

UNIVERSITY OF SANTO TOMAS
SUGGESTED ANSWERS
2015 CIVIL LAW BAR EXAMINATIONS
By: Assoc. Dean Viviana M. Paguirigan

I.

Alden and Stela were both former Filipino citizens. They were married in the Philippines but they later migrated to the United States where they were naturalized as American citizens. In their union they were able to accumulate several real properties both in the US and in the Philippines. Unfortunately, they were not blessed with children. In the US, they executed a joint will instituting as their common heirs to divide their combined estate in equal shares, the five siblings of Alden and the seven siblings of Stela. Alden passed away in 2013 and a year later, Stela also died. The siblings of Alden who were all citizens of the US instituted probate proceedings in a US court impleading the siblings of Stela who were all in the Philippines.

- a) Was the joint will executed by Alden and Stela who were both former Filipinos valid? Explain with legal basis. (3%)
- b) Can the joint will produce legal effect in the Philippines with respect to the properties of Alden and Stela found here? If so, how? (3%)
- c) Is the situation presented in Item I an example of depe9age? (2%)

SUGGESTED ANSWER:

a) Yes, the joint will of Alden and Stela is considered valid. Being no longer Filipino citizens at the time they executed their joint will, the prohibition under our Civil Code on joint wills will no longer apply to Alden and Stela. For as long as their will was executed in accordance with the law of the place where they reside, or the law of the country of which they are citizens or even in accordance with the Civil Code, a will executed by an alien is considered valid in the Philippines. (Article 816)

b) Yes, the joint will of Alden and Stela can take effect even with respect to the properties located in the Philippines because what governs the distribution of their estate is no longer Philippine law but their national law at the time of their demise. Hence, the joint will produces legal effect even with respect to the properties situated in the Philippines.

c) No, because depe9age is a process of applying rules of different states on the basis of the precise issue involved. It is a conflict of laws where different issues within a case may be governed by the laws of different states. In the situation in letter (a) no conflict of laws will arise because Alden and Stela are no longer Filipino citizens at the time of the execution of their joint will and the place of execution is not the Philippines.

II.

Marco and Gina were married in 1989. Ten years later, or in 1999, Gina left Marco and lived with another man, leaving their two children of school age with Marco. When Marco needed money for their children's education he sold a parcel of land registered in his name, without Gina's consent, which he purchased before his marriage. Is the sale by Marco valid, void or voidable? Explain with legal basis. (4%)

SUGGESTED ANSWER:

The sale made by Marco is considered void. The parties were married in 1989 and no mention was made whether they executed a marriage settlement. In the absence of a marriage settlement, the parties shall be governed by absolute community of property whereby all the properties owned by the spouses at the time of the celebration of the marriage as well as whatever they may acquire during the marriage shall form part of the absolute community. In ACP, neither spouse can sell or encumber property belonging to the ACP without the consent of the other. Any sale or encumbrance made by one spouse without the consent of the other shall be void although it is considered as a continuing offer on the part of the consenting spouse upon authority of the court or written consent of the other spouse. (Article 96 FC)

III.

Julie had a relationship with a married man who had legitimate children. A son was born out of that illicit relationship in 1981. Although the putative father did not recognize the child in his certificate of birth, he nevertheless provided the with child all the support he needed and spent time regularly with the child and his mother. When the man died in 2000, the child was already 18 years old so he filed a petition to be recognized as an illegitimate child of the putative father and sought to be given a share in his putative father's estate. The legitimate family opposed, saying that under the Family Code his action cannot prosper because he did not bring the action for recognition during the lifetime of his putative father.

