

**UNIVERSITY OF SANTO TOMAS**

**MULTIPLE CHOICE CIVIL LAW BAR EXAM 2013**

**SUGGESTED ANSWERS by: Assoc. Dean Viviana M. Paguirigan**

**I.** Armand died intestate. His full-blood brothers, Bobby and Conrad, and half-blood brothers, Danny, Edward and Floro, all predeceased him. The following are the surviving relatives:

1. Benny and Bonnie, legitimate children of Bobby;
2. Cesar, legitimate child of Conrad;
3. Dante, illegitimate child of Danny;
4. Ernie, adopted child of Edward; and
5. Felix, grandson of Floro.

The net value of Armand's estate is P 1,200,000.

1) How much do Benny and Bonnie stand to inherit by right of representation? (1%)

- (A) P200,000
- (B) P300,000
- (C) P400,000
- (D) P150,000
- (E) None of the above.

**ANSWER: E - In intestate succession if all the brothers and sisters of the decedent predeceased the latter, the nephews and nieces inherit in their own right or per capita and not by right of representation. (See Article 975)**

2) How much is Dante's share in the net estate? (1%)

- (A) P150,000.
- (B) P200,000.
- (C) P300,000.
- (D) P400,000.
- (E) None of the above.

**ANSWER: E- Dante will not inherit because his is an illegitimate child of a legitimate half-brother of Armand thus the barrier applies.**

3) How much is Ernie's share in the net estate. (1%)

- (A) P 0.
- (B) P400,000.
- (C) P150,000.
- (D) P200,000.
- (E) None of the above.

**ANSWER: A - Ernie will not inherit because being an adopted child of Edward, he cannot inherit from the relatives of the latter as the adoption creates only a relationship between adopter and adopted. (Sayson v. CA 205 SCRA 321)**

4) How much is Felix's share in the net estate? (1%)

- (A) P400,000.
- (B) P150,000.
- (C) P300,000.
- (D) P0.
- (E) None of the above.

**ANSWER: D – Felix is not entitled to inherit because the right of representation in the collateral line is only available to nephews and nieces of the decedent and not to grandnephews or grandnieces.**

**II.** A, B, C and D are the solidary debtors of X for P40,000. X released D from the payment of his share of P10,000. When the obligation became due and demandable, C turned out to be insolvent.

Should the share of insolvent debtor C be divided only between the two other remaining debtors, A and B? (1%)

- (A) Yes. Remission of D's share carries with it total extinguishment of his obligation to the benefit of the solidary debtors.
- (B) Yes. The Civil Code recognizes remission as a mode of extinguishing an obligation. This clearly applies to D.
- (C) No. The rule is that gratuitous acts should be restrictively construed, allowing only the least transmission of rights.

(D) No, as the release of the share of one debtor would then increase the burden of the other debtors without their consent.

**ANSWER: C – Under Art. 1217 when one of the solidary debtors cannot because of his insolvency reimburse his share to the debtor paying, such share shall be borne by all his co-debtors in proportion to the debt of each**

**III.** Amador obtained a loan of P300,000 from Basilio payable on March 25, 2012. As security for the payment of his loan, Amador constituted a mortgage on his residential house and lot in Basilio's favor. Cacho, a good friend of Amador, guaranteed and obligated himself to pay Basilio, in case Amador fails to pay his loan at maturity.

1) If Amador fails to pay Basilio his loan on March 25, 2012, can Basilio compel Cacho to pay? (1%)

(A) No, Basilio cannot compel Cacho to pay because as guarantor, Cacho can invoke the principle of excussion, i.e., all the assets of Basilio must first be exhausted.

(B) No, Basilio cannot compel Cacho to pay because Basilio has not exhausted the available remedies against Amador.

(C) Yes, Basilio can compel Cacho to pay because the nature of Cacho's undertaking indicates that he has bound himself solidarily with Amador.

(D) Yes, Basilio can compel Cacho who bound himself to unconditionally pay in case Amador fails to pay; thus the benefit of excussion will not apply.

