

## I. Insurance Code

1. A group of Malaysians wanted to invest in the Philippines' insurance business. After negotiations, they agreed to "FIMA Insurance Corp." with a group of Filipino businessmen. FIMA would have a P50 M paid up capital. P40 M of which would come up from the Filipino group. All corporate officers would be Filipinos and 8 out of 10-member Board of Directors would be Filipinos. Can FIMA operate an insurance business in the Philippines?
- No, since an insurance company must have at least P74 M paid up capital.
  - Yes, since there is substantial compliance with our nationalization laws respecting paid-up capital and Filipino dominated Board of Directors.
  - Yes, since FIMA's paid up capital more than meets the country's nationalization laws.
  - No, since an insurance company should be 100% owned by Filipinos.

### Answer:

- No, since an insurance company must have at least P74 M paid up capital. (BAR 2011)

**NB The minimum paid up capital requirement for a new insurance company is now P 1 billion**

## A. Concept of Insurance

1. May a member of the MILF or its breakaway group, the Abu Sayyaf, be insured with a company licensed to do business under the Insurance Code of the Philippines? Explain.
- b) BD has a bank deposit of half a million pesos. Since the limit of the insurance coverage of the PDIC is only 1/10 of BD's deposit, he would like some protection for the excess by taking out an insurance against all risk or contingencies of loss arising from any unsound or unsafe banking practices including unforeseen adverse effects of the continuing crisis involving the banking and financial sector in the Asian region. Does BD have an insurable interest within the meaning the Insurance Code of the Philippines?

### Answer:

- A member of the MILF or the Abu Sayyaf may be insured with a company licensed to do business under the Insurance Code of the Philippines. What is prohibited to be insured is a public enemy. A public enemy is a citizen or national of a country with which the Philippines is at war. Such member of the MILF or the Abu Sayyaf is not a citizen or national of another country, but of the Philippines.
- Yes. BD has insurable interest in his bank deposit. In case of loss of said deposit, more particularly to the extent of the amount in excess of the limit covered by the PDIC Act, BD will be damnified. He will suffer pecuniary loss of P400,000, that is, his bank deposit of half a million pesos minus P100,000 which is the maximum amount recoverable from the PDIC. (BAR 2000)

2. What is a mutual insurance company or association?

**Answer:**

A mutual insurance company is a cooperative enterprise where the members are both the insurer and the insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion of their interest. (BAR 2006)

3. In return for the 20 years of faithful service of X as a house helper to Y, the latter promised to pay P100,000 to X's heirs if he (X) dies in an accident by fire. X agreed. Is this an insurance contract?
- Yes, since all the elements of an insurance contract are present.
  - Yes, since X's services may be regarded as the consideration.
  - No, since Y actually made a conditional donation in X's favor.
  - No, since it is in fact an innominate contract between X and Y.

**Answer:**

b) No, since Y actually made a conditional donation in X's favor. (BAR 2011)

**B. Elements of an Insurance Contract**

**C. Characteristics/Nature and General Principles of Insurance Contract**

1. The Civil Code adopts the *theory of cognition*, while the Code of Commerce generally recognizes the *theory of manifestation*, in the perfection of contracts. How do these two theories differ?

**Answer:**

Under the theory of cognition, the acceptance is considered to effectively bind the offeror only from the time it came to his knowledge. Under the theory of manifestation, the contract is perfected at the moment when the acceptance is declared or made by the offeree. (BAR 1997)

2. An Insurance Contract is a contract of adhesion, which means that in resolving ambiguities in the provision of the insurance contract –
- The general rule is that, the insurance contract is to be interpreted strictly in accordance with what is written in the contract;
  - Are to be construed liberally in favor of the insured and strictly against the insurer who drafted the insurance policy;
  - Are to be construed strictly against the insured and liberally in favor of the insurer;
  - If there is an ambiguity in the insurance contract, this will invalidate the contract.

**Answer:**

b) Are to be construed liberally in favor of the insured and strictly against the insurer who drafted the insurance policy. (BAR 2012)

3. An insurance contract is an aleatory contract, which means that—
- An insurer will pay the insured equivalent to the amount of the premium;
  - The obligation of the insurer is to pay depending upon the happening of an uncertain event;

- c) **The insured pays a fixed premium for the duration of the policy period and the amount of the premiums paid to the insurer is not necessarily the same amount as what the insured will get upon the happening of an uncertain future event;**
- d) **The obligation of the insurer is to pay depending upon the happening of an event that is certain to happen.**

**Answer:**

b) The obligation of the insurer is to pay depending upon the happening of an uncertain event. (BAR 2012)

## **D. Parties to Insurance Contract**

### **1. Insurer**

1. **X Company procured a group accident insurance policy for its construction employees variously assigned to its provincial infrastructure projects. Y Insurance Company underwrote the coverage, the premiums of which were paid for entirely by X Company without any employee contributions. While the policy was in effect, five of the covered employees perished at sea on their way to their provincial assignments. Their wives sued Y Insurance Company for payment of death benefits under the policy. While the suit was pending, the wives signed a power of attorney designating an X Company executive, PJ as their authorized representative to enter into a settlement with the insurance company. When a settlement was reached, PJ instructed the insurance company to issue a settlement check to the order of the X Company, which will undertake the payment to the individual claimants of their respective shares. PJ misappropriated the settlement amount and the wives pursued their case against Y Insurance Company. Will the suit prosper? Explain.**

**Answer:**

Yes. The suit will prosper. Y insurance Company is liable. X Company, through its executive, PJ, acted as agent of Y Insurance Company. The latter is thus bound by the misconduct of its agent. It is the usual practice in the group insurance business that the employer-policy holder is the agent of the issuer. (BAR 2000)

### **2. Insured**

### **3. Beneficiary**

1. **On July 1, 1979, Crispulo, married to Laura with whom he has two legitimate children, was issued Policy No. 8008 of the Midland Life Insurance Co. on a whole-life plan for P10,000. He designated Angie, his common-law wife as the recoverable beneficiary. He referred to her, in his application and policy, as his wife.**

**Two years later, Crispulo died. Angie filed her claim for the proceeds of the policy as the designated beneficiary therein. The widow, Laura, also filed her claim as legal wife.**