- a) If you were the judge in this case, would how you rule? (4%)
- b) Wishing to keep the peace, the child during the pendency of the case decides to compromise with his putative father's family by abandoning his petition in exchange for Yi of what he would have received as inheritance if he were recognized as an illegitimate child. As the judge, would you approve such a compromise? (2%)

SUGGESTED ANSWER:

- a) If I were the judge, I will not allow the action for recognition filed after the death of the putative father. Under the Family Code, an illegitimate child who has not been recognized by the father in the record of birth, or in a private handwritten instrument, or in a public document and may prove his filiation based on open and continuous possession of the status of an illegitimate child but pursuant to Article 175, he or she must file the action for recognition during the lifetime of the putative father. The provision of Article 285 of the Civil Code allowing the child to file the action for recognition even after the death of the father will not apply because in the case presented, the child was no longer a minor at the time of death of the putative father.
- b) No, I will not approve the compromise agreement because filiation is a matter to be decided by law. It is not for the parties to stipulate whether a person is a legitimate or illegitimate child of another. (De Jesus v. Estate of Dizon 366 SCRA 499) In all cases of illegitimate children, their filiation must be duly proved. (Article 887, Civil Code)

ALTERNATIVE ANSWER: Yes, I would approve the compromise because it is no longer considered future inheritance. What the law prohibits is a compromise with respect to future legitime. In this case, the father is already dead so the compromise is considered valid.

IV.

Bert and Joe, both male and single, lived together as common law spouses and agreed to raise a son of Bert's living brother as their child without legally adopting him. Bert worked while Joe took care of their home and the boy. In their 20 years of cohabitation they were able to acquire real estate assets registered in their names as co-owners. Unfortunately, Bert died of cardiac arrest, leaving no will. Bert was survived by his biological siblings, Joe, and the boy.

- a) Can Article 147 on co-ownership apply to Bert and Joe, whereby all properties they acquired will be presumed to have been acquired by their joint industry and shall be owned by them in equal shares? (2%)
- b) What are the successional rights of the boy Bert Joe and raised as their son? (2%)
- c) If Bert and Joe had decided in the early years of their cohabitation to jointly adopt the boy, would they have been legally allowed to do so? Explain with legal basis. (3%)

SUGGESTED ANSWER:

- a) No, Article 147 cannot apply to Bert and Joe because the law only applies to a man and a woman who are capacitated to marry each other who live together as husband and wife without the benefit of marriage or under a void marriage. In the case of Bert and Joe, they are both men so the law does not apply.
- b) Neither of the two will inherit from Bert. Joe cannot inherit because the law does not recognize the right of a stranger to inherit from the decedent in the absence of a will. Their cohabitation will not vest Joe with the right to inherit from Bert. The child will likewise not inherit from Bert because of the lack of formal adoption of the child. A mere ward or "ampon" has no right to inherit from the adopting parents. (Manuel v. Ferrer, 247 SCRA 476)
- c) No, because joint adoption is allowed between husband and wife. Even if Bert and Joe are cohabiting with each other, they are not vested with the right to jointly adopt under the Family Code or even under the Domestic Adoption Act. (Section 7, R.A. 8552)

V.

Mrs. L was married to a ship captain who worked for an international maritime vessel. For her and her family's support, she would claim monthly allotments from her husband's company. One day, while en route from Hong Kong to Manila, the vessel manned by Captain L encountered a severe typhoon at sea. The captain was able to send radio messages of distress to the head office until all communications were lost. In the weeks that followed, the search operations yielded debris of the lost ship but the bodies of the crew and the passengers were not recovered. The insurance company thereafter paid out the death benefits to all the heirs of the passengers and crew. Mrs. L filed a complaint demanding that her monthly allotments continue for the next four years until her husband may be legally presumed dead because of his absence. If you were the magistrate would how you rule? (3%)

SUGGESTED ANSWER:

I would rule against Mrs. L. There is no merit in her contention that the monthly allotments to her should continue despite the presumptive death of the husband. In case of disappearance where there is danger of death, the person shall be presumed to have died at the beginning of the four (4) year period although his succession will be opened only at the end of the four year period. (Article 391, Civil Code) Since the husband of Mrs. L is presumed to have died at about the time of disappearance, he is no longer entitled to receive his salary from the day the presumption of death arises.

