine cases. And where the main cause of action is the claim for damages, the Amount thereof shall be considered in determining the jurisdiction of the court (Adm. Circular No. 09-94, June 14, 1994).

**Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for accion publiciana.**

**Anabel appealed the dismissal to the RTC which affirmed it and accordingly dismissed her appeal. She elevates the case to the Court of Appeals, which remands**

**The case to the RTC, Is the appellate court correct? Explain. (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

Yes, the Court of Appeals is correct in remanding the case to RTC for the latter to try the same on the merits. The RTC, having jurisdiction over the subject matter of the case appealed from MTC should try the case on the merits as if the case was originally med with it, and not just to affirm the dismissal of the case.

Rep. Act No.7691, however, vested jurisdiction over specified accion publiciana with courts of the first level (Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts) in cases where the assessed value of the real property involved does not exceed P20, 000.00 outside Metro Manila, or in Metro Manila, where such value does not exceed P50, 000.00.

**TRUE or FALSE. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

FALSE. The trial court has lost jurisdiction after perfection of the appeal and so it can no longer entertain a motion for reconsideration.

**ALTERNATIVE ANSWER:**

FALSE, because the appeal may be perfected as to one party but not yet perfected as to the other party who may still file a motion for reconsideration without abandonment of his right of appeal even though the appeal of the case is perfected already as to the other party.

## **5. Family Courts**

Juliet invoking the provisions of the Rule on Violence Against Women and their Children filed with the RTC designated as a Family Court a petition for issuance of a Temporary Protection Order (TPO) against her husband, Romeo. The Family Court issued a 30-day TPO against Romeo. A day before the expiration of the TPO, Juliet filed a motion for extension. Romeo in his opposition raised, among others, the constitutionality of R.A. No. 9262 (The VAWC Law) arguing that the law authorizing the issuance of a TPO violates the equal protection and due process clauses of the 1987 Constitution. The Family Court judge, in granting the motion for extension of the TPO, declined to rule on the constitutionality of R.A. No. 9262. The Family Court judge reasoned that Family Courts are without jurisdiction to pass upon constitutional issues, being a special court of limited jurisdiction and R.A. No. 8369, the law creating the Family Courts, does not provide for such jurisdiction. Is the Family Court judge correct when he declined to resolve the constitutionality of R.A. No. 9262? (2015 BAR EXAMS)

**SUGGESTED ANSWER**

NO, the Family Court Judge is not correct when it declined to resolve the constitutionality of R.A. No. 9262.

In *Garcia v. Hon. Rey Allan Drilon, G.R. No. 179267, June 25, 2013*, the Supreme Court held that the "Family Courts have authority and jurisdiction to resolve the constitutionality of a statute. In spite of its designation as a family court, the RTC remains to possess the authority as a court of general original jurisdiction to pass upon all kinds of cases whether civil, criminal, special proceedings, land registration, guardianship, naturalization, admiralty or insolvency. This authority is embraced in the general definition of judicial power to determine the valid and binding laws in conformity with the fundamental law."

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: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- a. the MTC;
- b. the RTC;
- c. Special Drugs Court;
- d. Family Court.

**6. Metropolitan Trial Courts/Municipal Trial Courts**

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

**SUGGESTED ANSWER**

- 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

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

Pedro and Juan are resident of Barangay Ifurug, Municipality of Dupaci Mountain Province. Pedro owes Juan the amount of P50,000.00. Due to non-payment. Juan brought his complaint to the Council of Elders of said barangay which implements the *bodong* justice system. Both appeared before the council where they verbally agreed that Pedro will pay in installments on specific due dates. Pedro reneged on his promise. Juan filed a complaint for sum of money before the Municipal Trial Court (MTC). Pedro filed a Motion to Dismiss on the ground that the case did not pass through the barangay conciliation under R.A. No. 7160 and that the RTC, not the MTC, has jurisdiction. In his opposition, Juan argued that the intervention of the Council of Elders is substantial compliance with the requirement of R.A. No. 7160 and the claim of P50,000.00 is clearly within the jurisdiction of the MTC. As MTC judge, rule on the motion and explain. (2016 BAR EXAMS)

**SUGGESTED ANSWER**

The Motion to Dismiss should be denied. As a general rule, no complaint involving any matter within the authority of the Lupon shall be instituted or filed directly in court for adjudication unless there has been a confrontation between the parties in the barangay and no settlement was reached section 412(a) of Republic Act No. 7160; *April Wolf, G. Martinez*, G.R. No.162084, June 28, 2005). However, in barangays where majority of the inhabitants are members of indigenous cultural communities, local systems of settling

disputes through their councils of datos or elders shall be recognized without prejudice to the applicable provisions of the Local Government Code (Sections 399, R.A. 7160). As a consequence, the customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities Sections 412, R.A. 7160), thus, the confrontation *between* Pedro and Juan before the Council of Elders of their barangay is sufficient compliance with the precondition for filing the case in court under Section 412 of R.A. No. 7160 (*Zamora y Heirs of Izquierdo*, G.R. No.146195, November 18, 2004). Be that as it may, it is well-settled that the mode of enforcement of an amicable settlement under the Katarungan Pambarangay Law does not rule out the right of rescission under Art. 2041 of the Civil Code (*Crisanta Miguel v. Montanez*, G.R. No.191336, January 25, 2014). Accordingly, Juan filed a complaint for sum Of money in the MTC, he is deemed to have rescinded the compromise agreement reached before the Council of Elders of the barangay. Henceforth. Pedro is incorrect in alleging that the RTC, not the MTC has jurisdiction over Juan's claim. Considering that the claim is only for P50,000.00, the case is within the exclusive jurisdiction of the MTC under B.P. Blg. 129 and may proceed pursuant to AM. No. 08-8-7-SC or the "Rules of Procedure for Small Claims Cases." Notably, a motion to dismiss is among the prohibited pleadings under Section 14(a) of said rules. Similarly, Juan's claim of P50,000.00 may be governed by the 1991 Rules on Summary Procedure which clearly falls within the jurisdiction of the MTC, ergo, the motion to dismiss based on lack of jurisdiction over the subject matter should be denied (Section 19(a)1 1991 Rules on Summary Procedure).

**A Small Claims Court \_\_\_\_\_ . (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (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

**The Rule on Small Claims is applicable to: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- a. claims for unpaid rentals of ₱ 100,000 or less, with prayer for ejectment.
- b. enforcement of a barangay amicable settlement involving a money claim of ₱ 50,000 after one (1) year from date of settlement.
- c. action for damages arising from a quasi-delict amounting to ₱ 100,000.
- d. action to collect on a promissory note amounting to ₱ 105,000 where plaintiff expressly insists in recovering only ₱ 1 00,000.

**X and Y, both residents of Bgy. II, Sampaloc, Manila entered into a ₱ 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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**Mariano, through his attorney-in-fact, Marcos, filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply with the mandatory barangay conciliation. Resolve the motion with reasons. (3%) (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

The motion to dismiss should be denied because the parties in interest, Mariano and Henry, do not reside in the same city/municipality, or is the property subject of the controversy situated therein. The required conciliation/mediation before the proper Barangay as mandated by the Local Government Code governs only when the parties to the dispute reside in the same city or municipality, and if involving real property, as in this case, the property must be situated also in the same city or municipality.

**G. Totality Rule**

**Lender extended to Borrower a P100,000.00 loan covered by a promissory note. Later, Borrower obtained another P100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a P300,000.00 loan secured by a real estate mortgage on his land valued at P500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the P500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for P500,000.00. Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2015 BAR EXAMS)**

**SUGGESTED ANSWER**

YES. The Lender correctly applied the totality rule and the rule on joinder of causes of action because where the claims in all the causes of action are principally for recovery of sum of money, the aggregate amount of the claim shall be the test of jurisdiction (*Section 5(d), Rule 2*).

Here, the total amount of the claim is P500,000.00. Hence, the Regional Trial Court (RTC) of Manila has jurisdiction over the suit. At any rate, it is immaterial that one of the loans is secured by a real estate mortgage because the Lender opted to file a collection of sum of money instead of foreclosure of the said mortgage.

At the trial, Borrower's lawyer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only P300,000.00 was the amount due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings. Should the court dismiss the case? (2015 BAR EXAMS)

**SUGGESTED ANSWER**

NO. The court should not dismiss the case. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted (*Navida v. Hon. Teodoro A. Dizon, Jr., G.R. No. 125078, May 30, 2011*).

Accordingly, even if the defendant is able to prove in the course of the trial that a lesser amount is due, the court does not lose jurisdiction and a dismissal of the case is not in order (*Paadlan v. Dinglasan, G.R. No. 180321, March 20, 2013*).

**III. Civil Procedure**

**A. Actions**

**1. Meaning of ordinary civil actions**

**2. Meaning of special civil actions**

**3. Civil actions versus special proceedings**

**4. Personal actions and real actions**

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

**SUGGESTED ANSWER**

- e. fair market value of the property.
- f. assessed value of the property.
- g. BIR zonal value of the property.
- h. fair market value of the property and amount of damages claimed.

**ALTERNATIVE ANSWER:**

- f. assessed value of the property

**5. Local and transitory actions**

**6. Actions *in rem*, *in personam* and *quasi in rem***

TRUE or FALSE. A suit for injunction is an action in rem. (2009 BAR EXAMS)

### **SUGGESTED ANSWER**

FALSE .A suit for injunction is an action in personam. In the early case of Auyong Hian v. Court of Tax Appeals (59 SCRA 110 [1974], it was held that a restraining order, like an injunction, operates upon a person. It is granted in the exercise of equity jurisdiction and has no in rem effect to invalidate an act done in contempt of an order of the court except where by statutory authorization, the decree is so framed as to act in rem on property. (Air Materiel Wing Savings and Loan Association, Inc. v. Manay, 535 SCRA356 [2007]).

### **B. Cause of action**

#### **1. Meaning of cause of action**

**A bought a Volvo Sedan from ABC Cars for P 5.0M. 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. (2012 BAR EXAMS)**

### **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, NCC). Under Article 1170 of the 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.

#### **2. Right of action versus cause of action**

#### **3. Failure to state a cause of action**

#### **4. Test of the sufficiency of a cause of action**

#### **5. Splitting a single cause of action and its effects**

Elise obtained a loan of P3 Million from Merchant Bank. Aside from executing a promissory note in favor of Merchant Bank, she executed a deed of real estate mortgage over her house and lot as security for her obligation. The loan fell due but remained unpaid; hence, Merchant Bank filed an action against Elise to foreclose the real estate mortgage. A month after, and while the foreclosure suit was pending, Merchant Bank also filed an action to recover the principal sum of P3 Million against Elise based on the same promissory note previously executed by the latter.

In opposing the motion of Elise to dismiss the second action on the ground of splitting of a single cause of action, Merchant Bank argued that the ground relied upon by Elise was devoid of any legal basis considering that the two actions were

based on separate contracts, namely, the contract of loan evidenced by the promissory note, and the deed of real estate mortgage. Is there a splitting of a single cause of action? Explain your answer. (4%) (2017 BAR EXAMS)

**SUGGESTED ANSWER**

Yes, there is splitting of a cause of action. A creditor cannot file a civil action against the debtor for collection of the debt and subsequently file an action to foreclose the mortgage. This is an example of splitting of a single cause of action, a practice that is vexatious and oppressive (*Danao v. Court of Appeals*, G.R. No. L-48276, June 6, 2001).

**6. Joinder and mis-joinder of causes of action**

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

**SUGGESTED ANSWER**

- 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".

A sued B in the RTC of Quezon City, joining two causes of action: for partition of real property and breach of contract with damages. Both parties reside in Quezon City but the real property is in Manila. May the case be dismissed for improper venue? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Yes, since causes of action pertaining to different venues may not be joined in one action.
- (B) No, since causes of action pertaining to different venues may be joined in the RTC if one of the causes of action falls within its jurisdiction.
- (C) Yes, because special civil action may not be joined with an ordinary civil action.
- (D) No, since plaintiff may unqualifiedly join in one complaint as many causes of action as he has against opposing party.

**C. Parties to civil actions**

**1. Real parties-in-interest; indispensable parties; representatives as parties; necessary parties; indigent parties; alternative defendants**

Spouses Marlon and Edith have three (3) children ages, 15, 12 and 7, who are studying at public schools. They have combined gross monthly income of P30,000.00 and they stay in an apartment in Manila with a monthly rent of P5,000.00. The monthly minimum wage per employee in Metro Manila does not exceed P13,000.00. They do not own any real property. The spouses want to collect a loan

of P25,000.00 from Jojo but do not have the money to pay the filing fees. (2016 BAR EXAMS)

**(A) Would the spouses qualify as indigent litigants under Section 19, Rule 141 on Legal Fees?**

**SUGGESTED ANSWER**

No. Spouses Marlon and Edith would not qualify as indigent litigants. Under Section 19 of Rule 141, Indigent litigants include those (a) whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee; and (b) who do not own real property with a fair market value as stated in the current tax declaration of more than three hundred thousand (P300,000.00) pesos, shall be exempt from payment of legal fees (Section 19 of Rule 141, Administrative Matter No. 04-2-04-SC, August 16, 2004; *Alguro v. Local Government Unit of the City of Naga*, G.R. No. 50135, October 30, 2006). Here, the spouses combined gross monthly income of P30,000.00 exceeds the limit provided by Section 19, Rule 141; accordingly, the spouses do not qualify as indigent litigants.

**B) If the spouses do not qualify under Rule 141, what other remedy can they avail of under the rules to exempt them from paying the filing fees? (2.5)**

**SUGGESTED ANSWER**

The Spouses can avail The following remedies under the rules in order to be exempted from the payment of the filing fees:

1. If the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of the application is mandatory. On the other hand, when the application does not satisfy one or both requirements then the application should not be denied outright; instead, the court should apply the "indigency test" under Section 21 of Rule 3 and use its sound discretion in determining the merits of the prayer for exemption (*Algura v. Local Government Unit of the City of Naga*, G.R. No.150135, October30, 2006). Hence, the spouses may be authorized to litigate as indigents if the court, upon an ex parte application and hearing, is satisfied that they do , not have money or property sufficient and available for food, shelter, and basic necessities for themselves and their family (Rule 3, Sec. 21 Rules of Court; *Re: Query of Mr. Roger Prioreshi*, A.M. No. 09-6-9-SC August 19, 2009).
2. The Spouses can also file a motion to sue as indigent under the Rules of Procedure on Small Claims. The Motion shall be referred to the Executive Judge for immediate action in case of multi-sala courts. If the motion is granted by the Executive Judge, the case shall be raffled off or assigned to the court designated to hear small claims cases. If the motion is denied, the plaintiff shall be given five (5) days within, which to pay the docket fees, otherwise, the case shall be dismissed without prejudice. In no case shall a party, even if declared an indigent, be exempt from the payment of the P1,000.00 fee for service of summons and processes (Section 10, A.M. No. 08-8-7-SC, 2016 Rules of Procedure for Small Claims Cases).
3. The spouses may. also claim exemption from payment of legal fees by seeking the help of the Integrated Bar of the Philippines pursuant to AM. No. 08-11-7-SC (*IRR*), Rule

on the *Exemption From the Payment of Legal Fees of the Clients of the Notional Committee on Legal Aid of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines*

**Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annotated in the TCT, was not impleaded as defendant. (2015 BAR EXAMS)**

**a. Should the complaint be dismissed?**

**SUGGESTED ANSWER**

NO. The complaint should not be dismissed because the mere non-joinder of an indispensable party is not a ground for the dismissal of the action (*Sec. 11, Rule 3; Republic v. Hon. Mangotara, G.R. No. 170375, July 7, 2010*).

**b. If the case should proceed to trial without Grieg being impleaded as a party to the case, what is his remedy to protect his interest?**

**SUGGESTED ANSWER**

If the case should proceed to trial without Grieg being impleaded as a party, he may intervene in the action (*Sec. 1, Rule 19*). He may also file a petition for annulment of judgment under Rule 47 of the Rules of Court.

In *Metrobank v. Hon. Floro Alejo, G.R. No. 141970, September 10, 2001*, the Supreme Court held that in a suit to nullify an existing Torrens Certificate of Title (TCT) in which a real estate mortgage is annotated, the mortgagee is an indispensable party. In such suit, a decision cancelling the TCT and the mortgage annotation is subject to a petition for annulment of judgment, because the non-joinder of a mortgagee deprived the court of jurisdiction to pass upon the controversy.

**Allan was riding a passenger jeepney driven by Ben that collided with a car driven by Cesar, causing Allan injury. Not knowing who was at fault, what is the best that Allan can do? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) File a tort action against Cesar.
- (B) Await a judicial finding regarding who was at fault.
- (C) Sue Ben for breach of contract of carriage.
- (D) Sue both Ben and Cesar as alternative defendants.

**In which of the following cases is the plaintiff the real party in interest? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) A creditor of one of the co-owners of a parcel of land, suing for partition
- (B) An agent acting in his own name suing for the benefit of a disclosed principal
- (C) Assignee of the lessor in an action for unlawful detainer

(D) An administrator suing for damages arising from the death of the decedent

## **2. Compulsory and Permissive Joinder of parties**

### **3. Misjoinder and Non-joinder of parties**

Hanna, a resident of Manila, filed a complaint for the partition of a large tract of land located in Oriental Mindoro. She impleaded her two brothers John and Adrian as defendants but did not implead Leica and Agatha, her two sisters who were permanent residents of Australia.

Arguing that there could be no final determination of the case without impleading all indispensable parties, John and Adrian moved to dismiss the complaint.

Does the trial court have a reason to deny the motion? Explain your answer. (4%) (2017 BAR EXAMS)

#### **SUGGESTED ANSWER:**

Yes, the trial court has reason to deny the motion. Section 11, Rule 3 Rules of Court, states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The petitioner can still amend his initiatory pleading in order to implead Leica and Agatha, for under the same rule, such amendment to implead an indispensable party may be made on motion of any party or on the trial court's own Initiative at any stage of the action and on such terms as are just (Ablaza v. Republic, G.R. No. 158298, August 11, 2010).

Unexplained or unjustified non-joinder in the Complaint of a necessary party despite court order results in (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) the dismissal of the Complaint.
- (B) suspension of proceedings.
- (C) contempt of court.
- (D) waiver of plaintiff's right against the unpleaded necessary party.

Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Hernando and Inocencio, the other co-owners of the property. As judge, will you grant the motion to dismiss? Explain. (2009 BAR EXAMS)

#### **SUGGESTED ANSWER**

NO, because the non-joinder of parties is not a ground for dismissal of action (Rule 3, Sec 11). The motion to dismiss should be denied.

## **4. Class suit**

## 5. Effect of death of party-litigant

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. (2014 BAR EXAMS)

- a. Can Kin II 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 II 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 v. Court of Appeals, G.R. No. 165777, July 25, 2011*).

- 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 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 (*Sec. 20, Rule 3*). 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 v. Fe Vda. De Te, G.R. No. 175910, July 30, 2009*).

A sued B for ejectment. Pending trial, B died, survived by his son, C. No substitution of party defendant was made. Upon finality of the judgment against B, may the same be enforced against C? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

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

## **D. Venue**

**Eduardo, a resident of the City of Manila, filed before the Regional Trial Court (RTC) of Manila a complaint for the annulment of a Deed of Real Estate Mortgage he signed in favor of Galaxy Bank (Galaxy), and the consequent foreclosure and auction sale on his mortgaged Makati property. Galaxy filed a Motion to Dismiss on the ground of improper venue alleging that the complaint should be filed with the RTC of Makati since the complaint involves the ownership and possession of Eduardo's lot. Resolve the motion with reasons. (2016 BAR EXAMS)**

### **SUGGESTED ANSWER**

The Motion to dismiss should be granted. An action for nullification of the mortgage documents and foreclosure of the mortgaged property is a real action that affects the title to the property; thus, venue of the real action is before the court having jurisdiction over the territory in which the property lies (*Jimmy T. Go v. United Coconut Planters Bank*, GR. No. 156187, November 11, 2004; *Chua v. Total Office Products & Services*, G.R. No. 152808, September 30, 2005).

In *Fortune Motors v. Court of Appeals* (ER. No. 112191, February 7, 1997), The Supreme Court also held that an action to annul a foreclosure sale of a real estate mortgage is no different from an action to annul a private sale of real property. While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action (*Paglaum Management & Development Corporation v. Union Bank of the Philippines*, G.R. No. 179018, June 18, 2012).

Being a real action, it shall be commenced and tried in the proper court which has jurisdiction over the area where the real property involved, or a portion thereof, is situated (Section 1, Rule 4, Rules of Court). The complaint should be filed in the RTC of Makati where the mortgaged property is situated.

### **ALTERNATIVE ANSWER**

The motion to dismiss should be denied. An action for the annulment of a real estate mortgage is a personal action which may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides or may be found, at the election of plaintiff (Sec. 2, Rule 4, Rules of Court; *Chua v. Total Office Products & Services*, G.R. No. 152808, September 30, 2005; *Orbeto v. Orbeto*, G.R. No. 166837, November 27, 2006). Since the plaintiff resides in Manila the complaint was properly filed in RTC of Manila

A law was passed declaring Mt. Karbungko as a protected area since it was a major watershed. The protected area covered a portion located in Municipality A of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course. Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediately, Maingat and STK filed a petition for the issuance of a writ of continuing *mandamus* against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutiny of the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction. (2015 BAR EXAMS)

a. Was the court correct in *motu proprio* dismissing the petition?

**SUGGESTED ANSWER**

NO. The court was not correct in *motu proprio* dismissing the petition. While it appears that the alleged actionable neglect or omission took place in the City of Z of Province II and, therefore cognizable by the RTC of Province II, nonetheless, venue is not jurisdictional, and it can be waived in a special civil action for continuing *mandamus* (*Dolot v. Hon. Paje, G.R. No. 199199, August 27, 2013*).

Besides, under Section 1, Rule 9 of the Rules of Court, defenses and objections not pleaded in the answer or in the motion to dismiss are deemed waived. Hence, the court cannot *motu proprio* dismiss the case on the ground of improper venue.

Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations. Should the court dismiss the petition?

**SUGGESTED ANSWER**

YES, the court should dismiss the petition because the proper procedure to question defect in an ECC is to follow the DENR administrative appeal process in accordance with the doctrine of exhaustion of administrative remedies (*Dolot v. Hon. Paje, G.R. No. 199199, August 27, 2013; Paje v. Casiño, G.R. No. 207257, February 3, 2015*).

**1. Venue versus jurisdiction**

**2. Venue of real actions**

### 3. Venue of personal actions

Gary who lived in Taguig borrowed P1 million from Rey who lived in Makati under a contract of loan that fixed Makati as the venue of any action arising from the contract. Gary had already paid the loan but Rey kept on sending him letters of demand for some balance. Where is the venue of the action for harassment that Gary wants to file against Rey? (2011 BAR EXAMS)

#### SUGGESTED ANSWER

- (A) In Makati since the intent of the party is to make it the venue of any action between them whether based on the contract or not.
- (B) In Taguig or Makati at the option of Gary since it is a personal injury action.
- (C) In Taguig since Rey received the letters of demand there.
- (D) In Makati since it is the venue fixed in their contract.

### 4. Venue of actions against non-residents

### 5. When the rules on venue do not apply

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: (2012 BAR EXAMS)

#### SUGGESTED ANSWER

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

Which of the following stipulations in a contract will supersede the venue for actions that the rules of civil procedure fix? (2011 BAR EXAMS)

#### SUGGESTED ANSWER

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

### 6. Effects of stipulation on venue

After working for 25 years in the Middle East, Evan returned to the Philippines to retire in Manila, the place of his birth and childhood. Ten years before his retirement, he bought for cash in his name a house and lot in Malate, Manila. Six months after his return, he learned that his house and lot were the subject of foreclosure proceedings commenced by ABC Bank on the basis of a promissory note and a deed of real estate mortgage he had allegedly executed in favor of ABC Bank five years earlier.

Knowing that he was not in the country at the time the promissory note and deed of mortgage were supposedly executed, Evan forthwith initiated a complaint in the RTC of Manila praying that the subject documents be declared null and void.

ABC Bank filed a motion to dismiss Evan's complaint on the ground of improper venue on the basis of a stipulation in both documents designating Quezon City as the exclusive venue in the event of litigation between the parties arising out of the loan and mortgage.

Should the motion to dismiss of ABC Bank be granted? Explain your answer. (5%)  
(2017 BAR EXAMS)

**SUGGESTED ANSWER**

No. ABC Bank's motion to dismiss should be denied. In *Briones v. Court of Appeals* (GR. No. 204444, January 14, 2015), the Supreme Court ruled that a complaint directly assailing the validity of the written instrument itself should not be bound by the exclusive venue stipulation contained therein and should be filed in accordance with the general rules on venue. The Supreme Court ruled that it would be inherently inconsistent for a complaint of this nature to recognize the exclusive venue stipulation when it, in fact, precisely assails the validity of the instrument in which such stipulation is contained.

In this case, Evan's complaint directly assails the validity of the promissory note and deed of mortgage, which contains said venue stipulation; hence, said venue stipulation is not binding on him. Evan correctly filed his complaint with the Manila RTC pursuant to Rule 4 of the Rules of Court.

**E. Pleadings**

**1. Kinds of pleadings**

**a. Complaint**

**b. Answer (Negative defenses, Negative pregnant, Affirmative defenses)**

**c. Counterclaims (Compulsory counterclaim, Permissive counterclaim, Effect on the counterclaim when the complaint is dismissed)**

**Compulsory counterclaim**

Abraham filed a complaint for damages in the amount of P750,000.00 against Salvador in the RTC in Quezon City for the latter's alleged breach of their contract of services. Salvador promptly filed his answer, and included a counterclaim for P250,000.00 arising from the allegedly baseless and malicious claims of Abraham that compelled him to litigate and to engage the services of counsel, and thus caused him to suffer mental anguish.

Noting that the amount of the counterclaim was below the exclusive original jurisdiction of the RTC, Abraham filed a motion to dismiss vis-a-vis the counterclaim on that ground.

**Should the counterclaim of Salvador be dismissed? Explain your answer. (4%) (2017 BAR EXAMS)**

**SUGGESTED ANSWER**

No, Salvador's counterclaim is compulsory in nature, and thus should not be dismissed. Section 7, Rule 6 of the Rules of Court defines a compulsory counterclaim as any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint (*Rungcayao v. Fort Ilocandia*, G.R. No. 170483, April 19, 2010). A counterclaim is compulsory where:

1. It arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim;
2. It does not require the presence of third parties of whom the court cannot acquire jurisdiction, and;
3. The trial court has jurisdiction to entertain the claim (*Spouses Arenas v. CA*, G.R. No 126640, November 23, 2000).

Regarding the trial court's jurisdiction, Section 7, Rule 6 of the Rules of Court explicitly states that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. In relation thereto, the Supreme Court held in *Alday v. FGU Insurance Corp.* (G.R, No. 138822, January 23, 2001), that claims for damages, allegedly suffered as a result of plaintiff's filing of a complaint, are compulsory. In this case, the court's jurisdiction over Salvador's counterclaim, despite being below the jurisdictional amount is evident from the following: Salvador's claims for litigation expenses arise out of Abraham's complaint for damages; Salvador's claims do not require the presence of third parties; and being compulsory in nature, the trial court may exercise jurisdiction over said claim.