**ANSWER: B – Basilio has in his favor a REM and he should exhaust his legal remedies against Amador. (Art. 2058)**

2) If Amador sells his residential house and lot to Diego, can Basilio foreclose the real estate mortgage? (1%)

(A) Yes, Basilio can foreclose the real estate mortgage because real estate mortgage creates a real right that attaches to the property.

(B) Yes, Basilio can foreclose the real estate mortgage. It is binding upon Diego as the mortgage is embodied in a public instrument.

(C) No, Basilio cannot foreclose the real estate mortgage. The sale confers ownership on the buyer, Diego, who must therefore consent.

(D) No, Basilio cannot foreclose the real estate mortgage. To deprive the new owner of ownership and possession is unjust and inequitable.

**ANSWER: A- Art. 2126 The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be to the fulfillment of the obligation for whose security it was constituted.**

**IV.** Cruz lent Jose his car until Jose finished his Bar exams. Soon after Cruz delivered the car, Jose brought it to Mitsubishi Cubao for maintenance check up and incurred costs of P8,000. Seeing the car's peeling and faded paint, Jose also had the car repainted for P10,000. Answer the two questions below based on these common facts.

1) After the bar exams, Cruz asked for the return of his car. Jose said he would return it as soon as Cruz has reimbursed him for the car maintenance and repainting costs of P 18,000.

Is Jose's refusal justified? (1%)

(A) No, Jose's refusal is not justified. In this kind of contract, Jose is obliged to pay for all the expenses incurred for the preservation of the thing loaned.

(B) Yes, Jose's refusal is justified. He is obliged to pay for all the ordinary and extraordinary expenses, but subject to reimbursement from Cruz.

(C) Yes, Jose's refusal is justified. The principle of unjust enrichment warrants the reimbursement of Jose's expenses.

(D) No, Jose's refusal is not justified. The expenses he incurred are useful for the preservation of the thing loaned. It is Jose's obligation to shoulder these useful expenses.

**ANSWER: NO CORRECT CHOICE – in commodatum, the bailee has no right of retention Article 1944 the bailee (Jose) has no right of retention even if it may be by reason of expenses, Article 1951 he can only retain if he suffers damage by reason of a flaw or defect in the thing**

2) During the bar exam month, Jose lent the car to his girlfriend, Jolie, who parked the car at the Mall of Asia's open parking lot, with the ignition key inside the car. Car thieves broke into and took the car.

Is Jose liable to Cruz for the loss of the car due to Jolie's negligence? (1%)

(A) No, Jose is not liable to Cruz as the loss was not due to his fault or negligence.

(B) No, Jose is not liable to Cruz. In the absence of any prohibition, Jose could lend the car to Jolie. Since the loss was due to force majeure, neither Jose nor Jolie is liable.

(C) Yes, Jose is liable to Cruz. Since Jose lent the car to Jolie without Cruz's consent, Jose must bear the consequent loss of the car.

(D) Yes, Jose is liable to Cruz. The contract between them is personal in nature. Jose can neither lend nor lease the car to a third person.

**ANSWER: D – Commodatum is purely personal in nature (Article 1939) the bailee can neither lend nor lease the object of the contract to a third person.**

- V. In 2005, L, M, N, O and P formed a partnership. L, M and N were capitalist partners who contributed P500,000 each, while O, a limited partner, contributed P1,000,000. P joined as an industrial partner, contributing only his services. The Articles of Partnership, registered with the Securities and Exchange Commission, designated L and O as managing partners; L was liable only to the extent of his capital contribution; and P was not liable for losses.

In 2006, the partnership earned a net profit of P800,000. In the same year, P engaged in a different business with the consent of all the partners. However, in 2007, the partnership incurred a net loss of P500,000. In 2008, the partners dissolved the partnership. The proceeds of the sale of partnership assets were insufficient to settle its obligation. After liquidation, the partnership had an unpaid liability of P300,000.