**If you were the Legal Counsel for the Insurance Company, to whom would you adjudicate the proceeds of the insurance policy? Reason out your answer briefly.**

**Answer:**

I would adjudicate the proceeds of the insurance policy to Laura, the legal wife. In the appointment of beneficiary, the New Civil Code imposed certain limitations; one of them being that the insured may not appoint, as his beneficiary, one with whom he is guilty of concubinage, at the time of designation. Since Crispulo was married to Laura at the time when he designated as his beneficiary his concubine Angie, with whom he was guilty of concubinage at the time of designation, Laura may have said designation of Angie nullified, by mere preponderance of evidence in the same action for nullification. There is even no need of the criminal conviction for concubinage. (*Arts. 739 and 2012, N.C.C.; Insular Life Assn. Co., Ltd. v. Ebrado, Oct. 28, 1977; 80 SCRA 181*) (BAR 1981, )

2. **On December 20, 1974, A took out a life insurance policy and named his wife B, as beneficiary. The policy was silent with regard to any change of beneficiary. Suspecting that B was committing adultery, A immediately notified the insurance company in writing that he is substituting his brother C as beneficiary in place of B. A died later on June 30, 1975. B claims the proceeds of the insurance policy, contending that as designated beneficiary, she cannot be changed without her consent, she having acquired a vested right to the proceeds of the policy. Decide. Give reasons for your answer.**

**Answer:**

B cannot claim the proceeds of A's life insurance policy. A's action in substituting his brother C as his beneficiary in place of B, his wife, in his insurance policy, is valid. The insured, A, can change the beneficiary in a policy of life insurance, without the consent of the beneficiary. (BAR 1978)

3. **Eduardo Fernandez applied for and was issued Policy No. 0777 by Atlas Life Insurance Corporation on a whole-life plan for P200,000. Although he was married to Clara, with whom he had 5 legitimate children, he designated his common-law wife, Diana Cruz, as his revocable beneficiary in the policy, and referred to Diana in his application and policy, as his wife. 5 years thereafter, he died. Diana immediately filed her claim for the proceeds of the policy as the designated beneficiary. Clara also filed her claim as legal wife. The insurance company filed a petition for Interpleader before the RTC of Rizal to determine who should be entitled to the proceeds of the policy.**

**If you were the judge, how would you decide the said interpleader action? Explain.**

**Answer:**

If I were the judge, I would decide that the legal wife, Clara, be entitled to the proceeds of insurance taken by Eduardo Fernandez who named his common-law wife, Diana, as his revocable beneficiary, at the time they were guilty of concubinage. In that case, the designation of Diana is void, being prohibited by the New Civil Code (Art. 739 and 2012). The guilt of Eduardo and Diana for concubinage may be proved by mere preponderance of evidence in the same action and there is no need for a criminal conviction for concubinage. (BAR 1985)

4. **On October 18, 1980, P, took out a life insurance policy and named his only son Q as beneficiary. The policy was silent with regard to any change of beneficiary. P later learned that Q was hooked on drugs and immediately notified the insurance company in writing that he is substituting his sister, R, as his beneficiary in place of Q. P later died of advanced tuberculosis. In the application form filled up by the agent of the insurance company prior to the issuance of the life insurance policy by the insurance company, the agent, without the knowledge of P, filled in a false answer and made it appear that P was in good health. Upon P's death, Q claimed the proceeds of the insurance policy contending that as designated beneficiary, he cannot be changed without his consent, he having acquired a vested right to the proceeds of the policy.**

**a) Is Q's contention correct? Reasons.**

**Answer:**

a) No, the designation of the beneficiary is revocable unless the right to revoke is waived. (BAR 1988)

5. **Juan de la Cruz was issued Policy No. 8888 of the midland Life Insurance Co. On a whole life plan for P20,000 on August 19, 1989. Juan de la Cruz is married to Cynthia with whom he has three legitimate children. He, however, designated Purita, his common-law-wife, as the revocable beneficiary. Juan de la Cruz referred to Purita in his application and policy as the legal wife.**

**3 years later, Juan de la Cruz died. Purita filed her claim for the proceeds of the policy as the designated beneficiary therein. The widow, Cynthia, also filed a claim as the legal wife. To whom should the proceeds of the insurance policy be awarded?**

**Answer:**

The proceeds of the insurance policy shall be awarded to the estate of Juan. Purita, the common-law wife, is disqualified as the beneficiary of the deceased because of illicit relation between the deceased and Purita, the designated beneficiary. Due to such illicit relation, Purita cannot be a donee of the deceased. Hence, she cannot also be his beneficiary. (BAR 1998)

6. **Jacob obtained a life insurance policy for P1 M designating irrevocably Diwata, a friend, as his beneficiary, Jacob, however, changed his mind and wants Yob and Jojo, his other friends, to be included as beneficiaries considering that the proceeds of the policy are sufficient for the three friends.**

**Can Jacob still add Yob and Jojo as his beneficiaries? Explain.**

**Answer:**

The insured cannot add other beneficiaries as this would diminish the interest of Diwata who is the irrevocably designated beneficiary. The insured can only do so with the consent of Diwata. (BAR 2005)

7. **What are the effects of an irrevocable designation of a beneficiary under the Insurance Code? Explain.**

**Answer:**

The irrevocable beneficiary has a vested interest in the policy, including its incident such as the policy loan and cash surrender value. (BAR 2005)

8. **On January 1, 2000, Antonio Rivera secured a life insurance from SOS Insurance Corp. for P1 M with Gemma Rivera, his adopted daughter, as the beneficiary. Antonio Rivera died on March 4, 2005 and in the police investigation, it was ascertained that Gemma Rivera participated as an accessory in the killing of Antonio Rivera. Can SOS Insurance Corp. avoid liability by setting up as a defense the participation of Gemma Rivera in the killing of Antonio Rivera? Discuss with reasons.**

**Answer:**

SOS cannot avoid liability under the policy. While Gemma's interest as beneficiary in the policy is considered forfeited since she is an accessory to the killing of Antonio, the proceeds of the policy should be paid to the nearest relative of Antonio (if not otherwise disqualified). The Insurance Code provides that the interest of a beneficiary in a life insurance policy shall be forfeited when the beneficiary is the principal, accomplice, or accessory in willfully bringing about the death of the insured; in which event, the nearest relative of the insured shall receive the proceeds of said insurance if not otherwise disqualified. (BAR 2008)

9. X is the common law wife of Y. Y loves X so much that he took out a life insurance on his own life and made her the sole beneficiary. Y did this to ensure that X will be financially comfortable when he is gone. Upon the death of Y—
- a) X as sole beneficiary under the life insurance policy on the life of Y will be entitled to the proceeds of the life insurance;
  - b) Despite the designation of X as the sole beneficiary, the proceeds of the life insurance will go to the estate of Y;
  - c) The proceeds of the life insurance will go to the compulsory heirs of Y;
  - d) The proceeds of the life insurance will be divided equally amongst X and the compulsory heirs of Y.

