

**UNIVERSITY OF SANTO TOMAS  
SUGGESTED ANSWERS IN CIVIL LAW  
BAR EXAMINATIONS 2013  
By: Assoc. Dean Viviana M. Paguirigan**

**QUESTION NO. I.**

You are a Family Court judge and before you is a Petition for the Declaration of Nullity of Marriage (under Article 36 of the Family Code) filed by Maria against Neil. Maria claims that Neil is psychologically incapacitated to comply with the essential obligations of marriage because Neil is a drunkard, a womanizer, a gambler, and a mama's boy- traits that she never knew or saw when Neil was courting her. Although summoned, Neil did not answer Maria's petition and never appeared in court.

To support her petition, Maria presented three witnesses- herself, Dr. Elsie Chan, and Ambrosia. Dr. Chan testified on the psychological report on Neil that she prepared. Since Neil never acknowledged nor responded to her invitation for interviews, her report is solely based on her interviews with Maria and the spouses' minor children. Dr. Chan concluded that Neil is suffering from Narcissistic Personality Disorder, an ailment that she found to be already present since Neil's early adulthood and one that is grave and incurable. Maria testified on the specific instances when she found Neil drunk, with another woman, or squandering the family's resources in a casino. Ambrosia, the spouses' current household help, corroborated Maria's testimony.

On the basis of the evidence presented, will you grant the petition? (8%)

***SUGGESTED ANSWER:***

If I were the judge, I will not grant the petition. Although psychological incapacity has not been defined by the Family Code, the Supreme Court in several cases (Republic vs. San Jose - February 28, 2007; Zamora v. CA an Zamora G.R. No. 141917 February 7, 2007; Benjamin Ting v. Carmen Ting G.R. No. 166562; March 31, 2009) has ruled that the intendment of the law is to confine psychological incapacity to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. What the law requires is downright incapacity and not refusal or neglect or difficulty but a failure to perform essential marital obligations due to causes psychological in nature.

Further, the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert for a conclusive diagnosis of grave, severe, and incurable presence of psychological incapacity. (Paz vs. Paz – February 18, 2010) In this case, the report of Dr. Chan is solely based on her interviews with Maria and the children. She did not actually hear, see and evaluate Neil. Hence, the report cannot constitute a reasonable basis to reach a conclusion as to Neil's psychological incapacity.

**QUESTION II.**

A collision occurred at an intersection involving a bicycle and a taxicab. Both the bicycle rider (a businessman then doing his morning exercise) and the taxi driver claimed that the other was at fault. Based on the police report, the bicycle crossed the intersection first but the taxicab, crossing at a fast clip from the bicycle's left, could not brake in time and hit the bicycle's rear wheel, toppling it and throwing the bicycle rider into the sidewalk 5 meters away.

The bicycle rider suffered a fractured right knee, sustained when he fell on his right side on the concrete side walk. He was hospitalized and was subsequently operated on, rendering him immobile for 3 weeks and requiring physical rehabilitation for another 3 months. In his complaint for damages, the rider prayed for the award of P1,000,000 actual damages, P200,000 moral damages, P200,000 exemplary damages, P1 00,000 nominal damages and P50,000 attorney's fees.

Assuming the police report to be correct and as the lawyer for the bicycle rider, what evidence (documentary and testimonial) and legal arguments will you present in court to justify the damages that your client claims? (8%)

***SUGGESTED ANSWER:***

As lawyer for the bicycle rider, I will present in addition to the police report, the medical abstract as to the injuries sustained by my client as well as copies of receipts of expenses incurred in connection with the treatment of his injuries. I will also present the testimony of my client and perhaps a bystander who witnessed the incident as to the circumstances surrounding the accident.

As for the legal argument, I will rebut the claim of negligence on my client's part by presenting evidence that my client has actually crossed the intersection ahead of the taxicab and it was the taxicab driver who rapidly cut the path of the bicycle which caused the collision. Also, even assuming that there was contributory negligence on the part of my client, I will argue that it will not preclude the recovery of damages but may only mitigate the damages to which he is entitled.

