

2014 BAR EXAMINATIONS
UNIVERSITY of the PHILIPPINES LAW CENTER
SUGGESTED ANSWERS IN CIVIL LAW
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I.

Ariz and Paz were officemates at Perlas ng Silangan Bank (PSB). They fell in love with each other and had a civil and church wedding. Meanwhile, Paz rapidly climbed the corporate ladder of PSB and eventually became its Vice President, while Ariz remained one of its bank supervisors, although he was short of 12 units to finish his Masters of Business Administration (MBA) degree.

Ariz became envious of the success of his wife. He started to drink alcohol until he became a drunkard. He preferred to join his "barkadas"; became a wifebeater; would hurt his children without any reason; and failed to contribute to the needs of the family. Despite rehabilitation and consultation with a psychiatrist, his ways did not change.

After 19 years of marriage, Paz, a devout Catholic, decided to have their marriage annulled by the church. Through the testimony of Paz and a psychiatrist, it was found that Ariz was a spoiled brat in his youth and was sometimes involved in brawls. In his teens, he was once referred to a psychiatrist for treatment due to his violent tendencies. In due time, the National Appellate Matrimonial Tribunal (NAMT) annulled the union of Ariz and Paz due to the failure of Ariz to perform and fulfill his duties as a husband and as a father to their children. The NAMT concluded that it is for the best interest of Paz, Ariz and their children to have the marriage annulled.

In view of the NAMT decision, Paz decided to file a Petition for Declaration of Nullity of Marriage of their civil wedding before the Regional Trial Court (RTC) of Makati City using the NAMT decision and the same evidence adduced in the church annulment proceedings as basis.

If you are the judge, will you grant the petition? Explain. (5%)

SUGGESTED ANSWER:

If I were the judge, I will not grant the petition. While the decision of the church tribunal annulling the marriage of the parties may be persuasive, it is not however, binding upon the civil courts. For psychological incapacity to be a ground for nullity, it must be shown that it was rooted in the history of the party alleged to be suffering from it, must be grave and serious, and incurable such that it renders the person incapacitated to perform the essential marital obligations due to causes psychological in nature. In the case presented, it appears that Ariz fulfilled his marital obligations at the beginning and it was only after feeling envious about the success of Paz that he started exhibiting violent tendencies and refused to comply with marital obligations. Psychological incapacity is not mere refusal

but outright incapacity to perform marital obligations which does not appear to be present in the case of Ariz. (Marcos v. Marcos G.R. No. 136490- October 19, 2000)

II.

Crispin died testate and was survived by Alex and Josine, his children from his first wife; Rene and Ruby, his children from his second wife; and Allan, Bea, and Cheska, his children from his third wife.

One important provision in his will reads as follows:

"Ang lupa at bahay sa Lungsod ng Maynila ay ililipat at ilalagay sa pangalan nila Alex at Rene hindi bilang pamana ko sa kanila kundi upang pamahalaan at pangalagaan lamang nila at nang ang sinuman sa aking mga anak, sampu ng aking mga apo at kaapuapuhan ko sa habang panahon, ay may tutuluyan kung magnanais na mag-aral sa Maynila o sa kalapit na mga lungsod."

Is the provision valid? (4%)

SUGGESTED ANSWER:

No, the provision is not valid. At first glance, the provision may appear valid as it provides for the transfer of title in favor of Alex and Rene over the parcel of land. A legacy or devise is to be construed as a donation effective mortis causa, and it is intended to transfer ownership to the legatee or devisee. Since the ownership is legally transferred to the Alex and Rene, they cannot be prohibited by the testator from alienating or partitioning the same perpetually. The dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void. (Article 870)

III.

The Roman Catholic Church accepted a donation of a real property located in Lipa City. A deed of donation was executed, signed by the donor, Don Mariano, and the donee, the Church, as represented by Fr. Damian. Before the deed could be notarized, Don Mariano died. Is the donation valid? (4%)

SUGGESTED ANSWER:

The donation is void. The donation of an immovable property must be in a public instrument in order for it to be valid. In this case, the donor died even before the notarization of the deed of donation. Hence, it does not satisfy the requirement of being in a public instrument for the donation to be valid.

IV.