**Answer:**

b) Despite the designation of X as the sole beneficiary, the proceeds of the life insurance will go to the estate of Y; (BAR 2012)

## E. Classes

### 1. Marine

- a. Coverage
- b. Implied Warranties

#### 1. What warranties are implied in marine insurance?

**Answer:**

The following warranties are implied in marine insurance:

- 1. That the ship is seaworthy to make the voyage and/or to take in certain cargoes;
- 2. That the ship shall not deviate from the voyage insured;
- 3. That the ship shall carry the necessary documents to show nationality or neutrality and that it will not carry document which will cast reasonable suspicion thereon;
- 4. That the ship shall not carry contraband, especially if it is making voyage through belligerent waters. (BAR 2000)

2. Paolo, the owner of an ocean-going vessel, offered to transport the logs of Constantino from Manila to Nagoya. Constantino accepted the offer, not knowing that the vessel was manned by an irresponsible crew with deep-seated resentments against Paolo, their employer.

Constantino insured the cargo of logs against both perils of the sea and barratry. The logs were improperly loaded on one side, thereby causing the vessel to tilt on one side. On the way to Nagoya, the crew unbolting the sea valve of the vessel causing water to flood the ship hold. The vessel sank.

Constantino tried to collect from the insurance company which denied liability, given the unworthiness of both the vessel and its crew.

**Constantino countered that he was not the owner of the vessel and he could therefore not be responsible for conditions about which he was innocent.**

**Is the insurance company liable?**

**Answer:**

No. the insurance company is not liable because there is an implied warranty in every marine insurance that the ship is seaworthy whoever is insuring the cargo, whether it be the shipowner or not. There was a breach of warranty, because the logs were improperly loaded and the crew was irresponsible. It is the obligation of the owner of the cargo to look for a reliable common carrier which keeps its vessel in seaworthy condition. (BAR 2010)

**3. On October 30, 2007, M/V Pacific, a Philippine registered vessel owned by Cebu Shipping Company (CSC), sank on her voyage from Hong Kong to Manila. Empire Assurance Company (Empire) is the insurer of the lost cargoes loaded on board the vessel which were consigned to Debenhams Company. After it indemnified Debenhams, Empire as subrogee filed an action for damages against CSC.**

- a) Assume the vessel was not seaworthy as in fact its hull had leaked, causing flooding in the vessel. Will your answer be the same? Explain.**
- b) Assume the facts in question b). Can the heirs of the 3 crew members who perished recover from CSC? Explain fully.**

**Answer:**

- a) No, my answer will be different. Allowing the vessel to depart on a voyage when it is not seaworthy is a violation of the implied warranty of seaworthiness, and thus constitutes negligence on the part of owner of the ship and the ship captain. The hypothecary principle in maritime commerce—limiting the ship owner's liability to the amount of insurance proceeds—is not applicable when the unseaworthiness of the vessel is due to the owner's fault or negligence.
- b) Yes, the heirs of the 3 crew members perished can recover from CSC for negligence which constitutes a quasi-delict in this case. (BAR 2008)

**c. Insurable Interest**

**d. Perils of the Sea and Perils of the Ship**

**1. A marine insurance policy on a cargo states that "the insurer shall be liable for losses incident to perils of the sea". During the voyage, seawater entered the compartment where the cargo was stored due to the defective drainpipe of the ship. The insured filed an action on the policy for recovery of the damages caused to the cargo. May the insured recover damages?**

**Answer:**

No. the proximate cause of the damage to the cargo insured was the defective drainpipe of the ship. This is peril of the ship, and not peril of the sea. The defect in the drainpipe was the result of the ordinary use of the ship. To recover under a marine insurance policy, the proximate cause of the loss or damage must be peril of the sea. (BAR 1998)

2. Perils of the ship, under marine insurance law, refer to loss which in the ordinary course of events results from
- Natural and inevitable actions of the sea.
  - Natural and ordinary actions of the sea.
  - Unnatural and inevitable actions of the sea.
  - Unnatural and ordinary actions of the sea.

**Answer:**

a. Natural and inevitable actions of the sea. (BAR 2011)

3. T Shipping, Co. insured all of its vessels with R insurance, Co. The insurance policies stated that the insurer shall answer for all damages due to perils of the sea. One of the insured's ship, the MV Don Priscilla, ran aground in the Panama Canal when its engine pipes leaked and the oil seeped into the cargo compartment. The leakage was caused by the extensive mileage that the ship had accumulated. May the insurer be made to answer for the damage to the cargo and the ship?
- Yes, because the insurance policy covered any or all damage arising from perils of the sea.
  - Yes, since there appears to have been no fault on the part of the shipowner and ship captain.
  - No, since the proximate cause of the damage was the breach of warranty of seaworthiness of the ship.
  - No, since the proximate cause of the damage was due to ordinary usage of the ship, and thus not due to perils of the sea.

**Answer:**

d. No, since the proximate cause of the damage was due to ordinary usage of the ship, and thus not due to perils of the sea. (BAR 2011)

- Concealment
- Seaworthiness

1. A shipped 100 pieces of plywood from Davao City to Manila. He took a marine insurance policy to insure the shipment against loss or damage due to "perils of the sea, barratry, fire, jettison, pirates and other such perils".

When the ship left the port of Davao, the shipman in charge forgot to secure one of the portholes, thru which sea water seeped during the voyage, damaging the plywood. A filed a claim against the insurance company which refused to pay on the ground that the loss or damage was not due to a peril of the sea or any of the risks covered by the policy. It was admitted that the sea was reasonably calm during the voyage and that no strong winds or waves were encountered by the vessel.