**QUESTION III.**

Sergio is the registered owner of a 500-square meter land. His friend, Marcelo, who has long been interested in the property, succeeded in persuading Sergio to sell it to him. On June 2, 2012, they agreed on the purchase price of P600,000 and that Sergio would give Marcelo up to June 30, 2012 within which to raise the amount. Marcelo, in a light tone usual between them, said that they should seal their agreement through a case of Jack Daniels Black and P5,000 "pulutan" money which he immediately handed to Sergio and which the latter accepted. The friends then sat down and drank the first bottle from the case of bourbon.

On June 15, 2013, Sergio learned of another buyer, Roberto, who was offering P800,000 in ready cash for the land. When Roberto confirmed that he could pay in cash as soon as Sergio could get the documentation ready, Sergio decided to withdraw his offer to Marcelo, hoping to just explain matters to his friend. Marcelo, however, objected when the withdrawal was communicated to him, taking the position that they have a firm and binding agreement that Sergio cannot simply walk away from because he has an option to buy that is duly supported by a duly accepted valuable consideration.

(A) Does Marcelo have a cause of action against Sergio? (5%)

(B) Can Sergio claim that whatever they might have agreed upon cannot be enforced because any agreement relating to the sale of real property must be supported by evidence in writing and they never reduced their agreement to writing? (3%)

***SUGGESTED ANSWER:***

- A) Yes, Marcelo has a cause of action against Sergio. As a rule, an offer can be withdrawn at any time before acceptance by communicating such withdrawal (Art. 1324) except when the option is founded upon a consideration as something paid or promised. In this case, although there was no separate consideration for the option, the offer had already been accepted and thus, it resulted into a perfected contract of sale between Marcelo and Sergio. Sale being a consensual contract is perfected by mere consent.
- B) No, Sergio cannot claim that the agreement cannot be enforced because it was not reduced into writing. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. (Art. 1356) In fact when the law requires a document or other special form, as in the acts and enumerated by law, the contracting parties may compel each other to observe that form, once the contract has been perfected, and this right may be exercised simultaneously with the action upon the contract. (Art. 1357) Even an oral sale of a parcel of land is valid between the parties (Campillo vs. CA 129 SCRA 513; Zaide v. CA 163 SCRA 71)

**QUESTION IV.**

Anselmo is the registered owner of a land and a house that his friend Boboy occupied for a nominal rental and on the condition that Boboy would vacate the property on demand. With Anselmo's knowledge, Boboy introduced renovations consisting of an additional bedroom, a covered veranda, and a concrete block fence, at his own expense.

Subsequently, Anselmo needed the property as his residence and thus asked Boboy to vacate and turn it over to him. Boboy, despite an extension, failed to vacate the property, forcing Anselmo to send him a written demand to vacate.

In his own written reply, Boboy signified that he was ready to leave but Anselmo must first reimburse him the value of the improvements he introduced on the property as he is a builder in good faith. Anselmo refused, insisting that Boboy cannot ask for reimbursement as he is a mere lessee. Boboy responded by removing the improvements and leaving the building in its original state.

(A) Resolve Boboy's claim that as a builder in good faith, he should be reimbursed the value of the improvements he introduced. (4%)

(B) Can Boboy be held liable for damages for removing the improvements over Anselmo's objection? (4%)

***SUGGESTED ANSWER:***

- A) Boboy's claim that he is a builder in good faith is without merit. The contract between the parties remains to be a lease despite the nominal rentals paid by Boboy. As such, Boboy's right with regard to the improvements he introduced on the property should not be resolved on the basis of the provisions of the Civil Code on builder in good faith under Article 448 but by the provision on lease, particularly Article 1678. A lessee who makes improvements on the property cannot be considered a builder in good faith for he knows that he does not own the property and his possession is merely temporary. Boboy may only claim one-half of the value of the improvements from Anselmo but if the latter refuses to reimburse him, Boboy may remove the improvements even if it may cause damage to the property.

- B) No, Boboy cannot be held liable for damages except if he caused unnecessary impairment to the property leased. Since Anselmo refused to appropriate the improvements and to reimburse Boboy, the latter may exercise his right to remove the improvements provided he shall not cause any more impairment to the property leased than is necessary.