VI.

Kardo met Glenda as a young lieutenant and after a whirlwind courtship, they were married. In the early part of his military career, Kardo was assigned to different places all over the country but Glenda refused to accompany him as she preferred to live in her hometown. They did not live together until the 12th year of their marriage when Kardo had risen up the ranks and was given his own command. They moved to living quarters in Fort Gregorio. One day, while Kardo was away on official business, one of his military aides caught Glenda having sex with the corporal assigned as Kardo's driver. The aide immediately reported the matter to Kardo who rushed home to confront his wife. Glenda readily admitted the affair and Kardo sent away her in anger. Kardo would later come to know the true extent of Glenda's unfaithfulness from his aides, his household staff, and former neighbors who informed him that Glenda has had intimate relations with various men throughout their marriage whenever Kardo was away on assignment.

Kardo filed a petition for declaration of nullity of marriage under Article 36. Based on interviews from Kardo, his aide, and the housekeeper, a psychologist testified that Glenda's habitual infidelity was due to her affliction with Histrionic Personality Disorder, an illness characterized by excessive emotionalism and uncontrollable attention-seeking behavior rooted in Glenda's abandonment as a child by her father. Kardo himself, his aide, and his housekeeper also testified in court. The RTC granted the petition, relying on the liberality espoused by *Te v. Te* and *Azcueta v. Republic*. However, the OSG filed an appeal, arguing that sexual infidelity was only a ground for legal separation and that the RTC failed to abide by the guidelines laid down in the *Molina* case. How would you decide the appeal? (5%)

SUGGESTED ANSWER:

I will resolve the appeal in favor of the Republic. In the case of *Dedel v. Dedel*, (G.R. No. 151867 January 29, 2004) the Supreme Court refused to declare the marriage of the parties void on the ground of sexual infidelity of the wife Sharon. In case mentioned, the wife committed infidelity with several men up to the extent of siring two illegitimate children with a foreigner. The court, however, said that it was not shown that the sexual infidelity was a product of a disordered personality and that it was rooted in the history of the party alleged to be psychologically incapacitated. Also, the finding of psychological incapacity cannot be based on the interviews conducted by the clinical psychologist on the husband or his witnesses and the person alleged to be psychologically incapacitated must be personally examined to arrive at such declaration. (*Marcos v. Marcos*, 343 SCRA 755; *Agraviador v. Agraviador*, G.R. No. 170729- December 8, 2010)

VII.

Mr. and Mrs. X migrated to the US with all their children. As they had no intention of coming back, they offered their house and lot for sale to their neighbors, Mr. and Mrs. A (the buyers) who agreed to buy the property for 128 Million. Because Mr. and Mrs. A needed to obtain a loan from a bank first, and since the sellers were in a hurry to migrate, the latter told the buyers that they could already occupy the house, renovate it as it was

already in a state of disrepair, and pay only when their loan is approved and released. While waiting for the loan approval, the buyers spent .PI Million in repairing the house. A month later, a person carrying an authenticated special power of attorney from the sellers demanded that the buyers either immediately pay for the property in full now or vacate it and pay damages for having made improvements on the property without a sale having been perfected.

a) What are the buyers' options or legal rights with respect to the they expenses incurred in improving the property under circumstances? (3%)

b) Can the buyers be made to immediately vacate on the ground that the sale was not perfected? Explain briefly. (3%)

SUGGESTED ANSWER:

- a) The buyers here may be deemed possessors or builders in good faith because they were made to believe that they were allowed to make repairs or renovation by the sellers themselves. As builders in good faith, they have the right to seek reimbursement for the value of the improvements in case the owner decides to appropriate them. They cannot be asked to remove the improvements because that is not one of the options given by law to the landowner in case the builder is in good faith.
- b) No, the buyers cannot be made to vacate on the ground that the sale was not perfected for the fact of the matter is that a contract of sale is consensual and is perfected by mere consent. (Article 1315, Civil Code) In this case, there was an agreement to deliver a determinate thing for a price certain in money. When the owners made an offer to sell their property to Mr. and Mrs. A and the latter accepted the offer, there was already a meeting of the minds between the parties resulting in the perfection of the contract of sale.