**Permissive counterclaim**

Defendant Dante said in his answer: "1. Plaintiff Perla claims that defendant Dante owes her P4,000 on the mobile phone that she sold him; 2. But Perla owes Dante

P6,000 for the dent on his car that she borrowed." How should the court treat the second statement? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) A cross claim
- (B) A compulsory counterclaim
- (C) A third party complaint
- (D) A permissive counterclaim

**d. Cross-claims**

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

Leave of court is always necessary in: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**f. Complaint-in-intervention**

**g. Reply**

**2. Pleadings allowed in small claim cases and cases covered by the Rules on Summary Procedure**

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. (2013 BAR EXAMS)

- a) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases?

**SUGGESTED ANSWER**

Atty. Novato may only give counseling and assist claimants in accomplishing the Statement of Claims and the Affidavits necessary to initiate a small claims action. He can also notarize the aforementioned documents since the statement of Claims and Response are required to be verified (Sec. 7, Rules of Procedure for Small Claims, A.M. No. 8-8-7 SC).

**b) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (2013 BAR)**

**SUGGESTED ANSWER**

Atty. Novato may file a Petition for Certiorari before the RTC since a decision in small claims cases is final and unappealable (Sec. 23, A.M. No. 8-8-7 SC). The petition for certiorari should be filed before the RTC conformably to the Principle of Judicial Hierarchy.

**Which of the following precepts forms part of the rules governing small claims? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) Permissive counterclaim is not allowed.
- (B) The court shall render its decision within 3 days after hearing.
- (C) Joinder of separate claims is not allowed.
- (D) Motion to declare defendant in default is allowed.

**3. Parts of a pleading**

**a. Caption**

**b. Signature and address**

**c. Verification and certification against forum shopping**

Tailors Toto, Nelson and Yenyen filed a special civil action for certiorari under Rule 65 from an adverse decision of the National Labor Relations Commission (NLRC) on the complaint for illegal dismissal against Empire Textile Corporation. They were terminated on the ground that they failed to meet the prescribed production quota at least four (4) times. The NLRC decision was assailed in a special civil action under Rule 65 before the Court of Appeals (CA). In the verification and certification against forum shopping, only Toto signed the verification and certification, while Atty. Arman signed for Nelson. Empire filed a motion to dismiss on the ground of defective verification and certification. Decide with reasons. (2016 BAR EXAMS)

**SUGGESTED ANSWER:**

The motion to dismiss on the ground of defective verification should be denied. The Supreme Court has held that a lawyer may verify a pleading in behalf of the client. Moreover a verification is merely a formal and not a jurisdictional requirement. The court should not dismiss the case but merely require the party concerned to rectify the defect.

The motion to dismiss on the ground of defective certification against forum-shopping should likewise be denied. Under reasonable or justifiable circumstances, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or

defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. (*Jacinto v. Gumaru*, 2 June 2014).

In this case, the petitioners have a common interest and invoke a common cause of action, that is, their illegal dismissal by Empire Textile Corporation for failure to meet production quotas.

**Mr. Humpty file 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. (2014 BAR EXAMS)**

**SUGGESTED ANSWER**

NO. There is no violation 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 v. Manuel Lacson*, G.R. No. 141508, May 5, 2010). In *Philippines Nails and Wires Corporation v. 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 v. Manuel Lacson*, G.R. No. 141508, May 5, 2010).

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

**SUGGESTED ANSWER**

- a. petitions for probate of will.
- b. application for search warrant.
- c. complaint-in-intervention.
- d. petition for Writ of Kalikasan.

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

**SUGGESTED ANSWER**

- 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.

**A complaint without the required "verification" (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) shall be treated as unsigned.
- (B) lacks a jurisdictional requirement.
- (C) is a sham pleading.
- (D) is considered not filed and should be expunged.

**Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a Complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of P19,700.00. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York. Brigido filed a motion to dismiss the complaint on the following grounds:**

**x x x**

**The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document. Rule on the foregoing grounds with reasons. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

The third ground raised questioning the validity of the verification and certification of non-forum shopping for lack of certification from the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document, is likewise without merit. The required certification alluded to, pertains to official acts, or records of official bodies, tribunals, and public officers, whether of the Philippines or of a foreign country: the requirement in Sec. 24, Rule 132 of the 1997 Rules refers only to paragraph (a) of Sec. 29 which does not cover notarial documents. It is enough that the notary public who notarized the verification and certification of non-forum shopping is clothed with authority to administer oath in that State or foreign country.

**d. Effect of the signature of counsel in a pleading**

The signature of counsel in the pleading constitutes a certification that \_\_\_\_\_ . (2013 BAR EXAMS)

**SUGGESTED ANSWER**

- (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.

**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**

On the basis of an alleged promissory note executed by Harold in favor of Ramon, the latter filed a complaint for P950,000.00 against the former in the RTC of Davao City. In an unverified answer, Harold specifically denied the genuineness of the promissory note. During the trial, Harold sought to offer the testimonies of the following: (1) the testimony of an NBI handwriting expert to prove the forgery of his signature; and (2) the testimony of a credible witness to prove that if ever Harold had executed the note in favor of Ramon, the same was not supported by a consideration.

**May Ramon validly object to the proposed testimonies? Give a brief explanation of your answer. (5%) (2017 BAR EXAMS)**

**SUGGESTED ANSWER:**

Ramon may validly object to the proposed testimony of the NBI handwriting expert. The alleged promissory note attached to Ramon's complaint is an actionable document since it is a written instrument upon which an action or defense is grounded (*Asian Construction and Development Corporation v. Mendoza*, G.R. No. 176949, June 27, 2012). Accordingly, Harold's failure to specifically deny under oath the genuineness of said actionable document amounts to an implied admission of its genuineness and due

execution under Rule 8, Section 8 of the Rules of Court. Harold cannot thus raise the defense of forgery by presenting the testimony of a handwriting expert. Well-settled is the rule that the trial court may reject evidence that a party adduces to contradict a judicial admission he previously made since such admission is conclusive as to him (*Equitable Card Network Inc., v. Capistrano*, G.R. No. 180157, February 8, 2012).

However, Ramon may not validly object to the testimony of a credible witness to prove that the promissory note was not supported by a consideration. The admission of the genuineness and due execution of a document does not bar the defense of want of a consideration (*Hibberd v. Rohde and McMillan*, G.R. No. L-8414, December 9, 1915).

**On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of Century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.**

X X X

**B. The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to P10, 000. At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10, 000 binds A. A countered that this was no longer in issue 11.S B Lines had jailed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (2010 BAR EXAMS)**

### **SUGGESTED ANSWER**

The Contention of B is correct: A's contention is wrong. It was A who pleaded the Bill of Lading as an actionable document where the stipulation limits B's liability to A to P10, 000.00 only. The issue raised by B does not go against or impugn the genuineness and due execution of the Bill of Lading as an actionable document pleaded by A, but invokes the binding effect of said stipulation. The oath is not required of B, because the issue raised by the latter does not impugn the genuineness and due execution of the Bill of Lading.

**Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1-million, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5-million. At the pretrial, Modesto marked and identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of P0.5-million, which Ernesto did not dispute. After pre-trial, Modesto filed a motion for judgment on the**

**pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

Modesto's motion for judgment on the pleadings should be denied. While it is true that under the actionable document rule, Ernesto's failure to deny under oath the promissory note in his answer amounted to an implied admission of its genuineness and due execution, his allegation in his answer that he was coerced into signing the promissory note tendered an issue which should be tried. The issue of coercion is not inconsistent with the due execution and genuineness of the instrument. Thus, Ernesto's failure to deny the genuineness of the promissory note cannot be considered a waiver to raise the issue that he was coerced in signing the same. Said claim of coercion may also be proved as an exception to the Parol Evidence Rule.

On the other hand, Ernesto's motion for summary judgment may be granted. Modesto's answer to Ernesto's counterclaim — that he owed the latter a sum less than what was claimed — amounted to an admission of a material fact and if the amount thereof could summarily be proved by affidavits, deposition, etc., without the need of going to trial, then no genuine issue of fact exists.

**ALTERNATIVE ANSWER:**

Modesto's motion for judgment on the pleadings should be denied because there is an issue of fact. While Ernesto did not specifically deny under oath the promissory note attached to

Modesto's complaint as an actionable document, such non-denial will not bar Ernesto's evidence that Modesto coerced him into signing the promissory note. Lack of consideration, as a defense, does not relate to the genuineness and due execution of the promissory note.

Likewise, Ernesto's motion for summary judgment should be denied because there is an issue of fact — the alleged coercion — raised by Ernesto which he has yet to prove in a trial on its merits. It is axiomatic that summary judgment is not proper or valid when there is an issue of fact remaining which requires a hearing. And this is so with respect to the coercion alleged by Ernesto as his defense, since coercion is not capable of being established by documentary evidence.

**c. Specific denials (Effect of failure to make specific denials, When a specific denial requires an oath)**

**Plaintiff Manny said in his complaint: "3. On March 1, 2001 defendant Letty borrowed P1 million from plaintiff Manny and made a promise to pay the loan within six months." In her answer, Letty alleged: "Defendant Letty specifically denies the allegations in paragraph 3 of the complaint that she borrowed P1 million from plaintiff Manny on March 1, 2001 and made a promise to pay the loan within six months." Is Letty's denial sufficient? (2011 BAR EXAMS)**

### **SUGGESTED ANSWER**

- (A) Yes, since it constitutes specific denial of the loan.
- (B) Yes, since it constitutes positive denial of the existence of the loan.
- (C) No, since it fails to set forth the matters defendant relied upon in support of her denial.
- (D) No, since she fails to set out in par. 2 of her answer her special and affirmative defenses.

### **5. Effect of failure to plead**

#### **a. Failure to plead defenses and objections**

#### **b. Failure to plead a compulsory counterclaim and cross-claim**

### **6. Default**

#### **a. When a declaration of default is proper**

Circe filed with the RTC a complaint for the foreclosure of real estate mortgage against siblings Scylla and Charybdis, co-owners of the property and co-signatories to the mortgage deed. The siblings permanently reside in Athens, Greece. Circe tipped off Sheriff Pluto that Scylla is on a *balikbayan* trip and is billeted at the Century Plaza Hotel in Pasay City. Sheriff Pluto went to the hotel and personally served Scylla the summons, but the latter refused to receive summons for Charybdis as she was not authorized to do so. Sheriff Pluto requested Scylla for the email address and fax number of Charybdis which the latter readily gave. Sheriff Pluto, in his return of the summons, stated that "Summons for Scylla was served personally as shown by her signature on the receiving copy of the summons. Summons on Charybdis was served pursuant to the amendment of Rule 14 by facsimile transmittal of the summons and complaint on defendant's fax number as evidenced by transmission verification report automatically generated by the fax machine indicating that it was received by the fax number to which it was sent on the date and time indicated therein." Circe, sixty (60) days after her receipt of Sheriff Pluto's return, filed a Motion to Declare Charybdis in default as Charybdis did not file any responsive pleading. (2015 BAR EXAMS)

#### **a. Should the court declare Charybdis in default?**

### **SUGGESTED ANSWER**

NO, the court should not declare Charybdis in default because there was no proper service of summons. Section 12, Rule 14 of the Rules of Court applies only to a foreign private juridical entity that is not registered in the Philippines and has no resident agent in the country, and not to individuals (*A.M. No. 11-3-6-SC, March 15, 2011*). The service of summons by facsimile under said rule is, therefore, defective.

A foreclosure of real estate mortgage is a *quasi in rem* action, thus, the court can render judgments as long as it has jurisdiction over the *res* and any of the modes of extra-territorial service of summons under Section 15 of Rule 14 is complied with prior leave of court. There is, unfortunately, no showing in the problem that a prior leave of court was obtained before resorting to extra-territorial service of summons; hence, the service of summons is defective.

**In a complaint filed by the plaintiff, what is the effect of the defendant's failure to file an answer within the reglementary period? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (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.

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

**SUGGESTED ANSWER**

- 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.

**Gerry sued XYZ Bus Co. and Rico, its bus driver, for injuries Gerry suffered when their bus ran off the road and hit him. Of the two defendants, only XYZ Bus Co. filed an answer, alleging that its bus ran off the road because one of its wheels got caught in an open manhole, causing the bus to swerve without the driver's fault. Someone had stolen the manhole cover and the road gave no warning of the danger it posed. On Gerry's motion and over the objection of XYZ Bus Co., the court declared Rico, the bus driver, in default and rendered judgment ordering him to pay P50,000 in damages to Gerry. Did the court act correctly? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) No, since the court should have tried the case against both defendants upon the bus company's answer.
- (B) No, the court should have dropped Rico as defendant since the moneyed defendant is the bus company.

(C) Yes, the court can, under the rules, render judgment against the defendant declared in default.

(D) Yes, since, in failing to answer, Rico may be deemed to have admitted the allegations in the complaint.

### **b. Effect of an order of default, Effect of a partial default**

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

#### **SUGGESTED ANSWER**

- 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

### **c. Relief from an order of default, Extent of relief**

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

#### **SUGGESTED ANSWER**

- a. Petition for Relief from Judgment;
- b. Petition for Certiorari;
- c. Motion for Reconsideration;
- d. Motion to Set Aside Order of Default.

### **d. Actions where default is not allowed**

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

#### **SUGGESTED ANSWER**

- a. probate proceedings where the estate is valued at ₱ 1 00,000;
- b. forcible entry cases;
- c. collection case not exceeding ₱ 100,000;
- d. violation of rental law.

### **1. Filing and service of pleadings**

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

#### **SUGGESTED ANSWER**

- 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.

**a. Modes of service (Personal service, Service by mail, Substituted service)**

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: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

Which of the following is NOT REGARDED as a sufficient proof of personal service of pleadings? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Official return of the server.
- (B) Registered mail receipt.
- (C) Written admission of the party served.
- (D) Affidavit of the server with a statement of the date, place and manner of service.

**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**

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? (2013 BAR EXAMS)

**SUGGESTED ANSWER**

- (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.

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

**SUGGESTED ANSWER**

- 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.

**e. Effect of amended pleading**

Upon termination of the pre-trial, the judge dictated the pretrial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried. (2009 BAR EXAMS)

[a] If, immediately upon receipt of his copy of the pretrial order, plaintiffs counsel should move for its amendment to include a fourth (4th) triable issue which he allegedly inadvertently failed to mention when the judge dictated the order. Should the motion to amend be granted? Reasons.

**SUGGESTED ANSWER**

Depending on the merit of the issue sought to be brought in by the amendment, the motion to amend may be granted upon due hearing. It is a policy of the Rules that parties should be afforded reasonable opportunity to bring about a complete determination of the controversy between them, consistent with substantial justice. With this end in view, the amendment before trial may be granted to prevent manifest injustice. The matter is addressed to the sound and judicious discretion of the trial court.

[b] Suppose trial had already commenced and after the plaintiffs second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5th) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiffs counsel? Reasons.

**SUGGESTED ANSWER**

The motion may be denied since trial had already commenced and two witnesses for the plaintiff had already testified. Courts are required to issue pre-trial Order after the pre-trial conference has been terminated and before trial begins, precisely because the reason for such Order is to define the course of the action during the trial. Where trial had already commenced, more so the adverse party had already presented witnesses

**F. Summons**

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

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: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

Proof of service of summons shall be through the following, except : (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

Summons was served on "MCM Theater," a business entity with no juridical personality, through its office manager at its place of business. Did the court acquire jurisdiction over MCM Theater's owners? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

**2. Voluntary appearance**

**3. Personal service**

Teddy filed against Buboy an action for rescission of a contract for the sale of a commercial lot. After having been told by the wife of Buboy that her husband was out of town and would not be back until after a couple of days, the sheriff requested the wife to just receive the summons in behalf of her husband. The wife acceded to the request, received the summons and a copy of the complaint, and signed for the same. (2017 BAR EXAMS)

(a) Was there a valid service of summons upon Buboy? Explain your answer briefly. (3%)

(b) If Buboy files a motion to dismiss the complaint based on the twin grounds of lack of jurisdiction over his person and prescription of the cause of action, may he

**be deemed to have voluntarily submitted himself to the jurisdiction of the court? Explain your answer briefly (3%).**

**SUGGESTED ANSWER:**

(a) No, there was no valid service of summons in this case, since the summons was not personally received by Buboy. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period. "Several attempts: means at least three tries, preferably on at least two different dates" (Mancha. v. Court of Appeals, G.R. No. 130974, August 16, 2006).

(b) No, the filing of the motion to dismiss, assailing the jurisdiction of the court over his person, together with other grounds raised therein, is not a voluntary submission to the court's jurisdiction (Garcia v. Sandiganbayan, G.R. No. 170122, October 12, 2009). Under Section 20, Rule 14 of the Rules of Court, the defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss on other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

The filing of a motion is deemed voluntary submission to the court's jurisdiction only when it constitutes an unqualified voluntary appearance before the court, such that the defendant failed to object to the court's jurisdiction over his person (PVIB v. Spouses Dy, G.R. No. 171137, June 5, 2009).

**4. Substituted service**

**Juan sued Roberto for specific performance. Roberto knew that Juan was to file the case so he went out of town and temporarily stayed in another city to avoid service of summons. Juan engaged the service of Sheriff Matinik to serve the summons but when the latter went to the residence of Roberto, he was told by the caretaker thereof that his employer no longer resides at the house. The caretaker is a high school graduate and is the godson of Roberto. Believing the caretaker's story to be true, Sheriff Matinik left a copy of the summons and complaint with the caretaker. Was there a valid substituted service of summons? Discuss the requirements for a valid service of summons. (2016 BAR EXAMS)**

**SUGGESTED ANSWER**

No. There was no valid substituted service of summons. In an action strictly *in personam*, 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. While substituted service of summons is permitted, it is extraordinary in character and in derogation of the usual method of service; hence, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules. Compliance with the rules regarding the service of summons is as important as the issue of due process for the Court to acquire jurisdiction. For the presumption of regularity

in the performance of official duty to apply, the Sheriff's Return must show that serious efforts or attempts were exerted to personally serve the summons and that said efforts failed. These facts must be Specifically narrated in the Return. It must clearly show that the substituted service must be made on a person of suitable age and discretion living in the dwelling or residence of defendant; otherwise, the Return is flawed and the presumption cannot be availed of. The Supreme Court laid down the requirements as follows: Impossibility of prompt personal service, i.e., the party relying on substituted service or the sheriff must show that defendant cannot be served promptly or there is impossibility of prompt service within a reasonable time. *Reasonable time* being "so much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires that should be done, having a regard for the rights and possibility of loss, if any to the other party". Moreover, it must be indicated therein that the sheriff has made *several attempts at personal* service for at least three

(3) *times on at least two (2) different* dates. Specific details in the return, i.e., the sheriff must describe in the Return of Summons the facts and circumstances surrounding their attempted personal service. Substituted service effected on a person of suitable age and discretion residing at defendant's house or residence; or on a competent person in charge of defendant's office or regular place of business (*Ma. Imelda M. Manotoc v. Court of Appeals*, G.R. No. 130974, Au16, 2006)

**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. (2013 BAR EXAMS)**

**a) Was there proper and valid service of summons on Charlie?**

**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; the service of summons was improper.

In an action strictly in personam like a complaint for 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 summons within a reasonable period, then substituted service can be resorted to (*Manotoc v. Court of Appeals*, G.R. No. 130974, August 16, 2006). 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*, G.R. No. 167230, August 14, 2009).

Since there was no prior attempt to serve the summons in person, the substituted service to Charlie's secretary is invalid.

**b) If declared in default, what can Charlie do to obtain relief?**

**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).*

**5. Extra-territorial service, when allowed**

Tristan filed a suit with the RTC of Pasay against Arthur King and/or Estate of Arthur King for reconveyance of a lot declared in the name of Arthur King under TCT No. 1234. The complaint alleged that "on account Arthur King's residence abroad up to the present and the uncertainty of whether he is still alive or dead, he or his estate may be served with summons by publication." Summons was published and nobody filed any responsive pleading within sixty (60) days therefrom. Upon motion, defendants were declared in default and judgment was rendered declaring Tristan as legal owner and ordering defendants to reconvey said lot to Tristan.

Jojo, the court-designated administrator of Arthur King's estate, filed a petition for annulment of judgment before the CA praying that the decision in favor of Tristan be declared null and void for lack of jurisdiction. He claims that the action filed by Tristan is an action *in personam* and that the court did not acquire jurisdiction over

defendants Arthur King and/or his estate. On the other hand, Tristan claims that the suit is an action *in rem* or at least an action *quasi in rem*. Is the RTC judge correct in ordering service of summons by publication? Explain. (2016 BAR EXAMS)

**SUGGESTED ANSWER:**

Yes, the RTC judge is correct in ordering service of summons by publication. Under Section 15 Rule 14 of the Rules of Civil Procedure, extraterritorial service, which includes service by publication, may be availed of in actions the subject of which is property within the Philippines in which the defendant has or claims a lien or interest or in which the relief demanded consists in excluding the defendant from any interest therein.

In this case, the action for reconveyance has for its subject a real property in the Philippines in the defendant's name and in which the relief sought is to annul the defendant's title and vest it in the plaintiff. Although the action for reconveyance is *in personam* (Republic v. CA, 315 SCRA 600, 606), the test of whether an action is covered by Section 15 Rule 14 is not its technical characterization as *in rem* or *quasi in rem* but whether it is among those mentioned in S15 R14. (See *Baltazar v. Court of Appeals*, 168 SCRA 354, 363).

**TRUE or FALSE. Summons may be served by mail (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

FALSE. Rule 14 of the Rules of Court, on Summons, provide only for serving Summons (a) to the defendant in person; or (b) if this is not possible within a reasonable time, then by substituted service in accordance with Sec. 7 thereof; or (c) any of the foregoing two ways is not possible, then with leave of court, by publication in accordance with same Rule.

**ALTERNATIVE ANSWER:**

TRUE, but only in extraterritorial service under Sec. 15 of the Rule on Summons where service may be effected "in any other manner the court may deem sufficient".

**G. Motions**

**1. Motions in general**

**a. Definition of a motion**

**b. Motions versus pleadings**

**c. Notice of hearing and hearing of motions**

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

### **SUGGESTED ANSWER**

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

#### **d. Omnibus Motion Rule**

The defendant in an action for sum of money filed a motion to dismiss the complaint on the ground of improper venue. After hearing, the court denied the motion. In his answer, the defendant claimed prescription of action as affirmative defense, citing the date alleged in the complaint when the cause of action accrued. May the court, after hearing, dismiss the action on ground of prescription? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- (A) Yes, because prescription is an exception to the rule on Omnibus Motion.
- (B) No, because affirmative defenses are barred by the earlier motion to dismiss.
- (C) Yes, because the defense of prescription of action can be raised at anytime before the finality of judgment.
- (D) No, because of the rule on Omnibus Motion.

## **2. Motions for Bill of Particulars**

### **a. Purpose and when applied for**

### **b. Actions of the court**

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: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

### **ALTERNATIVE ANSWER:**

- c. allow the parties the opportunity to be heard.

## **c. Compliance with the order and effect of noncompliance**

### **3. Motion to dismiss**

### **a. Grounds**

The information against Roger Alindogan for the crime of acts of lasciviousness under Article 336 of the Revised Penal Code avers:

"That on or about 10:30 o'clock in the evening of February 1, 2010 at Barangay Matalaba, Imus, Cavite and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, wilfully, unlawfully and feloniously commit sexual abuse on his daughter, Rose Domingo, a minor of 11 years old, either by raping her or committing acts of lasciviousness on her, against her will and consent to her damage and prejudice. ACTS CONTRARY TO LAW."

The accused wants to have the case dismissed because he believes that the charge is confusing and the information is defective. What ground or grounds can he raise in moving for the quashal of the information? Explain. (2016 BAR EXAMS)

**SUGGESTED ANSWER:**

The grounds which the accused can raise in moving for the quashal of the information are the following:

1. THE INFORMATION CHARGES MORE THAN ONE OFFENSE. The information charges two offenses, that is, rape and sexual abuse. Worse, the charges are stated in the alternative, making it unclear to the accused as to what offense exactly he is being charged with.
2. THE INFORMATION DOES NOT CONFORM SUBSTANTIALLY TO THE REQUIRED FORM. The information merely states that the accused committed acts of lasciviousness upon the victim without specifying what those acts of lasciviousness were

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 Philippines 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? (2014 BAR EXAMS)

- a. 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.

**SUGGESTED ANSWER**

NO. The ground invoked in the Motion to Dismiss is not proper. Under Article 360 of the RPC, 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.

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

**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. (*Art. 360, RPC*). 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 v. Tan, G.R. No. 145022, September 23, 2005*).

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

**SUGGESTED ANSWER**

- a. failure to prosecute;
- b. lack of jurisdiction over the parties;
- c. *litis pendentia*;
- d. prescription.

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

**SUGGESTED ANSWER**

- e. unenforceable under the Statute of Frauds;
- f. *Res Judicata*;
- g. Litis Pendentia;
- h. Lack of jurisdiction.

**Which of the following grounds for dismissal invoked by the court will NOT PRECLUDE the plaintiff from refiled his action? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) *Res judicata*.
- (B) Lack of jurisdiction over the subject matter.

- (C) Unenforceability under the Statutes of Fraud.
- (D) Prescription.

### **b. Resolution of motion**

**Miguel filed a Complaint for damages against Jose, who denied liability and filed a Motion to Dismiss on the ground of failure to state a cause of action. In an Order received by Jose on January 5, 2015, the trial court denied the Motion to Dismiss. On February 4, 2015, Jose sought reconsideration of that Order through a Motion for Reconsideration. Miguel opposed the Motion for Reconsideration on the ground that it was filed out of time. Jose countered that the 15- day rule under Section 1 of Rule 52 does not apply where the Order sought to be reconsidered is an interlocutory order that does not attain finality. Is Jose correct? Explain. (2016 BAR EXAMS)**

#### **SUGGESTED ANSWER**

Yes, Jose is correct. The 15-day period to file a motion for reconsideration under Section 1 of Rule 52 refers to a motion for reconsideration of a judgment or *final resolution* or order. In this case, what is involved is an order denying a motion to dismiss, which is not a final order as it does not terminate the case. The order is simply an interlocutory order which may be reconsidered by the trial court at any time during the pendency of the case. [See *Rasdas v. Estenor*, 13 Dec 2005]. It should also be noted that Miguel did not file a motion to declare Jose in default.

**Mr. Avenger filed with 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: (2014 BAR EXAMS)**

- 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 ANSWER**

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.
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*).

4. Mr. Avenger may amend his Complaint, as a matter of right, since a Motion to Dismiss is not a responsive pleading. (*Irene R. Marcos-Araneta v. 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 ANSWER**

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. 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; Marmo v. 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. (*Section 4 and 6, Rule 16*)

**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 ANSWER**

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

1. A motion for reconsideration (*Sec, 1, Rule 37*);
2. A motion for new trial (*Sec. 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*); and
3. Petition for Certiorari (*Rule 65*).