**How would you decide the case? Explain.**

**Answer:**

I would decide in favor of the insured A because the insurer was guilty of breach of the implied warranty of seaworthiness. The Insurance Code provides that in every contract of marine insurance, there is a warranty that the ship is seaworthy at the commencement of the risk. Seaworthiness refers not only to the structure of the

ship but also as to its being properly laden. In other words, a ship which is seaworthy for the insurance on the ship, may, by reason of being unfit to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo. In this case, the fact that the porthole was not secured at the port of departure made the ship unseaworthy as far as the cargo of plywood was concerned. Thus, the insurer should be liable for the damage thereto although the loss was not one due to perils insured against. (BAR 1983)

2. **Jacob, the owner of a barge, offered to transport the logs of Esau from Palawan to Manila. Esau accepted the offer not knowing that the barge was manned by an irresponsible crew with deep-seated resentments against Jacob, their employer.**

**Esau insured his cargo of logs against both perils of the sea and barratry.**

**The logs were improperly loaded on one side, thereby causing the barge to tilt and to navigate on an uneven keel. When the strong winds and high waves, normal for that season, started to pound the barge, the crew took advantage of the situation and unbolted the sea valves of the barge, causing sea water to come in. the barge sank.**

**When Esau tried to collect from the insurance firm, the latter stated that it could not be held responsible considering the unworthiness of both the barge and its crew. Esau countered that he was not the owner of the barge and he could not be held responsible for conditions about which he was innocent.**

**Is the insurance company liable? Decide with reasons.**

**Answer:**

In marine insurance, the implied warranty of seaworthiness of the vessel applies also to the insurance of the cargo. In an insurance against perils of the sea, it is the responsibility of the insured rather than the insurer to see to it that the vessel is seaworthy. That responsibility, however, shifts to the insurer where the covered risks include perils of the ship. Accordingly, the insurance company in the problem can be held liable. (BAR 1986) g.

**Deviation**

1. **On a clear weather, MV Sundo, carrying insured cargo, left the port of Manila bound for Cebu. While at sea, the vessel encountered a strong typhoon forcing the captain to steer the vessel to the nearest island where it stayed for 7 days. The vessel ran out of provisions for its passengers. Consequently, the vessel proceeded to Leyte to replenish its supplies.**
  - a) **Assuming that the cargo was damaged because of such deviation, who between the insurance company and the owner of the cargo bears the loss? Explain.**
  - b) **Under what circumstances can a vessel properly proceed to a port other than its port of destination? Explain.**

**Answer:**

a) The insurance company should bear the loss. Since the deviation was caused by a strong typhoon, it was caused by circumstances beyond the control of the captain, and also to avoid a peril whether or not insured against. Deviation is therefore proper.

b) A vessel can properly proceed to a port other than its port of destination in the following cases:

1. When caused by circumstances over which neither the master or the owner of the ship has any control;

2. When necessary to comply with a warranty, or to avoid a peril, whether or not the peril is insured against;
3. When made in good faith, and upon reasonable grounds of belief in the necessity to avoid peril;
4. When made in good faith for the purpose of saving human life or relieving another vessel in distress.  
(BAR 2005)

2. **On October 30, 2007, M/V Pacific, a Philippine registered vessel owned by Cebu Shipping Company (CSC), sank on her voyage from Hong Kong to Manila. Empire Assurance Company (Empire) is the insurer of the lost cargoes loaded on board the vessel which were consigned to Debenhams Company. After it indemnified Denbenhams, Empire as subrogee filed an action for damages against CSC.**

**Assume that the vessel was seaworthy. Before departing, the vessel was advised by the Japanese Meteorological Center that it was safe to travel to its destination. But while at sea, the vessel received a report of a typhoon moving within its general path. To avoid the typhoon, the vessel changed its course. However, it was still at the fringe of the typhoon when it was repeatedly hit by huge waves, foundered and eventually sank. The captain and the crew were saved except 3 who perished. Is CSC liable to Empire? Explain.**

**Answer:**

No, CSC is not liable to Empire. The doctrine of proper deviation is applicable in this case. The change of course made by the vessel is proper as it was to avoid the typhoon and the huge waves which are considered perils of the sea. (BAR 2008)

3. **T, the captain of MV Don Alan, while asleep in his cabin, dreamt of an Intensity 8 earthquake along the path of his ship. On waking up, he immediately ordered the ship to return to port. True enough, the earthquake and tsunami struck 3 days later and the ship was saved. Was the deviation proper?**
  - a) **Yes, because the deviation was made in good faith and on reasonable ground for believing that it was necessary to avoid a peril.**
  - b) **No, because no reasonable ground for avoiding a peril existed at the time of the deviation.**
  - c) **No, because T relied merely on his supposed gift of prophecy.**
  - d) **Yes, because the deviation took place based on a reasonable belief of the captain.**

**Answer:**

b. No, because no reasonable ground for avoiding a peril existed at the time of the deviation. (BAR 2011)

#### **h. Loss and Abandonment**

1. **An inter-island vessel, insured for P2 M against "total and constructive total loss," sank in 150 ft of water one mile off Paranaque during a typhoon. After the typhoon, the ship owner gave written notice of abandonment of his interest in the entire sunken ship to the insurance company. Refusing to accept the offer of abandonment, the insurer hired salvors to refloat the vessel at a total cost of P40,000. Because the refloated vessel needed repairs, the insurer issued invitations to bid for repairs. Several firms submitted separate sealed bids ranging from P1.2 M to P1.3 M for the complete refurbishing and/or restoration of the vessel to its original condition. On the basis of the following facts, the insurance company rejected the claim of the ship owner for payment of total loss on the ground that the ground that there was no constructive total loss.**

- a) Was the notice of abandonment given by the owner properly made? Reason.
- b) Is the position of the insurance company as to the absence of constructive total loss well taken? Reason.
- c) Assuming that the ship owner failed to give the proper notice of abandonment, may he still recover from the insurer? Why?