1) Assuming that the just and equitable share of the industrial partner, P, in the profit in 2006 amounted to P100,000, how much is the share of O, a limited partner, in the P800,000 net profit? (1%)

- (A) P160,000.
- (B) P175,000.
- (C) P280,000.
- (D) P200,000.
- (E) None of the above.

**ANSWER: C – P280,000. Since after deducting the P100k share of P there remains P700k, the three partners L, M, N will each have 1 share and O will have two shares (2:1) three shares plus two shares, the balance of P700k will be divided by 5 which will yield the result of P140k multiplied by 2 (for O)**

2) In 2007, how much is the share of O, a limited partner, in the net loss of P500,000? (1%)

- (A) P 0.

- (B) P1 00,000.
- (C) P125,000.
- (D) P200,000.
- (E) None of the above.

**ANSWER: D - Article 1797 share in profits and losses is proportionate to contribution**

3) Can the partnership creditors hold L, O and P liable after all the assets of the partnership are exhausted? (1%)

(A) Yes. The stipulation exempting P from losses is valid only among the partners. L is liable because the agreement limiting his liability to his capital contribution is not valid insofar as the creditors are concerned. Having taken part in the management of the partnership, O is liable as capitalist partner.

(B) No. P is not liable because there is a valid stipulation exempting him from losses. Since the other partners allowed him to engage in an outside business activity, the stipulation absolving P from liability is valid. For O, it is basic that a limited partner is liable only up to the extent of his capital contribution.

(C) Yes. The stipulations exempting P and L from losses are not binding upon the creditors. O is likewise liable because the partnership was not formed in accordance with the requirements of a limited partnership.

(D) No. The Civil Code allows the partners to stipulate that a partner shall not be liable for losses. The registration of the Articles of Partnership embodying such stipulations serves as constructive notice to the partnership creditors. (E) None of the above is completely accurate.

**ANSWER: A – Article 1799 a stipulation which excludes one or more partners from any share in profits and losses is void. P, industrial partner may be exempt but that is only with respect to the partners but not the creditors. O, by taking part in the management even if he is a limited partner becomes liable as a general partner (Article 1848)**

**VI.** Gary is a tobacco trader and also a lending investor. He sold tobacco leaves to Homer for delivery within a month, although the period for delivery was not guaranteed. Despite Gary's efforts to deliver on time, transportation problems and government red tape hindered his efforts and he could only deliver after 30 days. Homer refused to accept the late delivery and to pay on the ground that the agreed term had not been complied with.

As lending investor, Gary granted a P1,000,000 loan to Isaac to be paid within two years from execution of the contract. As security for the loan, Isaac promised to

deliver to Gary his Toyota Innova within seven (7) days, but Isaac failed to do so. Gary was thus compelled to demand payment for the loan before the end of the agreed two-year term.

1) Was Homer justified in refusing to accept the tobacco leaves? (1%)

(A) Yes. Homer was justified in refusing to accept the tobacco leaves. The delivery was to be made within a month. Gary's promise of delivery on a "best effort" basis made the delivery uncertain. The term, therefore, was ambiguous.

(B) No. Homer was not justified in refusing to accept the tobacco leaves. He consented to the terms and conditions of the sale and must abide by it. Obligations arising from contract have the force of law between the contracting parties.

(C) Yes. Homer was justified in his refusal to accept the delivery. The contract contemplates an obligation with a term. Since the delivery was made after 30 days, contrary to the terms agreed upon, Gary could not insist that Homer accept the tobacco leaves.

(D) No. Homer was not justified in refusing to accept the tobacco leaves. There was no term in the contract but a mixed condition. The fulfillment of the condition did not depend purely on Gary's will but on other factors, e.g., the shipping company and the government. Homer should comply with his obligation.

**ANSWER: B (obligations arising from contracts have the force of law) or D (the obligation is not with the term but with a mixed condition –although the facts are not clear enough if it was stated in the contract that the other factors like transportation or government regulations would be a factor)**

2) Can Gary compel Isaac to pay his loan even before the end of the two-year period? (1%)

(A) Yes, Gary can compel Isaac to immediately pay the loan. Non-compliance with the promised guaranty or security renders the obligation immediately demandable. Isaac lost his right to make use of the period.