Nante, a registered owner of a parcel of land in Quezon City, sold the property to Monica under a deed of sale which reads as follows:

"That for and in consideration of the sum of P500,000.00, value to be paid and delivered to me, and receipt of which shall be acknowledged by me to the full satisfaction of Monica, referred to as Vendee, I hereby sell, transfer, cede, convey, and assign, as by these presents, I do have sold, transferred, ceded, conveyed and assigned a parcel of land covered by TCT No. 2468 in favor of the Vendee."

After delivery of the initial payment of P100,000.00, Monica immediately took possession of the property. Five (5) months after, Monica failed to pay the remaining balance of the purchase price. Nante filed an action for the recovery of possession of the property. Nante alleged that the agreement was one to sell, which was not consummated as the full contract price was not paid. Is the contention of Nante tenable?

SUGGESTED ANSWER:

The contention of Nante is not tenable. The deed itself states that for consideration received, he sells, transfers, and conveys the land to Monica and there was delivery of the property to the latter. The contract is clearly one of sale as there was no reservation of ownership on the part of the seller Nante. The non-payment of the price in a contract of sale would only entitle the seller to rescind the contract but it does not thereby prevent the transfer of ownership particularly so as in this case, where there was already delivery to the buyer.

V.

What is the effect of preterition ? (1%)

- (A) It annuls the devise and legacy
- (B) It annuls the institution of heir
- (C) It reduces the devise and legacy
- (D) It partially annuls the institution of heir

Answer is letter B (preterition annuls the institution of heirs)

VI.

Miko and Dinah started to live together as husband and wife without the benefit of marriage in 1984. Ten (10) years after, they separated. In 1996, they decided to live together again, and in 1998, they got married.

On February 17, 2001, Dinah filed a complaint for declaration of nullity of her marriage with Miko on the ground of psychological incapacity under Article 36 of the Family Code. The court rendered the following decision:

- "1. Declaring the marriage null and void;
2. Dissolving the regime of absolute community of property; and
3. Declaring that a decree of absolute nullity of marriage shall only be issued after liquidation, partition and distribution of the parties' properties under Article 147 of the Family Code."

Dinah filed a motion for partial reconsideration questioning the portion of the decision on the issuance of a decree of nullity of marriage only after the liquidation, partition and distribution of properties under Article 147 of the Code.

If you are the judge, how will you decide petitioner's motion for partial reconsideration? Why? (4%)

SUGGESTED ANSWER:

I will grant partial reconsideration. If the marriage is declared void under Article 36, the provisions of the Family Code on liquidation, partition, and distribution of the properties on absolute community or conjugal partnership will not apply but rather Article 147 or Article 148 depending on the presence or absence of a legal impediment between them. In *Dino v. Dino*,¹ the SC ruled that Art. 50 of the Family Code and Section 19 of the Rules on Declaration of Nullity applies only to marriages which are declared void ab initio or annulled by final judgment under Articles 40 and 45 of the Family. In short, Art. 50 of the Family Code does not apply to marriages which are declared void ab initio under Art. 36 of the FC which should be declared void without waiting for the liquidation of the properties of the parties.

VII.

Due to the continuous heavy rainfall, the major streets in Manila became flooded. This compelled Cris to check-in at Square One Hotel. As soon as Cris got off from his Toyota Altis, the Hotel's parking attendant got the key of his car and gave him a valet parking

¹ *Alain Dino vs. Ma. Caridad Dino G.R. No. 178044, January 19, 2011*

customer's claim stub. The attendant parked his car at the basement of the hotel. Early in the morning, Cris was informed by the hotel manager that his car was carnapped. (4%)

(A) What contract, if any, was perfected between Cris and the Hotel when Cris surrendered the key of his car to the Hotel's parking attendant?

(B) What is the liability, if any, of the Hotel for the loss of Cris' car?

SUGGESTED ANSWER:

- a) The contract between Cris and Square One Hotel is one of necessary deposit. Deposit of effects made by travelers or guests in hotels or inns is considered a necessary deposit.² This includes not only the personal effects brought inside the hotel premises but also vehicles or animals and articles which have been introduced or placed in the annexes of the hotel.