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

**SUGGESTED ANSWER**

- 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.

**c. Remedies of plaintiff when the complaint is dismissed**

#### **d. Remedies of the defendant when the motion is denied**

#### **e. When grounds pleaded as affirmative defenses**

#### **H. Dismissal of actions**

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: (2012 BAR)

#### **SUGGESTED ANSWER**

- 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.

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

Agatha filed a complaint against Yana in the RTC in Makati City to collect P350,000.00, an amount representing the unpaid balance on the price of the car Yana had bought from Agatha. Realizing a jurisdictional error in filing the complaint in the RTC, Agatha filed a notice of dismissal before she was served with the answer of Yana. The RTC issued an order confirming the dismissal.

Three months later, Agatha filed another complaint against Yana based on the same cause of action this time in the MeTC of Makati City. However, for reasons personal to her, Agatha decided to have the complaint dismissed without prejudice by filing a notice of dismissal prior to the service of the answer of Yana. Hence, the case was dismissed by the MeTC.

A month later, Agatha refiled the complaint against Yana in the same MeTC.

May Yana successfully invoke the Two-Dissmissal Rule to bar Agatha's third complaint? Explain your answer. (3%) (2017 BAR EXAMS)

#### **SUGGESTED ANSWER**

No, Yana cannot successfully invoke the Two-Dissmissal Rule. In order for the Two-Dissmissal Rule to apply, Rule 17, Section 1 of the Rules of Court requires that both dismissals through plaintiff's notices were made by a competent court. Moreover, in *Ching Cheng* (G.R. No. 175507, October 8, 2014), the Supreme Court ruled that the following requisites should concur for the Two-Dissmissal Rule to apply:

- a. There was a previous case that was dismissed by a competent court;
- b. Both cases were based on or include the same claim;
- c. Both notices for dismissal were filed by the plaintiff; and

d. When the motion to dismiss filed by the plaintiff was consented to by the defendant on the ground that the latter paid and satisfied all the claims of the former.

In this case, the Makati City RTC had no jurisdiction over the first complaint which was dismissed through Agatha's notice, because it is below its jurisdictional amount of at least P400,000.00. Therefore, the Two-Dismissal Rule cannot be successfully invoked in this case.

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

**SUGGESTED ANSWER**

- 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.

**2. Dismissal upon motion by plaintiff; effect on existing counterclaim**

Antique dealer Mercedes borrowed P1, 000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.

Mercedes filed in February 2009 her Answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a dacion engago agreement in which her vintage P1, 000,000 Rolex watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a "frivolous lawsuit.. She accordingly prayed for P50, 000 damages.

A. Benjamin soon after moved for the dismissal of the case. The trial court accordingly dismissed the complaint. And it also dismissed the Counterclaim.

Mercedes moved for a reconsideration of the dismissal of the Counterclaim. Pass upon Mercedes' motion. (2010 Bar Question)

**SUGGESTED ANSWER**

Mercedes' Motion for Reconsideration is impressed with merit: the trial court should not have dismissed her counter-claim despite the dismissal of the Complaint.

Since it was the plaintiff (Benjamin) who moved for the dismissal of his Complaint, and at a time when the defendant (Mercedes) had already filed her Answer thereto and with counterclaim, the dismissal of the Complaint should not carry with it the dismissal of the

counterclaim without the conformity of the defendant-counterclaimant. The Revised Rules of Court now provides in Rule 17, Sec. 2 there or that "[1]a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim x x x."

## **I. Pre-trial**

### **1. Concept of pre-trial, Nature and purpose**

### **2. Notice of pre-trial**

### **3. Appearance of parties; effect of failure to appear**

What is the consequence of the unjustified absence of the defendant at the pre-trial? (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) The trial court shall declare him as in default.
- (B) The trial court shall immediately render judgment against him.
- (C) The trial court shall allow the plaintiff to present evidence ex-parte.
- (D) The trial court shall expunge his answer from the record.

### **4. Distinction between pre-trial in civil case and pre-trial in criminal case**

### **5. Alternative Dispute Resolution (ADR) (Special Rules of Court on ADR (A.M. No. 07-11-08-SC))**

Water Builders, a construction company based in Makati City, entered into a construction agreement with Super Powers, Inc., an energy company based in Manila, for the construction of a mini hydroelectric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former P 10 million, the full amount of the down payment paid, and P2 million by way of liquidated damages. Dissatisfied with the CIAC's judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City. Should Water Builders' petition be dismissed? (2015 BAR EXAMS)

#### **SUGGESTED ANSWER**

YES, the petition should be dismissed on the ground of improper venue. Under the Special Rules of Court on Alternative Dispute Resolution (ADR), the petition shall be filed

with the Regional Trial Court having jurisdiction over the place where one of the parties is doing business, where any of the parties reside or where the arbitration proceedings were conducted (*Rule 11.3, Special Rules of Court on Alternative Dispute Resolution, A.M. No. 07-11-08-SC*); hence, the venue of the petition to vacate the arbitral award of Water Builders is improperly laid.

**Which among the following is not subject to mediation for judicial dispute resolution? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (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.

**Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (2012 BAR EXAMS)**

**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.

**Upon termination of the pre-trial, the judge dictated the pretrial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.**

x x x

**Suppose trial had already commenced and after the plaintiffs second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5th) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiffs counsel? Reasons. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

The motion may be denied since trial had already commenced and two witnesses for the plaintiff had already testified. Courts are required to issue pre-trial Order after the pre-trial conference has been terminated and before trial begins, precisely because the reason for such Order is to define the course of the action during the trial. Where trial had already commenced, more so the adverse party had already presented witnesses, to allow an amendment would be unfair to the party who had already presented his witnesses. The amendment would simply render nugatory the reason for or purpose of the pre-trial Order.

Sec.7 of Rule 18 on pre-trial in civil actions is explicit in allowing a modification of the pre-trial Order “before” trial begins to prevent manifest injustice.

## **J. Intervention**

### **1. Requisites for intervention**

The right to intervene is not absolute. In general, it **CANNOT** be allowed where (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) the intervenor has a common interest with any of the parties.
- (B) it would enlarge the issues and expand the scope of the remedies.
- (C) the intervenor fails to put up a bond for the protection of the other parties.
- (D) the intervenor has a stake in the property subject of the suit.

Ranger Motors filed a replevin suit against Bart to recover possession of a car that he mortgaged to it. Bart disputed the claim. Meantime, the court allowed, with no opposition from the parties, Midway Repair Shop to intervene with its claim against Bart for unpaid repair bills. On subsequent motion of Ranger Motors and Bart, the court dismissed the complaint as well as Midway Repair Shop’s intervention. Did the court act correctly? (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) No, since the dismissal of the intervention bars the right of Bart to file a separate action.
- (B) Yes, intervention is merely collateral to the principal action and not an independent proceeding.
- (C) Yes, the right of the intervenor is merely in aid of the right of the original party, which in this case had ceased to exist.
- (D) No, since having been allowed to intervene, the intervenor became a party to the action, entitled to have the issue it raised tried and decided.

### **2. Remedy for the denial of motion to intervene**

## **K. Subpoena**

### **1. Subpoena *duces tecum***

### **2. Subpoena *ad testificandum***

TRUE or FALSE. The viatory right of a witness served with a subpoena ad testificandum refers to his right not to comply with the subpoena. (2009 BAR EXAMS)

#### **SUGGESTED ANSWER**

FALSE. The viatory right of a witness, embodied in Sec. 10, Rule 21 of the Rules of Civil Procedure, refers to his right not to be compelled to attend upon a subpoena, by reason of the distance from the residence of the witness to the place where he is to testify. It is available only in civil cases (People v. Montejo, 21 SCRA 722[1965]).

### **3. Quashing of subpoena**

#### **L. Modes of Discovery**

**Briefly explain the procedure on "Interrogatories to Parties under Rule 25 and state the effect of failure to serve written interrogatories (2016 BAR EXAMS)**

#### **SUGGESTED ANSWER**

##### **PROCEDURE**

Any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf (Section 1, Rule 25:Rules of Court).

The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. The party upon whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof, unless the court on motion and for good cause shown, extends or shortens the time (Section 2, Rule 25, Rules of Court).

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; and answers shall be deferred until the objections are resolved, which shall be at as early a time as is practicable (Section 3, Rule 25, Rules of Court).

Should a party fail to file and serve written interrogatories on an adverse party, he cannot compel the latter to give testimony in open court or to give deposition pending appeal, unless allowed by the court for good cause shown and to prevent a failure of justice (Section 6, Rule 25, Rules of Court; Spouses Vicente Afulugencia *and Leticia Afulugencia* v. Metropolitan Bank & Trust Co., et at, G.R. No. 185145, February 5,2014).

**Briefly explain the procedure on "Admission by Adverse Party" under Rule 26 and the effect of failure to file and serve the request. (2016 BAR EXAMS)**

#### **SUGGESTED ANSWER**

##### **PROCEDURE**

1. At any time after issues have been joined, a party may file and serve upon any 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. Copies of the documents shall

be delivered with the request unless copies have already been furnished (Section 1, Rule 26, Rules of Court).

2 Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request which shall not be less than fifteen (15) days after service thereof or within such further time as the court may allow on motion, the party to whom the request directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

3. Objections to any request for admission shall be submitted to the court by the party requested within the period for and prior to the filing of his sworn statement as contemplated in the preceding paragraph and his compliance therewith shall be deferred until such obligations are resolved, which resolution shall be made as early as practicable (Section 2, Rule 26, Rules of Court).

4. Any admission made by a party pursuant to such request is for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding (Section 3, Rule 26). Unless otherwise allowed by the court for good cause shown and to prevent a failure of justice a party who fails to file and serve a request for *admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence on such facts* (Section 5, Rule 26, Rules of Court).

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- a. motion for production of documents.
- b. written interrogatories.
- c. request for admission under Rule 26.
- d. request for subpoena duces tecum.

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

**SUGGESTED ANSWER**

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

Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence. Ernie's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2015 BAR EXAMS)

**SUGGESTED ANSWER**

If the order for the conduct of physical and mental examination is issued as a mode of discovery and Ernesto defies the said order, the court cannot validly order his arrest (Sec. 3[d], Rule 29).

**1. Depositions pending action; depositions before action or pending appeal**

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: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**2. Production or inspection of documents or things**

Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products. To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC.

Resolve BTC's motion with reasons. (2009 BAR EXAMS)

**SUGGESTED ANSWER**

I will deny the motion. The ingredients and chemical components of CCC's products are trade secrets within the contemplation of the law. Trade secrets may not be the subject of compulsory disclosure by reason of their confidential and privileged character. Otherwise, CCC would eventually be exposed to unwarranted business competition with others who may imitate and market the same kinds of products in violation of CCC's proprietary rights. Being privileged, the detailed list of ingredients and chemical components may not be the subject of mode of discovery under Rule 27, Section 1 which expressly makes privileged information an exception from its coverage (*AirPhilippines Corporation v. Pennswell, Inc.*, 540 SCRA 215 [2007]).

### **3. Consequences of refusal to comply with modes of discovery**

On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of Century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

x x x

On July 21, 2009, B Lines served on A a "Notice to Take Deposition," setting the deposition on July 29, 2009 at 8:30 a.m. at the office of its counsel in Makati. A failed to appear at the deposition-taking, despite notice. As counsel for B Lines, how would you proceed? (2010 BAR EXAMS)

#### **SUGGESTED ANSWER**

As counsel for B Lines (which gave notice to take the deposition), I shall proceed as follows:

1. Find out why A failed to appear at the deposition taking, despite notice;
2. If failure was for valid reason, then set another date for taking the deposition;
3. If failure to appear at deposition taking was without valid reason, then I would me a motion/application in the court where the action is pending, for an, order to show cause for his refusal to submit to the discovery; and
4. For the court to issue appropriate Order provided under Rule 29 of the Rules, for noncompliance with the show-cause order, aside from contempt of court.

### **M. Trial**

#### **1. Order of trial; reversal of order**

### **N. Demurrer to evidence**

#### **1. Waiver of right to present evidence**

## **2. Demurrer to evidence in a civil case versus demurrer to evidence in a criminal case**

Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence. Ernie's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding. Was Ernie's counsel's objection proper? (2015 BAR EXAMS)

### **SUGGESTED ANSWER**

NO. The Rule on demurrer to evidence is applicable in Special Proceedings (*Matute v. Court of Appeals, G.R. No. 26751, January 31, 1969*).

Moreover, under Section 2, Rule 72 of the Rules of Court, in the absence of special rules, the rules provided for in ordinary actions shall be applicable, as far as practicable, to special proceedings.

AA, a twelve-year-old girl, while walking alone met BB, a teenage boy who befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:

"On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."

At the trial, the prosecutor called to the witness stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

X X X

After the prosecution had rested its case, BB' s counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB' s minority as alleged in the Information. Should the court grant the demurrer? (2015 BAR EXAMS)

### **SUGGESTED ANSWER**

NO, the court should not grant the demurrer. While it was alleged in the information that BB was a minor at the time of the commission of the offense, the failure of the prosecutor to present evidence to prove his minority is not a basis for the granting of the demurrer, because minority of the accused is not an element of the crime of rape.

Be that as it may, the Court should not consider minority in rendering the decision. After all, the failure of the prosecutor to prove the minority of AA may only affect the imposable penalty but may not absolve him from criminal liability.

### **O. Judgments and Final Orders**

**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: (2014 BAR EXAMS)**

- (A) *pro hac vice*
- (B) *non pro tunc*
- (C) *confession relicta verification*
- (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 v. Dejapa, G.R. No. 167332, February 7, 2011).

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

### **SUGGESTED ANSWER**

- 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.

### **1. Judgment without trial**

### **2. Judgment on the pleadings**

**Royal Bank (Royal) filed a complaint for a sum of money against Ervin and Jude before the RTC of Manila. The initiatory pleading averred that on February 14, 2010,**

Ervin obtained a loan from Royal in the amount of P1 Million, as evidenced by Promissory Note No. 007 (PN) signed by Ervin. Jude signed a Surety Agreement binding herself as surety for the loan. Royal made a final demand on February 14, 2015 for Ervin and Jude (defendants) to pay, but the latter failed to pay. Royal prayed that defendants Ervin and Jude be ordered to pay the amount of P1 Million plus interests.

In their answer, Ervin admitted that he obtained the loan from Royal and signed the PN. Jude also admitted that she signed the Surety Agreement. Defendants pointed out that the PN did not provide the due date for payment, and that the loan has not yet matured as the maturity date was left blank to be agreed upon by the parties at a later date. Defendants filed a Motion for a Judgment on the Pleadings on the ground that there is no genuine issue presented by the parties' submissions. Royal opposed the motion on the ground that the PN' s maturity is an issue that must be threshed out during trial. (2016 BAR EXAMS)

[a] Resolve the motion with reasons.

**SUGGESTED ANSWER:**

The Motion for Judgment on the Pleadings should be denied. Under the Rules of Civil Procedure, a motion for judgment on the pleadings may be filed only by the plaintiff or the claimant. In this case, it was the defendants, not the Plaintiff Royal Bank, which filed a motion for judgment on the pleadings. Hence, the motion should be denied.

[b] Distinguish "Summary Judgment" and "Judgment on the Pleadings."

**SUGGESTED ANSWER:**

A summary judgment is distinguished from a judgment on the pleadings as follows:

1. A summary judgment is proper even if there is a remaining issue as to the amount of damages, while a judgment on the pleadings is proper if it appears that there is no genuine issue between the parties.
2. A summary judgment is based not only on the pleadings but also upon affidavits, depositions, and admissions showing that, except as to the amount of damages, there is no genuine issue, while a judgment on the pleadings is based exclusively upon the pleadings without the presentation of any evidence.
3. A motion for summary judgment requires 10-day notice (Section 3 Rule 35), while a motion for judgment on the pleadings is subject to a 3-day notice rule (Section 4, Rule 15).
4. A summary judgment may be prayed for by a defending party (Section 2, Rule 35), while a judgment on the pleadings may be prayed for only by a plaintiff or claimant.

**Plaintiff sued defendant for collection of P 1 million based on the latter's promissory note. The complaint alleges, among others:**

1. Defendant borrowed P 1 million from plaintiff as evidenced by a duly executed promissory note;
2. The promissory note reads:

**"Makati, Philippines  
Dec. 30, 2014**

**For value received from plaintiff, defendant promises to pay plaintiff III million, twelve (12) months from the above indicated date without necessity of demand.**

**Signed  
Defendant**

**A copy of the promissory note is attached as Annex "A."**

**Defendant, in his verified answer, alleged among others:**

- 1. Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or**
- 2. Defendant has paid the III million claimed in the promissory note (Annex "A" of the Complaint) as evidenced by an "Acknowledgment Receipt" duly executed by plaintiff on January 30, 2015 in Manila with his spouse signing as witness.**

**A copy of the "Acknowledgment Receipt" is attached as Annex "1" hereof.**

**Plaintiff filed a motion for judgment on the pleadings on the ground that defendant's answer failed to tender an issue as the allegations therein on his defenses are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue. Is judgment on the pleadings proper? (2015 BAR EXAMS)**

**SUGGESTED ANSWER**

**NO, the judgment on the pleadings is not proper. Judgment on the pleading is proper only when the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading (Sec. 1, Rule 34).**

**When it appears, however, that not all the material allegations of the complaint were admitted in the answer, because some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleadings cannot be rendered (*Philippine National bank v. Aznar, G.R. No. 17105, May 30, 2011*).**

**Clearly, since the defendant's verified Answer specifically denied the execution of the promissory note, or raised the affirmative of payment, judgment on the pleading is not proper.**

**Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts. Should the court grant defendant's motion for summary judgment? (2015 BAR EXAMS)**

**SUGGESTED ANSWER**

NO, the court should not grant the motion for summary judgment because the defense of payment is a genuine issue as to material fact that must be resolved by the court upon presentation of evidence.

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is sham, fictitious, contrived or false claim.

Relative thereto, when the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take place of a trial. The evidence on record must be viewed in light most favourable to the party opposing the motion who must be given the benefit of all favourable inferences as can reasonably be drawn from the evidence (*Smart Communications v. Aldecoa*, G.R. No. 166330, September 11, 2013).

**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: (2014 BAR EXAMS)**

- (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 v. Beata Sayson*, G.R. No. 172660, August 24, 2011).

**ALTERNATIVE ANSWER**

A) summary judgement. 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 v. Beata Sayson*, G.R. No. 172660, August 24, 2011).

**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? (2012 BAR EXAMS)**

**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 matters contained in the request for admission by the plaintiff (Rule 34 in connection with Sec. 2, Rule 26).

**3. Summary judgments**

**a. For the claimant**

**Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1-million, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5-million. At the pretrial, Modesto marked and identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of P0.5-million, which Ernesto did not dispute. After pre-trial, Modesto filed a motion for judgment on the pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

Modesto's motion for judgment on the pleadings should be denied. While it is true that under the actionable document rule, Ernesto's failure to deny under oath the promissory note in his answer amounted to an implied admission of its genuineness and due execution, his allegation in his answer that he was coerced into signing the promissory note tendered an issue which should be tried. The issue of coercion is not inconsistent with the due execution and genuineness of the instrument. Thus, Ernesto's failure to deny the genuineness of the promissory note cannot be considered a waiver to raise the issue that he was coerced in signing the same. Said claim of coercion may also be proved as an exception to the Parol Evidence Rule.

On the other hand, Ernesto's motion for summary judgment may be granted. Modesto's answer to Ernesto's counterclaim — that he owed the latter a sum less than what was claimed — amounted to an admission of a material fact and if the amount thereof could summarily be proved by affidavits, deposition, etc., without the need of going to trial, then no genuine issue of fact exists.

### **ALTERNATIVE ANSWER**

Modesto's motion for judgment on the pleadings should be denied because there is an issue of fact. While Ernesto did not specifically deny under oath the promissory note attached to Modesto's complaint as an actionable document, such non-denial will not bar Ernesto's evidence that Modesto coerced him into signing the promissory note. Lack of consideration, as a defense, does not relate to the genuineness and due execution of the promissory note.

Likewise, Ernesto's motion for summary judgment should be denied because there is an issue of fact — the alleged coercion — raised by Ernesto which he has yet to prove in a trial on its merits. It is axiomatic that summary judgment is not proper or valid when there is an issue of fact remaining which requires a hearing. And this is so with respect to the coercion alleged by Ernesto as his defense, since coercion is not capable of being established by documentary evidence.

**b. For the defendant**

**c. When the case not fully adjudicated**

**4. Judgment on the pleadings versus summary judgments**

**5. Rendition of judgments and final orders**

**6. Entry of judgment and final order**

**P. Post-judgment remedies**

**1. Motion for new trial or reconsideration**

**When may a party file a second motion for reconsideration of a final judgment or final order? (2013 BAR EXAMS)**

### **SUGGESTED ANSWER**

(A) At anytime within 15 days from notice of denial of the first motion for reconsideration.

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

(C) A party is not allowed to file a second motion for reconsideration of a final judgment or final order.

(D) A party is allowed as a matter of right to file a second motion for reconsideration of a judgment or final order.

(E) None of the above.

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

### **SUGGESTED ANSWER**

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

**Fraud as a ground for new trial must be extrinsic as distinguished from intrinsic. Which of the following constitutes extrinsic fraud? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) Collusive suppression by plaintiff's counsel of a material evidence vital to his cause of action.
- (B) Use of perjured testimony at the trial.
- (C) The defendant's fraudulent representation that caused damage to the plaintiff.
- (D) Use of falsified documents during the trial.

**A motion for reconsideration of a decision is pro forma when (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) it does not specify the defects in the judgment.
- (B) it is a second motion for reconsideration with an alternative prayer for new trial.
- (C) it reiterates the issues already passed upon but invites a second look at the evidence and the arguments.
- (D) its arguments in support of the alleged errors are grossly erroneous.

**2. Appeals in general**

**a. Judgments and final orders subject to appeal**

**Give brief answers to the following (2017 BAR EXAMS):**

(a) X X X

(b) What is the Harmless Error Rule in relation to appeals? (2%)

**SUGGESTED ANSWER**

(a) X X X

(b) Under Rule 51, Section 6 of the Rules of Court, the Harmless Error Rule states that no error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is a ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court to be inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect which does not affect the substantial rights of the parties.

**Findings of fact are generally not disturbed by the appellate court except in cases \_\_\_\_\_ . (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

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

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

**SUGGESTED ANSWER**

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

**Which of the following is appealable? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) An order of default against the defendant.
- (B) The denial of a motion to dismiss based on improper venue.
- (C) The dismissal of an action with prejudice.
- (D) The disallowance of an appeal.

**b. Modes of appeal**

- i. Ordinary appeal**
- ii. Petition for review**
- iii. Petition for review on certiorari**

**What is the mode of appeal applicable to the following cases, and what issues may be raised before the reviewing court/tribunal? (2017 BAR EXAMS)**

- (a) The decision or final order of the National Labor Relations Commission. (1.5%)**
- (b) The judgment or final order of the RTC in the exercise of its appellate jurisdiction. (1.5%)**

**SUGGESTED ANSWER:**

(a) Strictly, there is no appeal from an NLRC decision. However, NLRC decisions or final orders are reviewable on petition for certiorari under Rule 65 of the Rules of Court, filed before the Court of Appeals (St. Martin Funeral Homes v. NLRC, G.R. No. 130866, September 16, 1998). Petitioner may raise the issue on whether the NLRC acted with

grave abuse of discretion amounting to lack or excess jurisdiction (Pfizer Inc., v. Galan, G.R. No. 158460, August 24, 2007).

(b) The mode of appeal is petition for review under Rule 42 of the Rules of Court. Petitioner may raise errors of fact, law, or both under Section 2 of Rule 42.

**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)**

- (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 (2014 BAR EXAMS)**

**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:

1. 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.
2. 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.
3. 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.

**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?**

- (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 (2014 BAR EXAMS)**

**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

**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:**

- (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 (2014 BAR EXAMS)**

**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.

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**c. Period of appeal**

**In a civil action involving three separate causes of action, the court rendered summary judgment on the first two causes of action and tried the third. After the period to appeal from the summary judgment expired, the court issued a writ of execution to enforce the same. Is the writ of execution proper? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**d. Perfection of appeal**

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

**a) An order of execution issued by the RTC.**

**SUGGESTED ANSWER**

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

**b) Judgment of RTC denying a petition for Writ of Amparo.**

**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, September 25, 2007*).

**c) Judgment of MTC on a land registration case based on its delegated jurisdiction.**

**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*)

**d) A decision of the Court of Tax Appeal's First Division.**

**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. Appeal from judgments or final orders of the MTC**

**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? (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

On July 15,2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2,2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following:

[a] Judgment of a Municipal Trial Court (MTC) pursuant to its delegated jurisdiction dismissing his client's application for land registration? (2009 BAR EXAMS)

**SUGGESTED ANSWER**

By notice of appeal, within 15 days from notice of judgment or final order appealed from, to the Court of Appeals;

**f. Appeal from judgments or final orders of the RTC**

**Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.**

x x x

[e] The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal. (2009 BAR EXAMS)

**SUGGESTED ANSWER**

FALSE. The trial court has lost jurisdiction after perfection of the appeal and so it can no longer entertain a motion for reconsideration.

**ALTERNATIVE ANSWER**

FALSE, because the appeal may be perfected as to one party but not yet perfected as to the other party who may still file a motion for reconsideration without abandonment of his right of appeal even though the appeal of the case is perfected already as to the other party.

**Distinguish the two (2) modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

In cases decided by the **Regional Trial Courts in the exercise of their original jurisdiction**, appeals to the Court of Appeals shall be ordinary appeal by filing written notice of appeal indicating the parties to the appeal; specifying the judgment/final order

or part thereof appealed from; specifying the court to which the appeal is being taken; and stating the material dates showing the timeliness of the appeal. The notice of appeal shall be filed with the RTC which rendered the judgment appealed from and copy thereof shall be served upon the adverse party within 15 days from notice of judgment or final order appealed from. But if the case admits of multiple appeals or is a special proceeding, a record on appeal is required aside from the written notice of appeal to perfect the appeal, in which case the period for appeal and notice upon the adverse party is not only 15 days but 30 days from notice of judgment or final order appealed from. The full amount of the appellate court docket fee and other lawful fees required must also be paid within the period for taking an appeal, to the clerk of the court which rendered the judgment or final order appealed from (Secs. 4 and 5, Rule 41, Rules of Court). The periods of 15 or 30 days above-stated are non-extendible.

In cases decided by the **Regional Trial Court in the exercise of its appellate jurisdiction**, appeal to the Court of Appeals shall be by filing a verified petition for review with the Court of Appeals and furnishing the RTC and the adverse party with copy thereof, within 15 days from notice of judgment or final order appealed from. Within the same period for appeal, the docket fee and other lawful fees required with the deposit for cost should be paid. The 15-day period maybe extended for 15 days and another 15 days for compelling reasons.