### **QUESTION V.**

Josefa executed a deed of donation covering a one-hectare rice land in favor of her daughter, Jennifer. The deed specifically provides that:

*"For and in consideration of the love and service Jennifer has shown and given to me, I hereby freely, voluntarily and irrevocably donate to her my one-hectare rice land covered by TCT No. 11550, located in San Fernando, Pampanga. This donation shall take effect upon my death."*

The deed also contained Jennifer's signed acceptance, and an attached notarized declaration by Josefa and Jennifer that the land will remain in Josefa's possession and cannot be alienated, encumbered, sold or disposed of while Josefa is still alive.

Advise Jennifer on whether the deed is a donation inter vivos or mortis causa and explain the reasons supporting your advice. (8%)

#### ***SUGGESTED ANSWER:***

I will advise Jennifer that the deed of donation executed in her favor by Josefa is a donation inter vivos. An inter vivos donation is generally irrevocable once accepted, and the law requires that if it involves immovable property, it must be in a public document and there must be a deed of acceptance which must be in the same deed of donation. If the acceptance is in a separate instrument, it has to be noted in both instruments. (Art. 749) In this case, the deed of acceptance clearly signifies that it is a donation inter vivos because a donation mortis causa need not be accepted by the donee during the lifetime of the donor although the donee in the case of mortis causa donation is free to accept or repudiate it after the death of the donor.

Also, the prohibition on alienation during Josefa's lifetime all the more indicates that the donation is inter vivos because the fact that Josefa reserved the lifetime usufruct of the land shows that her intent is to transfer the ownership of the donated property to Jennifer or else there would have been no need for her to reserve the lifetime usufruct thereof if it were a donation mortis causa. (Gestopa v. CA 342 SCRA 105 citing Reyes vs. Mosqueda, 187 SCRA 661, 671 (1990); Concepcion vs. Concepcion, 91 Phil. 823, 827 (1952).)

### **QUESTION VI.**

Lito obtained a loan of P1,000,000 from Ferdie, payable within one year. To secure payment, Lito executed a chattel mortgage on a Toyota Avanza and a real estate mortgage on a 200-square meter piece of property.

(A) Would it be legally significant - from the point of view of validity and enforceability - if the loan and the mortgages were in public or private instruments? (6%)

(B) Lito's failure to pay led to the extra-judicial foreclosure of the mortgaged real property. Within a year from foreclosure, Lito tendered a manager's check to Ferdie to redeem the property. Ferdie refused to accept payment on the ground that he wanted payment in cash: the

check does not qualify as legal tender and does not include the interest payment. Is Ferdie's refusal justified? (4%)

***SUGGESTED ANSWER:***

- A) With respect to the loan, the same is both valid and enforceable regardless of whether it is in a private or public document because as a rule, contracts shall be obligatory in whatever form they may have been entered into provided all the essential requisites for their validity are present. A loan is a contract which the law does not require to be in a particular form in order that it may be valid or enforceable.

However, with regard to the chattel mortgage, since the law (Act 1508) requires an affidavit of good faith stating that the chattel mortgage is supposed to stand as security for the loan, it is submitted that for validity of the chattel mortgage, it must be in a public document. A real estate mortgage under the provisions of Article 2125 requires that in order that a mortgage may be validly constituted that the document in which it appears must be recorded. If it is not recorded, the mortgage is nevertheless valid and binding between the parties. Hence, for validity both chattel and real estate mortgages must be in a public document. But for purposes of enforceability, it is submitted that the form of the contract whether in a public or private document would be immaterial. (*Mobil Oil vs. Diocares* 29 SCRA 656).

- B) Ferdie's refusal to accept the check on the ground that it does not qualify as legal tender is correct because a check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. (*Philippine Airlines vs. CA and Amelia Tan* – January 30, 1990) Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3). Also, redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of full redemption price within the said period. Whether the redemption is being made under Act 3135 or under the General Banking Law, the mortgagor or his assignee is required to tender payment to make said redemption valid. (*Heirs of Quisumbing vs. PNB aand SLDC* –G.R. No. 178242 January 20, 2009)

**QUESTION VII.**

In 2005, Andres built a residential house on a lot whose only access to the national highway was a pathway crossing Brando's property. Andres and others have been using this pathway (pathway A) since 1980.

In 2006, Brando fenced off his property, thereby blocking Andres' access to the national highway. Andres demanded that part of the fence be removed to maintain his old access route to the highway (pathway A), but Brando refused, claiming that there was another available pathway (pathway B) for ingress and egress to the highway. Andres countered that pathway B has defects, is circuitous, and is extremely inconvenient to use.