- b) In the case of Durban Apartments vs. Pioneer Insurance,³ the Supreme Court held the hotel liable for the loss of the vehicle of the guest after its valet parking attendant parked the vehicle in front of a bank near the hotel premises. The court ruled that the bank's parking area became an annex of the hotel when the management of the bank allowed the hotel to park vehicles there on the night in question. The contract of deposit was perfected when the guest surrendered the keys to his vehicle to the parking attendant and the hotel is under obligation of safely keeping and returning it. Ultimately, Square One Hotel is liable for the loss of the vehicle.

VIII.

Tess leased her 1,500 sq. m. lot in Antipolo City to Ruth for a period of three (3) years, from January 2010 to February 2013.

On March 19, 2011, Tess sent a letter to Ruth, part of which reads as follows:

"I am offering you to buy the property you are presently leasing at P5,000.00 per sq. m. or for a total of P7,500,000.00. You can pay the contract price by installment for two (2) years without interest.

² Article 1998, Civil Code

³ G.R. No. 179419 January 12, 2011

I will give you a period of one (1) year from receipt of this letter to decide whether you will buy the property."

After the expiration of the lease contract, Tess sold the property to her niece for a total consideration of P4 million.

Ruth filed a complaint for the annulment of the sale, reconveyance and damages against Tess and her niece. Ruth alleged that the sale of the leased property violated her right to buy under the principle of right of first refusal.

Is the allegation of Ruth tenable? (4%)

SUGGESTED ANSWER:

No, the allegation of Ruth is not tenable. The letter written by Tess did not grant a right of first refusal to Ruth. At most, it is to be construed as an option contract whereby Ruth was given the right to buy or not to buy the leased property. An option is itself not a purchase but it merely secures the privilege to buy. However, the option is not valid because it was not supported by a cause or consideration distinct from the price of the property. (Article 1479) Also, Ruth does not appear to have exercised her option before the offer was withdrawn by the subsequent sale of the property to the niece of Tess.

IX.

Spouses Macario and Bonifacia Dakila entered into a contract to sell with Honorio Cruz over a parcel of industrial land in Valenzuela, Bulacan for a price of Three Million Five Hundred Thousand Pesos (P3,500,000.00). The spouses would give a downpayment of Five Hundred Thousand Pesos (P500,000.00) upon the signing of the contract, while the balance would be paid for the next three (3) consecutive months in the amount of One Million Pesos (P1,000,000.00) per month. The spouses paid the first two (2) installments but not the last installment. After one (1) year, the spouses offered to pay the unpaid balance which Honorio refused to accept.

The spouses filed a complaint for specific performance against Honorio invoking the application of the Maceda Law. If you are the judge, how will you decide the case? (4%)

SUGGESTED ANSWER:

I will rule in favor of Honorio. The invocation of the Maceda Law is misplaced. The law applies only to sale or financing of realty on installment payments including residential units or residential condominium apartments and does not apply to sales of industrial units or industrial lands like in the case presented. Another reason why the Maceda law will not apply is that, the sale in the case at bar is not the sale on installment as contemplated by the law. The sale on installment covered by the Maceda Law is one where the price is paid or amortized over a certain period in equal

installments. The sale to the Spouses Dakila is not a sale on installment but more of a straight sale where a down payment is to be made and the balance to be paid in a relatively short period of three months.

X.

Dorotea leased portions of her 2,000 sq. m. lot to Monet, Kathy, Celia, and Ruth for five (5) years. Two (2) years before the expiration of the lease contract, Dorotea sold the property to PM Realty and Development Corporation. The following month, Dorotea and PM Realty stopped accepting rental payments from all the lessees because they wanted to terminate the lease contracts.

Due to the refusal of Dorotea to accept rental payments, the lessees , Ruth, et al., filed a complaint for consignation of the rentals before the Regional Trial Court (RTC) of Manila without notifying Dorotea.

Is the consignation valid? (4%)

SUGGESTED ANSWER:

No, the consignation is not valid. For consignation of the thing or sum due to be proper, there must be prior notice to the creditor that the debtor is going to consign the payment in court. This notice is intended to give the creditor the opportunity to accept payment and thus avoid liability for costs in case it is found that the act of consignation was properly made. Even on the assumption that Dorotea was no longer the creditor as she had already sold the property to DM Realty, the facts do not state that the realty corporation was also given notice before filing the case for consignation.