**On July 15,2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2,2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following: (2009 Bar EXAMS)**

x x x

**(B) Judgment of the Regional Trial Court (RTC) denying his client's petition for a Writ of Habeas Data?**

**SUGGESTED ANSWER**

By verified petition for review on certiorari under Rule 45, with the modification that appellant may raise questions of fact or law or both, within 5 work days from date of notice of the judgment or final order to the Supreme Court (Sec. 19, A.M. No. Q8-1-16SC);

**(C) Order of a Family Court denying his client's petition for Habeas Corpus in relation to custody of a minor child?**

**SUGGESTED ANSWER**

By notice of appeal, within 48 hours from notice of judgment or final order to the Court of Appeals (Sec. 14, RA No. 8369 in relation to Sec 3, Rule 41, Rules of Court).

**(D) Order of the RTC denying his client's Petition for Certiorari questioning the Metropolitan Trial Court's (MeTC's) denial of a motion to suspend criminal proceedings?**

**SUGGESTED ANSWER**

By notice of appeal, within 15 days from notice of the final Order, to the Court of Appeals (Magestrado v. People, 527SCRA 125 [2007]).

**g. Appeal from judgments or final orders of the CA**

**h. Appeal from judgments or final orders of the CTA**

On July 15, 2009, Atty. Manananggal was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following:

x x x

**Judgment of the First Division of the Court of Tax Appeals (CTA) affirming the RTC decision convicting his client for violation of the National Internal Revenue Code? (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

By petition for review filed with the Court of Tax Appeals (CTA) en banc, within 30 days from receipt of the decision or ruling in question (Sec. 9[b], Rule 9, Rev. Rules of CTA).

**i. Review of final judgments or final orders of quasi-judicial agencies**

**3. Relief from judgments, orders and other proceedings a. Grounds for availing of the remedy**

**b. Time to file petition**

**c. Contents of petition**

Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

**How may Patricio prevent the sale of the property on execution? (2009 BAR EXAMS)**

### **SUGGESTED ANSWER**

Patricio may file a Petition for Relief with preliminary injunction (Rule 38), posting a bond equivalent to the value of the property levied upon; or assail the levy as invalid if ground exists. Patricio may also simply pay the amount required by the writ and the costs incurred therewith.

## **4. Annulment of judgments or final orders and resolutions**

### **a. Grounds for annulment**

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 resident 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. (2014 BAR EXAMS)

### **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 v. 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 (*Aleban v. 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 (Sec. 3, Rule 9). 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.

**a. Period to file action**

**b. Effects of judgment of annulment**

**5. Collateral attack of judgments**

**Q. Execution, satisfaction and effect of judgments**

**1. Difference between finality of judgment for purposes of appeal; for purposes of execution**

**2. When execution shall issue (Execution as a matter of right, Discretionary execution)**

Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 down payment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial, the court rendered judgment ordering Aldrin to pay all the instalments due, the cancellation of Yuri's title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executory, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former. Aldrin filed a "Petition for the Issuance of a Writ of Execution" with proper notice of hearing. The petition alleged, among others, that the decision had become final and executory and he is entitled to the issuance of the writ of execution as a matter of right. Neil filed a motion to dismiss the petition on the ground that it lacked the required certification against forum shopping. (2015 BAR EXAMS)

**a. Should the court grant Neil's Motion to Dismiss?**

**SUGGESTED ANSWER**

NO. The motion to dismiss should be denied because the certification against forum shopping is only required in a complaint or other initiatory pleading (Sec. 5, Rule 7; *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005). Since a petition for the issuance of the writ of execution is not an initiatory pleading, it does not require a certification against forum shopping.

**Despite the issuance of the writ of execution directing Neil to execute the deed of sale in favor of Aldrin, the former obstinately refused to execute the deed. What is Aldrin's remedy? (2015 BAR EXAMS)**

**SUGGESTED ANSWER**

Aldrin may move for the issuance of a court order directing the execution of the Deed of Sale by some other person appointed by it.

Under Section 10, Rule 39 of the Rules of Court, if a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds, other documents, or to perform, any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

The phrase "some other person appointed by the court" may refer to the branch clerk of court, sheriff or even the Register of Deeds, and their acts when done under such authority shall have the effect of having been done by Neil himself.

**3. How a judgment is executed**

**a. Execution by motion or by independent action**

**Distinguish between conclusiveness of judgment and bar by prior judgment. (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) Conclusiveness of judgment bars another action based on the same cause; bar by prior judgment precludes another action based on the same issue.
- (B) Conclusiveness of judgment bars only the defendant from questioning it; bar by prior judgment bars both plaintiff and defendant.
- (C) Conclusiveness of judgment bars all matters directly adjudged; bar by prior judgment precludes all matters that might have been adjudged.
- (D) Conclusiveness of judgment precludes the filing of an action to annul such judgment; bar by prior judgment allows the filing of such an action.

**b. Issuance and contents of a writ of execution**

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

**SUGGESTED ANSWER**

- 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.

### **c. Execution of judgments for money**

**Q: Antique dealer Mercedes borrowed P1, 000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.**

**On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.**

**Mercedes filed in February 2009 her Answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a dacion engago agreement in which her vintage P1, 000,000 Rolex watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a "frivolous lawsuit.. She accordingly prayed for P50, 000 damages.**

**x x x**

**Suppose there was no Counterclaim and Benjamin's complaint was not dismissed, and judgment was rendered against Mercedes for P1, 000,000. The judgment became final and executory and a writ of execution was correspondingly issued.**

**Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at P1.2 million. The Sheriff, however, on request of Benjamin, seized Mercedes 17th century ivory image of the La Sagrada Familia estimated to be worth over P1, 000,000. Was the Sheriffs action in order? (2010 BAR EXAMS)**

#### **SUGGESTED ANSWER**

No, the Sheriff's action was not in order. He should not have listened to Benjamin, the judgment obligee/creditor, in levying on the properties of Mercedes, the judgment obligor/debtor. The option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment, is vested by law (Rule 39, Sec. 9 (b) upon the judgment obligor, Mercedes, not upon the judgment obligee, Benjamin, in this case. Only if the judgment obligor does not exercise the option, is the Sheriff authorized to levy on personal properties if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

### **4. Properties exempt from execution**

### **5. Proceedings where property is claimed by third persons**

#### **a. In relation to third-party claim in attachment and replevin**

What should the court sheriff do if a third party serves on him an affidavit of claim covering the property he had levied? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Ask the judgment obligee to file a court-approved indemnity bond in favor of the third-party claimant or the sheriff will release the levied property.
- (B) Ask the judgment obligee to file a court-approved bond for the sheriff's protection in case he proceeds with the execution.
- (C) Immediately lift the levy and release the levied property.
- (D) Ask the third-party claimant to support his claim with an indemnity bond in favor of the judgment obligee and release the levied property if such bond is filed.

**6. Rules on Redemption**

**Q: Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale. (2009 BAR EXAMS)**

x x x

**[b] If Orencio is the purchaser of the property at the execution sale, how much does he have to pay? Explain.**

**SUGGESTED ANSWER**

Orencio, the judgment creditor should pay only the excess amount of the bid over the amount of the judgment, if the bid exceeds the amount of the judgment.

**[c] If the property is sold to a third party at the execution sale, what can Patricio do to recover the property? Explain.**

**SUGGESTED ANSWER**

Patricio can exercise his right of legal redemption within 1 year from date of registration of the certificate of sale by paying the amount of the purchase price with interest of 1% monthly, plus assessment and taxes paid by the purchaser, with interest thereon, at the same rate.

**7. Examination of judgment obligor when judgment is unsatisfied**

**8. Effect of judgment or final orders**

**9. Enforcement and effect of foreign judgments or final orders**

What defenses may be raised in a suit to enforce a foreign judgment? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) That the judgment is contrary to Philippine procedural rules.
- (B) None, the judgment being entitled to full faith and credit as a matter of general comity among nations.
- (C) That the foreign court erred in the appreciation of the evidence.
- (D) That extrinsic fraud afflicted the judgment.

## **R. Provisional remedies**

### **1. Nature of Provisional Remedies**

### **2. Preliminary Attachment**

**Q: 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:**

- (A) writ of preliminary injunction**
- (B) writ for preliminary attachment**
- (C) an order granting support pendente lite**
- (D) a writ of replevin (2014 BAR EXAMS)**

### **SUGGESTED ANSWER**

(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.  
(D) 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.

**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 Agente levied on the latter's house and lot. On November 20, 2013, the Sheriff served upon Agente summons and a copy of the complaint. On November 22, 2013, Agente filed an Answer with Motion to Discharge the Writ if 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. (2014 EXAMS)**

**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 v. Nicanor Satsatin, G.R. No. 166759, November 25, 2009*). Accordingly, the issuance of the writ of attachment is valid notwithstanding the absence of a prior service of summons to Agnete.

**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. v. Court of Appeals, G.R. No. 93262 December 29, 1991*). Thus, the writ of preliminary attachment must only be served simultaneous or at least after the service of summons to the defendant (*Sofia Torres v. Nicanor Satsatin, G.R. No. 166759, November 25, 2009*).

**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. 8 moves to lift the attachment. Rule on this. (2012 BAR EXAMS)**

**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 the prior or contemporaneous service of summons with the writ of attachment (Sec. 5, Rule 57).

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

**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 of judgment where property of an adverse party may be attached as security for 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 payment of a counter bond.

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 the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor (Section 9[c], Rule 39).

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 choose 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 (Sec. 9 [b], Rule 39).

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 a 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.

**Arthur, a resident foreigner sold his car to Bren. After being paid but before delivering the car, Arthur replaced its original sound system with an inferior one. Bren discovered the change, rejected the car, and demanded the return of his money. Arthur did not comply. Meantime, his company reassigned Arthur to Singapore. Bren filed a civil action against Arthur for contractual fraud and damages. Upon his application, the court issued a writ of preliminary attachment on the grounds that (a) Arthur is a foreigner; (b) he departed from the Philippines; and (c) he was guilty of fraud in contracting with Bren. Is the writ of preliminary attachment proper? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

(A) No, Arthur is a foreigner living abroad; he is outside the court's jurisdiction.

- (B) Yes, Arthur committed fraud in changing the sound system and its components before delivering the car bought from him.
- (C) Yes the timing of his departure is presumptive evidence of intent to defraud.
- (D) No, since it was not shown that Arthur left the country with intent to defraud Bren.

**a. Grounds for issuance of writ of attachment**

**b. Requisites; Issuance and contents of order of attachment; affidavit and bond**

**c. Rule on prior or contemporaneous service of summons**

**d. Manner of attaching real and personal property; when property attached is claimed by third person**

**e. Satisfaction of judgment out of property attached**

**4. Preliminary injunction**

**a. Definitions and differences: preliminary injunction and temporary restraining order; status quo ante order**

The Court of Appeals cannot issue a temporary restraining order in the following cases except: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

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

**b. Requisites**

**c. Kinds of injunction**

**d. When writ may be issued**

Preliminary Prohibitive Injunction will not lie: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

### e. Grounds for issuance of preliminary injunction

### f. Duration of a Temporary Restraining Order (TRO)

A temporary restraining order (TRO) was issued on September 20, 2017 by the RTC against defendant Jeff enjoining him from entering the land of Regan, the plaintiff.

On October 9, 2017, upon application of Regan, the trial court, allegedly in the interest of justice, extended the TRO for another 20 days based on the same ground for which the TRO was issued.

On October 15, 2017, Jeff entered the land subject of the TRO. May Jeff be liable for contempt of court? Why? (4%) (2007 BAR EXAMS)

#### **SUGGESTED ANSWER:**

No, Jeff may not be held liable for contempt. Under Rule 58, Section 5 of the Rules of Court, a Temporary Restraining Order is valid for 20 days. Its effectivity is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued, thus, Jeff cannot be held liable for contempt.

### 5. Receivership

#### a. Cases when receiver may be appointed

Which of the following is NOT within the power of a judicial receiver to perform? (2011 BAR EXAMS)

#### **SUGGESTED ANSWER**

- (A) Bring an action in his name.
- (B) Compromise a claim.
- (C) Divide the residual money in his hands among the persons legally entitled to the same.
- (D) Invest the funds in his hands without court approval.

Which of the following is in accord with the applicable rules on receivership? (2011 BAR EXAMS)

- (A) The court may appoint the plaintiff as receiver of the property in litigation over the defendant's objection.
- (B) A receiver may be appointed after judgment if the judgment obligor refuses to apply his property to satisfy the judgment.
- (C) The trial court cannot appoint a receiver when the case is on appeal.
- (D) The filing of bond on appointment of a receiver is mainly optional.

### 6. Replevin

**a. When may writ be issued**

**b. Requisites**

**c. Affidavit and bond; redelivery bond**

Which of the following conforms to the applicable rule on replevin? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

Which of the following has NO PLACE in an application for a replevin order? A statement (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) that the property is wrongfully detained by the adverse party.
- (B) that the property has not been distrained for a tax assessment or placed under custodia legis.
- (C) of the assessed value of the property.
- (D) that the applicant owns or has a right to the possession of the property.

**d. Sheriff's duty in the implementation of the writ; when property is claimed by third party**

When is the defendant entitled to the return of the property taken under a writ of replevin? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) When the plaintiff's bond is found insufficient or defective and is not replaced.
- (B) When the defendant posts a redelivery bond equal to the value of the property seized.
- (C) When the plaintiff takes the property and disposes of it without the sheriff's approval.
- (D) When a third party claims the property taken yet the applicant does not file a bond in favor of the sheriff.

The RTC of Malolos, Branch 1, issued a writ of execution against Rene for P20 million. The sheriff levied on a school building that appeared to be owned by Rene. Marie, however, filed a third party claim with the sheriff, despite which, the latter scheduled the execution sale. Marie then filed a separate action before the RTC of Malolos, Branch 2, which issued a writ of preliminary injunction enjoining the sheriff from taking possession and proceeding with the sale of the levied property. Did Branch 2 correctly act in issuing the injunction? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- (A) Yes, since the rules allow the filing of the independent suit to check the sheriff's wrongful act in levying on a third party's property.
- (B) Yes, since Branch 2, like Branch 1, is part of the RTC of Malolos.
- (C) No, because the proper remedy is to seek relief from the same court which rendered the judgment.
- (D) No, since it constitutes interference with the judgment of a co-equal court with concurrent jurisdiction.

## **S. Special civil actions**

### **1. Interpleader (Requisites for interpleader, When to file)**

In which of the following is Interpleader improper? (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

### **a. When court may refuse to make judicial declaration**

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

### **SUGGESTED ANSWER**

- 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

## **3. 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**

What is the proper remedy to secure relief from the final resolutions of the Commission On Audit? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Petition for review on certiorari with the Supreme Court.
- (B) Special civil action of certiorari with the Court of Appeals.
- (C) Special civil action of certiorari with the Supreme Court.
- (D) Appeal to the Court of Appeals.

The decisions of the Commission on Elections or the Commission on Audit may be challenged by (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) petition for review on certiorari filed with the Supreme Court under Rule 45.
- (B) petition for review on certiorari filed with the Court of Appeals under Rule 42.
- (C) appeal to the Supreme Court under Rule 54.
- (D) special civil action of certiorari under Rule 65 filed with the Supreme Court.

**1. Certiorari, prohibition and mandamus**

Hannibal, Donna, Florence and Joel, concerned residents of Laguna de Bay, filed a complaint for mandamus against the Laguna Lake Development Authority, the Department of Environment and Natural Resources, the Department of Public Work and Highways, Department of Interior and Local Government, Department of Agriculture, Department of Budget, and Philippine National Police before the RTC of Laguna alleging that the continued neglect of defendants in performing their duties has resulted in serious deterioration of the water quality of the lake and the degradation of the marine life in the lake. The plaintiffs prayed that said government agencies be ordered to clean up Laguna de Bay and restore its water quality to Class C waters as prescribed by Presidential Decree No. 1152, otherwise known as the Philippine Environment Code. Defendants raise the defense that the cleanup of the lake is not a ministerial function and they cannot be compelled by mandamus to perform the same. The RTC of Laguna rendered a decision declaring that it is the duty of the agencies to clean up Laguna de Bay and issued a permanent writ of mandamus ordering said agencies to perform their duties prescribed by law relating to the cleanup of Laguna de Bay. (2016 BAR EXAMS)

(A) Is the RTC correct in issuing the writ of mandamus? Explain.

**SUGGESTED ANSWER**

Yes, the RTC is correct. In *MMDA v. Concerned Residents of Manila Bay*, 18 December 2008, the SC held that the cleaning or rehabilitation of Manila Bay can be compelled by mandamus. The ruling in *MMDA* may be applied by analogy to the clean up of the Laguna de Bay.

While the term issued by the RTC of Laguna is a *permanent* writ of mandamus, this should be considered only as a semantic error and that what the RTC really intended to issue is a writ of *continuing* mandamus. There is no such thing as a permanent writ of mandamus since the writ shall cease to be effective once the judgment is fully satisfied.

**(B) What is the writ of continuing mandamus?**

**SUGGESTED ANSWER**

The writ of continuing mandamus is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.

**What is the effect of the pendency of a special civil action under Rule 65 of the Rules of Court on the principal case before the lower court? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**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? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (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.

**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 \_\_\_\_\_. (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (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.

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

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

**SUGGESTED ANSWER**

- 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.

**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. (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

If I were the private prosecutor, I would file a petition for certiorari under Rule 65 with the Court of Appeals (Cerezo v. People, GR 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 v. Romulo Awingan et. al. G.R. No. 177727, January 19, 2010).

### **Distinguish error of jurisdiction from error of judgment. (2012 BAR EXAMS)**

#### **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 v. Moir, G.R. No. L-12256, February 6, 1917; Cochingyan v. Cloribel, G.R. No. 27070-71, April 22, 1977; Fortich v. Corona, G.R. No. 131457, April 24, 1998; Artistica Ceramica, Inc. v. Ciudad Del Carmen Homeowner's Association, Inc., G.R. Nos. 167583-84, June 16, 2010).

**What is the movant's remedy if the trial court incorrectly denies his motion to dismiss and related motion for reconsideration? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- (A) Answer the complaint.
- (B) File an administrative action for gross ignorance of the law against the trial judge.
- (C) File a special civil action of certiorari on ground of grave abuse of discretion.
- (D) Appeal the orders of denial.

**A party aggrieved by an interlocutory order of the Civil Service Commission (CSC) filed a petition for certiorari and prohibition with the Court of Appeals. May the Court of Appeals take cognizance of the petition? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- (A) Yes, provided it raises both questions of facts and law.
- (B) No, since the CSC Chairman and Commissioners have the rank of Justices of the Court of Appeals.
- (C) No, since the CSC is a Constitutional Commission.
- (D) Yes, since the Court of Appeals has jurisdiction over the petition concurrent with the Supreme Court.

### **a. Definitions and distinctions**

#### **i. Certiorari distinguished from appeal by certiorari**

**b. When petition for certiorari, prohibition and mandamus is proper**

Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 9, 2015, the court granted Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015. (2015 BAR EXAMS)

a. What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial?

**SUGGESTED ANSWER**

The remedy of the prosecution is to file a petition for *certiorari* under Rule 65 of the Rules of Court, because the denial of a motion for reconsideration is merely an interlocutory order and there is no plain, speedy and adequate remedy under the course of law.

Be that as it may, it may be argued that appeal is the appropriate remedy from an *order denying a motion for reconsideration* of an order granting a motion for new trial because an order denying a motion for reconsideration was already removed in the enumeration of matters that cannot be a subject of an appeal under Section 1, Rule 41 of the Rules of Court.

b. In what court and within what period should a remedy be availed of?

**SUGGESTED ANSWER**

Following the principle of judicial hierarchy, the petition for *certiorari* should be filed before the Court of Appeals within sixty (60) days from receipt of the copy of the order of denial of the public prosecutor's motion for reconsideration, or on October 20, 2015.

c. Who should pursue the remedy?

**SUGGESTED ANSWER**

The Office of the Solicitor General (OSG) should pursue the remedy. In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the people is vested solely in the Solicitor General. Under Presidential decree No. 4478 among the specific powers and functions of the OSG is to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of

the People of the Philippines in all criminal cases (*Cariño v. de Castro*, G.R. No. 176084, April 30, 2008).

The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for *certiorari* against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information. (2015 BAR EXAMS)

a. Was the remedy taken by the governor correct?

**SUGGESTED ANSWER**

NO, the remedy taken by the Governor is not correct. The petition for *certiorari* is a remedy that is only available when there is no plain, speedy and adequate remedy under the ordinary course of law; hence, the Governor should have filed a Motion for Reconsideration.

Besides, there is no showing that the Ombudsman committed grave abuse of discretion in granting immunity to the treasurer who agreed to cooperate in the prosecution of the case.

b. Will the writ of *mandamus* lie to compel the Ombudsman to include the treasurer in the Information?

**SUGGESTED ANSWER**

NO, *Mandamus* will not lie to compel the Ombudsman to include the treasurer in the Information. In matters involving exercise of judgment and discretion, *mandamus* may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion (*Ampatuan, Jr. v. Secretary De Lima*, G.R. No. 197291, April 3, 2013).

Evidently, the Ombudsman's act of granting the treasurer immunity from prosecution under such terms and conditions as it may determine (Sec. 17, R.A. 6770) is a discretionary duty that may not be compelled by the extraordinary writ of *mandamus*.

**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. (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

NO, mandamus will not lie. The proper remedy is a petition for prohibition (Serena v. 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 v. Danilo Mora, G.R. No. 157783, September 23, 2005).

Which of the following is NOT REQUIRED in a petition for mandamus? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) The act to be performed is not discretionary.
- (B) There is no other adequate remedy in the ordinary course of law.
- (C) The respondent neglects to perform a clear duty under a contract.
- (D) The petitioner has a clear legal right to the act demanded.

**c. Exceptions to filing of motion for reconsideration before filing petition**

**d. Effects of filing of an unmeritorious petition**

**5. Quo Warranto**

**a. Judgment in quo warranto action**

**6. Expropriation**

Which of the following is NOT CONSISTENT with the rules governing expropriation proceedings? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) The court shall declare the defendant who fails to answer the complaint in default and render judgment against him.
- (B) The court shall refer the case to the Board of Commissioners to determine the amount of just compensation.
- (C) The plaintiff shall make the required deposit and forthwith take immediate possession of the property sought to be expropriated.
- (D) The plaintiff may appropriate the property for public use after judgment and payment of the compensation fixed in it, despite defendant's appeal.

**a. When plaintiff can immediately enter into possession of the real property, in relation to R.A. No. 8974**

**Q: The Republic of the Philippines, through the Department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the**

assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

X X X

As judge, will you grant the writ of possession prayed for by DPWH? Explain. (2009 BAR EXAMS)

**SUGGESTED ANSWER**

NO. The expropriation here is governed by Rep. Act No. 8974 which requires 100% payment of the zonal value of the property as determined by the BIR, to be the amount deposited. Before such deposit is made, the national government thru the DPWH has no right to take possession of the property under expropriation.

**b. Defenses and objections**

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

[a] Will Jovito's motion to dismiss prosper? Explain. (2009 BAR EXAMS)

**SUGGESTED ANSWER**

NO. The present Rule of Procedure governing expropriation (Rule 67), as amended by the 1997 Rules of Civil Procedure, requires the defendant to file an Answer, which must be filed on or before the time stated in the summons. Defendant's objections and defenses should be pleaded in his Answer not in a motion.

**c. Ascertainment of just compensation**

**7. Foreclosure of real estate mortgage**

**a. Judgment on foreclosure for payment or sale**

Is the buyer in the auction sale arising from an extra-judicial foreclosure entitled to a writ of possession even before the expiration of the redemption period? If so, what is the action to be taken? (2016 BAR EXAMS)

**SUGGESTED ANSWER**

A. Yes, the buyer in the auction sale is entitled to a writ of possession even before the expiration of the redemption period upon the filing of the ex parte petition for issuance of a writ of possession and posting of the appropriate bond. Under Section 7 of Act No. 3135, as amended, the writ of possession may be issued to the purchaser in a foreclosure sale either within the one-year redemption period upon the filing of a bond, or after the lapse of the redemption period, without need of a bond (*LZK Holdings and Development Corporation V. Planters Development Bank*, G.R. No. 167998, April 27, 2007). Stated otherwise, Section 7 of Act No. 3135, as amended, also refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Hence, upon the purchaser's filing of the ex parte petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in favor of the purchaser (*Spouses Nicasio C: Marquez and Anita J. Marquez v. Spouses Carlito Alindog and Carmen Alindog*, G.R. No.184045, January 22,2014; *Spouses Jose Gatuslao and Ermila Gatuslao v. Leo Ray Yanson*, G.R. No.191540, January 21, 2015).

**After the period of redemption has lapsed and the title to *the* lot is consolidated in the name of the auction buyer, is he entitled to the writ of possession as a matter of right? If so, what is the action to be taken? (2016 BAR EXAMS)**

**SUGGESTED ANSWER**

Yes, the buyer is entitled to the writ of possession as a matter of right. After consolidation of ownership, a writ of possession will issue as a matter of course, without the filing and approval of a bond. The action to be taken is to file an ex parte petition for issuance of writ of possession with the RTC pursuant to Section 7 of Act No. 3135. (*Navarra v. CA*, 204 SCRA 850).

**Suppose that after the title to the lot has been consolidated in the name of the auction buyer, said buyer sold the lot to a third party without first getting a writ of possession. Can the transferee exercise the right of the auction buyer and claim that it is a ministerial duty of the court to issue a writ of possession in his favor? Briefly explain. (2016 BAR EXAMS)**

**SUGGESTED ANSWER**

Yes. The Supreme Court has held that a transferee of the purchaser or winning bidder may file an ex parte motion for the issuance of a writ of possession. The reason is that the transferee steps into the shoes of the purchaser and acquires whatever rights the transferor had. (*Laureno v. Bormaheco*, 404 Phil. 80).

**When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) After the decision has become final and executory.
- (B) At any time after the failure of the defendant to pay the judgment amount.

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

**Which of the following correctly states the rule on foreclosure of mortgages? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) The rule on foreclosure of real estate mortgage is suppletorily applicable to extrajudicial foreclosures.
- (B) In judicial foreclosure, an order of confirmation is necessary to vest all rights in the purchaser.
- (C) There is equity of redemption in extra-judicial foreclosure.
- (D) A right of redemption by the judgment obligor exists in judicial foreclosure.

**b. Deficiency judgment (Instances when court cannot render deficiency judgment)**

**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): (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) Extrajudicial foreclosure of mortgage.
- (B) Judicial foreclosure of mortgage.
- (C) Execution sale.
- (D) Foreclosure by a bank.

**In a judicial foreclosure proceeding, under which of the following instances is the court NOT ALLOWED to render deficiency judgment for the plaintiff? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) If the mortgagee is a banking institution.
- (B) if upon the mortgagor's death during the proceeding, the mortgagee submits his claim in the estate proceeding.
- (C) If the mortgagor is a third party who is not solidarily liable with the debtor.
- (D) If the mortgagor is a non-resident person and cannot be found in the Philippines.