To settle their dispute, Andres and Brando hired Damian, a geodetic and civil engineer, to survey and examine the two pathways and the surrounding areas, and to determine the shortest and the least prejudicial way through the servient estates. After the survey, the engineer concluded that pathway B is the longer route and will need improvements and repairs, but will not significantly affect the use of Brando's property. On the other hand, pathway A that had long been in place, is the shorter route but would significantly affect the use of Brando's property.

In light of the engineer's findings and the circumstances of the case, resolve the parties' right of way dispute. (6%)

***SUGGESTED ANSWER:***

I will rule in favor of Brando. The easement of right of way should be established at a point least prejudicial to the servient estate where the distance from the dominant estate to the public highway may be the shortest. (Art. 650) If these two conditions do not concur in one estate, the criterion of least prejudice prevails over shortest distance. (Anastacia Quimen vs. CA and Yolanda Oliveros May 29, 1996) In this case, to establish the easement on the property of Brando would significantly affect his use of his property whereas while Pathway B may prove to be the longer route, it will cause least prejudice to Brando. Andres' argument that Pathway B is circuitous and inconvenient to use should not be given weight because the true test of the establishment of an easement is adequacy. Convenience of the dominant estate has never been the gauge for the establishment of the easement. (Costabella Corporation v. CA 193 SCRA 333; Cristobal vs. Ledesma 291 SCRA 122)

**QUESTION VIII.**

Ciriaco Realty Corporation (CRC) sold to the spouses Del a Cruz a 500-square meter land (Lot A) in Paranaque. The land now has a fair market value of P1,200,000. CRC likewise sold to the spouses Rodriguez, a 700-square meter land (Lot B) which is adjacent to Lot A. Lot B has a present fair market value of P1,500,000.

The spouses Dela Cruz constructed a house on Lot B, relying on the presentation of the CRC sales agent that it is the property they purchased. Only upon the completion of their house did the spouses Dela Cruz discover that they had built on Lot B owned by the spouses Rodriguez, not on Lot A that they purchased. They spent P 1 000,000 for the house.

As their lawyer, advise the spouses Dela Cruz on their rights and obligations under the given circumstances, and the recourses and options open to them to protect their interests. (8%)

***SUGGESTED ANSWER:***

I will advise Spouses Dela Cruz that they have the right to retain possession of the premises until Rodriguez exercises any of the options under Article 448 of the Civil Code. (Tecnogas Manufacturing vs. CA February 10, 1997) Spouses Dela Cruz are builders in good faith because before constructing the house, they exercised due diligence by asking the agent of CRC the location of Lot A and they relied on the information given by the agent who is presumed to know the identity of the lot purchased by the Dela Cruz. (Pleasantville vs. CA 253 SCRA 10) The owner of the land on which anything has been built in good faith by another has the right to appropriate as his own the works, sowing or planting after payment of the indemnity or to oblige the builder to pay the price of the land if its value is not considerably higher than the building or trees, or to ask the sower to pay proper rent. I will also advise my clients that Rodriguez may not compel them to remove the improvements because it is not one of the options granted to the landowner if the builder is in good faith.

### **QUESTION IX.**

Rica petitioned for the annulment of her ten-year old marriage to Richard. Richard hired Atty. Cruz to represent him in the proceedings. In payment for Atty. Cruz's acceptance and legal fees, Richard conveyed to Atty. Cruz a parcel of land in Taguig that he recently purchased with his lotto winnings. The transfer documents were duly signed and Atty. Cruz immediately took possession by fencing off the property's entire perimeter.

Desperately needing money to pay for his mounting legal fees and his other needs and despite the transfer to Atty. Cruz, Richard offered the same parcel of land for sale to the spouses Garcia. After inspection of the land, the spouses considered it a good investment and purchased it from Richard. Immediately after the sale, the spouses Garcia commenced the construction of a three-story building over the land, but they were prevented from doing this by Atty. Cruz who claimed he has a better right in light of the prior conveyance in his favor.