XI.

An easement that can be acquired by prescription: (1%)

- (A) Right of way
- (B) Watering of an animal
- (C) Lateral and subjacent support
- (D) Light and view

Correct answer – letter D – only continuous and apparent easements may be acquired by prescription

XII.

J.C. Construction (J.C.) bought steel bars from Matibay Steel Industries (MSI) which is owned by Buddy Batungbacal. J.C. failed to pay the purchased materials worth P500,000.00 on due date. J.C. persuaded its client Amoroso with whom it had receivables to pay its obligation to MSI. Amoroso agreed and paid MSI the amount of P50,000.00. After two (2) other payments, Amoroso stopped making further payments.

Buddy filed a complaint for collection of the balance of the obligation and damages against J.C. J.C. denied any liability claiming that its obligation was extinguished by reason of novation which took place when MSI accepted partial payments from Amoroso on its behalf.

Was the obligation of J.C. Construction to MSI extinguished by novation? Why? (4%)

SUGGESTED ANSWER:

No, the obligation of JC was not extinguished by novation. Novation may either be objective or subjective. Subjective novation takes place by the substitution of debtor or subrogation of a third person to the rights of the creditor. Novation by substituting a new debtor may take place even without the knowledge or against the will of the original debtor but not without the consent of the creditor. Moreover, novation must be expressed and it cannot be implied and there must be an agreement that the old obligation is extinguished. In the case of JC, it does not appear that MSI had agreed to release JC from the obligation. Hence, the obligation of JC was not extinguished.

XIII.

Esteban and Martha had four (4) children: Rolando, Jun, Mark, and Hector. Rolando had a daughter, Edith, while Mark had a son, Philip. After the death of Esteban and Martha, their three (3) parcels of land were adjudicated to Jun. After the death of Jun, the properties passed to his surviving spouse Anita, and son Cesar. When Anita died, her share went to her son Cesar. Ten (10) years after, Cesar died intestate without any issue. Peachy, Anita's sister, adjudicated to herself the properties as the only surviving heir of Anita and Cesar. Edith and Philip would like to recover the properties claiming that they should have been reserved by Peachy in their behalf and must now revert back to them.

Is the contention of Edith and Philip valid? (4%)

SUGGESTED ANSWER:

No, the contention is not valid. The property adjudicated to Jun from the estate of his parents which he in turn left to Anita and Cesar is not subject to reservation in favor of

Edith and Philip. In *Mendoza et. al. vs. Policarpio, et. al.*⁴ the court ruled that lineal character of the reservable property is reckoned from the ascendant from whom the propositus received the property by gratuitous title. The ownership should be reckoned only from Jun, as he is the ascendant from where the first transmission occurred or from whom Cesar inherited the properties. Moreover, Article 891 provides that the person obliged to reserve the property should be an ascendant. Peachy is not Cesar's ascendant but a mere collateral relative. On the assumption that the property is reservable, Edith and Philip being first cousins of Cesar who is the propositus are disqualified to be reservatarios as they are not third degree relatives of Cesar.

XIV.

A pedestrian, who was four (4) months pregnant, was hit by a bus driver while crossing the street. Although the pedestrian survived, the fetus inside her womb was aborted. Can the pedestrian recover damages on account of the death of the fetus? (1%)

(A) Yes, because of Article 2206 of the Civil Code which allows the surviving heirs to demand damages for mental anguish by reason of the death of the deceased.

(B) Yes, for as long as the pedestrian can prove that she was not at fault and the bus driver was the one negligent.

(C) No, because a fetus is not a natural person.

(D) No, if the fetus did not comply with the requirements under Article 41 of the Civil Code.

Correct Answer is letter D – Article 41 of the Civil Code requires that to be considered a person, a fetus with an intrauterine life of less than seven months must survive for the full twenty-four hours from complete separation from the mother's womb.

XV.

Mr. Bong owns several properties in Pasig City. He decided to build a condominium named Flores de Manila in one of his lots. To fund the project, he obtained a loan from the National Bank (NB) secured by a real estate mortgage over the adjoining property which he also owned.