VIII.

X, Y, Z are siblings who inherited a IO-storey building from their parents. They agreed in writing to maintain it as a co-owned property for leasing out and to divide the net profits among themselves equally for a period of 20 years. On the gth year, X wanted to get out of the co-ownership so he could get his 1/3 share in the property. Y and Z refused, saying X is bound by their agreement to keep the co-ownership for 20 years. Are Y and Z correct? Explain. (3%)

SUGGESTED ANSWER:

Y and Z are partly correct. The law provides that none of the co-owners shall be obliged to remain in the co-ownership and it is the right of a co-owner to ask for partition of the co-ownership anytime. One exception to the rule is if the co-owners agree to keep the

thing undivided which period shall not exceed ten years. In this case, the agreement to keep the thing undivided shall be valid at the most for ten years. (Article 494, Civil Code)

IX.

Jose, single, donated a house and lot to his only niece, Maria, who was of legal age and who accepted the donation. The donation and Maria's acceptance thereof were evidenced by a Deed of Donation. Maria then lived in the house and lot donated to her, religiously paying real estate taxes thereon. Twelve years later, when Jose had already passed away, a woman claiming to be an illegitimate daughter of Jose filed a complaint against Maria. Claiming rights as an heir, the woman prayed that Maria be ordered to reconvey the house and lot to Jose's estate. In her complaint she alleged that the notary public who notarized the Deed of Donation had an expired notarial commission when the Deed of Donation was executed by Jose. Can Maria be made to reconvey the property? What can she put up as a defense? (4%)

SUGGESTED ANSWER:

No. Maria cannot be compelled to reconvey the property. The Deed of Donation was void because it was not considered a public document. However, a void donation can trigger acquisitive prescription. (Solis v. CA 176 SCRA 678; Doliendo v. Biarnesa 7 Phil. 232) The void donation has a quality of titulo colorado enough for acquisitive prescription especially since 12 years had lapsed from the deed of donation.

ALTERNATIVE ANSWER: Yes, Maria can be made to reconvey the property. The law provides that no person may give or receive by way of donation more than what he may give or receive by will. On the assumption that the property donated to Maria is the only property of Jose, the legitime of his illegitimate child would be impaired if Maria would be allowed to keep the entire property. After taking into account the value of the property, Maria can be made to reconvey the property to the extent necessary to satisfy the legitime of Jose's illegitimate daughter provided that the woman claiming to be Jose's child can prove her filiation to the deceased.

Maria can set up the defense that the action has prescribed. An action for revocation of the donation on the ground that it impaired the legitime of a compulsory heir may only be filed within ten (10) years from the time the cause of action accrues which is at the time of the death of Jose. The facts are not clear as to when Jose died but on the assumption that he died ten years prior to the filing of the action, the same has clearly prescribed.

X.

X, a dressmaker, accepted clothing materials from Karla to make two dresses for her. dayOn the X was supposed to deliver Karla's dresses, X called up Karla to say that

she had an urgent matter to attend to and will deliver them the next day. That night, however, a robber broke into her shop and took everything including Karla's two dresses. X claims she is not liable to deliver Karla's dresses or to pay for the clothing materials considering she herself was a victim of the robbery which was a fortuitous event and over which she had no control. Do you agree? Why? (3%)

SUGGESTED ANSWER:

No, I do not agree with the contention of X. The law provides that except when it is otherwise declared by stipulation or when the law provides or the nature of the obligation requires the assumption of risk, no person shall be liable for those events which could not be foreseen or which though foreseen were inevitable. (Article 1174, Civil Code) In the case presented, X cannot invoke fortuitous event as a defense because she had already incurred in delay at the time of the occurrence of the loss. (Article 1165, Civil Code)

XI.