(B) Yes, Gary can compel Isaac to immediately pay the loan. The delivery of the Toyota Innova is a condition for the loan. Isaac's failure to deliver the car violated the condition upon which the loan was granted. It is but fair for Gary to demand immediate payment.

(C) No, Gary cannot compel Isaac to immediately pay the loan. The delivery of the car as security for the loan is an accessory contract; the principal contract is still the P 1,000,000 loan. Thus, Isaac can still make use of the period.

(D) No, Gary cannot compel Isaac to immediately pay the loan. Equity dictates that Gary should have granted a reasonable extension of time for Isaac to deliver his Toyota Innova. It would be unfair and burdensome for Isaac to pay the P1,000,000 simply because the promised security was not delivered.

**ANSWER: A – Article 1198 Isaac lost his right to make use of the period because he failed to furnish the guaranty or security in consideration of which Gary agreed to the period**

**VII.** Lito was a commercial pilot who flew for Pacific-Micronesia Air. In 1998, he was the co-pilot of the airline's Flight MA916 that mysteriously disappeared two hours after take-off from Agaña, Guam, presumably over the Pacific Ocean. No trace of the plane and its 105 passengers and crew was ever found despite diligent search; Lito himself was never heard of again. Lito left behind his wife, Lita, and their two children.

In 2008, Lita met and married Jaime. They now have a child of their own.

While on a tour with her former high school classmates in a remote province of China in 2010, Lita was surprised to see Lito or somebody who looked exactly like him, but she was sure it was Lito because of the extreme surprise that registered in his face when he also saw her. Shocked, she immediately fled to her hotel and post haste returned to the country the next day. Lita now comes to you for legal advice. She asks you the following questions:

1) If Lito is alive, what is the status of his marriage to Lita? (1%)

(A) The marriage subsists because the marital bond has not been terminated by death.

(B) The marriage was terminated when Lita married Jaime.

(C) The marriage subsists because Lita's marriage to Jaime is void.

(D) The marriage is terminated because Lito is presumed dead after his plane has been missing for more than 4 years.

(E) The marriage can be formally declared terminated if Lito would not resurface.

**ANSWER: A – Since Lito is still alive the marital bond has not been severed**

2) If Lito is alive, what is the status of Lita's marriage to Jaime? (1%)

(A) The marriage is valid because Lita's marriage to Lito was terminated upon Lito's disappearance for more than seven years.



(B) The marriage is valid. After an absence of more than 10 years, Lito is already presumed dead for all purposes.

(C) The marriage is void. Lito's mere absence, however lengthy, is insufficient to authorize Lita to contract a subsequent marriage.

(D) The marriage is void. If Lito is indeed alive, his marriage to Lita was never dissolved and they can resume their marital relations at any time.

**ANSWER: C – Lito's absence did not automatically grant Lita the right to remarry without securing a declaration of presumptive death**

**VIII.** Which of the following actions or defenses are meritorious: (1%)

(A) An action for recovery of downpayment paid under a rescinded oral sale of real property.

(B) A defense in an action for ejectment that the lessor verbally promised to extend or renew the lease.

(C) An action for payment of sum of money filed against one who orally promised to answer another's debt in case the latter defaults.

(D) A defense in an action for damages that the debtor has sufficient, but unliquidated assets to satisfy the credit acquired when it becomes due.

(E) None of the above.

**ANSWER: A - In Asia Productions v. Pano (205 SCRA 458) the SC allowed recovery of the partial payment made by the buyer of a building under a verbal contract of sale because the buyer is not seeking the enforcement of the contract and at any rate it is not covered by the statute of frauds.**

**IX.** Betty entrusted to her agent, Aida, several pieces of jewelry to be sold on commission with the express obligation to turn over to Betty the proceeds of the sale, or to return the jewelries if not sold in a month's time. Instead of selling the jewelries, Aida pawned them with the Tambunting Pawnshop, and used the money for herself. Aida failed to redeem the pawned jewelries and after a month, Betty discovered what Aida had done. Betty brought criminal charges which resulted in Aida's conviction for estafa.