During construction, he built three (3) pumps on the mortgaged property to supply water to the condominium. After one (1) year, the project was completed and the condominium

⁴ G.R. NO. 176422 -March 20, 2013

was turned over to the buyers. However, Mr. Bong failed to pay his loan obligation to NB. Thus, NB foreclosed the mortgaged property where the pumps were installed. During the sale on public auction of the mortgaged property, Mr. Simon won in the bidding. When Mr. Simon attempted to take possession of the property, the condominium owners, who in the meantime constituted themselves into Flores de Manila Inc. (FMI), claimed that they have earlier filed a case for the declaration of the existence of an easement before the Regional Trial Court (RTC) of Pasig City and prayed that the easement be annotated in the title of the property foreclosed by NB. FMI further claimed that when Mr. Bong installed the pumps in his adjoining property, a voluntary easement was constituted in favor of FMI.

Will the action prosper? (4%)

SUGGESTED ANSWER:

No, the action will not prosper. The essence of a mortgage is that it immediately subjects the property upon which it is imposed, and whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.⁵ There was no voluntary easement in this case because at the time the water pumps were constructed, the subject lot where the water pumps were constructed and the condominium belong to the same person. No one can have an easement over his own property. (Bogo- Medellin vs. CA G.R. 124699, July 31, 2003.) Even of the assumption that an easement was created in favor of FMI that alone will not defeat the right of the mortgagee to enforce the security if the debtor defaults.

XVI.

A congregation for religious women, by way of commodatum, is using the real property owned and registered in the name of Spouses Manuel as a retreat house.

Maria, a helper of the congregation discovered a chest in the backyard. When she opened the chest, it contained several pieces of jewelry and money. (4%)

(A) Can the chest containing the pieces of jewelry and money be considered as hidden treasure?

(B) Who has the right to claim ownership of it?

SUGGESTED ANSWER:

- a) No, for property to be considered hidden treasure it must consist of money, jewelry or other precious objects, the lawful ownership of which does not appear. In the case at bar, the chest was just lay in the backyard and the real property where it

⁵ Article 2126

was found belongs to the Spouses Manuel. They are thus presumed the owner of the chest where the jewelry was found.

- b) Since it does not come within the purview of hidden treasure, the spouses Manuel have the right to claim ownership over the chest as well as its contents.

XVII.

On March 30, 2000, Mariano died intestate and was survived by his wife, Leonora, and children, Danilo and Carlito. One of the properties he left was a piece of land in Alabang where he built his residential house.

After his burial, Leonora and Mariano's children extrajudicially settled his estate. Thereafter, Leonora and Danilo advised Carlito of their intention to partition the property. Carlito opposed invoking Article 159 of the Family Code. Carlito alleged that since his minor child Lucas still resides in the premises, the family home continues until that minor beneficiary becomes of age.

Is the contention of Carlito tenable? (4%)

SUGGESTED ANSWER:

No, the contention of Carlito is not tenable. In the case of *Patricio v. Dario*,⁶ with similar facts to the case at bar, the court ruled that to qualify as beneficiary of the family home the person must be among those mentioned in Article 154, he/she must be actually living in the family home and must be dependent for legal support upon the head of the family. While Lucas, the son of Carlito satisfies the first and second requisites, he cannot however, directly claim legal support from his grandmother, Leonora because the person primarily obliged to give support to Lucas is his father, Carlito. Thus, partition may be successfully claimed by Leonora and Danilo.

XVIII.

Spouses Magtanggol managed and operated a gasoline station on a 1,000 sq.m. lot which they leased from Francisco Bigla-awa. The contract was for a period of three (3) years. When the contract expired, Francisco asked the spouses to peacefully vacate the premises. The spouses ignored the demand and continued with the operation of the gasoline station.

One month after, Francisco, with the aid of a group of armed men, caused the closure of the gasoline station by constructing fences around it.