**8. Partition**

**a. Matters to allege in the complaint for partition**

**When may a co-owner NOT demand the partition of the thing owned in common?  
(2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) When the creditor of one of the co-owners has attached the property.
- (B) When the property is essentially indivisible.
- (C) When related co-owners agreed to keep the property within the family.
- (D) When a co-owner uses the property as his residence.

**9. Forcible entry and unlawful detainer**

**a. Definitions and distinction**

Landlord, a resident of Quezon City, entered into a lease contract with Tenant, a resident of Marikina City, over a residential house in Las Pinas City. The lease contract provided, among others, for a monthly rental of P25,000.00, 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. (2014 BAR EXAMS)

**a. What judicial remedy would you recommend to Maria?**

**SUGGESTED ANSWER**

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 P100,000 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 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?**

**SUGGESTED ANSWER**

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 (*Sec. 2, Rule 4*). 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 (Sec. 1, Rule 4). 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?**

**SUGGESTED ANSWER**

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 (Sec. 2, Rule 70).

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

**To rid the spouses' Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

As counsel of spouses Juan, I will file a special civil action for Forcible Entry. The Rules of Court provides that a person deprived of the possession of any land or building by force, intimidation, threat, strategy or stealth may at any time within one (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 (Sec. 1, Rule 70).

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).

In *Abad v. Farrales*, G.R. 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 Sec. 1, Rule 4).

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.

**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? (2013 BAR EXAMS)**

### **SUGGESTED ANSWER**

Patty may undertake the following remedies:

- a) She may file a small claims case against CCC Company for damages arising from fault or negligence before the MTC where she or the defendant resides, at her option (A.M. No. 8-8-7-SC in relation to Section 2, Rule 4, Rules of Court).
- b) She may also file an independent civil action against the company based on quasi-delict under Article 2176 of the Civil Code. The law states, 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.
- 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 defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.

**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? (2012 BAR EXAMS)**

### **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 (Sec. 4, Rule 71). The writ was not directed to X but to the sheriff which 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 v. Tutaan, L-16643, September 29, 1983; Medina v. Garces, L- 25923, July 15, 1980; Pascua v. Heirs of Segundo Simeon, G.R. No. L-47717, May 2, 1988; Patagan et. al. v. Panis, G.R. No. 55630, April 8, 1988).

**Which of the following renders a complaint for unlawful detainer deficient? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) The defendant claims that he owns the subject property.
- (B) The plaintiff has tolerated defendant's possession for 2 years before demanding that he vacate it.
- (C) The plaintiff's demand is for the lessee to pay back rentals or vacate.
- (D) The lessor institutes the action against a lessee who has not paid the stipulated rents.

**b. How to stay the immediate execution of judgment**

Judgment was rendered against defendant Jaypee in an action for unlawful detainer. The judgment ordered Jaypee to vacate and to pay attorney's fees in favor of Bart, the plaintiff.

To prevent the immediate execution of the judgment, would you advise the posting of a supersedeas bond as counsel for Jaypee? Explain your answer briefly. (2%). (2017 BAR EXAMS)

**SUGGESTED ANSWER**

I would advise Jaypee to post a supersedeas bond, but I would also advise him that the posting of a supersedeas bond alone does not prevent the immediate execution of the judgment. To stay the immediate execution of the judgment in an ejectment case, the defendant:

1. Must perfect an appeal;
2. File a supersedeas bond; and
3. Periodically deposit the rentals becoming due during the pendency of the appeal;

otherwise, the writ of execution will issue upon motion of the plaintiff (Achang V. Hon. Luczon, G.R. No. 164246, January 15, 2014; Rule 70, Section 19 of the Rules of Court).

**ALTERNATIVE ANSWER:**

As counsel for Jaypee, I would not advise the posting of a supersedeas bond. The supersedeas bond shall be equivalent to the unpaid rentals, damages and costs which accrued down to the time of the judgment (Section 19, Rule 70, Rules of Court; Chua V. Court of Appeals, G.R. No. 113886, February 24, 1998). In other words, the supersedeas bond covers the monetary judgment of the lower court; thus, if the judgment does not make any pronouncement as to the pecuniary liability of the defendant, the posting of the supersedeas bond should not be required. Attorney's fees are not covered by a supersedeas bond (Once v. Gonzales, G.R. No. L-44806, March 31, 1977).

**Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgment in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ. (2009 BAR EXAMS)**

**a. How can Mike stay the execution of the MTC judgment? Explain. (2%)**

**SUGGESTED ANSWER:**

Execution shall issue immediately upon motion, unless Mike (a) perfects his appeal to the RTC, (b) files a sufficient supersedeas bond to pay the rents, damages and costs accruing up to the time of the judgment appealed from, and (c) deposits monthly with the RTC during the pendency of the appeal the amount of rent due from time to time (Rule 70, Sec. 19).

**b. Mike appealed to the Regional Trial Court (RTC), which affirmed the MTC decision.**

**Mike then filed a petition for review with the Court of Appeals (CA). The CA dismissed the petition on the ground that the sheriff had already executed the MTC decision and had ejected Mike from the premises, thus rendering the appeal moot and academic. Is the CA correct? Reasons. (3%)**

**SUGGESTED ANSWER:**

No, the Court of Appeals is not correct. The dismissal of the appeal is wrong, because the execution of the RTC judgment is only in respect of the eviction of the defendant from the leased premises. Such execution pending appeal has no effect on the merits of the ejectment suit which still has to be resolved in the pending appeal. Rule 70, Sec. 21 of the Rules provides that the RTC judgment against the defendant shall be immediately executory, "without prejudice to a further appeal" that may be taken therefrom [Uy v. Santiago, 336 SCRA 680 [2000]].

**c. Summary procedure, prohibited pleadings**

**Laura was the lessee of an apartment unit owned by Louie. When the lease expired, Laura refused to vacate the property. Her refusal prompted Louie to file an action**

for unlawful detainer against Laura who failed to answer the complaint within the reglementary period.

Louie then filed a motion to declare Laura in default. Should the motion be granted? Explain your answer. (3%) (2017 BAR EXAMS)

**SUGGESTED ANSWER**

No, the motion should not be granted because it is a prohibited pleading. Under Section 19 (h) of the Rules on Summary Procedure, a motion to declare defendant in default is among the pleadings that are prohibited in cases covered by said Rule. Considering that an action for unlawful detainer is covered by the Rules on Summary Procedure, Louie's motion to declare Laura in default is a prohibited pleading, and thus, should not be granted.

**10. Contempt**

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 \_\_\_\_\_. (2013 BAR EXAMS)

**SUGGESTED ANSWER**

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

A person may be charged with direct contempt of court when: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- (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.

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

**SUGGESTED ANSWER**

- (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.

Ramon witnessed the commission of a crime but he refuses to testify for fear of his life despite a subpoena being served on him. Can the court punish him for contempt? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) No, since no person can be compelled to be a witness against another.
- (B) Yes, since public interest in justice requires his testimony.
- (C) No, since Ramon has a valid reason for not testifying.
- (D) Yes, since litigants need help in presenting their cases.

**IV. Special Proceedings**

Which of the following is not a Special Proceeding? (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Absentees;
- (B) Escheat;
- (C) Change of First Name;
- (D) Constitution of Family Home;

**ALTERNATIVE ANSWER**

All the above mentioned are considered Special Proceedings because they are remedies which seek to establish a status, right or a particular fact.

Anna filed a petition for appointment as regular administratrix of her fathers' estate. Her sister Sophia moved to dismiss the petition on the ground that the parties, as members of the same family, have not exerted earnest effort toward a compromise prior to the filing of the petition. Should the petition be dismissed? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) Yes, since such earnest effort is jurisdictional in all estate cases.
- (B) No, since such earnest effort is not required in special proceedings.
- (C) Yes, since such earnest effort is required prior to the filing of the case.
- (D) No, since such earnest effort toward a compromise is not required in summary proceedings.

**A. Settlement of estate of deceased persons, venue and process**

Chika sued Gringo, a Venezuelan, for a sum of money. The Metropolitan Trial Court of Manila (MeTC) rendered a decision ordering Gringo to pay Chika P50,000.00 plus legal interest. During the pendency of the appeal before the RTC, Gringo died of acute hemorrhagic pancreatitis. Atty. Perfecto, counsel of Gringo, filed a manifestation attaching the death certificate of Gringo and informing the RTC that he cannot substitute the heirs since Gringo did not disclose any information on his

family. As counsel for Chika, what remedy can you recommend to your client so the case can move forward and she can eventually recover her money? Explain. (2016 BAR EXAMS)

**SUGGESTED ANSWER:**

The remedy is to file a petition for settlement of the estate of Gringo and for the appointment of an administrator. Chika as a creditor is an interested person who can file the petition for settlement of Gringo's estate. Once the administrator is appointed, a motion may be filed that the administrator be substituted as the defendant. Chika may also file claim against Gringo as a contingent claim in the probate proceedings pursuant to Rule 86 of the Rules of Court.

**1. Which court has jurisdiction**

Apart from the case for the settlement of her parents' estate, Betty filed an action against her sister, Sigma, for reconveyance of title to a piece of land. Betty claimed that Sigma forged the signatures of their late parents to make it appear that they sold the land to her when they did not, thus prejudicing Betty's legitime. Sigma moved to dismiss the action on the ground that the dispute should be resolved in the estate proceedings. Is Sigma correct? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

**In proceedings for the settlement of the estate of deceased persons, the court in which the action is pending may properly (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) Pass upon question of ownership of a real property in the name of the deceased but claimed by a stranger.
- (B) Pass upon with the consent of all the heirs the issue of ownership of estate asset, contested by an heir if no third person is affected.
- (C) Rule on a claim by one of the heirs that an estate asset was held in trust for him by the deceased.
- (D) Rescind a contract of lease entered into by the deceased before death on the ground of contractual breach by the lessee.

**2. Venue in judicial settlement of estate**

## **B. Summary settlement of estates**

### **1. Extrajudicial settlement by agreement between heirs, when allowed**

### **2. Summary settlement of estates of small value, when allowed**

### **3. Remedies of aggrieved parties after extrajudicial settlement of estate**

Pinoy died without a will. His wife, Rosie, and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate. Rosie and the three children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed. Are Rosie and the three children correct? Explain. (4%) (2009 BAR EXAMS)

#### **SUGGESTED ANSWER**

No, the contention is not correct. Suzy can file a complaint to annul the extrajudicial settlement and she can recover what is due her as such heir if her status as an illegitimate child of the deceased has been established. The publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is intended for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. She can file the action therefor within four (4) years after the settlement was registered.

## **C. Production and probate of will**

### **1. Nature of probate proceeding**

### **2. Who may petition for probate; persons entitled to notice**

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? (2012 BAR EXAMS)

#### **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.

**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. (2012 BAR EXAMS)

**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).

**Czarina died single. She left all her properties by will to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.**

**Duqueza soon instituted an action for probate of Czarina's will. Marco, on the other hand, instituted intestate proceedings. Both actions were consolidated before the RTC of Pasig. On motion of Marco, Duqueza's petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%) (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The petition for probate of Czarina's will, as filed by Duquesa should not be dismissed on mere motion of Marco who instituted intestate proceedings.

The law favors testacy over intestacy, hence, the probate of the will cannot be dispensed with. (See Sec. 5, Rule 75) Thus, unless the will – which shows the obvious intent to disinherit Marco – is probated, the right of a person to dispose of his property maybe rendered nugatory (See Seangio v. Reyes, G.R. Nos. 140371-72, Nov. 27, 2006). Besides, the authority of the probate court is generally limited only to a determination of the extrinsic validity of the will. In this case, Marco questioned the intrinsic validity of the will.

**D. Allowance or disallowance of will**

**1. Contents of petition for allowance of will**

**2. Grounds for disallowing a will**

**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 rental condominium units in Makati City. Johnny's entire estate which he**

inherited from his parents is valued at P200 million. Johnny appointed Anastacia's executrix of his will. (2014 BAR EXAMS)

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 v. Palaganas, G.R. No. 169144, January 26, 2011*).

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 (*Sec. 1, Rule 78*). While she 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.

Which of the following is sufficient to disallow a will on the ground of mistake? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- (A) An error in the description of the land devised in the will.
- (B) The inclusion for distribution among the heirs of properties not belonging to the testator.
- (C) The testator intended a donation intervivos but unwittingly executed a will.
- (D) An error in the name of the person nominated as executor.

**3. Effects of probate**

Pedrillo, a Fil-Am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity.

Upon Pedrillo's demise, his will was duly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US\$1,000 per month for the next 15 years.

Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo's will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate. Winston now files in the Makati RTC a motion to compel XYZ to account for all sums in its possession forming part of Pedrillo's estate. Rule on the motion. (5%) (2010 BAR EXAMS)

**SUGGESTED ANSWER**

The motion should be denied. Makati RTC has no jurisdiction over XYZ of Hong Kong. The letters of administration granted to Winston only covers all Pedrillo's estate in the Philippines. (Rule 77, Sec. 4) This cannot cover the annuities in Hongkong.

At the outset, Makati RTC should not have taken cognizance of the petition filed by Winston, because the will does not cover any property of Pedrillo located here in the Philippines.

**E. Letters testamentary and of administration**

**1. When and to whom letters of administration granted**

A special administrator may be appointed by a court when: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- (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.

**2. Opposition to issuance of letters testamentary; simultaneous filing of petition for administration**

Sal Mineo died intestate, leaving a P1 billion estate. He was survived by his wife Dayanara and their five children. Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%) (2010 BAR EXAMS)

**SUGGESTED ANSWER**

The opposition should be overruled for lack of merit. The allegation that there was a genuine effort to settle the estate amicably before the filling of the petition is not required by the Rules. Besides, a petition for issuance of letters of administration may be contested on either of two grounds: (1) the incompetency of the person for whom letters are prayed therein; and (2) the contestant's own right to the administration. (Sec. 4, Rule 79).

## **F. Claims against the estate**

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

### **SUGGESTED ANSWER**

- 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.

The statute of "non-claims" requires that: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

Which of the following claims survive the death of the defendant and need not be presented as a claim against the estate? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. Contingent money claims arising from contract.
- B. Unenforced money judgment against the decedent, with death occurring before levy on execution of the property.
- C. Claims for damages arising from quasi-delict.
- D. Claims for funeral expenses.

## **1. Claim of executor or administrator against the estate**

## **G. Actions by and against executors and administrators**

## **H. Distribution and Partition**

As a rule, the estate shall not be distributed prior to the payment of all charges to the estate. What will justify advance distribution as an exception? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. The estate has sufficient residual assets and the distributees file sufficient bond.
- B. The specific property sought to be distributed might suffer in value.
- C. An agreement among the heirs regarding such distribution.
- D. The conformity of the majority of the creditors to such distribution.

## **I. Escheat**

### **1. Remedy of respondent against petition; period for filing a claim**

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

#### **SUGGESTED ANSWER**

- 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.

## **J. Guardianship**

**Which of the following is a duty enjoined on the guardian and covered by his bond? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

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

### **1. Rule on guardianship over minor**

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

#### **SUGGESTED ANSWER**

- E. An older brother or sister who is over 18 years old.
- F. The actual custodian over 21 years old.
- G. A paternal grandparent.
- H. An uncle or aunt over 21 years old.

## **K. Adoption**

**A and B adopted their nephew. They filed an action for revocation of the adoption on May 1, 1998 on the ground that their nephew neglected them. Based on the Rules of Domestic Adoption, the judge must: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Advise A and B to just disinherit the nephew.
- B. Disallow the revocation.
- C. Refer the petition to the DSWD.
- D. Grant the petition after hearing.

**L. Writ of habeas corpus**

Hercules was walking near a police station when a police officer signalled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "Sir, may problema po ba?" Instead of replying, the police officer locked up Hercules inside the police station jail. What is the remedy available to Hercules to secure his immediate release from detention? (2015 BAR EXAMS)

**SUGGESTED ANSWER**

The remedy available to Hercules is to file a petition for *habeas corpus* questioning the illegality of his warrantless arrest. The writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of liberty (Sec. 1, Rule 102).

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

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

**SUGGESTED ANSWER**

- 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.

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

denying his motion for reconsideration. Did he file a timely notice of appeal? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

A. No, since he filed it more than 2 days after receipt of the decision granting the petition.

B. No, since he filed it more than 2 days after receipt of the order denying his motion for reconsideration.

C. Yes, since he filed it within 15 days from receipt of the denial of his motion for reconsideration.

D. Yes, since he filed it within 7 days from receipt of the denial of his motion for reconsideration.

**1. Contents of the petition**

**2. Distinguish peremptory writ from preliminary citation**

**3. When writ disallowed/discharged**

**4. Rules on Custody of Minors and Writ of Habeas Corpus in relation to Custody of Minors (A.M. No. 03-04-04-SC)**

**M. Writ of Amparo (A.M. No. 07-9-12-SC)**

The residents of Mt. Ahohoy, headed by Masigasig, formed a nongovernmental organization - Alyansa Laban sa Minahan sa Ahohoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the mining site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their trucks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Ahohoy (APKA), a civilian volunteer organization serving as auxiliary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their binge drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation. Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of *amparo* against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of *amparo* with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised among their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in an *amparo* petition. (2015 BAR EXAMS)

**a. Is their defense tenable?**

**SUGGESTED ANSWER**

No, the defense is not tenable. The writ of *amparo* is a remedy available to any person whose right to life, liberty and security has been violated or is threatened with violation by an unlawful act or omission of a public officer or employee or of a private individual or entity. The writ covers extra-legal killings, enforced disappearances or threats thereof (Sec. 1, *The Rule on the Writ of Amparo*, A.M. No. 07-9-12-SC).

Moreover, the rules do not require that the respondents should be agents of the State in order to be impleaded as respondents in an *amparo* petition (*Secretary of National Defense v. Manalo*, G.R. No. 180906, October 7, 2008).

**b. Respondents Mapusok and APKA, in their Return filed with the Court of Appeals, raised as their defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC. Are respondents correct in raising their defense?**

**SUGGESTED ANSWER**

Yes, the respondents are correct in raising the defense. Under section 2(c) of the Rules on the Writ of *Amparo*, the filing of a petition by Mayumi who is an immediate member of the family of the aggrieved party already suspends the right of all other authorized parties to file similar petitions. Hence, ALMA cannot file the petition because of earlier petition by Mayumi with the RTC.

**c. Mayumi later filed separate criminal and civil actions against Mapusok. How will the cases affect the *amparo* petition she earlier filed?**

**SUGGESTED ANSWER**

When a criminal action and separate civil action are filed subsequent to a petition for a writ of *amparo*, the latter shall be consolidated with the criminal action. After consolidation, the procedure under Rules shall continue to apply to the disposition of the reliefs in the petition (Sec. 1, *Id.*).

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

**SUGGESTED ANSWER**

- A. Production order.
- B. Witness protection order.
- C. Hold departure order.
- D. Temporary protection order.

**What is the right correlation between a criminal action and a petition for Writ of Amparo both arising from the same set of facts? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. When the criminal action is filed after the Amparo petition, the latter shall be dismissed.
- B. The proceeding in an Amparo petition is criminal in nature.
- C. No separate criminal action may be instituted after an Amparo petition is filed.
- D. When the criminal action is filed after the Amparo petition, the latter shall be consolidated with the first.

**Alex filed a petition for writ of amparo against Melba relative to his daughter Toni's involuntary disappearance. Alex said that Melba was Toni's employer, who, days before Toni disappeared, threatened to get rid of her at all costs. On the other hand, Melba countered that she had nothing to do with Toni's disappearance and that she took steps to ascertain Toni's whereabouts. What is the quantum of evidence required to establish the parties' respective claims? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. For Alex, probable cause; for Melba, substantial evidence.
- B. For Alex, preponderance of evidence; for Melba, substantial evidence.
- C. For Alex, proof beyond reasonable doubt; for Melba, ordinary diligence.
- D. For both, substantial evidence.

**Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US authorities in connection with the Balikatan exercises.**

**Marinella alleges that as a result of her expose, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed.**

**Atty. Daro, counsel for the Chief of Staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro's motion. Explain. (3%) (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The motion to dismiss must be denied on the ground that it is a prohibited pleading under Section 11(a) of the Rule on the Writ of Amparo. Moreover, said Rule does not require the petition therefor to allege a complete detail of the actual or threatened violation of the victim's rights. It is sufficient that there be an allegation of real threat against petitioner's life, liberty and/ or security (Gen. A. Razon, Jr. v. Tagitis, G.R. No. 182498, Dec. 03, 2009).

**1. Coverage**

## 2. Distinguish from habeas corpus and habeas data

What is the writ of amparo? How is it distinguished from the writ of habeas corpus? (2%) (2009 BAR EXAMS)

### **SUGGESTED ANSWER**

The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.

The writ of amparo differs from a writ of habeas corpus in that the latter writ is availed of as a remedy against cases of unlawful confinement or detention by which any person is deprived of his liberty, or cases by which rightful custody of any person is withheld from another who is lawfully entitled thereto (Sec 1, Rule 102, Rules of Court).

## N. Writ of Habeas Data (A.M. No. 08-1-16-SC)

### 1. Scope of writ

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: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. RTC where AFP is located;
- B. RTC where Sgt. Santos resides;
- C. Supreme Court;
- D. Court of Appeals.

### **ALTERNATIVE ANSWER**

- B. RTC where Sgt. Santos resides
- C. Supreme Court

Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved by her co-employees because she extends cash advances or "vales" to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her.

Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat.

Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company's refusal to disclose the results of its investigation.

Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of habeas data before the Regional Trial Court (RTC) to enjoin Temptation, Inc. from transferring her on the ground that the company's refusal to provide her with a copy of the investigation results compromises her right to life, liberty and privacy.

**Resolve the petition. Explain. (5%) (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

Azenith's petition for the issuance of a writ of habeas data must be dismissed as there is no showing that her right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission. Neither was the company shown to be engaged in the gathering, collecting nor storing of data or information regarding the person, family, home and correspondence of the aggrieved party (Sec. 1, Rule on the Writ of Habeas Data).

**What is the writ of habeas data? (1%) (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

**O. Absentees**

**1. Purpose of the rule**

**2. Who may file; when to file**

Frank and Gina were married on June 12, 1987 in Manila. Barely a year after the wedding, Frank exhibited a violent temperament, forcing Gina, for reasons of personal safety, to live with her parents. A year thereafter, Gina found employment as a domestic helper in Singapore, where she worked for ten consecutive years. All the time she was abroad, Gina had absolutely no communications with Frank, nor did she hear any news about him. While in Singapore, Gina met and fell in love with Willie.

On July 4, 2007, Gina Filed a petition with the RTC of Manila to declare Frank presumptively dead, so that she could marry Willie. The RTC granted Gina's petition. The Office of the

Solicitor General (OSG) filed a Notice of Appeal with the RTC, stating that it was appealing the decision to the Court of Appeals on questions of fact and law.

**a. Is a petition for Declaration of Presumptive Death a special proceeding? Why or why not? (2%) (2009 BAR EXAMS)**

**SUGGESTED ANSWER:**

No. The petition for Declaration of Presumptive Death provided in Art. 41 of the “Family Code” is not the special proceeding governing absentees under Rule 107 of the Rules of Court whose rules of procedure will not be followed (Republic v. CA, 458 SCRA [2005]). Said petition for Declaration of Presumptive Death under Article 41 of the Family Code is a summary proceeding, authorized for purposes only of remarriage of the present spouse, to avoid incurring the crime of bigamy. Nonetheless, it is in the nature of a special proceeding, being an application to establish a status or a particular fact in court.

**ALTERNATIVE ANSWER:**

A petition for declaration of presumptive death may be considered a special proceeding, because it is so classified in the Rules of Court (Rule 107, Rules of Court), as differentiated from an ordinary action which is adversarial. It is a mere application or proceeding to establish the status of a party or a particular fact, to viz: that a person has been unheard of for a long time and under such circumstance that he may be presumed dead.

**b. As the RTC judge who granted Gina’s petition, will you give due course to the OSG’s Notice of Appeal? Explain. (3%)**

**SUGGESTED ANSWER**

No. Appeal is not a proper remedy since the decision is immediately final and executory upon notice to the parties under Art. 247 of the Family Code (Republic v. Bermudes-Lorino, 449 SCRA 57 [2005]). The OSG may assail RTC’s grant of the petition only on the premise of grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy should be by certiorari under Rule 65 of the Rules of Court.

**P. Cancellation or correction of entries in the Civil Registry**

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

Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, Hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City. (2015 BAR EXAMS)

- a. **As Hades' lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia?**

**SUGGESTED ANSWER**

As Hades' lawyer, I would file a petition for recognition of a foreign divorce decree, or at least a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court and include therein a prayer for recognition of the aforementioned divorce decree.

In *Corpuz v. Sto. Tomas*, G.R. No. 186571, August 11, 2010, the High Court declared that “the recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or particular fact” (*Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013).

- b. **In what court should you file the petition?**

**SUGGESTED ANSWER**

1. Petition for recognition of foreign divorce decree should be filed in Regional Trial Court of the place of residence of any of the parties, at the option of the petitioner; or
2. Petition for cancellation or correction of entries under Rule 108 should be filed in the Regional Trial Court of Makati City, where the corresponding Local Civil Registry is located.

- c. **What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition?**

**SUGGESTED ANSWER**

1. In a petition for recognition of foreign judgment, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To more specific, a copy of foreign judgment may be admitted in evidence and proven as a fact under Sections 24 and 25 of Rule 132 in relation to Section 48(b) of the Rules of Court (*Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013).
2. Before the court can hear the petition under Rule 108 of the Rules of Court, Hades must satisfy the following procedural requirements: (a) filing of a verified petition; (b) naming as parties all persons who have or claim any interest which would be affected; (c) issuance of an order fixing the time and place of the hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation (*Rule 108; Co v. Civil Registrar of Manila*, G.R. No. 138496. February 23, 2004; *Corpuz v. Tirol*, G.R. No. 186571, August 11, 2010).

**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 Sheila May is the best friend of John Starr. As a lawyer, Mary Jane seeks your advice on her predicament. What legal remedy would you avail to enable Mary Jane to contract marriage with Sultan Ahmed? (2014 BAR EXAMS)

**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 v. Merlinda L. Olaybar, G.R. No. 189538, February 10, 2014*).

**A was adopted by B and C when A was only a toddler. Later on in life, A filed with 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. (2014 BAR EXAMS)**

**SUGGESTED ANSWER**

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:

1. When the name is ridiculous, dishonourable or extremely difficult to write or pronounce;
2. When the change results as a legal consequence, as in legitimation;
3. When the change will avoid confusion;
4. When one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage;
5. A sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and
6. 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.

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).

**Angel Kubeta filed a petition to change his first name "Angel." After the required publication but before any opposition could be received, he filed a notice of dismissal. The court confirmed the dismissal without prejudice. Five days later, he filed another petition, this time to change his surname "Kubeta." Again, Angel filed a notice of dismissal after the publication. This time, however, the court issued an order, confirming the dismissal of the case with prejudice. Is the dismissal with prejudice correct? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Yes, since such dismissal with prejudice is mandatory.
- B. No, since the rule on dismissal of action upon the plaintiff’s notice does not apply to special proceedings.
- C. No, since change of name does not involve public interest and the rules should be liberally construed.
- D. Yes, since the rule on dismissal of action upon the plaintiff’s notice applies and the two cases involve a change in name.