Jackie, 16, inherited a townhouse. Because she wanted to study in an exclusive school, she sold her townhouse by signing a Deed of Sale and turning over possession of the same to the buyer. When the buyer discovered she was still a minor, she promised to execute another Deed of Sale when she turns 18. When Jackie turned 25 and was already working, she wanted to annul the sale and return the buyer's money to recover her townhouse. Was the sale contract void, voidable or valid? Can Jackie still recover the property? Explain. (4%)

SUGGESTED ANSWER:

The contract of sale was voidable on the ground that Jackie is incapable of giving consent at the time of the execution of the sale. (Article 1390 and Article 1327) Jackie can no longer recover the townhouse unit because if a contract is voidable on the ground of minority, the action to annul it must be filed within four (4) years from attainment of the age of majority. Since Jackie was already 25 years old, the action has clearly prescribed because she should have filed it before she reached the age of 22. (Article 1391, Civil Code)

XII.

A. Iya and Betty owed Jun P500,000.00 for advancing their equity in a corporation they joined as incorporators. Iya and Betty bound themselves solidarily liable for the debt. Later, Iya and Jun became sweethearts so Jun condoned the debt of P500,000.00. May Iya demand from Betty ~250,000.00 as her share in the debt? Explain legal with basis. (2%)

B. Juancho, Don and Pedro borrowed ~150,000.00 from their friend Cita to put up an internet cafe orally promising to pay her the full amount after one year. Because of their lack of business know-how, their business collapsed. Juancho and Don ended up penniless but Pedro was able to borrow money and put up a restaurant which did well. Can Cita demand that Pedro pay the entire obligation since he, together with the two others, promised to pay the amount in full after one year? Defend your answer. (2%)

SUGGESTED ANSWER:

- a) No, Iya may not demand the 250,000 from Betty because the entire obligation has been condoned by the creditor Jun. In a solidary obligation the remission of the whole obligation obtained by one of the solidary debtors does not entitle him to reimbursement from his co-debtors. (Article 1220, Civil Code)
- b) No, Cita cannot demand that Pedro pay the entire obligation because the obligation in this case is presumed to be joint. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. (Article 1207) In a joint obligation, there is no mutual agency among the joint debtors such that if one of them is insolvent the others shall not be liable for his share.

XIII.

A. X and Y are partners in a shop offering portrait painting. Y provided the capital and the marketing while X was the portrait artist. They accepted the PS0,000.00 payment of Kyla to do her portrait but X passed away without being able to do it. Can Kyla demand that Y deliver the portrait she had paid for because she was dealing with business establishment and not with the artist personally? Why or why not? (3%)

B. In this jurisdiction, is a joint venture (*i.e.*, a group of corporations contributing resources for a specific project and sharing the profits therefrom) considered a partnership? (3%)

SUGGESTED ANSWER:

- a) No Kyla cannot demand that Y deliver the portrait. The death of X has the effect of dissolving the partnership. (Article 1830, Civil Code) Also, while the obligation was contracted by the partnership, it was X who was supposed to create the portrait for Kyla. Since X died before creating the portrait, the obligation can no longer be complied because of impossibility of performance. (Article 1266) In obligations to do, the debtor shall be released when the prestation becomes legally or physically impossible without the debtor's fault.

- b) Yes, under Philippine law, a joint venture is understood to mean an organization formed for some temporary purpose and is hardly distinguishable from a partnership since its elements are similar which are: community of interest in business, sharing of profits, and losses, and a mutual right of control. (Primelink Properties v. Lazatin June 27, 2006 citing Blackner v. Mcdermott, 176 F. 2d 498[1949])

XIV.