Was the act of Francisco and his men lawful? Why? (4%)

⁶ G.R. No. 170829 November 20, 2006

SUGGESTED ANSWER:

No, the act was not lawful. Even if the lessee's right to occupy the premises has expired, the lessor cannot physically oust the lessee from the leased premises if the latter refuses to vacate. The lessor must go through the proper channels by filing an appropriate case for unlawful detainer or recovery of possession. Every possessor has a right to be respected in his possession (Article 539) and in no case my possession be acquired through force or intimidation as long as there is a possessor who objects thereto. (Article 536) The act of Francisco is an abuse of rights because even if he has the right to recover possession of his property, he must act with justice and give the lessees their day in court and observe honesty and good faith.

XIX.

Who enjoys the Right of Retention? (1%)

- (A) Depositary until full payment of what may be due him in deposit.
- (B) Lessee if he advances the expenses for the repair of the leased premises.
- (C) Bailee if bailor owes him something.
- (D) Builder in bad faith for the recovery of necessary and useful expenses.

Correct answer is letter A – depositary (Article 1994)

XX.

Mabuhay Elementary School organized a field trip for its Grade VI students in Fort Santiago, Manila Zoo, and Star City. To be able to join, the parents of the students had to sign a piece of paper that reads as follows:

"I allow my child (name of student), Grade – Section, to join the school's field trip on February 14, 2014.

I will not file any claim against the school, administrator or teacher in case something happens to my child during the trip."

Joey, a 7-year-old student of Mabuhay Elementary School was bitten by a snake while the group was touring Manila Zoo. The parents of Joey sued the school for damages. The school, as a defense, presented the waiver signed by Joey's parents.

Was there a valid waiver of right to sue the school? Why? (4%)

SUGGESTED ANSWER:

No, there was no valid waiver of the right to sue the school. A waiver to be valid must have three requisites 1) existence of the right; 2) legal capacity of the person waiving the right and 3) the waiver must not be contrary to law, morals, good customs, public order or public policy or prejudicial to a third person with a right recognized by law. In the case presented, the waiver may be considered contrary to public policy as it exonerates the school from liability for future negligence. The waiver in effect allows the school to not exercise even ordinary diligence.

XXI.

A delayed accession is: (1%)

- (A) formation of an island
- (B) avulsion
- (C) alluvium
- (D) change in the course of the riverbed

Correct answer is letter B (Article 459 Civil Code)

XXII.

On March 27, 1980, Cornelio filed an application for land registration involving a parcel of agricultural land that he had bought from Isaac identified as Lot No. 2716 with an area of one (1) hectare. During the trial, Cornelio claimed that he and his predecessors-in-interest had been in open, continuous, uninterrupted, public and adverse possession and occupation of the land for more than thirty (30) years. He likewise introduced in evidence a certification dated February 12, 1981 citing a presidential declaration to the effect that on June 14, 1980, agricultural lands of the public domain, including the subject matter of the application, were declared alienable and disposable agricultural land. (4%)

- (A) If you are the judge, will you grant the application for land registration of Cornelio?

(B) Can Cornelio acquire said agricultural land through acquisitive prescription, whether ordinary or extraordinary?

SUGGESTED ANSWER:

- a) No, I will not grant the application. To be entitled to registration of the parcel of land, the applicant must show that the land being applied for is alienable land. At the time of the filing of the application, the land has not yet been declared alienable by the state. (Republic v. CA, G.R. No. 144057, January 17, 2005)
- b) Cornelio can acquire the land by acquisitive prescription only after it was declared part of alienable land by the state by possession for the required number of years for ordinary prescription, ten years possession in good faith with just title or extraordinary prescription by possession for thirty years without need of any other condition. (Article 1134, Civil Code)

XXIII.

After undergoing sex reassignment in a foreign country, Jose, who is now using the name of "Josie," married his partner Ador. Is the marriage valid? (1%)

- (A) Yes, the marriage is valid for as long as it is valid in the place where it is celebrated following Article 17 of the Civil Code.
- (B) Yes, the marriage is valid if all the essential and formal elements of marriage under the Family Code are present.
- (C) No, the marriage is not valid because one essential element of marriage is absent.
- (D) No, the marriage is not valid but is voidable because "Josie" concealed her real identity.

Correct answer is letter C – not valid for lack of one essential requirement (Silverio v. Republic G.R. No. 174689, October 22, 2007)

XXIV.