**Answer:**

- a) *First Suggested Answer:* The notice of abandonment made in writing by the insured to the insurer was sufficient, had the loss been a constructive total loss of the vessel, meaning more than  $\frac{3}{4}$  of the value of the vessel. (*Sec. 139, Corporation Code*)

*Second Suggested Answer:* The notice of abandonment made in writing was not proper, since the existence of the constructive total loss of the vessel had not yet been determined. (*Sec. 141, Insurance Code*)

- b) Yes, the position of the insurance company as to the absence of constructive total loss is well taken. The sum total of the damage to the vessel was only P1,340,000.00 (P40,000 for the salvors, and P1,300 for the restoration of the vessel to its original condition) which amount is not more than  $\frac{3}{4}$  of the value of the vessel (P2 M). (*Sec. 139, Corporation Code*)
- c) Yes, the shipowner may still recover from the insurer, his actual loss, the amount of P1,340,000.00 which is now only partial loss, being not total loss. But since the said amount was already spent by the insurer on the vessel, the insurer is no longer liable to the shipowner, except to deliver the vessel. (BAR 1982)

2. **An insurance company issued a marine insurance policy covering a shipment by sea from Mindoro to Batangas of 1,000 pieces of Mindoro garden stones against “total loss only”. The stones were loaded in two lighters, the first with 600 pieces and the second with 400 pieces. Because of rough seas, damage was caused the second lighter resulting in the loss of 325 out of the 400 pieces. The owner of the shipment filed claims against the insurance company on the ground of constructive total loss inasmuch as more than  $\frac{3}{4}$  of the value of the stones had been lost in one of the lighter.**

**Is the insurance company liable under its policy? Why?**

**Answer:**

The insurance company is not liable under its policy covering against “total loss only” the shipment of 1,000 pieces of Mindoro garden stones. There is no constructive total loss that can be claimed since the  $\frac{3}{4}$  rule is to be computed on the total 1,000 pieces of Mindoro garden stones covered by the single policy coverage. (BAR 1992)

3. **RC Corporation purchased from Thailand, which it intended to sell locally. Due to stormy weather, the ship carrying the rice became submerged in sea water and with it the rice cargo. When the cargo arrived in Manila, RC filed a claim for total loss with the insurer, because the rice was no longer fit for human consumption. Admittedly, the rice could still be used as animal feed.**

**Is RC’s claim for total loss justified? Explain.**

**Answer:**

Yes, RC’s claim for total loss is justified. The rice, which was imported from Thailand for sale locally, is obviously intended for consumption by the public. The complete physical destruction of the rice is not essential to constitute an actual loss. Such a loss exists in this case since the rice, having been soaked in sea water and

thereby rendered unfit for human consumption, has become totally useless for the purpose for which it was imported. (BAR 1996)

4. **MV Pearly Shells, a passenger and cargo vessel, was insured for P40 M against “constructive total loss”. Due to typhoon, it sank near Palawan. Luckily, there were no casualties, only injured passengers. The shipowner sent a notice of abandonment of his interest over the vessel to the insurance company which then hired professionals to afloat the vessel for P900,000. When re-floated, the vessel needed repairs estimated at P2 M. the insurance company refused to pay the claim of the shipowner, stating that there was “no constructive total loss.”**
- a) **Was there “constructive total loss” to entitle the shipowner to recover from the insurance company? Explain.**
- b) **Was it proper for the shipowner to send a notice of abandonment to the insurance company? Explain.**

**Answer:**

- a) There was constructive total loss. When the vessel sank, it was likely that it would be totally lost because of the improbability of recovery.
- b) It was proper for the shipowner to send a notice of abandonment to the insurance company, because there was reliable information of the loss of the vessel. (BAR 2005)

5. **X Shipping Co., insured its vessel MV Don Teodoro for P100 M with ABC Insurance Co. through T, an agent of X Shipping. During a voyage, the vessel accidentally caught fire and suffered damages estimated at P80 M. T personally informed ABC Insurance that X Shipping was abandoning the ship. Later, ABC Insurance denied X Shipping’s claim for loss on the ground that a notice of abandonment through its agent was improper. Is ABC Insurance right?**
- a) **Yes, since X Shipping should have ratified its agent’s action.**
- b) **No, since T, as agent of X Shipping who procured the insurance, can also give notice of abandonment for his principal.**
- c) **Yes, since only the agent of X Shipping relayed the fact of abandonment.**
- d) **No, since in the first place, the damage was more than  $\frac{3}{4}$  of the ship’s value.**

**Answer:**

- b. No, since T, as agent of X Shipping who procured the insurance, can also give notice of abandonment for his principal. (BAR 2011)

6. **A cargo ship of X Shipping Co. ran aground off the coast of Cebu during a storm and lost all its cargo amounting to P50 M. the ship itself suffered damages estimated at P80 M. the cargo owners filed a suit against X Shipping but it invoked the doctrine of limited liability since it vessel suffered an P80 M damage, more than the collective value of all lost cargo. Is X Shipping correct?**
- a) **Yes, since under the doctrine, the value of the lost cargo and the damage to the ship can be set-off.**
- b) **No, since each cargo owner has a separate and individual claim for damages.**
- c) **Yes, since the extent of the ship’s damage was greater than that of the value of the lost cargo.**
- d) **No, since X Shipping neither incurred a total loss nor abandoned its ship.**

**Answer:**

d. No, since X Shipping neither incurred a total loss nor abandoned its ship. (BAR 2011)

**7. For a constructive total loss to exist in marine insurance, it is required that the person insured relinquish his interest in the thing insured. This relinquishment must be**

- a) Actual.
- b) Constructive first and if it fails, then actual.
- c) Either actual or constructive.
- d) Constructive.

**Answer:**

a. Actual. (BAR 2011)

**i. Barratry**

**1. What is "barratry" in marine insurance?**

**Answer:**

Barratry is any willful misconduct on the part of the master or the crew in pursuance of some unlawful or fraudulent purpose without the consent of the owner and to the prejudice of the interest of the owner. (BAR 2010)

**2. Fire**

**a. Extent of Liability under Open Policy**

**1. A) Suppose that Fortune owns a house valued at P600,000 and insured the same against fire with 3 insurance companies as follows:**

X -----	P400,000.00
Y -----	P200,000.00
Z -----	P600,000.00

**In the absence of any stipulation in the policies from which insurance company or companies may Fortune recover in case of fire should destroy his house completely?**

- b) **If each of the fire insurance policies obtained by Fortune in problem (a) is a valued policy and the value of his house was fixed in each of the policies at P1 M, how much would Fortune recover from X if he has already obtained full payment on the insurance policies issued by Y and Z?**
- c) **If each of the policies obtained by Fortune in problem (a) above is an open policy and it was immediately determined after the fire that the value of Fortune's house was P2.4 M, how much may he collect from X, Y and Z?**

- d) In problem (a), what is the extent of the liability of the insurance companies among themselves?
- e) Supposing in problem (a) above, Fortune was able to collect from both Y and Z, may he keep the entire amount he was able to collect from the said 2 insurance companies?