A driver of a bus owned by company Z ran over a boy who died instantly. A criminal case for reckless imprudence resulting in homicide was filed against the driver. He was convicted and was ordered to pay P2 Million in actual and moral damages to the parents of the boy who was an honor student and had a bright future. Without even trying to find out if the driver had assets or means to pay the award of damages, the parents of the boy filed a civil action against the bus company to make it directly liable for the damages.

- a) Will their action prosper? (4%)
b) If the parents of the boy do not wish to file a separate civil action against the bus company, can they still make the bus company liable if the driver cannot pay the award for damages? If so, what is the nature of the employer's liability and how may civil damages be satisfied? (3%)

SUGGESTED ANSWER:

- a) Yes, the action will prosper. The liability of the employer in this case may be based on quasi-delict and is included within the coverage of independent civil action. It is not necessary to enforce the civil liability based on culpa aquiliana that the driver or employee be proven to be insolvent since the liability of the employer for the quasi-delicts committed by their employees is direct and primary subject to the defense of due diligence on their part. (Article 2176; Article 2180)
- b) Yes, the parents of the boy can enforce the subsidiary liability of the employer in the criminal case against the driver. The conviction of the driver is a condition sine qua non for the subsidiary liability of the employer to attach. Proof must be shown that the driver is insolvent. (Article 103, Revised Penal Code)

XV.

A. Sara borrowed P50,000.00 from Julia and orally promised to pay it within six months. When Sara tried to pay her debt on the 6th month, Julia demanded the payment of interest of 12% per annum because of Sara's delay in payment. Sara paid her debt and the interest claimed by Julia. After rethinking, Sara demanded back from Julia the amount she had paid as interest. Julia claims she has no obligation to return

the interest paid by Sara because it was a natural obligation which Sara voluntarily performed and can no longer recover. Do you agree? Explain. (4%)

B. Distinguish civil and natural obligations. (2%)

SUGGESTED ANSWER:

- a) No, the case is not one of a natural obligation because even if the contract of loan is verbal, the delay of Julia made her liable for interest upon demand by Sara. This is not a case of a natural obligation but a civil obligation to pay interest by way of damages by reason of delay. (Article 1956; Article 1169; Article 2209 Civil Code)
- b) A civil obligation is based on positive law which gives a right of action to compel their performance in case of breach. A natural obligation is based on equity and natural law and cannot be enforced by court action but after voluntary fulfilment by the obligor, they authorize the retention of what may have been delivered or rendered by reason thereof. (Article 1423, Civil Code)

XVI.

Donna pledged a set of diamond ring and earrings to Jane for P200,000.00 She was made to sign an agreement that if she cannot pay her debt within six months, Jane could immediately appropriate the jewelry for herself. After six months, Donna failed to pay. Jane then displayed the earrings and ring set in her jewelry shop located in a mall. A buyer, Juana, bought the jewelry set for P300,000.00.

- a) Was the agreement which Donna signed with Jane valid? Explain with legal basis. (2%)
- b) Can Donna redeem the jewelry set from Juana by paying the amount she owed Jane to Juana? Explain with legal basis. (2%)
- c) Give an example of a pledge created by operation of law. (2%)

SUGGESTED ANSWER:

- a) appropriate the jewelry upon default of Donna is considered pactum commissorium and it is considered void by law. (Article 2088)
- b) No, Donna cannot redeem it from Juana because the pledge contract is between her and Jane. Juana is not a party to the pledge contract. (Article 1311, Civil Code)
- c) One example of a pledge created by operation of law is the right of the depositary to retain the thing deposited until the depositor shall have paid him whatever may be due to the depositary by reason of the deposit. (1994) Another is the right of the agent to retain the thing which is the object of the agency until the principal reimburses him the expenses incurred in the execution of the agency. (Article 1914, Civil Code)

XVII.