Ted, married to Annie, went to Canada to work. Five (5) years later, Ted became a naturalized Canadian citizen. He returned to the Philippines to convince Annie to settle in Canada. Unfortunately, Ted discovered that Annie and his friend Louie were having an affair. Deeply hurt, Ted returned to Canada and filed a petition for

divorce which was granted. In December 2013, Ted decided to marry his childhood friend Corazon in the Philippines. In preparation for the wedding, Ted went to the Local Civil Registry of Quezon City where his marriage contract with Annie was registered. He asked the Civil Register to annotate the decree of divorce on his marriage contract with Annie. However, he was advised by the National Statistics Office (NSO) to file a petition for judicial recognition of the decree of divorce in the Philippines.

Is it necessary for Ted to file a petition for judicial recognition of the decree of divorce he obtained in Canada before he can contract a second marriage in the Philippines? (4%)

SUGGESTED ANSWER:

Yes, a divorce decree even if validly obtained abroad cannot have effect in the Philippines unless it is judicially recognized through an appropriate petition filed before Philippine courts. In **Corpuz v. Sto. Tomas**,⁷ the SC ruled that the foreigner must file a petition under Rule 108 and prove therein the fact of divorce by presenting an official copy attested by the officer having custody of the original. He must also prove that the court which issued the divorce has jurisdiction to issue it and the law of the foreign country on divorce.

XXV.

Mario executed his last will and testament where he acknowledges the child being conceived by his live-in partner Josie as his own child; and that his house and lot in Baguio City be given to his unborn conceived child. Are the acknowledgment and the donation mortis causa valid? Why? (4%)

SUGGESTED ANSWER:

Yes, the acknowledgment is considered valid because a will (although not required to be filed by the notary public) may still constitute a document which contains an admission of illegitimate filiation. Article 834 also provides that the recognition of an illegitimate child does not lose its legal effect even though the will wherein it was made should be revoked. This provision by itself warrants a conclusion that a will may be considered as proof of filiation. The donation mortis causa may be considered valid because although unborn, a fetus has a presumptive personality for all purposes favorable to it provided it be born under the conditions specified in Article 41.

⁷ Gerbert Corpuz vs. Daisylyn Sto. Tomas G.R. No. 186571; August 11, 2010

XXVI.

Isaac leased the apartment of Dorotea for two (2) years. Six (6) months after, Isaac subleased a portion of the apartment due to financial difficulty. Is the sublease contract valid? (1%)

- (A) Yes, it is valid for as long as all the elements of a valid sublease contract are present.
- (B) Yes, it is valid if there is no express prohibition for subleasing in the lease contract.
- (C) No, it is void if there is no written consent on the part of the lessor.
- (D) No, it is void because of breach of the lease contract.

Correct answer is letter B – Article 1650

XXVII.

Fe, Esperanza, and Caridad inherited from their parents a 500 sq. m. lot which they leased to Maria for three (3) years. One year after, Fe, claiming to have the authority to represent her siblings Esperanza and Caridad, offered to sell the leased property to Maria which the latter accepted. The sale was not reduced into writing, but Maria started to make partial payments to Fe, which the latter received and acknowledged. After giving the full payment, Maria demanded for the execution of a deed of absolute sale which Esperanza and Caridad refused to do. Worst, Maria learned that the siblings sold the same property to Manuel. This compelled Maria to file a complaint for the annulment of the sale with specific performance and damages.

If you are the judge, how will you decide the case? (4%)

SUGGESTED ANSWER:

I will dismiss the case for annulment of the sale and specific performance filed by Maria with respect to the shares pertaining to Esperanza and Caridad. Since the object of the sale is a co-owned property, a co-owner may sell his undivided share or interest in the property owned in common but the sale will be subject to the result of the partition among the co-owners. In a co-ownership there is no mutual agency except as provided under Article 487. Thus, Fe cannot sell the shares of Esperanza and Caridad without a special power of attorney from them and the sale with respect to the shares of the latter without

their written authority is void under Article 1874. Hence, the sale of the property to Manuel is not valid with respect to the shares of Esperanza and Caridad. Maria can only assail the portion pertaining to Fe as the same has been validly sold to her by Fe.

XXVIII.