**Q. Appeals in special proceedings**

In settlement proceedings, appeal may be taken from an: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**V. Criminal Procedure**

**A. General matters**

**1. Distinguish jurisdiction over subject matter from jurisdiction over person of the accused**

**2. Jurisdiction of criminal courts**

Engr. Magna Nakaw, the District Engineer of the DPWH in the Province of Walang Progreso, and Mr. Pork Chop, a private contractor, were both charged in the Office of the Ombudsman for violation of the Anti-Graft and Corrupt Practices Act (RA. No. 3019) under a conspiracy theory.

While the charges were undergoing investigation in the Office of the Ombudsman, Engr. Magna Nakaw passed away. Mr. Pork Chop immediately filed a motion to terminate the investigation and to dismiss the charges against him, arguing that because he was charged in conspiracy with the deceased, there was no longer a conspiracy to speak of and, consequently, any legal ground to hold him for trial had been extinguished.

Rule on the motion to terminate filed by Mr. Pork Chop, with brief reasons. (5%). (2017 BAR EXAMS)

**SUGGESTED ANSWER**

The motion to terminate should be denied. In *People v. Go* (G.R. No. 168539, March 24, 2014), the Supreme Court ruled that the avowed policy of the State and the legislative intent to repress acts of public officers and private persons alike, which constitute graft or corrupt practices, would be frustrated if the death of a public officer would bar the prosecution of a private person who conspired with such public officer in violating R.A. No. 3019. Since the absence or presence of conspiracy is factual in nature and involves evidentiary matters, the allegation of conspiracy against Mr. Pork Chop is better ventilated before the trial court during the trial, where he can adduce evidence to prove or disprove its presence.

The information charges PNP Chief Luis Santos, (Salary Grade 28), with "taking advantage of his public position as PNP Head by feloniously shooting JOSE ONA,

inflicting on the latter mortal wounds which caused his death." Based solely on this allegation, which court has jurisdiction over the case? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- A. Sandiganbayan only
- B. Sandiganbayan or Regional Trial Court
- C. Sandiganbayan or Court Martial
- D. Regional Trial Court only

**3. When injunction may be issued to restrain criminal prosecution**

**B. Prosecution of offenses**

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. (2013 BAR EXAMS)

a. Is the contemplated criminal action a viable option to bring?

**SUGGESTED ANSWER**

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

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?

**SUGGESTED ANSWER**

Yes. Under Article 171 of the Family Code, the heirs of the husband may impugn the filiation of the child in the following cases:

1. If the husband should die before the expiration of the period fixed for bringing his action;
2. If he should die after the filing of the complaint, without having desisted therefrom;
- or
3. 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., G.R. No. L-7516, May 12, 1955; Jimenez v. Intermediate Appellate Court, G.R. No. 75773, April 17, 1990).

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

In Jao v. Court of Appeals, G.R. 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.

**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. (2013 BAR EXAMS)**

**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.**

### **SUGGESTED ANSWER**

As counsel for Gary, I will first make him medically examined in order to ascertain the gravity and extent of the injuries he sustained from the accident. Second, I will secure a police report relative to the mishap. 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 and later on to the appropriate MTC of Mandaluyong City for the crime of Reckless Imprudence resulting to physical injuries and damage to property (Sec. 1 and 15, Rule 110).

**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.**

### **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:

1. File the independent civil action and prosecute the criminal case separately.
2. File the independent civil action without filing the criminal case.
3. 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.

**Q: 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. (2013 BAR EXAMS)**

**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?**

**SUGGESTED ANSWER**

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.

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 (Sec. 15[b], Rule 110). 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.

**b. May the charges of robbery and illegal possession of firearm be filed directly by the investigating prosecutor with the appropriate court without a preliminary investigation?**

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

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**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? (2012 BAR EXAMS)**

**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 (Sec. 6, Rule 12).

**The accused was convicted for estafa thru falsification of public document filed by one of two offended parties. Can the other offended party charge him again with the same crime? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**Upon review, the Secretary of Justice ordered the public prosecutor to file a motion to withdraw the information for estafa against Sagun for lack of probable cause. The public prosecutor complied. Is the trial court bound to grant the withdrawal? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**1. Criminal actions, how instituted**

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

**3. Criminal actions, when enjoined**

**4. Control of prosecution**

**5. Designation of offense**

**6. Amendment or substitution of complaint or information**

**Leave of court is required to amend a complaint or information before arraignment if the amendment \_\_\_\_\_. (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**Which of the following is a correct statement of the rule on amendment of the information in a criminal proceeding? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. An amendment that downgrades the offense requires leave of court even before the accused pleads.
- B. Substantial amendments are allowed with leave of court before the accused pleads.
- C. Only formal amendments are permissible before the accused pleads.
- D. After the plea, a formal amendment may be made without leave of court.

**The city prosecutor charged Ben with serious physical injuries for stabbing Terence. He was tried and convicted as charged. A few days later, Terence died due to severe infection of his stab wounds. Can the prosecution file another information against Ben for homicide? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**Pedrito and Tomas, Mayor and Treasurer, respectively, of the Municipality of San Miguel, Leyte, are charged before the Sandiganbayan for violation of Section 3 (e), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The information alleges, among others, that the two conspired in the purchase of several units of computer through personal canvass instead of a public bidding, causing undue injury to the municipality.**

**Before arraignment, the accused moved for reinvestigation of the charge, which the court granted. After reinvestigation, the Office of the Special Prosecutor filed an amended information duly signed and approved by the Special Prosecutor, alleging the same delictual facts, but with an additional allegation that the accused**

**gave unwarranted benefits to SB Enterprises owned by Samuel. Samuel was also indicted under the amended information. Before Samuel was arraigned, he moved to quash the amended information on the ground that the officer who filed the same had no authority to do so. Resolve the motion to quash with reasons. (3%) (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

The motion to quash filed by Samuel should be granted.

There is no showing that the special prosecutor was duly authorized or deputized to prosecute Samuel. Under R.A. No. 6770) also known as the Ombudsman Act of 1989, the Special Prosecutor has the power and authority, under the supervision and control of the Ombudsman, to conduct preliminary investigation and prosecute criminal cases before the Sandiganbayan and perform such other duties assigned to him by the Ombudsman (Calingin v. Desierto, 529 SCRA 720 [2007])

Absent a clear delegation of authority from the Ombudsman to the Special Prosecutor to file the information, the latter would have no authority to file the same. The Special Prosecutor cannot be considered an alter ego of the Ombudsman as the doctrine of qualified political agency does not apply to the Office of the Ombudsman. In fact, the powers of the Office of the Special Prosecutor under the law may be exercised only under the supervision and control and upon the authority of the Ombudsman (Perez v. Sandiganbayan, 503 SCRA 252[2006]).

**ALTERNATIVE ANSWER:**

The motion to quash should be denied for lack of merit. The case is already filed in court which must have been done with the approval of the Ombudsman, and thus the Special Prosecutor's Office of the Ombudsman takes over. As it is the court which ordered the reinvestigation, the Office of the Special Prosecutor which is handling the case in court, has the authority to act and when warranted, refile the case. The amendment made is only a matter of form which only particularized the violation of the same provision of Rep. Act 3019, as amended.

**7. Venue of criminal actions**

**8. Intervention of offended party**

**C. Prosecution of civil action**

**1. Rule on implied institution of civil action with criminal action**

**2. When civil action may proceed independently**

**Tomas was criminally charged with serious physical injuries allegedly committed against Darwin. During the pendency of the criminal case, Darwin filed a separate civil action for damages based on the injuries he had sustained.**

Tomas filed a motion to dismiss the separate civil action on the ground of *litis pendentia*, pointing out that when the criminal action was filed against him, the civil action to recover the civil liability from the offense charged was also deemed instituted. He insisted that the basis of the separate civil action was the very same act that gave rise to the criminal action.

**Rule on Tomas' motion to dismiss, with brief reasons. (5%) (2017 BAR EXAMS)**

**SUGGESTED ANSWER**

The motion to dismiss should be denied. Darwin's civil action is based on physical injuries, and is therefore an independent civil action which may proceed independently of the criminal case (Article 33, Civil Code). However, Darwin cannot recover damages twice for the same act or omission charged in the criminal action (Rule 111, Section 2, Rules of Court).

As the Supreme Court ruled in *People v. Lipala* (G.R. No. 200302, April 20, 2016), "the independent civil actions in Articles 32, 33, 34, and 2176, as well as claims from sources of obligations other than delict, are not deemed instituted with the criminal action but may be filed separately by the offended party even without reservation".

**3. When separate civil action is suspended**

**4. Effect of death of the accused or convict on civil action**

**5. Prejudicial Question**

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. (2014 BAR EXAMS)

**SUGGESTED ANSWER**

The motion filed by Solomon should be denied. The elements of prejudicial question are: (1) the previous instituted civil action involves an issue similar or intimately related to the issue determines 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. v. Janiola*, G.R. No. 184861, June 30, 2009). 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.

**The city prosecutor of Manila filed, upon Soledad's complaint, a criminal action for estafa against her sister, Wella, before the RTC of Manila for selling to Victor a land that she previously sold to Soledad. At the same time Soledad filed a civil action to annul the second sale before the RTC of Quezon City. May the Manila RTC motu proprio suspend the criminal action on ground of prejudicial question? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Yes, if it may be clearly inferred that complainant will not object to the suspension of the criminal case.
- B. No, the accused must file a motion to suspend the action based on prejudicial question.
- C. Yes, if it finds from the record that such prejudicial question exists.
- D. Yes, if it is convinced that due process and fair trial will be better served if the criminal case is suspended.

**6. Rule on filing fees in civil action deemed instituted with the criminal action**

**Name two instances where the trial court can hold the accused civilly liable even if he is acquitted. (2%) (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The Instances where the civil, liability is not extinguished despite acquittal of the accused where:

1. The acquittal is based on reasonable doubt;
2. Where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and
3. Where the civil liability is not derived from or based on the criminal act of which the accused is acquitted (Remedios Nota Sapiera v. Court of Appeals, September 14,1999).

**X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street: Lawyer L, who witnessed the incident, offered his legal services to V.**

**V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone. On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X**

before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urduyeta where he resides. In his "Certification against Forum Shopping" V made no mention of the pendency of the, criminal case in Sta. Maria. (2010 BAR EXAMS)

a. Is V guilty of forum shopping? (2%)

**SUGGESTED ANSWER**

No, V is not guilty of forum shopping because the case in Sta. Maria, Bulacan, is a criminal action rued in the name of the People of the Philippines, where civil liability arising from the crime is deemed also instituted therewith; whereas the case rued in Urduyeta, Pangasinan, is a civil action for quasi-delict in, the name of V and against both X and Y for all damages caused by X and Y to V, which may be beyond the jurisdiction of MTC. Hence, the tests of forum shopping, which is res adjudicata or litis pendentia, do not obtain here.

Moreover, substantive law (Art. 33 Civil Code) and Sec. 3, Rule III, Revised Rules of Criminal Procedure, expressly authorize the filing. Such, action for damages entirely separate and distinct from the criminal action.

b. Instead of filing an Answer, X and Y move to dismiss the complaint for damages on the ground of litis pendentia. Is the motion meritorious? Explain. (2%)

**SUGGESTED ANSWER**

No, the motion to dismiss base on alleged litis pendentia is without merit because there is no identity of parties and subject matter in the two cases. Besides, Art. 33 of the Civil Code and Rule III, Sec. 3 of the Rules of Criminal Procedure authorize the separate civil action for damages arising from physical injuries to proceed independently.

c. Suppose only X was named as defendant in the complaint for damages, may he move for the dismissal of the complaint for failure of V to implead Y as an indispensable party? (2%)

**SUGGESTED ANSWER:**

No, X may not move for dismissal of the civil action for damages on the contention that Y is an indispensable party who should be impleaded. Y is not an indispensable party but only a necessary party. Besides, non-joinder and misjoinder of parties is not a ground for dismissal of actions (Rule 3, Sec. 11, Rules of Court.)

d. X moved for the suspension of the proceedings in the criminal case to await the decision in the civil case. For his part, Y moved for the suspension of the civil case to await the decision in the criminal case. Which of them is correct? Explain. (2%)

### **SUGGESTED ANSWER**

Neither of them is correct. Both substantive law (Art.33 of the Civil Code) and procedural law (Rule III, Sec. 3, and Rules of Criminal Procedure) provide for the two actions to proceed independently of each other, therefore, no suspension of action is authorized.

### **D. Preliminary investigation**

#### **1. Nature of right**

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. (2013 BAR EXAMS)

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?

### **SUGGESTED ANSWER**

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, 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 as but not later than the start of the trial of the case.

b. What "during-trial" remedy can you use to allow an early evaluation of the prosecution evidence without the need of presenting defense evidence; when and how can you avail of this remedy?

### **SUGGESTED ANSWER**

I will file first a motion for leave to file a demurrer within five (5) days from the time the prosecution rested its case. If the same is granted, then I will now file a demurrer to evidence within ten (10) days (Sec. 23, Rule 119). This remedy would allow the evaluation of the sufficiency of prosecution's evidence without the need of presenting defense

evidence. It may be done through the court's initiative or upon motion of the accused and after the prosecution rested its case (Sec. 23, Rule 119).

**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. (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. October 20, 2011
- B. October 10, 2011
- C. November 15, 2011
- D. October 16, 2011.

**What is the remedy of the accused if the trial court erroneously denies his motion for preliminary investigation of the charge against him? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Wait for judgment and, on appeal from it, assign such denial as error.
- B. None since such order is final and executory.
- C. Ask for reconsideration; if denied, file petition for certiorari and prohibition.
- D. Appeal the order denying the motion for preliminary investigation.

**When may an information be filed in court without the preliminary investigation required in the particular case being first conducted? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**2. Purposes of preliminary investigation**

**3. Resolution of investigation prosecutor**

**4. Inquest**

**Give brief answers to the following (2017 BAR EXAMS):**

(a) X X X

(b) X X X

(c) When does a public prosecutor conduct an inquest instead of a preliminary investigation? (2%)

**SUGGESTED ANSWER**

(a) X X X

(b) X X X

(c) Under Rule 112, Section 7 of the Rules of Court, a public prosecutor conducts inquest instead of a preliminary investigation when a person is lawfully arrested without an arrest warrant involving an offense which requires a preliminary investigation.

**E. Arrest**

**1. Arrest, how made**

An information for murder was filed against Rapido. The RTC judge, after personally evaluating the prosecutor's resolution, documents and parties' affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido's lawyer examined the *rollo* of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest. Immediately, Rapido's counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

1. The judge before issuing the warrant did not personally conduct a searching examination of the prosecution witnesses in violation of his client's constitutionally-mandated rights;
2. There was no prior order finding probable cause before the judge issued the arrest warrant.

May the warrant of arrest be quashed on the grounds cited by Rapido's counsel? State your reason for each ground. (2015 BAR EXAMS)

**SUGGESTED ANSWER**

No, the warrant of arrest may not be quashed based on the grounds cited by Rapido's counsel. In the issuance of warrant of arrest, the mandate of the Constitution is for the judge to personally determine the existence of probable cause. The words "personal determination," was interpreted by the Supreme Court in *Soliven v. Makasiar*, G.R. No. 82585, November 14, 1988, as the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause.

What the law requires as personal determination on the part of a judge is that he should not rely solely on the report of the investigating prosecutor. Thus, personal examination of the complainant and his witnesses is, thus, not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest (*People v. Joseph "Jojo" Grey*, G.R. No. 10109, July 26, 2010).

At any rate, there is no law or rule that requires the Judge to issue a prior Order finding probable cause before the issuance of a warrant of arrest.

## **2. Arrest without warrant, when lawful**

**Answer the following briefly: (2017 BAR EXAMS)**

(a) X X X

(b) X X X

(c) Give at least two instances when a peace officer or a private person may make a valid warrantless arrest. (2%)

### **SUGGESTED ANSWER**

(a) X X X

(b) X X X

(c) Under Section 5, Rule 113 of the Rules of Court, a peace officer or a private person may make a valid warrantless arrest in the following instances:

1. When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
2. When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
3. When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

**Under Section 5, Rule 113 a warrantless arrest is allowed when an offense has just been committed and the peace officer has probable cause to believe, based on his personal knowledge of facts or circumstances, that the person to be arrested has committed it. A policeman approaches you for advice and asks you how he will execute a warrantless arrest against a murderer who escaped after killing a person. The policeman arrived two (2) hours after the killing and a certain Max was allegedly the killer per information given by a witness. He asks you to clarify the following: (2016 BAR EXAMS)**

**[a] How long after the commission of the crime can he still execute the warrantless arrest?**

### **SUGGESTED ANSWER:**

The arrest must be made within 24 hours after the commission of the crime. Where the arrest took place a day after the commission of the crime, it cannot be said that an offense has just been committed. (People v. Del Rosario, 305 SCRA 740).

**[b] What does "personal knowledge of the facts and circumstances that the person to be arrested committed it" mean? (2.5%)**

**SUGGESTED ANSWER:**

"Personal knowledge of the facts and circumstances that the person to be arrested committed it" means personal knowledge not of the commission of the crime itself but of facts and circumstances which would lead to the conclusion that the person to be arrested has probably committed the crime. Such personal knowledge arises from reasonably worthy information in the arresting person's possession coupled with his own observation and fair inferences therefrom that the person arrested has probably committed the offense. (Pestilos v. Generoso, 739 SCRA 337).

**As Cicero was walking down a dark alley one midnight, he saw an "owner-type jeepney" approaching him. Sensing that the occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle- elements from the Western Police District - gave chase and apprehended him.**

**The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of shabu tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body-search legal? (3%) (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The arrest and body-search was legal. Cicero appears to be alone "walking down a dark alley" and at midnight. There appears probable cause for the policemen to check him, especially when he darted into a corner (presumably also dark) and run under such circumstance. Although the arrest came after the body-search where Cicero was found with shabu and a Swiss knife, the body search is legal under the "Terry search" rule or the "stop and frisk" rule. And because the mere possession, with animus, of dangerous drug (the shabu) is a violation of the law (Rep. Act 9165), the suspect is in a continuing state of committing a crime while he is illegally possessing the dangerous drug, thus making the arrest tantamount to an arrest in flagrante: so the arrest is legal and correspondingly, the search and seizure of the shabu and the concealed knife may be regarded as incident to a lawful arrest.

**ALTERNATIVE ANSWER:**

No. The arrest and the body-search were not legal. In this case, Cicero did not run because the occupant's of the vehicle identified themselves as police officers. He darted into the corner and ran upon the belief that the Occupants of the vehicle were up to no good. Cicero's act of running does not show any reasonable ground to believe that a crime has been committed or is about to be committed for the police officers to apprehend him and conduct body search. Hence, the arrest was illegal as it does not fall under any

of the circumstances for a valid warrantless arrest provided in Sec. 5 of Rule 113 of the Rules of Criminal Procedure.

### **3. Method of arrest (By officer with warrant, By officer without warrant, By private person)**

**In a criminal case for violation of a city ordinance, the court may issue a warrant of arrest: (2012 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- 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.

### **F. Bail 1. Nature**

**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: (2012 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- 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 OOJ.

**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? (2012 BAR EXAMS)**

#### **SUGGESTED 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).

**Angie was convicted of false testimony and served sentence. Five years later, she was convicted of homicide. On appeal, she applied for bail. May the Court of Appeals deny her application for bail on ground of habitual delinquency? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- A. Yes, the felonies are both punishable under the Revised Penal Code.
- B. Yes, her twin convictions indicated her criminal inclinations.
- C. No, the felonies fall under different titles in the Revised Penal Code.
- D. No, the charges are bothailable.

**Berto was charged with and convicted of violating a city ordinance against littering in public places punishable by imprisonment of one month or a fine of P1,000.00. But the city mayor pardoned him. A year later, he was charged with violating a city ordinance against jaywalking which carried the same penalty. Need Berto post bail for such offense? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**When may the bail of the accused be cancelled at the instance of the bondsman? (2011 BAR EXAMS)**

- A. When the accused jumps bail.
- B. When the bondsman surrenders the accused to the court.
- C. When the accused fails to pay his annual premium on the bail bond.
- D. When the accused changes his address without notice to the bondsman.

**A surety company, which provided the bail bond for the release of the accused, filed a motion to withdraw as surety on the ground of the accused's non-payment of the renewal premium. Can the trial court grant the withdrawal? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**2. When a matter of right; exceptions**

**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. (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

Yes. An application for bail is an appropriate remedy to secure provisional remedy of the 14-year old boy. Under the Rules, bail is a matter of right before or even after conviction before the MTC which has jurisdiction over the crime of malicious mischief (Sec. 4, Rule 114). Consequently, bail can be posted as a matter of right.

**The Metropolitan Trial Court convicted Virgilio and Dina of concubinage. Pending appeal, they applied for bail, claiming they are entitled to it as a matter of right. Is their claim correct? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. No, bail is not a matter of right after conviction.
- B. Yes, bail is a matter of right in all cases not involving moral turpitude.
- C. No, bail is dependent on the risk of flight.
- D. Yes, bail is a matter of right in the Metropolitan Trial Court before and after conviction.

**3. When a matter of discretion**

**Answer the following briefly: (2017 BAR EXAMS)**

(a) X X X

(b) When is bail a matter of judicial discretion? (2%)

**SUGGESTED ANSWER**

(a) X X X

(b) Under Section 5, Rule 114 of the Rules of Court, bail is a matter of judicial discretion under the following circumstances:

1. Before conviction, in cases where the offense charged is punishable by reclusion perpetua; and
2. After accused's conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment.

In *People v. Leviste* (GR. No. 189122, March 17, 2010), the Supreme Court ruled that the absence of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court does not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.

**4. Hearing of application for bail in capital offenses**

Paz was awakened by a commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO1 Remus and P02 Romulus proceeded to the condo unit identified by Paz. PO 1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced

themselves as police officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by P02 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung physically hurt her. P02 Romulus detained Oasis Jung at the station's jail. After the inquest proceeding, the public prosecutor filed an information for Violation of R.A. No. 9262 (The VAWC Law) for physical violence and five separate informations for violation of R.A. No. 7610 (The Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made only after his arraignment. (2015 BAR EXAMS)

a. Did the court properly impose that bail condition?

**SUGGESTED ANSWER**

No. The court did not properly impose that bail condition. The Revised Rules of Criminal Procedure do not require the arraignment of the accused as prerequisite to the conduct of hearings in the bail petition. A person is allowed to file a petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing the bail petition (*Serapio v. Sandiganbayan*, G.R. No. 149116, January 2, 2003).

Moreover, the condition that the approval of bail bonds shall be made only after arraignment would place the accused in a position where he has to choose between: (1) filing a motion to quash (the Information) and thus delay his released on bail because until his motion to quash can be resolved, his arraignment cannot be held; and (2) foregoing the filing of a motion to quash (the Information) so that he can be arraigned at once and thereafter be released on bail (*Lavides v. Court of Appeals*, G.R. No. 129670, February 1, 2000).

b. After his release from detention on bail, can Oasis Jung still question the validity of his arrest?

**SUGGESTED ANSWER**

Yes. Oasis Jung can still question the validity of his arrest even after his release from detention on bail. Under Section 26, Rule 114 of the Rules of Court, 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 a charge against him, provided that he raises them before entering his plea.

**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. (2014 BAR EXAMS)**

**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 charge 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 circumstance 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 no strong (*Sec. 13, Art. III, 1987 Constitution*). Besides, it is settled that an Order granting bail is merely interlocutory which cannot attain finality (*Pobre v. People, G. R. No. 141805, July 8, 2015*).

**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 v. Court of Appeals, G.R. No. 189122, March 17, 2010*).

**A was charge 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 acquire 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. (2014 BAR EXAMS)

a. If you are the Sandiganbayan, how will you rule on the motion?

**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 v. 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 (Sec. 1, Rule 114). 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 v. 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 custody of the law (Jose C. Miranda v. Virgilio M. Tuliao, G.R. No. 158763, March 31, 2006). Thus, Sandiganbayan may grant the Motion to quash the warrant of arrest.

b. If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake?

**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.

Which of the following states a correct guideline in hearing applications for bail in capital offenses? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

**5. Guidelines in fixing amount of bail**

**6. Hold departure order & Bureau of Immigration watch list**

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a. one-way airplane ticket was purchased online using his credit card for a flight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

What is the proper procedure to prevent Dina from leaving the Philippines? (2%) (2010 BAR EXAMS)

**SUGGESTED ANSWER:**

I would advise: (1) The filing of an appropriate criminal action cognizable by the RTC against Dina and the filing in said criminal action a Motion for the issuance of a Hold Departure Order; (2) thereafter, a written request with the Commissioner of the Bureau of Immigration for a Watch List Order pending the issuance of the Hold Departure Order should be filed; (3) then, the airline company should be requested to cancel the ticket issued to Dina.

**G. Rights of the accused**

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

**SUGGESTED ANSWER:**

- 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.

**1. Rights of accused at the trial**

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? (2013 BAR EXAMS)

**SUGGESTED ANSWER:**

- 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.

## **2. Rights of persons under custodial investigation**

X was arrested for the alleged murder of a 6-year Old lad. He was read his Miranda rights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of non-stop interrogation. He remained quiet until, on the 3rd hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court) interpreting X's answer as an admission of guilt, convicted him.

On appeal, X's counsel faulted the trial court in its interpretation of his client's answer, arguing that X invoked his Miranda rights when he remained quiet for the first two hours of questioning. Rule on the assignment of error. (3%) (2010 BAR EXAMS)

### **SUGGESTED ANSWER**

The assignment of error invoked by X's counsel is impressed with merit since there has been no express waiver of X's Miranda rights. In order to have a valid waiver of the Miranda rights, the same must be in writing and made in the presence of his counsel. The uncounseled extrajudicial confession of X being without a valid waiver of his Miranda rights, is inadmissible, as well as any information derived therefrom.

Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of shabu which they alleged was swallowed by Lorenzo. Suppose the PGH agreed to, and did perform the surgery, is the package of shabu admissible in evidence? Explain. (3%) (2010 BAR EXAMS)

### **SUGGESTED ANSWER**

No, the package of shabu extracted from the body of Lorenzo is not admissible in evidence because it was obtained through surgery which connotes forcible invasion into the body of Lorenzo without his consent and absent due process. The act of the policemen and the PGH surgeon involved, violate the fundamental rights of Lorenzo, the suspect.

**TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 BAR EXAMS)**

The accused in a criminal case has the right to avail of the various modes of discovery.

### **SUGGESTED ANSWER**

True. The accused has the right to move for the production or inspection of material evidence in the possession of the prosecution. It authorizes the defense to inspect, copy or photograph any evidence of the prosecution in its possession after obtaining permission from the court (Rule 116, Sec. 10; Webb v. De Leon, 247 SCRA 652 [1995]).