Explain your answer.

**Answer:**

- a) Fortune may recover from the insurers in such order as he may select up to their concurrent liability.
- b) One Answer (assuming that the real value is P1 M):  
Fortune may still recover only the balance of P200,000 from X Insurance Company since the insured may only recover up to the extent of his loss.
- Another Answer (assuming that the real value is P600,000):  
Having obtained full payment on the insurance policies issued by Y and Z, Fortune may no longer recover from X Insurance Company.
- c) In an open policy, the insured may recover his total loss up to the amount of the insurance coverage. Thus, the extent of recovery would be P400,000 from X; P200,000 from Y; and P600,000 from Z.
- d) In the problem (a), the insurance companies among themselves would be liable, viz:

X—  $4/12$  of P600,000 = P200,000

Y—  $2/12$  of P600,000 = P100,000

Z—  $6/12$  of P600,000 = P300,000

- e) No, he can only be indemnified for his loss, not profit thereby; hence, he must return P200,000 of the P800,000 he was able to collect. (BAR 1990)

### b. Alteration

- On May 13, 1996, PAM, Inc. obtained a P15 M fire insurance policy from Ilocano Insurance covering its machineries and equipment effective for 1 year or until May 14, 1997. The policy expressly stated that the insured properties were located at "Sanyo Precision Phils. Building, Phase III, Lots 4 and 6, Block 15, PEZA, Rosario Cavite." Before its expiration, the policy was renewed on "as is" basis for another year until May, 13, 1998. The subject properties were later transferred to Pace Factory also in PEZA. On October 12, 1997, during the effectivity of the renewed policy, a fire broke out at the Pace Factory which totally burned the insured properties.

The policy forbade the removal of the insured properties unless sanctioned by Ilocano. Condition 9(c) of the policy provides that "the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy x x x (c) if the property insured is removed to any building or place other than in that which is herein stated to be insured." PAM claims that it has substantially complied with notifying Ilocano for the insurance coverage. Is Ilocano liable under the policy?

**Answer:**

Ilocano is not liable under the policy. With the transfer of the location of the subject properties, without notice and without insurer's consent, after the renewal of the policy, the insured clearly committed concealment, misrepresentation and a breach of material warranty. The Insurance Code provides that a neglect to communicate that which a party knows and ought to communicate, is called concealment. A concealment entitles the injured party to rescind a contract of insurance in case of an alteration in the use or condition of the thing insured. An alteration in the use or condition of a thing insured from that to which it is limited by the policy made without the consent of the insurer, by means within the control of the insured, and increasing the risks, entitles the insurer to rescind the contract of fire insurance. (BAR 2014)

**c. Friendly fire vs. Hostile fire**

- 1. Queens Insurance Company insured X, a resident of Baguio City, "against all direct loss and damage by fire." X lived in a house heated by a furnace. His servant built a fire in the furnace using material that was highly flammable. The furnace fire caused intense heat and great volumes of smoke and soot that damaged the furnishings in the rooms of X. when X tried to collect on the policy, Queens Insurance refused to pay contending that the damage is not covered by the policy, where the fire is confined within the furnace. Decide.**

**Answer:**

The refusal of Queens to pay is justified. The damage is not covered by the policy which only insures "against all direct loss and damage by fire." The damage being claimed by X was caused by intense heat and great volumes of smoke and soot and not directly by fire. The stipulation in the policy is paramount, not being contrary to law. (BAR 1989)

**3. Casualty**

**a. Accident vs Intentional**

- 1. In a course of a voluntary boxing contest, B who had an accident insurance policy, slid and slipped, enabling his opponent boxer to hit him with a blow that threw him to the ropes, hitting his head against the canvass, causing B's eventual death. There is nothing in the insurance contract appertaining to boxing. Is the Insurance Company liable? Reasons.**

**Answer:**

The insurer is liable because the death in this case was an accident within the meaning of the policy. It was an accident because the insured did not expect to die by entering such contest. His slipping was accidental and this caused him to hit his head against the canvass, leading to his death. (BAR 1975)

- 2. Luis was the holder of an accident insurance policy effective November 1, 1988 to October 31, 1989. At a boxing contest held on January 1, 1989 and sponsored by his employer, he slipped and was hit on the face by his opponent so he fell and his head hit one of the posts of the boxing ring. He was rendered unconscious and was dead on arrival at the hospital due to "intracranial hemorrhage."**

**Can his father who is a beneficiary under said insurance policy successfully claim indemnity from the insurance company? Explain your answer.**

**Answer:**

Yes, the father who is a beneficiary under the accident insurance can successfully claim indemnity for the death of the insured. Clearly, the proximate cause of the death was the boxing contest. Death is sustained in a boxing contest is an accident. (BAR 1990)

**3. S Insurance Company issued a Personal Accident Policy to Bob Tan with a face value of P500,000.**

**In the evening of September 5, 1992, after his birthday party, Tan was in a happy mood but not drunk. He was playing with his handgun, from which he previously removed the magazine. As his secretary was watching television, he stood in front of her and pointed the gun at her. She pushed it aside and said that it may be loaded. He assured her that it was not and then pointed it at his temple. The next moment, there was an explosion and Tan slumped to the floor lifeless.**

**The wife of the deceased sought payment on the policy but her claim was rejected. The insurance company agreed that there was no suicide. However, it was the submission of the insurance company that there was no accident. In support thereof, it contended (a) that there was no accident when a deliberated act was performed unless some additional, unexpected, independent and unforeseen happening occur which produces or brings about the injury or death; and (b) that the insured willfully exposed himself to needless peril and thus removed himself from the coverage of the insurance policy. Are the two contentions of the insurance company tenable? Explain.**