Spouses Esteban and Maria decided to raise their two (2) nieces, Faith and Hope, both minors, as their own children after the parents of the minors died in a vehicular accident.

Ten (10) years after, Esteban died. Maria later on married her boss Daniel, a British national who had been living in the Philippines for two (2) years.

With the permission of Daniel, Maria filed a petition for the adoption of Faith and Hope. She did not include Daniel as her co-petitioner because for Maria, it was her former husband Esteban who raised the kids.

If you are the judge, how will you resolve the petition? (4%)

SUGGESTED ANSWER:

I will dismiss the petition for adoption. The rule is that the husband and wife must jointly adopt and there are only three recognized exceptions to joint adoption by the husband and wife: 1) if one spouse seeks to adopt the legitimate child of the other; 2) if one spouse seeks to adopt his or her own illegitimate child; 3) if the spouses are legally separated. The case of Maria and Daniel does not appear to fall under any of the recognized exceptions, accordingly the petition filed by the wife alone should be dismissed.

XXIX

Timothy executed a Memorandum of Agreement (MOA) with Kristopher setting up a business venture covering three (3) fastfood stores known as "Hungry Toppings" that will be established at Mall Uno, Mall Dos, and Mall Tres.

The pertinent provisions of the MOA provides:

1. Timothy shall be considered a partner with thirty percent (30%) share in all of the stores to be set up by Kristopher;
2. The proceeds of the business, after deducting expenses, shall be used to pay the principal amount of P500,000.00 and the interest therein which is

to be computed based on the bank rate, representing the bank loan secured by Timothy;

3. The net profits, if any, after deducting the expenses and payments of the principal and interest shall be divided as follows: seventy percent (70%) for Kristopher and thirty percent (30%) for Timothy;

4. Kristopher shall have a free hand in running the business without any interference from Timothy, his agents, representatives, or assigns, and should such interference happen, Kristopher has the right to buy back the share of Timothy less the amounts already paid on the principal and to dissolve the MOA; and

5. Kristopher shall submit his monthly sales report in connection with the business to Timothy.

What is the contractual relationship between Timothy and Kristopher? (4%)

SUGGESTED ANSWER:

The contractual relationship between Timothy and Kristopher is a contract of partnership as defined under Article 1767 of the Civil Code, since they have bound themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits of the partnership between them. With a seed money of P500, 000.00 obtained by Timothy through a bank loan, they agreed to divide the profits, 70% for Kristopher and 30% for Timothy.

However, to be more specific, theirs is a limited partnership as defined under Article 1843 of the Civil Code because Timothy does not take part in the control of the business pursuant to Article 1848, Civil Code. Nevertheless, Timothy is entitled to monthly sales reports in connection with the business, a right enshrined in Article 1851 of the Civil Code.

XXX.

Joe Miguel, a well-known treasure hunter in Mindanao, executed a Special Power of Attorney (SPA) appointing his nephew, John Paul, as his attorney-in-fact. John Paul was given the power to deal with treasure-hunting activities on Joe Miguel's land and to file charges against those who may enter it without the latter's authority. Joe Miguel agreed to give John Paul forty percent (40%) of the treasure that may be found on the land.

Thereafter, John Paul filed a case for damages and injunction against Lilo for illegally entering Joe Miguel's land. Subsequently, he hired the legal services of Atty. Audrey agreeing to give the latter thirty percent (30%) of Joe Miguel's share in whatever treasure that may be found in the land.

Dissatisfied however with the strategies implemented by John Paul, Joe Miguel unilaterally revoked the SPA granted to John Paul.

Is the revocation proper? (4%)

SUGGESTED ANSWER:

No, the revocation was not proper. As a rule, a contract of agency may be revoked by the principal at will.⁸ However, an agency ceases to be revocable at will if it is coupled with an interest or if it is a means of fulfilling an obligation already contracted. (Article 1922). In the case at bar, the agency may be deemed an agency coupled with an interest not only because of the fact that John Paul expects to receive 40% of whatever treasure may be found but also because he also contracted the services of a lawyer pursuant to his mandate under the contract of agency and he therefore stands to be liable to the lawyer whose services he has contracted. (Sevilla v. Tourist World Service, G.R. No. L-41182-3 April 16, 1988)

⁸ Article 1920