### **H. Arraignment and plea**

#### **1. Arraignment and plea, how made**

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

### **SUGGESTED ANSWER**

- A. March 4
- B. March 16
- C. March 30
- D. March 11

An accused may move for the suspension of his arraignment if: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

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

### **SUGGESTED ANSWER**

- A. Estafa cases;
- B. Complex crimes;
- C. Cases cognizable by the Sandiganbayan;
- D. Court martial cases.

#### **2. When may accused enter a plea of guilty to a lesser offense**

#### **3. Accused pleads guilty to capital offense, what the court should do**

#### **4. Searching inquiry**

##### **I. Motion to quash**

Which of the following distinguishes a motion to quash from a demurrer to evidence? (2013 BAR EXAMS)

**SUGGESTED ANSWER**

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

When a Motion to Quash search warrant is denied, the best remedy is: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- A. Appeal the denial order.
- B. File a motion to suppress evidence.
- C. File an injunction suit.
- D. File a certiorari petition.

**ALTERNATIVE ANSWER**

- D. File a certiorari petition

Which of the following statements is incorrect? (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**Q: 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 a need to conduct a pre-suspension hearing? Explain. (2012 BAR EXAMS)**

### **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. 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, a 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 v. Mariano, G.R. No. 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 v. The Honorable Sandiganbayan, G.R. No. 172035, July 04, 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.

**What is the effect of the failure of the accused to file a motion to quash an information that charges two offenses? (2011 BAR EXAMS)**

- A. He may be convicted only of the more serious offense.
- B. He may in general be convicted of both offenses.
- C. The trial shall be void.
- D. He may be convicted only of the lesser offense.

### **1. Grounds**

**Boy Maton, a neighborhood tough guy, was arrested by a police officer on suspicion that he was keeping prohibited drugs in his clutch bag. When Boy Maton was searched immediately after the arrest, the officer found and recovered 10 sachets of shabu neatly tucked in the inner linings of the clutch bag. At the time of his arrest Boy Maton was watching a basketball game being played in the town plaza, and he was cheering for his favorite team. He was subsequently charged with illegal possession of dangerous drugs, and he entered a plea of not guilty when he was arraigned.**

**During the trial, Boy Maton moved for the dismissal of the information on the ground that the facts revealed that he had been illegally arrested. He further moved**

for the suppression of the evidence confiscated from him as being the consequence of the illegal arrest, hence, the fruit of the poisonous tree.

The trial court, in denying the motions of Boy Maton, explained that at the time the motions were filed, Boy Maton had already waived the right to raise the issue of the legality of the arrest. The trial court observed that, pursuant to the Rules of Court, Boy Maton, as the accused, should have assailed the validity of the arrest before entering his plea to the information. Hence, the trial court opined that any adverse consequence of the alleged illegal arrest had also been equally waived. Comment on the ruling of the trial court. (5%) (2017 BAR EXAMS)

### **SUGGESTED ANSWER**

The trial court's correct insofar as Boy Maton is considered to have waived his objections to the illegality of his arrest. In *Villanueva vs. People* (G.R. No. 199042, November 17, 2014), the Supreme Court held that objections to the irregularity of arrest must be made before his arraignment. In this case, Boy Maton made no objection to the irregularity of his arrest before his arraignment. Hence the trial court is correct when it ruled that Boy Maton had already waived his right to question the illegality of his arrest. Any irregularity attending the arrest of an accused "should be timely raised in a motion to quash the information at any time before arraignment, failing in which, he is deemed to have waived" his right to question the regularity of his arrest (*People v. Cunanan*, G.R. No. 198924, March 16, 2015).

However, the trial court erred when it ruled that Boy Maton likewise waived his right to assail the illegal search. In the *Villanueva* case (*supra*), the Supreme Court ruled that "a waiver of an illegal arrest is not a waiver of an illegal search." It further held that "while the accused has already waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search." Therefore, Boy Maton may still move for the suppression of the evidence confiscated from him being the consequences of the illegal arrest.

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

### **3. Double jeopardy**

Juancho entered a plea of guilty when he was arraigned under an information for homicide. To determine the penalty to be imposed, the trial court allowed Juancho to present evidence proving any mitigating circumstance in his favor. Juancho was able to establish complete self-defense.

Convinced by the evidence adduced by Juancho, the trial court rendered a verdict of acquittal.

**May the Prosecution assail the acquittal without infringing the constitutional guarantee against double jeopardy in favor of Juancho? Explain your answer (5%) (2017 BAR EXAMS)**

**SUGGESTED ANSWER**

Yes, the prosecution may assail Juancho's acquittal without violating his right against double jeopardy. In the similar case of *People v. Balisacan* (GR. No. L-26376, August 31, 1966), the Supreme Court held that if an accused who first entered a plea of guilty was later on allowed to prove any mitigating circumstance, his prior plea is deemed vacated. The court should require him to plead anew on the charge, or at least direct that a new plea of not guilty be entered for him. Thus in this case, since Juancho was allowed to present evidence to prove mitigating circumstances in his favor, there can be no double jeopardy with respect to the prosecution's appeal.

Furthermore, the Supreme Court ruled in the *Balisacan* case that a plea of guilty is an unconditional admission of guilt with respect to the offense charged. It forecloses the right to defend oneself from said charge and leaves the court with no alternative but to impose the penalty fixed by law under the circumstances. Since Juancho was only allowed to testify in order to establish mitigating circumstances for the purposes of fixing the penalty, his testimony, thus, could not be taken as a trial on the merits to determine his guilt or innocence. Juancho's acquittal is therefore void considering that the prosecution was not afforded an opportunity to present its evidence or even to rebut the testimony of the defendant.

**Paz was awakened by a commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO1 Remus and P02 Romulus proceeded to the condo unit identified by Paz. PO 1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as police officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by P02 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung physically hurt her. P02 Romulus detained Oasis Jung at the station's jail. After the inquest proceeding, the public prosecutor filed an information for Violation of R.A. No. 9262 (The VAWC Law) for physical violence and five separate informations for violation of R.A. No. 7610 (The Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made only after his arraignment.**

**Before arraignment, Oasis Jung's lawyer moved to quash the other four separate informations for violation of the child abuse law invoking the single larceny rule. Should the motion to quash be granted? (2015 BAR EXAMS)**

**SUGGESTED ANSWER**

No. The court should not grant the motion to quash, because the “single larceny rule” does not find application where the charges involve violations of R.A. 9262 (The VAWC Law) and R.A. 7610 (The Child Abuse Law), considering that each criminal act is based on a different criminal impulse and intent.

In *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, the Supreme Court explained that the “*Single Larceny doctrine*” applies only to criminal crimes committed *delicto continuado*, which exists if there should be plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and same instant or resolution leading to the perpetration of the same criminal purpose or aim.

The said rule applies in theft cases, where the taking of several things, whether belonging to the same or different owners, at the same time and place constitutes but one larceny (*Id.*).

**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 passenger 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 Injures. 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 on homicide was also set for arraignment. Instead of pleading, McJolly interposed the defense of double jeopardy. Resolve. (2014 BAR EXAMS)**

**SUGGESTED ANSWER**

McJolly correctly interposed the defense of double jeopardy. Reckless imprudence under Article 365 is a 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 v. Hon, Modesto-San Pedro*, G.R. No. 172716, November 17, 2010).

**4. Provisional dismissal**

**A pending criminal case, dismissed provisionally, shall be deemed permanently dismissed if not revived after 2 years with respect to offenses punishable by imprisonment (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Of more than 12 years.
- B. Not exceeding 6 years or a fine not exceeding P1,000.00.
- C. Of more than 6 years or a fine in excess of P1,000.00.
- D. Of more than 6 years.

**J. Pre-trial**

**1. Pre-trial agreement**

**K. Trial**

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

**SUGGESTED ANSWER**

- A. 15;
- B. 10;
- C. 30;
- D. None of the above.

**1. Trial *in absentia***

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 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 of 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. (2014 BAR EXAMS)

- a. Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

**SUGGESTED ANSWER**

No. 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 v. De Grano*, G.R. No. 167710, June 5, 2009).

**b. Can Balatong and Labong appeal their conviction in case Ludong accepts his conviction for homicide?**

**SUGGESTED ANSWER**

No. Balatong and Labong cannot appeal their conviction because they lost their right to appeal 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 v. De Grano*, G.R. No. 167710, June 5, 2009).

**Enumerate the requisites of a "trial *in absentia*" (2%) and a promulgation of judgment *in absentia*" (2%). (2010 BAR EXAMS)**

**SUGGESTED ANSWER**

The requisites of a valid trial in absentia are: (1) accused's arraignment; (2) his due notification of the trial; and (3) his unjustifiable failure to appear during trial (*Bernardo v. People*, G.R. No. 166980, April 4, 2007).

The requisites for a valid promulgation of judgment are:

1. A valid notice of promulgation of judgment,
2. Said notice was duly furnished to the accused, personally or thru counsel;
3. Accused failed to appear on the scheduled date of promulgation of judgment despite due notice;
4. Such judgment be recorded in the criminal docket; and
5. Copy of said judgment had been duly served upon the accused or his counsel

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

**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. (2013 BAR EXAMS)**

**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?**

**SUGGESTED ANSWER**

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 bailable crime but has no means to post bail, or is charge 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:

1. 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.
2. 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 send promptly to the public attorney.

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 (Sec. 1 (g), Rule116).

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 (Sec. 9, Rule 119) or to a speedy disposition of cases (Sec. 16, Art. III, 1987 Constitution).

- 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?**

**SUGGESTED ANSWER**

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 (Sec. 9, Rule 119; Tan v. People, G.R. No. 173637, April 21, 2009). 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 (Sec. 14, Rule 119). I can also move for provisional dismissal of the case (Sec. 8, Rule 117).

### 3. Requisites for discharge of accused to become a state witness

Which among the following is a requisite before an accused may be discharged to become a state witness? (2013 BAR EXAMS)

#### SUGGESTED ANSWER

- 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.

### 4. Effects of discharge of accused as state witness

The prosecution moved for the discharge of Romy as state witness in a robbery case it filed against Zoilo, Amado, and him. Romy testified, consistent with the sworn statement that he gave the prosecution. After hearing Romy, the court denied the motion for his discharge. How will denial affect Romy? (2011 BAR EXAMS)

#### SUGGESTED ANSWER

- A. His testimony shall remain on record.
- B. Romy will be prosecuted along with Zoilo and Amado.
- C. His liability, if any, will be mitigated.
- D. The court can convict him based on his testimony.

### 5. Demurrer to evidence

After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurrer to evidence with leave of court. The prosecution was allowed to comment thereon. Thereafter, the court granted the demurrer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurrer was not in accord with the law and jurisprudence, will the motion prosper? Explain your answer. (3%) (2009 BAR EXAMS)

#### SUGGESTED ANSWER

No, the motion will not prosper. With the granting of the demurrer, the case shall be dismissed and the legal effect is the acquittal of the accused. A judgment of acquittal is immediately executory and no appeal can be made therefrom. Otherwise the Constitutional protection against double jeopardy would be violated.

## **L. Judgment**

**A judgment of conviction in a criminal case becomes final when: (2012 BAR EXAMS)**

### **SUGGESTED ANSWER**

- 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.

### **1. Promulgation of judgment; instances of promulgation of judgment *in absentia***

**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: (2012 BAR EXAMS)**

### **SUGGESTED ANSWER**

- 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.

**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: (2012 BAR EXAMS)**

### **SUGGESTED ANSWER**

- 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.

**The accused jumps bail and fails to appear on promulgation of judgment where he is found guilty. What is the consequence of his absence? (2011 BAR EXAMS)**

### **SUGGESTED ANSWER**

- A. Counsel may appeal the judgment in the absence of the accused.

- B. The judgment shall be promulgated in his absence and he loses his right of appeal.
- C. The promulgation of the judgment shall be suspended until he is brought to the jurisdiction of the court.
- D. The judgment shall be void.

## **M. New trial or reconsideration**

### **1. Requisites before a new trial may be granted on ground of newly-discovered evidence**

**What is the effect and ramification of an order allowing new trial? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- A. The court's decision shall be held in suspension until the defendant could show at the reopening of trial that it has to be abandoned.
- B. The court shall maintain the part of its judgment that is unaffected and void the rest.
- C. The evidence taken upon the former trial, if material and competent, shall remain in use.
- D. The court shall vacate the judgment as well as the entire proceedings had in the case.

## **N. Appeal**

### **1. Effect of appeal by any of several accused**

### **2. Grounds for dismissal of appeal**

## **O. Search and seizure**

Hercules was walking near a police station when a police officer signalled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "*Sir, may problema po ba?*" Instead of replying, the police officer locked up Hercules inside the police station jail. (2015 BAR EXAMS)

- a. If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint?

#### **SUGGESTED ANSWER**

As counsel of policeman, I will raise the defense of presumption of regularity in the performance of duty.

I can also raise the defense that the police officer has the duty to search Hercules under the “Stop-and-Frisk” rule.

A stop-and-frisk situation must precede a warrantless arrest, be limited to the person’s outer clothing, and should be grounded upon a genuine reason, in the light of the police officers experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him (*Valdez v. People, G.R. No. 170180, November 23, 2007*).

The “stop-and-frisk” search should be used “when dealing with rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure a search warrant.” “Stop-and-frisk” searches (sometimes referred to as Terry searches) are necessary for law enforcement, that is, law enforcers should be given the legal arsenal to prevent the commission of the offenses. This should be balanced, however, with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution (*People of the Philippines v. Victor Cogaed, G.R. No. 200334, July 30, 2014*).

**b. If Hercules opts to file a civil action against the police officer, will he have a cause of action?**

**SUGGESTED ANSWER**

Yes. Hercules has a cause of action to file civil action against the police officer under Article 32(4) in relation to Article 2219(6) and (10) of the New Civil code, which provides that a police officer may be liable for damages when the right to be secure in one’s person, house, papers and effects against unreasonable searches and seizures is impaired. The indemnity includes moral damages. Exemplary damages may also be adjudicated (*Galvante v. Casimiro, G.R. No. 162808, April 22, 2008*).

**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? (2014 BAR EXAMS)**

**SUGGESTED ANSWER**

The objection is valid. The search warrant specifically designates or describes the house as the place to be searched. Incidentally, the marijuana was seized by the 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 v. People of the Philippines, G.R. No. 185128, January 30, 2012). 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 v. People of the Philippines, G.R. No. 176077, August 31, 2011).

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER:**

- 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.

**1. Nature of search warrant**

**Q: 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. (2012 BAR EXAMS)**

**a. Where can he file an application for search warrant?**

**SUGGESTED ANSWER**

PDEA Director may file an application for search warrant in any court within the judicial region where the crime was committed (Sec. 2[b], Rule 126).

**b. What documents should he prepare in his application for search warrant?**

**SUGGESTED ANSWER**

He should prepare a petition for issuance of a search warrant and attach therein sworn statements and affidavits.

**c. Describe the procedure that should be taken by the judge on the application.**

**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 (Sec. 5, Rule 126). 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 (Sec. 6, Rule 126).

Suppose the judge issues the search warrant worded in this way: (2012 BAR EXAMS)

**PEOPLE OF THE PHILIPPINES**  
**Plaintiff**

**-versus-**

**Ho Pia and Sio Pao,**  
**Accused.**

X-----X

**Criminal Case No. 007**  
**for Violation of R.A. 9165**

**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 1st day of March, 2012.***

***(signed)***  
***Judge XYZ***

**a. Cite/enumerate the defects, if any, of the search warrant.**

**SUGGESTED ANSWER**

1. The search warrant failed to particularly describe the place to be searched and the things to be seized (Sec. 4, Rule 126).
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 (Sec. 8, Rule 126), 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 v. CFI of Tayabas, G.R. No. L-45358, January 29, 1937). 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?**

**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 (Sec.14, Rule 126). A search warrant shall be valid only for ten days from its date. Thereafter, it shall be void (Sec. 10, Rule 126).

**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 v. Bodett, G.R. No. 196390, September 28, 2011). The possession of an unlicensed armalite found in plain view is mala prohibita. The same be kept in custodia legis.

**Which of the following MISSTATES a requisite for the issuance of a search warrant? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. The warrant specifically describes the place to be searched and the things to be seized.
- B. Presence of probable cause.
- C. The warrant issues in connection with one specific offense.
- D. Judge determines probable cause upon the affidavits of the complainant and his witnesses.

**2. Distinguish from warrant of arrest**

**3. Particularity of place to be searched and things to be seized**

**4. Personal property to be seized**

**5. Exceptions to search warrant requirement**

**a. Search incidental to lawful arrest**

**b. Plain view situation**

**c. Stop and frisk situation**

**VI. Evidence**

**A. General principles**

Cindy charged her husband, George, with bigamy for a prior subsisting marriage with Teresa. Cindy presented Ric and Pat, neighbors of George and Teresa in Cebu City, to prove, first, that George and Teresa cohabited there and, second, that they established a reputation as husband and wife. Can Cindy prove the bigamy by such evidence? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- A. Yes, the circumstantial evidence is enough to support a conviction for bigamy.
- B. No, at least one direct evidence and two circumstantial evidence are required to support a conviction for bigamy.
- C. No, the circumstantial evidence is not enough to support a conviction for bigamy.
- D. No, the circumstantial evidence cannot overcome the lack of direct evidence in any criminal case.

**1. Admissibility of evidence**

Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond (refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of “shabu” were confiscated from him. Edmond consented and also signed a receipt for the amount of P3,000.00, allegedly representing the “purchase price of the shabu.” At the trial, the arresting officer testified and identified the documents executed and signed by Edmond. Edmond’s lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond.

Edmond’s lawyer objected to the admissibility of the documents for being the “fruit of the poisoned tree.” Resolve the objection with reasons. (3%) (2009 BAR EXAMS)

**SUGGESTED ANSWER**

The objection to the admissibility of the documents which the arresting officer asked Edmond to sign without the benefit of counsel, is well-taken. Said documents having been signed by the accused while under custodial investigation, imply an “admission” without the benefit of counsel, that the shabu came from him and that the P3,000.00 was received by him pursuant to the illegal selling of the drugs. Thus, it was obtained by the arresting

officer in clear violation of Sec. 12(3), Art. III of the 1987 Constitution, particularly the right to be assisted by counsel during custodial investigation.

Moreover, the objection to the admissibility of the evidence was timely made, i.e., when the same is formally offered.

#### **a. Relevance of evidence and collateral matters**

#### **b. Direct and circumstantial evidence**

Answer the following briefly: (2017 BAR EXAMS)

(a) What elements should concur for circumstantial evidence to be sufficient for conviction? (2%)

#### **SUGGESTED ANSWER**

(a) For circumstantial evidence to warrant the conviction of the accused, the following elements should concur:

1. There is more than one circumstance;
2. The facts from which the circumstances arose are duly established in court; and
3. The circumstances form the unbroken chain of events leading to the conclusion of the culpability of the accused for the crime for which he is convicted (Bacolod v. People, G.R. No. 206236, July 15, 2013).

#### **2. Burden of proof and burden of evidence**

#### **3. Presumptions (Conclusive presumptions, Disputable presumptions)**

Under the Rules on Evidence, the following is a conclusive presumption and therefore cannot be contradicted by evidence. (2012 BAR EXAMS)

#### **SUGGESTED ANSWER**

- 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.

#### **4. Liberal construction of the rules of evidence**

#### **5. 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

In which of the following instances is the quantum of evidence ERRONEOUSLY applied? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- A. In Writ of Amparo cases, substantial evidence.
- B. To satisfy the burden of proof in civil cases, preponderance of evidence.
- C. To overcome a disputable presumption, clear and convincing evidence.
- D. To rebut the presumptive validity of a notarial document, substantial evidence.

**B. Judicial notice and judicial admissions**

**1. Matters of judicial notice (Mandatory, Discretionary)**

A court may take judicial notice of: (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

Which of the following matters is NOT A PROPER SUBJECT of judicial notice? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

- A. Persons have killed even without motive.
- B. Municipal ordinances in the municipalities where the MCTC sits.
- C. Teleconferencing is now a way of conducting business transactions.
- D. British law on succession personally known to the presiding judge.

**2. Judicial admissions**

A vicarious admission is considered an exception to the hearsay rule. It, however, does not cover: (2014 BAR EXAMS)

- (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 a co-partner or agent (Section 29); admission by conspirator (Section 30); admission by privies; (Section 31); which are collectively classified by Senator Salonga as "vicarious admissions". (Vide Gilbert, Sec. 332; Remedial Law V, Herrera, page 398).

**Which of the following admissions made by a party in the course of judicial proceedings is a judicial admission? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Admissions made in a pleading signed by the party and his counsel intended to be filed.
- B. An admission made in a pleading in another case between the same parties.
- C. Admission made by counsel in open court.
- D. Admissions made in a complaint superseded by an amended complaint.

**3. Judicial notice of foreign laws, law of nations and municipal ordinance**

**C. Object (real) evidence**

**1. Nature of object evidence**

**Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (2012 BAR EXAMS)**

**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 v. Sitco, G.R. No. 178202, May 14, 2010). 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). 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 (Id.). 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).

Arvin was caught in flagrante delicto selling drugs for P200,000.00. The police officers confiscated the drugs and the money and brought them to the police station where they prepared the inventory duly signed by police officer Oscar Moreno. They were, however, unable to take pictures of the items. Will this deficiency destroy the chain of custody rule in the drug case? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

**2. Rule on DNA Evidence (A.M. No. 06-11-5-SC)**

**a. Assessment of probative value of DNA evidence and admissibility**

In a case 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. (2013 BAR EXAMS)

**SUGGESTED ANSWER**

I will first file a motion for leave to file demurrer to evidence within five (5) days from the time the prosecution rested its case. If the same is granted, then I will file a demurrer to evidence within ten (10) days from notice on the ground of insufficiency of evidence of the prosecution (Sec. 23, Rule 119).

In *People v. De Guzman*, G.R. No. 186498, March 26, 2010, the Supreme Court held that in 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. The identity of the prohibited drug must be established with moral certainty. Apart from the showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. The corpus delicti should be identified with unwavering exactitude.

Similarly, in *People v. Sitco*, G.R. No. 178202, May 14, 2010, the High Court held that in prosecutions involving narcotics and other illegal substances, the substance itself constitute 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. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification must be established with moral certainty and is a function of the rule of chain of custody. 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.

**In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused's. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)**

**SUGGESTED ANSWER**

As private prosecutor, I shall try to discredit the results of the DNA test by questioning and possibly impugning the integrity of the DNA profile by showing a flaw/error in obtaining the biological sample, or in the chain of custody of the biological sample obtained; the testing methodology employed; the scientific standard observed; the forensic DNA laboratory which conducted the test; and the qualification, training and experience of the forensic laboratory personnel who conducted the DNA testing.

**TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

**The Vallejo standard refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

True. In *People v. Vallejo*, 382 SCRA192 (2002), it was held that in assessing the probative value of DNA evidence, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

**D. Documentary evidence**

**1. Meaning of documentary evidence**

**2. Best Evidence Rule**

**a. Meaning of the rule**

**b. When applicable**

Police officers arrested Mr. Druggie in a buy-bust operation and confiscated from him 10 sachets of shabu and several marked genuine peso bills worth P5,000.00 used as the buy-bust money during the buy-bust operation.

At the trial of Mr. Druggie for violation of R.A. No. 9165 (Comprehensive Dangerous Drug Act of 2002), the Prosecution offered in evidence, among others, photocopies of the confiscated marked genuine peso bills. The photocopies were offered to prove that Mr. Druggie had engaged at the time of his arrest in the illegal selling of dangerous drugs.

Invoking the Best Evidence Rule, Atty. Maya Bang, the defense counsel, objected to the admissibility of the photocopies of the confiscated marked genuine peso bills.

Should the trial judge sustain the objection of the defense counsel? Briefly explain your answer (5%) (2017 BAR EXAMS)

**SUGGESTED ANSWER**

No, the trial judge should not sustain the defense counsel's objection. In *People v. Tandoy* (G.R. No. 80505, December 4, 1990), the Supreme Court held that the best evidence rule applies only when the contents of the document are the subject of Inquiry. Where the issue is only as to whether or not such document was actually executed, or exists, or the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible.

Here, the marked money was presented by the prosecution solely for the purpose of establishing its existence and not its contents. Other substitutionary evidence, like a photocopy thereof, is therefore admissible without the need of presenting the original. Hence, the best evidence rule does not apply in this case. The trial judge, therefore, should not sustain the defense counsel's objection.

Atty. Maya Bang, however, may object to the photocopies of the confiscated marked genuine peso bills for being hearsay evidence. Since it does not appear that the prosecution was able to establish that its submission of photocopied documents is justified under Rule 130, Sections 3 (a), (b), and (d) of the Rules of Court, said photocopied documents do not have any probative weight and should be disregarded whether objected to or not (*Republic v. Mupas*, G.R. No. 181892, April 19, 2016).

**ALTERNATIVE ANSWER**

The photocopies of the confiscated marked money should be excluded as evidence under the Best Evidence Rule. To be admissible as secondary evidence, the prosecution should have shown that the original marked money has been lost or destroyed, or cannot be produced in court, or that it is in the custody of the adverse party (*People v. Pamarlto*, G.R. No. 108453, July 11, 1994).

### c. Requisites for introduction of secondary evidence

## 3. Rules on Electronic Evidence (A.M. No. 01-7-01-SC)

### a. Scope; coverage; meaning of electronic evidence; electronic data message

Under the Rules of Electronic Evidence, "ephemeral electronic conversation" refers to the following, except: (2012 BAR EXAMS)

#### **SUGGESTED ANSWER**

- A. Text messages;
- B. Telephone conversations;
- C. Faxed document;
- D. Online chatroom sessions;

A private electronic document's authenticity may be received in evidence when it is proved by: (2012 BAR EXAMS)

#### **SUGGESTED ANSWER**

- 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.

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-way airplane ticket was purchased online using his credit card for a flight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

x x x

Suppose an Information is filed against Dina on August 12, 2008 and she is immediately arrested. What pieces of electronic evidence will Dante have to secure in order to prove the fraudulent online transaction? (2%) (2010 BAR EXAMS)

#### **SUGGESTED ANSWER**

He will have to present (a) his report to the bank that he lost his credit card (b) that the ticket was purchased after the report of the lost add.(c) the purchase of one-way ticket.

Dante should bring an original (or an equivalent copy) printout of: 1)the online ticket purchase using his credit card; 2) the phone call log to show that he already alerted the credit card company of his loss; and 3) his credit card billing statement-bearing the online ticket transaction.

**Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

**An electronic document is 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. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

True. This statement is embodied in Sec.I, Rule 4 of A.M. No. 01-7-01-SC, re: Rules on Electronic Evidence.