Betty thereafter filed an action against Tambunting Pawnshop for the recovery of the jewelries. Tambunting raised the defense of ownership, additionally arguing that it is duly licensed to engage in the pawnshop and lending business, and that it accepted the mortgage of the jewelry in good faith and in the regular course of its business.

If you were the judge, how will you decide the case? (1%)

(A) I will rule in favor of Betty. My ruling is based on the Civil Code provision that one who has lost any movable or has been unlawfully deprived thereof may recover it from the person in possession of the same. Tam bunting's claim of good faith is inconsequential.

(B) I will rule in favor of Betty. Tambunting's claim of good faith pales into insignificance in light of the unlawful deprivation of the jewelries. However, equity dictates that Tambunting must be reimbursed for the pawn value of the jewelries.

(C) I will rule in favor of Tambunting. Its good faith takes precedence over the right of Betty to recover the jewelries.

(D) I will rule in favor of Tambunting. Good faith is always presumed. Tambunting's lawful acquisition in the ordinary course of business coupled with good faith gives it legal right over the jewelries.

**ANSWER: A- Article 559 of the Civil Code applies (See Dizon vs. Suntay 47 SCRA 160)**

**X.** Arlene owns a row of apartment houses in Kamuning, Quezon City. She agreed to lease Apartment No. 1 to Janet for a period of 18 months at the rate of P10,000 per month. The lease was not covered by any contract. Janet promptly gave Arlene two (2) months deposit and 18 checks covering the rental payment for 18 months. This show of good faith prompted Arlene to promise Janet that should Arlene decide to sell the property, she would give Janet the right of first refusal.

(1) Not long after Janet moved in, she received news that her application for a Master of Laws scholarship at King's College in London had been approved. Since her acceptance of the scholarship entailed a transfer of residence, Janet asked Arlene to return the advance rental payments she made. Arlene refused, prompting Janet to file an action to recover the payments. Arlene filed a motion to dismiss, claiming that the lease on which the action is based, is unenforceable.

If you were the judge, would you grant Arlene's motion? (1%)

(A) Yes, I will grant the motion because the lease contract between Arlene and Janet was not in writing, hence, Janet may not enforce any right arising from the same contract.

(B) No, I will not grant the motion because to allow Arlene to retain the advance payments would amount to unjust enrichment.

(C) Yes, I will grant the motion because the action for recovery is premature; Janet should first secure a judicial rescission of the contract of lease.

(D) No. I will not grant the motion because the cause of action does not seek to enforce any right under the contract of lease.

**ANSWER: D – recovery of advance rental payments made is not covered by the statute of frauds because its purpose is not to perpetrate fraud but to prevent fraud**

2) Assume that Janet decided not to accept the scholarship and continued leasing Apartment No. 1. Midway through the lease period, Arlene decided to sell Apartment No. 1 to Jun in breach of her promise to Janet to grant her the right of first refusal. Thus, Janet filed an action seeking the recognition of her right of first refusal, the payment of damages for the violation of this right, and the rescission of the sale between Arlene and Jun.

Is Janet's action meritorious? (1%)

(A) Yes, under the Civil Code, a promise to buy and sell a determinate thing is reciprocally demandable.

(B) No, the promise to buy and sell a determinate thing was not supported by a consideration.

(C) Yes, Janet's right of first refusal was clearly violated when the property was not offered for sale to her before it was sold to Jun.

(D) No, a right of first refusal involves an interest over real property that must be embodied in a written contract to be enforceable.

(E) None of the above.

**ANSWER: D – although the lease itself is valid even if verbal, the right of first refusal is a different matter because a verbal promise to grant a right of first refusal which in essence is a promise to sell is unenforceable under the Statute of Frauds**