Z, a gambler, wagered and lost P2 Million in baccarat, a card game. He was pressured into signing a Deed of Absolute Sale in favor of the winner covering a parcel of land with improvements worth P20 Million. One month later, the supposed vendee of the property demanded that he and his family vacate the property subject of the deed of sale. Was the deed of sale valid? What can Z do? (4%)

SUGGESTED ANSWER:

The sale is valid. Being pressured to sign the deed of sale is not equivalent to vitiation of consent. Z however, can recover his losses from the winner because the law provides that no action can be maintained by the winner for the collection of what he has won in any game of chance. But any loser in a game of chance may recover his loss from the winner, with legal interests from the time he paid the amount lost. (Article 2014)

XVIII.

A lawyer was given an authority by means of a Special Power of Attorney by his client to sell a parcel of land for the amount of P3 Million. Since the client owed the lawyer P1 Million in attorney's fees in a prior case he handled, the client agreed that if the property is sold, the lawyer was entitled to get 5% agent's fee plus P1 Million as payment for his unpaid attorney's fees. The client, however, subsequently found a buyer of his own who was willing to buy the property for a higher amount. Can the client unilaterally rescind the authority he gave in favor of his lawyer? Why or why not? (4%)

SUGGESTED ANSWER:

No, the agency in the case presented is one which is coupled with an interest. As a rule, agency is revocable at will except if it was established for the common benefit of the agent and the principal. In this case, the interest of the lawyer is not merely limited to his commission for the sale of the property but extends to his right to collect his unpaid professional fees. Hence, it is not revocable at will. (Article 1927)

XIX.

Mr. A, a businessman, put several real estate properties under the name of his eldest son X because at that time, X was the only one of legal age among his four children. He told his son he was to hold those assets for his siblings until they become adults themselves. X then got married. After 5 years, Mr. A asked X to transfer the titles over three properties to his three siblings, leaving two properties for himself. To A's surprise, X said that he

can no longer be made to transfer the properties to his siblings because more than 5 years have passed since the titles were registered in his name. Do you agree? Explain. (4%)

SUGGESTED ANSWER:

No, the transfer of the properties in the name of X was without cause or consideration and it was made for the purpose of holding these properties in trust for the siblings of X. If the transfer was by virtue of a sale, the same is void for lack of cause or consideration. Hence, the action to declare the sale void is imprescriptible. (Article Heirs of Ureta vs. Ureta September 14, 2011- G.R. No. 165748 September 14, 2011)

ALTERNATIVE ANSWER:

No, I do not agree. A trust was created in favor of the siblings of X when their father A transferred the titles in his name. The facts are clear that X was to hold these assets for his siblings until they reach the age of majority. An action to recover property based on an implied trust prescribes in ten years from the time the title was issued in favor of the trustee. In the case presented, only five years had lapsed from the issuance of the title hence, the action has not yet prescribed.

XX.

A. Mr. and Mrs. Roman and Mr. and Mrs. Cruz filed an application for registration of a parcel of land which after due proceedings was granted by the RTC acting registration as land court. However, before the decree of registration could be issued, the spouses Roman and the spouses Cruz sold the lot to Juan. In the notarized deed of sale, the sellers expressly undertook to submit the deed of sale to the land registration court so that the title to the property would be directly issued in Juan's name. Is such a stipulation valid? (2%)

B. Distinguish a direct attack from a collateral attack on a title. (2%)

C. If the title in Item XX.A is issued in the names of the original sellers, would a motion filed by Juan in the same case to correct or amend the title in order to reflect his name as owner considered be collateral attack? (2%)

SUGGESTED ANSWER:

- a) Yes, because when one who is not the owner of the property sells or alienates it and later the seller or grantor acquires title, such title passes by operation of law to the buyer or grantee. (Article 1434, Civil Code)
- b) A direct attack on a title is one where the action filed is precisely for the purpose of pointing out the defects in the title with a prayer that it be declared void. A collateral

attack is one where the action is not instituted for the purpose of attacking the title but the nullity of the title is raised as a defense in a different action.

- c) No, because Juan is not attacking the title but merely invoking his right as transferee. Hence, it does not involve a collateral attack on the title.