**b. Probative value of electronic documents or evidentiary weight; method of proof**

**4. Parol Evidence Rule**

**Parole evidence is an: (2014 BAR EXAMS)**

- 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**

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 v. Rudlin International Corporation, G.R. No. 164186, October 4, 2010)

**The Parole Evidence Rule applies to: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Subsequent agreements placed on issue.**
- B. Written agreements or contractual documents.**
- C. Judgment on a compromise agreement.**
- D. Will and testaments.**

**ALTERNATIVE ANSWER**

- D. Will and testaments**

**a. Application of the parol evidence rule**

**5. Authentication and proof of documents**

**a. When evidence of authenticity of a private writing is not required (ancient documents)**

## **b. Public documents as evidence; proof of official record**

Bearing in mind the distinction between private and public document, which of the following is admissible in evidence without further proof of due execution or genuineness? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. Baptismal certificates.
- B. Official record of the Philippine Embassy in Singapore certified by the Vice-Consul with official seal.
- C. Documents acknowledged before a Notary Public in Hong Kong.
- D. Unblemished receipt dated December 20, 1985 signed by the promisee, showing payment of a loan, found among the well-kept file of the promissor.

## **c. Proof of lack of record**

### **E. Testimonial evidence**

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. (2013 BAR EXAMS)

a. May the testimony of Nenita be allowed over the objection of Walter?

### **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 (Sec. 22, Rule 130). 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.

**b. May the testimony of Dr. Carlos, Walter's psychiatrist, be allowed over Walter's objection?**

**SUGGESTED ANSWER**

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.

**c. May the testimony of Fr. Platino, the priest-confessor, be allowed over Walter's objection?**

**SUGGESTED ANSWER**

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).

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.

**Which of the following is admissible? (2013 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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 extra judicial 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.

**1. Qualifications of a witness**

**Correctly complete the sentence: A lone witness --- (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Is credible only if corroborated.
- B. Is never credible.
- C. May be believed even if not corroborated.
- D. Is always credible.

**Considering the qualifications required of a would-be witness, who among the following is INCOMPETENT to testify? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**2. Competency versus Credibility of a witness**

**3. Disqualifications of witnesses**

**a. By reason of mental capacity or immaturity**

**b. By reason of marriage**

On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, pa2tayin u ni Mabini. Mtgaln nyang plano i2. Mg ingat u bka ma tsugi k." (2010 BAR EXAMS)

a. A subpoena ad testificandum was served on Gregoria. For her to be presented for the purpose of identifying her cellphone and the text message. Mabini objected to her Presentation on the ground of marital privilege. Resolve. (3%)

**SUGGESTED ANSWER**

The objection should be sustained on the ground of the marital disqualification rule (Rule 130, Sec. 22); not on the ground of the "marital privilege" communication rule. (Rule 130, Sec. 24). The marriage between Mabini and Gregoria is still subsisting and the situation at bar does not come under the exceptions to the disqualification by reason of marriage.

b. Suppose Mabini's objection in question A was sustained. The prosecution thereupon announced that it would be presenting Emilio's wife Graciana to identify

**Emilio's cellphone bearing Gregoria's text message. Mabini objected again. Rule on the objection. (2%)**

**SUGGESTED ANSWER**

The objection should be overruled. The testimony of Graciana is not covered by the said marital disqualification rule because she is not the wife of Mabini. Besides, Graciana will identify only the cellphone as that of her husband Emilio, not the messages therein which to her are hearsay.

**c. By reason of death or insanity of adverse party**

**In which of the following cases is the testimony in a case involving a deceased barred by the Survivorship Disqualification Rule or Dead Man Statute? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**d. By reason of privileged communications**

**John filed a petition for declaration of nullity of his marriage to Anne on the ground of psychological incapacity under Article 36 of the Family Code. He obtained a copy of the confidential psychiatric evaluation report on his wife from the secretary of the psychiatrist. Can he testify on the said report without offending the rule on privileged communication? Explain. (2016 BAR EXAMS)**

**SUGGESTED ANSWER:**

Yes, John can testify on the psychiatric report without offending the rule on privileged communication. In a case involving similar facts, the Supreme Court held that there is no violation of physician-patient privilege since the one testifying is not the psychiatrist. The privilege bars only the physician, not other persons. (Krohn v. Court of Appeals, 233 SCRA 146).

There is no violation of marital communication privilege since the report is not a confidential communication between spouses. There is also no violation of the marital disqualification rule since the case involves an exception, that is, a civil case by one spouse against the other.

**X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street: Lawyer L, who witnessed the incident, offered his legal services to V.**

V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone. On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his "Certification against Forum Shopping" V made no mention of the pendency of the, criminal case in Sta. Maria.

x x x  
x x x  
x x x  
x x x

Atty. L offered in the criminal case his affidavit respecting what he witnessed during the incident. X's lawyer wanted to cross examine Atty. L who, however, objected on the ground of lawyer client privilege. Rule on the objection. (2%) (2010 BAR EXAMS)

**SUGGESTED ANSWER**

The objection should be overruled. Lawyer-client privilege is not involved here. The subject on which the counsel would be examined has been made public in the affidavit he offered and thus, no longer privileged, aside from the fact that it is in respect of what the counsel witnessed during the incident and not to the communication made by the client to him or the advice he gave thereon in his professional capacity.

**4. Examination of a witness**

What is the "most important witness" rule pursuant to the 2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures? Explain. (2016 BAR EXAMS)

**SUGGESTED ANSWER**

(A) Under A.M. No. 03-1-09-SC or the "2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures," in civil cases where no amicable settlement was reached by the parties, the trial judge is directed to determine the most important witnesses and limit the number of such witnesses to be heard. The court shall also require the parties and/or counsels to submit the names, addresses and contact numbers of the witnesses to be summoned by subpoena. The facts to be proven by each witness and the approximate number of hours per witness shall also be fixed by the trial judge (Section (I)(A)(5) (j) of A.M. No. 03-01-09-SC or the "2004 Guidelines of Pm-trial and Use of Deposition-Discovery Measures", July13, 2004).

**What is the "one day examination of witness" rule pursuant to the 2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measures? Explain. (2016 BAR EXAMS)**

**SUGGESTED ANSWER**

The rule requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the courts' discretion during trial on whether or not to extend the direct and or cross-examination for justifiable reasons. On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court, but the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132 (Section (I)(A)(5)0) of AM. No. 03-01-09 SC or the "2004 Guidelines of Pre-trial and Use of Deposition-Discovery Measure?, July 13, 2004).

**a. Order in the examination of an individual witness**

- i. Direct examination**
- ii. Cross examination**
- iii. Re-direct examination**
- iv. Re-cross examination**
- v. Recalling the witness**

**Pedro, the principal witness in a criminal case, testified and completed his testimony on direct examination in 2015. Due to several postponements by the accused, grounded on his recurring illness, which were all granted by the judge, the cross-examination of Pedro was finally set on October 15, 2016. Before the said date, Pedro died. The accused moved to expunge Pedro's testimony on the ground that it violates his right of confrontation and the right to cross-examine the witness. The prosecution opposed the motion and asked that Pedro's testimony on direct examination be admitted as evidence. Is the motion meritorious? Explain. (2016 BAR EXAMS)**

**SUGGESTED ANSWER:**

No, the motion to expunge Pedro's testimony on the ground that it violates the accused's right to confront the witness is not meritorious. As ruled by the Supreme Court, where the delay in cross-examining the witness was imputable to the accused, he could not be heard to complain if the witness becomes unavailable through no fault of the party presenting the witness and hence the witness's direct examination should not be stricken out. In this case, the delay in cross-examining Pedro was imputable to the motions for postponement filed by the accused and without fault on the part of the prosecution.

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**ALTERNATIVE ANSWER**

- B. Allowed to remain in the record.

**b. How the witness is impeached by evidence of inconsistent statements (laying the predicate)**

**c. Evidence of the good character of a witness**

In an attempt to discredit and impeach a Prosecution witness in a homicide case, the defense counsel called to the stand a person who had been the boyhood friend and next-door neighbor of the Prosecution witness for 30 years. One question that the defense counsel-asked of the impeaching witness was: "Can you tell this Honorable Court about the general reputation of the prosecution witness in your community for aggressiveness and violent tendencies?"

Would you, as the trial prosecutor, interpose your objection to the question of the defense counsel? Explain your answer. (4%) (2017 BAR EXAMS)

**SUGGESTED ANSWER**

Yes. Under Rule 132, Section 11 of the Rules of Court, a witness may be impeached only by contradictory evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony. A witness may not be impeached by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of an offense (Rules of Court, Rule 132, Section 11). Accordingly, the defense counsel may not impeach the prosecution witness through testimonial evidence showing his general reputation for aggressiveness and violent tendencies.

**ALTERNATIVE ANSWER**

As trial prosecutor, I would not interpose an objection to the question of the defense counsel, because it may be admissible as an exception to the hearsay rule, being a common reputation.

Under the Rules, common reputation existing previous to the controversy, respecting facts of public or general interest more than thirty years old, or respecting marriage or moral character, may be given in evidence. Monuments and inscriptions in public places may be received as evidence of common reputation (Section 41, Rule 130, Rules of Court).

Hence, the general reputation in the community of the prosecution witness for aggressiveness and violent tendencies may be admissible in evidence as a common reputation.

#### **d. Judicial Affidavit Rule (A.M. No. 12-8-8-SC)**

**What are the contents of a judicial affidavit? (2016 BAR EXAMS)**

##### **SUGGESTED ANSWER**

A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness; (b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held; (c) A statement that the witness is answering the questions asked of him fully conscious that he does-so under oath, and that he may face criminal liability for false testimony or perjury; (d) Questions asked of the witness and his corresponding answers, consecutively numbered, that: (1) *Show the circumstances under which the witness acquired the facts upon which he testifies;* (2) *Elicit from him those facts which are relevant to the issues that the case presents;* and (3) *identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;* (e) The signature of the witness over his printed name; and (f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same. (Section 3, AM. No.12-8-8 SC, Judicial Affidavit Rule).

**Pedro was charged with theft for stealing Juan's cellphone worth P20,000.00. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the cellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan's cellphone. At the trial, Pedro's lawyer objected to the prosecution's use of judicial affidavits of her witnesses considering the imposible penalty on the offense with which his client was charged. (2015 BAR EXAMS)**

**a. Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario?**

##### **SUGGESTED ANSWER**

Yes, Pedro's lawyer is correct in objecting to the judicial affidavit of Mario. The Judicial Affidavit Rules shall apply only to criminal actions where the maximum of the imposible penalty does not exceed six (6) years (*Section 9(a)(1), A.M. No. 12-8-9-SC or the Judicial Affidavit Rule*).

Here, the maximum imposible penalty for the crime of theft of a cellphone worth P20,000 is *prison mayor* in its minimum to medium periods, or six years and one day to eight years and one day. Thus, Pedro's lawyer is correct in objecting to the judicial affidavit of Mario.

**b. Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan?**

**SUGGESTED ANSWER**

No. Pedro's lawyer is not correct in objecting to the judicial affidavit of Juan because the Judicial Affidavit Rules apply with respect to the civil aspect of the actions, regardless of the penalties involved (*Section 9, A.M. No. 12-8-8-SC or the Judicial Affidavit Rule*). Here the judicial affidavit of Juan was offered to prove the civil liability of Pedro. Thus, the objection of Pedro's lawyer to the judicial affidavit of Juan is not correct.

**c. At the conclusion of the prosecution's presentation of evidence, Prosecutor Marilag orally offered the receipt attached to Juan's judicial affidavit, which the court admitted over the objection of Pedro's lawyer. After Pedro's presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly liable for P20,000.00. Pedro's lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan's judicial affidavit, documentary evidence which Prosecutor Marilag failed to orally offer. Is the motion for reconsideration meritorious?**

**SUGGESTED ANSWER**

No. The motion for reconsideration is not meritorious. The judicial affidavit is not required to be orally offered as separate documentary evidence, because it is filed in lieu of the direct testimony of the witness. It is offered, at the time the witness is called to testify, and any objection to it should have been made at the time the witness was presented (*Section 6 and 8, A.M. No. 12-8-8-SC or the Judicial Affidavit Rule*).

Since the receipt attached to the judicial affidavit was orally offered, there was enough basis for the court to award civil liability.

**Q: TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

**x x x**

**The One-Day Examination of Witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

True. Par. 5(i) of Supreme Court A.M. No. 03.1.09- SC requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the courts discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons. On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court. However, the judge

has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132.

### **ALTERNATIVE ANSWER**

False. This rule is not absolute: it will still allow the trial judge the discretion whether to extend the direct and/or cross examination for justifiable reasons or not. The exercise of this discretion may still result in wranglings as to the proper exercise of the trial court's discretion, which can delay the proceedings.

## **5. Admissions and confessions**

### **a. *Res inter alios acta* rule**

In which of the following situations is the declaration of a deceased person against his interest NOT ADMISSIBLE against him or his successors and against third persons? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. Declaration of a joint debtor while the debt subsisted.
- B. Declaration of a joint owner in the course of ownership.
- C. Declaration of a former co-partner after the partnership has been dissolved.
- D. Declaration of an agent within the scope of his authority.

Henry testified that a month after the robbery Asiong, one of the accused, told him that Carlos was one of those who committed the crime with him. Is Henry's testimony regarding what Asiong told him admissible in evidence against Carlos? (2011 BAR EXAMS)

### **SUGGESTED ANSWER**

- A. No, since it is hearsay.
- B. No, since Asiong did not make the statement during the conspiracy.
- C. Yes, since it constitutes admission against a co-conspirator.
- D. Yes, since it part of the res gestae.

### **b. Confessions**

X was arrested for the alleged murder of a 6-year Old lad. He was read his Miranda rights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of non-stop interrogation. He remained quiet until, on the 3rd hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court) interpreting X's answer as an admission of guilt, convicted him.

On appeal, X's counsel faulted the trial court in its interpretation of his client's answer, arguing that X invoked his Miranda rights when he remained quiet for the

first two hours of questioning. Rule on the assignment of error. (3%) (2010 BAR EXAMS)

**SUGGESTED ANSWER**

The assignment of error invoked by X's counsel is impressed with merit since there has been no express waiver of X's Miranda rights. In order to have a valid waiver of the Miranda rights, the same must be in writing and made in the presence of his counsel. The uncounseled extrajudicial confession of X being without a valid waiver of his Miranda rights, is inadmissible, as well as any information derived therefrom.

**c. Similar acts as evidence**

Which of the following statements is not accurate? (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**ALTERNATIVE ANSWER**

- A. A plea of guilty later withdrawn is admissible in evidence against the accused who made the plea.

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? (2012 BAR EXAMS)

**SUGGESTED ANSWER**

- 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.

**ALTERNATIVE ANSWER**

- D. The prejudicial statements are not admissible because these were made outside the proceedings.

**Ben testified that Jaime, charged with robbery, has committed bag-snatching three times on the same street in the last six months. Can the court admit this testimony as evidence against Jaime? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

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

**TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

x x x  
x x x  
x x x

**Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it. (2009 BAR EXAMS)**

**SUGGESTED ANSWER**

True. The effect or consequence of the admission will bind also the party who adopted or espoused the same, as applied in *Estrada v. Desierto*, 356 SCRA 108 [2001]). An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person.

**6. Hearsay Rule**

**a. Meaning of hearsay**

**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 send 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 objected 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 their 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. (2014 BAR EXAMS)

### **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*). Under Section 36, Rules 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 surround 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 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 “non-human 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 v. Quick*. 323 S.W. 2d 386 [Mo. 1959]; *Buck v. State*, 138 P. 2d 115 [Okla. 1943]; *Herrera*, 1999).

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 the 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.

**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: (2012 BAR EXAMS)**

### **SUGGESTED ANSWER**

- 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.

**To prove the identity of the assailant in a crime of homicide, a police officer testified that, Andy, who did not testify in court, pointed a finger at the accused in a police lineup. Is the police officer's testimony regarding Andy's identification of the accused admissible evidence? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. Yes, since it is based on his personal knowledge of Andy's identification of the accused.
- B. Yes, since it constitutes an independently relevant statement.
- C. No, since the police had the accused identified without warning him of his rights.
- D. No, since the testimony is hearsay.

**To prove that Susan stabbed her husband Elmer, Rico testified that he heard Leon running down the street, shouting excitedly, "Sinaksak daw ni Susan ang asawa niya! (I heard that Susan is stabbing her husband!)" Is Leon's statement as narrated by Rico admissible? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. No, since the startling event had passed.
- B. Yes, as part of the res gestae.
- C. No, since the excited statement is itself hearsay.
- D. Yes, as an independently relevant statement.

**b. Exceptions to the hearsay rule**

**Dying declaration**

**Immediately before he died of gunshot wounds to his chest, Venancio told the attending physician, in a very feeble voice, that it was Amulfo, his co-worker, who had shot him. Venancio added that it was also Amulfo who had shot Vicente, the man whose cadaver was lying on the bed beside him.**

**In the prosecution of Amulfo for the criminal killing of Venancio and Vicente, are all the statements of Venancio admissible as dying declarations? Explain your answer. (5%) (2017 BAR ANSWER)**

**SUGGESTED ANSWER**

No, not all statements of Venancio are admissible as dying declarations. A dying declaration is a statement made under the consciousness of an impending death (Rules of Court, Rule 130, Section 37). It may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. In this case, presuming there is evidence that Venancio was conscious of his impending death when he made his statement that it was Arnulfo who shot him, said statement may

be considered as a dying declaration which is admissible in evidence as an exception to the hearsay rule. The degree and seriousness of the gunshot wounds sustained by Venancio and the fact that death supervened thereafter may constitute substantial evidence of his consciousness of his impending death (People v. Tanaman, G.R. No. 71768, July 28, 1987).

While Venancio's statement about the death of Vicente may not be considered as a dying declaration, it may still be admitted in evidence as part of res gestae, which is also an exception to the hearsay rule (Rules of Court, Rule 130, Section 42). Venancio's statement about the killing of Vicente may be considered to have been made after the occurrence of a startling occurrence. Thus, it may be admitted in evidence.

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- A. To prove robbery.
- B. To prove homicide.
- C. To prove robbery and homicide.
- D. To prove the "corpus delicti".

**ALTERNATIVE ANSWER**

- C. To prove robbery and homicide

**On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, pa2tayin u ni Mabini. Mtgaln nyang plano i2. Mg ingat u bka ma tsugi k." (2010 BAR EXAMS)**

**a. If Mabini's objection in question B was overruled, can he object to the presentation of the text message on the ground that it is hearsay? (2%)**

**SUGGESTED ANSWER**

No, Gregoria's text message In Emilio's cellphone is not covered by the hearsay rule because it is regarded in the rules of evidence as independently relevant statement: the text message is not to prove the truth of the fact alleged therein but only as to the circumstance of whether or not premeditation exists.

**b. Suppose that shortly before he expired, Emilio was able to send a text message to his wife Graciana reading "Nasaksak ako. Dna me makahinga. SiMabiniang may gawa ni2." Is this text message admissible as a dying declaration? Explain. (3%)**

### **SUGGESTED ANSWER**

Yes, the text message is admissible as a dying declaration since the same came from the victim who shortly expired and it is in respect of the cause and circumstance of his death. The decisive factor that the message was made and sent under consciousness of an impending death, is evidently attendant from the victim's Statement: "D na me makahinga" and the fact that he died shortly after he sent the text message. However, cellphone messages are regarded as electronic evidence, and in a recent case (Ang v. Court of Appeals et al., GR No. 182835, April 20, 2010), the Supreme Court ruled that the Rules on Electronic Evidence applies only to civil actions, quasi-judicial proceedings and administrative proceeding, not to criminal actions.

**Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto w'ho shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%) (2009 BAR EXAMS)**

### **SUGGESTED ANSWER**

Objection overruled. The disclosure received by Domingo from Carla may be regarded as independently relevant statement which is not covered by the hearsay rule; hence admissible. The statement may be received not as evidence of the truth of what was stated but only as to the tenor thereof and the occurrence when it was said, independently of whether it was true or false. (People v. Cloud, 333 Phil. 306[1996]; People v. Malibiran, et al., G.R. No. 178301, April 24, 2009)

### **ALTERNATIVE ANSWER**

Objection sustained. The disclosure made by Carla has no other probative value except to identify who shot Betty. Its tenor is irrelevant to the incident, and the same was made not to a police investigator of the occurrence but to a nurse whose concern is only to attend to the patient. Hence, the disclosure does not qualify as independently relevant statement and therefore, hearsay. The nurse is competent to testify only on the condition of Betty when rushed to the hospital but not as to who caused the injury. The prosecution should call on Carla as the best witness to the incident.

### **Declaration against interest**

**Which of the following is NOT REQUIRED of a declaration against interest as an exception to the hearsay rule? (2011 BAR EXAMS)**

### **SUGGESTED ANSWER**

- A. The declarant had no motive to falsify and believed such declaration to be true.
- B. The declarant is dead or unable to testify.
- C. The declaration relates to a fact against the interest of the declarant.

D. At the time he made said declaration he was unaware that the same was contrary to his aforesaid interest.

### **Family reputation or tradition regarding pedigree**

#### **Part of the *res gestae***

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 neighbour, *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 in 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: (2014 BAR EXAMS)

a. The trial court erred in giving weight to *PO2 Asintado's* testimony, as the latter did not have 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.

#### **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., v. People, G.R. No. 181052, November 14, 2012*).

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 v. 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.

**b. The trial court erred in holding that *Rene's* statement to the press was a confession which, standing alone, would be sufficient to warrant a conviction. Resolve.**

#### **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 v. Hipona, G.R. No. 185709, February 18, 2010*).

**To prove payment of a debt, *Bong* testified that he heard *Ambo* say, as the latter was handing over money to *Tessie*, that it was in payment of debt. Is *Bong's* testimony admissible in evidence? (2011 BAR EXAMS)**

#### **SUGGESTED ANSWER**

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

### **7. Opinion rule**

#### **a. Opinion of expert witness**

#### **b. Opinion of ordinary witness**

**In a case, the prosecutor asked the medical expert the question, "Assuming that the assailant was behind the deceased before he attacked him, would you say that**

treachery attended the killing?" Is this hypothetical question permissible? (2011 BAR EXAMS)

**SUGGESTED ANSWER**

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

**8. Character evidence**

**a. Criminal cases**

Character evidence is admissible \_\_\_\_\_. (2013 BAR EXAMS)

**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
- 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.

Character evidence is admissible (2011 BAR EXAMS)

**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.
- B. in criminal cases, the prosecution may prove the bad moral character of the accused to prove his criminal predisposition.
- C. in criminal cases, the bad moral character of the offended party may not be proved.
- D. when it is evidence of the good character of a witness even prior to impeachment.

In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the Anti-Graft and Corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground / s. Respond. (3%) (2010 BAR EXAMS)

**SUGGESTED ANSWER**

The objection is on the ground that the fact sought to be elicited by the prosecution is irrelevant and immaterial to the offense under prosecution and trial. Moreover, the Rules

do not allow the prosecution to adduce evidence of bad moral character of the accused pertinent to the offense charged, except on rebuttal and only if it involves a prior conviction by final judgment (Rule 130, Sec. 51, and Rules of Court).

### **9. Rule on Examination of a Child Witness (A.M. No. 004-07-SC)**

**Under the Rules on Examination of a child witness, a child witness is one: (2012 BAR EXAMS)**

#### **SUGGESTED ANSWER**

- 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.

#### **a. Live-link TV testimony of a child witness**

**AA, a twelve-year-old girl, while walking alone met BB, a teenage boy who befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:**

**"On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."**

**At the trial, the prosecutor called to the witness stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case. (2015 BAR EXAMS)**

**a. Is BB's counsel correct?**

#### **SUGGESTED ANSWER**

No. BB's counsel is not correct. Every child is presumed qualified to be a witness (Sec. 6, *Rule on Examination of Child Witness, A.M. No. 004-07-SC*). To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence (*Id.*).

Here, AA, a twelve (12) year old child who is presumed to be competent, may be asked leading questions by the prosecutor in conducting his direct examination pursuant to

Rules on Examination of Child Witness and the Revised Rules on Criminal Procedure (*People v. Santos*, G.R. No. 171452, October 17, 2008).

**b. In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge *motu proprio* conducted his *voir dire* examination on AA. Was the action taken by the judge proper?**

**SUGGESTED ANSWER**

Yes, the judge may *motu proprio* conduct his *voir dire* examination on AA. Under the Rules on Examination of Child Witness, the court shall conduct a competency examination of a child, *motu proprio* or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court (*Id.*).

**F. Offer and objection**

**1. Offer of evidence**

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

**SUGGESTED ANSWER**

- 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.

**ALTERNATIVE ANSWER**

- b. evidence in land registration proceedings

**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: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**A private document may be considered as evidence when it is sequentially: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

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

**SUGGESTED ANSWER**

- a. case where the judge is on leave.
- b. small claims proceedings.
- c. cases where the parties agree in writing.
- d. land registration proceedings.

**During trial, plaintiff offered evidence that appeared irrelevant at that time but he said he was eventually going to relate to the issue in the case by some future evidence. The defendant objected. Should the trial court reject the evidence in question on ground of irrelevance? (2011 BAR EXAMS)**

**SUGGESTED ANSWER**

- (A) No, it should reserve its ruling until the relevance is shown.
- (B) Yes, since the plaintiff could anyway subsequently present the evidence anew.
- (C) Yes, since irrelevant evidence is not admissible.
- (D) No, it should admit it conditionally until its relevance is shown.

**2. When to make an offer**

**3. Objection**

**A narrative testimony is usually objected to but the court may allow such testimony if: (2012 BAR EXAMS)**

**SUGGESTED ANSWER**

- 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.

**ALTERNATIVE ANSWER**

- b. the witness is of advanced age

**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? (2012 BAR EXAMS)**

**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 (Sec. 38, Rule 132).

#### **4. Tender of excluded evidence**

Answer the following briefly: (2017 BAR EXAMS)

- (a) X X X
- (b) X X X
- (c) X X X
- (d) What is a tender of excluded evidence? (2%)

#### **SUGGESTED ANSWER**

- (a) X X X
- (b) X X X
- (c) X X X

(d) Tender of excluded evidence is a remedy embodied under Section 40, Rule 132 of the Rules of Court, which states that "if documents or things offered in evidence are excluded by the Court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony."

In Cruz-Arevalo v. Querubin-Layosa (AM. No. RTJ-06-2005, July 14, 2006), the Supreme Court ruled that this procedure, also known as offer of proof, is made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence. The appellate court will better understand and appreciate the assignment of error if the evidence involved is included in the record of the case.

#### **VII. Revised Rules on Summary Procedure**

##### **A. Cases covered by the rule**

##### **B. Effect of failure to answer**

##### **C. Preliminary conference and appearances of parties**

#### **VIII. Katarungang Pambarangay Law (P.D. No. 1508; R.A. 7610, as amended)**

## **A. Cases covered**

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: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- a. a court-appointed sheriff.
- b. any Barangay Kagawad.
- c. Punong Barangay.
- d. any member of the Pangkat ng Tagapagsundo.

The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

## **B. Subject matter for amicable settlement**

### **RULES OF PROCEDURE FOR ENVIRONMENTAL CASES**

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: (2012 BAR EXAMS)

### **SUGGESTED ANSWER**

- 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.

What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (2012 BAR EXAMS)

### **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).