**Answer:**

No. these 2 contentions of the insurance company are not tenable. The insurer is liable for injury or death even due to the insured's gross negligence. The fact that the insured removed the magazine from the handgun means that the insured did not willfully expose himself to needless peril. At most, the insured is only guilty of negligence. (BAR 1993)

**4. Sun-Moon Insurance issued a Personal Accident Policy to Henry Dy with a face value of P500,000. A provision in the policy states that "the company shall not be liable in respect of bodily injury consequent upon the insured person attempting to commit suicide or willfully exposing himself to needless peril except in an attempt to save human life". 6 months later, Henry died of a bullet wound in his head. Investigation showed that one evening Henry was in a happy mood although he was not drunk. He was playing with his handgun from which he had previously removed its magazine. He pointed the gun at his sister who got scared. He assured her it was not loaded. He then pointed the gun at his temple and pulled the trigger. The gun fires and Henry slumped dead on the floor.**

**Henry's wife, Beverly, as the designated beneficiary, sought to collect under the policy. Sun-Moon rejected her claim on the ground that the death of Henry was not accidental. Beverly sued the insurer.**

**Decide. Discuss fully.**

**Answer:**

Beverly can recover the proceeds of the policy from the insurer. The death of the insured was not due to suicide or willful exposure to needless peril which are the excepted risks. The insured's act was purely an act of negligence which is covered by the policy and for which the insured got the insurance for his protection. In fact, he removed the magazine from the gun and when he pointed the gun to his temple he did so because he thought that it was safe for him to do so. He did so to assure his sister that the gun was harmless. There is none in the policy that would relieve the insurer of liability for the death of the insured since the death was an accident. (BAR 1995)

5. CNI insured SAM under a homeowner's policy against claims for accidental injuries by neighbors. SAM's minor son, BOY, injured 3 children of POS, a neighbor, who sued SAM for damages.

SAM's lawyer was at ATT, who was paid for his services by the insurer for reporting periodically on the case to CNI. In one report, ATT disclosed to CNI that after his investigations, he found the injuries to the 3 children not accidental but intentional.

SAM lost the case in court, and POS was awarded P1 M in damages which he sought to collect from the insurer. But CNI used ATT's report to deny the claim on the ground that the injuries to POS' 3 children were intentional, hence excluded from the policy's coverage. POS countered that CNI was stopped from using ATT's report because it was unethical for ATT to provide prejudicial information against his client to the insurer, CNI.

**Who should prevail: the claimant, POS; or the insurer, CNI? Decide with reasons briefly.**

**Answer:**

CNI is not stopped from using ATT's report because CNI, in the first place, commissioned it and paid ATT for it. On the other hand, ATT has no conflict of interest because SAM and CNI are on the same side—their interests being congruent with each other, namely, to oppose POS' claim. It cannot be said that ATT has used the information to the disadvantage or prejudice of SAM.

However, in *Finman General Assurance Corp. v. Court of Appeals*, 213 SCRA 493 (1992), it was explained that there is no "accident" in the context of an accident policy, if it is the natural result of the insured's voluntary act, unaccompanied by anything unforeseen except the injury. There is no accident when a deliberate act is performed, unless some additional and unforeseen happening occurs that brings about the injury. This element of deliberateness is not clearly shown from the facts of the case, especially considering the fact that BOY is a minor, and the injured parties are also children. Accordingly, it is possible that CNI may not prosper. ATT's report is not conclusive on POS or the court. (BAR 2004)

4. Suretyship

5. Life

**a. Incontestability Clause**

1. On May 5, 1982, Juan applied for a life insurance policy with Acme Life Insurance Co. The policy was issued to Juan on June 30, 1982 but the date of issue, as appearing on the policy was May 15, 1982, the date of his application. Juan subsequently realized that some of his answers in the insurance application were erroneous. Accordingly, he supplied the insurance company with the correct replies. However, his letter to the insurance company was lost in the mails. Juan died June 1, 1984.

**The insurance company now refuses to pay Juan's beneficiary contending that Juan misrepresented the state of his health at the time of his application. Is the insurance company liable? State your reason.**

**Answer:**

Yes. The incontestability clause that must be contained in every individual life insurance policy refers to the date of its issue as shown in the policy. Since the policy of life insurance had been in force during the lifetime of the insured, Juan, for a period of 2 years from May 15, 1982, the date of issue as shown in the policy, the policy

has become incontestable. The insurance company can no longer prove that the policy is void *ab initio* or rescindable by reason fraudulent concealment or misrepresentation of the insured. (BAR 1984)

- 2. Manpower Company obtained a group life insurance policy for its employees from Phoenix Insurance Company. The master policy issued by Phoenix on June 1, 1986 contained a provision that eligible employees for insurance coverage were all full time employees of Manpower regularly working at least 30 hours per week. The policy had also an incontestable clause. Beforehand, Phoenix sent enrollment cards to Manpower for distribution to its eligible employees. X filled out the card which contained a printed clause: "I request the insurance for which I may become eligible under said Group Policy." The cards were then sent to Phoenix and X was among the employees of Manpower who was issued a certificate of coverage by Phoenix**

**On July 3, 1988, X was killed on the occasion of a robbery in their house. While processing the claim of X's beneficiary, Phoenix found out that X was not an eligible employee as defined in the group policy since he has not been employed 30 hours a week by Manpower. Phoenix refused to pay. May X's beneficiary invoke the incontestability clause against Phoenix? Reasons.**

**Answer:**

The beneficiary of X may validly invoke the incontestability clause. If the incontestability clause can apply even to cases of intentional concealment and misrepresentation, there would be no cogent reason for denying such application where the insured had not been guilty thereof. When X filled out the card containing the printed clause "I request the insurance for which I may become eligible under said Group Policy", it behooved the insurer to look into the qualifications of X whether he can thus be covered or not by the group life insurance policy. In issuing the certificate of coverage to X, Phoenix may, in fact, be said to have waived the 30-hour per week requirement. (BAR 1989)

- 3. Atty. Roberto took out a life insurance policy from Dana Insurance Corp. (DIC) on September 1, 1989. On August 31, 1990, Roberto died. DIC refused to pay his beneficiaries because it discovered that Roberto had misrepresented certain material facts in his application. The beneficiaries sued on the basis that DIC can contest the validity of the insurance policy only within 2 years from the date of issue and during the lifetime of the insured. Decide the case.**

**Answer:**

I would rule in favor of the insurance company. The incontestability clause, applies only if the policy had been in effect for at least 2 years. The 2-year period is counted from the time the insurance becomes effective until the death of the insured and not thereafter. (BAR 1991)

NB The better answer is that the 2 year period is counted from date of issuance as appearing in the policy.