Is Atty. Cruz's claim correct? (8%)

#### ***SUGGESTED ANSWER:***

No, Atty. Cruz is not correct. At first glance, it may appear that Atty. Cruz is the one who has a better right because he first took possession of the property. However, as a lawyer of Richard he is prohibited under Article 1491 from acquiring the property and rights which may be the object of any litigation in which they may take part by virtue of their profession. While the suit is for annulment of marriage and it may be argued that the land itself is not the object of the litigation, the annulment of marriage if granted, will carry with it the liquidation of the absolute community or conjugal partnership of the spouses as the case may be (Article 50 in relation to Article 43 of the Family Code). Richard purchased the land with his lotto winnings during the pendency of the suit for annulment and on the assumption that the parties are governed by the regime of absolute community or conjugal partnership, winnings from gambling or betting will form part thereof. Also, since the land is part of the absolute community or conjugal partnership of the Richard and Rica it may not be sold or alienated without the consent of the latter and any disposition or encumbrance of the property of the community or conjugal property without the consent of the other spouse is void. (Article 96 and Article 124, Family Code).

### **QUESTION X.**

Manuel was born on 12 March 1940 in a 1 000-square meter property where he grew up helping his father, Michael, cultivate the land. Michael has lived on the property since the land was opened for settlement at about the time of the Commonwealth government in 1935, but for some reason never secured any title to the property other than a tax declaration in his name. He has held the property through the years in the concept of an owner and his stay was uncontested by others. He has also conscientiously and continuously paid the realty taxes on the land.

Michael died in 2000 and Manuel - as Michael's only son and heir - now wants to secure and register title to the land in his own name. He consults you for legal advice as he wants to perfect his title to the land and secure its registration in his name.

(A) What are the laws that you need to consider in advising Manuel on how he can perfect his title and register the land in his name? Explain the relevance of these laws to your projected course of action. (4%)

(B) What do you have to prove to secure Manuel's objectives and what documentation are necessary? (4%)

***SUGGESTED ANSWER:***

- A) For purposes of confirmation of imperfect title, I will have to consider the provisions of Commonwealth Act No. 141 as well as the Property Registration Decree or P.D. 1529 in giving my advice to Manuel. C.A. No. 141 which amended the second Public Land Act (Act 2874) provides that there are two requisites for judicial confirmation of imperfect title namely: 1) open and continuous, exclusive and notorious possession and occupation of the land by himself or through his predecessor in interest under bona fide claim of ownership since June 12, 1945; and 2) the classification of the land as alienable and disposable land of the public domain. (Secretary of DENR v. Yap -G.R. NO. 167707, October 8, 2008) The Property Registration Decree or P.D. 1529 provides who may file an application for registration of title to the land under Section 14<sup>1</sup> thereof which provides that those who by themselves or their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands for the public domain under a bona fide claim of ownership since June 12, 1945 or earlier. Since Manuel's father Michael had been in open, continuous, exclusive and notorious possession of the land since 1935, and that the land was declared alienable in the same year, his possession has ripened into ownership which entitles him or his successor Manuel to file an application for judicial confirmation of imperfect title.
- B) I have to prove that the land was already declared alienable at the time that Manuel or his father Michael took possession of the land and that their possession was open, continuous, exclusive and notorious which started prior to or on June 12, 1945 as required by C.A. No. 141. To prove the first requisite, the original classification of the land as approved by the DENR Secretary (Republic v. T.A. N. Properties 555 SCRA 4777 (2008) or in lieu thereof, a Certification by the DENR Regional office attesting to the alienable and disposable character of the land (Republic v. Serrano G.R. No. 183063 – February 24, 2010) must have to be submitted. I also have to file together with the application for registration all original muniments of title or copies thereof and a survey plan of the land approved by the Bureau of Lands in accordance with Section 17 of P.D. 1529.<sup>2</sup> Manuel may also submit the tax declarations and tax payment receipts which have been ruled to be good indications of possession in the concept of owner (Republic vs. Candy Maker, Inc. G.R. No. 163766, June 22, 2006).

---

<sup>1</sup> **Section 14.** Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) Those who have acquired ownership of land in any other manner provided for by law.

<sup>2</sup> **Section 17.** *What and where to file.* The application for land registration shall be filed with the Court of First Instance of the province or city where the land is situated. The applicant shall file together with the application all original muniments of titles or copies thereof and a survey plan of the land approved by the Bureau of Lands.

The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.