- 4. On September 23, 1990, Tan took a life insurance policy from Philam. The policy was issued on November 6, 1990. He died on April 26, 1992 of hepatoma. The insurance company denied the beneficiaries' claim and rescinded the policy by reason of alleged misrepresentation and concealment of material facts made by Tan in his application. It returned the premiums paid.**

**The beneficiaries contend that the company had no right to rescind the contract as rescission must be done "during the lifetime" of the insured within 2 years and prior to the commencement of the action.**

**Is the contention of the beneficiaries tenable?**

**Answer:**

No. The incontestability clause does not apply. The insured died within less than 2 years from the issuance of the policy on September 23, 1990. The insured died on April 26, 1992, or less than 2 years from September 23, 1990.

The right of the insurer to rescind is only lost if the beneficiary has commenced an action on the policy. There is no such action in this case. (BAR 1994)

5. **Renato was issued a life insurance policy on January 2, 1990. He concealed the fact that 3 years prior to the issuance of his life insurance policy, he had been seeing a doctor about his heart ailment.**

**On March 1, 1992, Renato died of heart failure. May the heirs file a claim on the proceeds of the life insurance policy of Renato?**

**Answer:**

Yes. The life insurance policy in question was issued on January 2, 1990. More than 2 years had elapsed when Renato, the insured, died on March 1, 1992. The incontestability clause applies. (BAR 1998)

6. **The “incontestability clause” in a Life Insurance Policy means—**

- a) **That life insurance proceeds cannot be claimed 2 years after the death of the insured;**
- b) **That 2 years after date of issuance or reinstatement of the life insurance policy, the insurer cannot anymore prove that the policy is void ab initio or rescindable by reason of fraudulent concealment or misrepresentation of the insured;**
- c) **That the insured can still claim from the insurance policy after 2 years even though premium is not paid;**
- d) **That the insured can only claim proceeds in a life insurance policy 2 years after death.**

**Answer:**

b) That 2 years after date of issuance or reinstatement of the life insurance policy, the insurer cannot anymore prove that the policy is void ab initio or rescindable by reason of fraudulent concealment or misrepresentation of the insured. (BAR 2012)

7. **X, in January 30, 2009, or 2 years before reaching the age of 65, insured his life for P20 M. for reason unknown to his family, he took his own life 2 days after his 65<sup>th</sup> birthday. The policy contains no excepted risk. Which statement is most accurate?**

- a) **The insurer will be liable;**
- b) **The insurer will not be liable;**
- c) **The state of sanity of the insured is relevant in cases of suicide in order to hold the insurer liable;**
- d) **The state of sanity of the insured is irrelevant in cases of suicide in order to hold the insurer liable.**

**Answer:**

b) The insurer will be liable. (BAR 2012)

8. **On July 3, 1993, Delia Sotero (Delia) took out a life insurance policy from Ilocos Bankers Life Insurance Corporation (Ilocos Life) designating Creencia Aban (Aban), her niece, as her beneficiary. Ilocos Life**

issued Policy No. 747, with a face value of P100,000, in Sotero's favor on August 30, 1993, after the requisite medical examination and payment of the premium.

On April 10, 1996, Sotero died. Aban filed a claim for the insurance proceeds on July 9, 1996. Ilocos Life conducted an investigation into the claim and came out with the following findings:

1. Sotero did not personally apply for insurance coverage, as she was illiterate.
2. Sotero was sickly since 1990.
3. Sotero did not have the financial capability to pay the premium on the policy.
4. Sotero did not sign the application for insurance.
5. Aban was the one who filed the insurance application and designated herself as the beneficiary.

For the above reasons and claiming fraud, Ilocos Life denied Aban's claim on April 16, 1997, but refunded the premium paid on the policy.

- a. May the incontestability period set in even in cases of fraud as alleged in this case?
- b. Is Aban entitled to claim the proceeds under the policy?

**Answer:**

- a) Yes. The "incontestability clause" is a provision in law that after a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of 2 years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void ab initio or is rescindable by reason of fraudulent concealment or misrepresentation of the insured or his agent.

In this case, the policy was issued on August 30, 1993, and the insured died on April 10, 1996. The insurance policy was thus in force for a period of 3 years, 7 months and 24 days. Considering that the insured died after the 2-year period, Ilocos is, therefore, barred from proving that the policy is void ab initio by reason of the insured's fraudulent concealment or misrepresentation or want of insurable interest on the part of the beneficiary.

- b) Yes, Aban is entitled to claim the proceeds. After the 2-year period lapse, or when the insured dies within the period, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation, as in this case, when the insured did not personally apply for the policy as she was illiterate and that it was the beneficiary who filled up the insurance application designating herself as beneficiary. (BAR 2014)

## 6. Compulsory Motor Vehicle Liability Insurance

1. X was riding a suburban utility vehicle (SUV) covered by a comprehensive motor vehicle liability insurance (CMVLI) underwritten by FastPay Insurance Company when it collided with a speeding bus owned by RM Travel, Inc. the collision resulted in serious injuries to X; Y, a passenger of the bus; and Z, a pedestrian waiting for a ride at the scene of the collision. The police report established that the bus was the offending vehicle. The bus had a CMVLI policy issued by Dragon Insurance Corporation, X, Y and Z jointly sued RM Travel and Dragon Insurance for indemnity under the Insurance Code of the Philippines. The lower court applied the "no-fault" indemnity policy of the statute, dismissed the suit against RM Travel, and ordered Dragon insurance to pay indemnity to all three plaintiffs. Do you agree with the court's judgment? Explain.

**Answer:**

No. The cause of action of Y is based on the contract of carriage, while that of X and Z is based on torts. The court should not have dismissed the suit against RM Travel. The court should have ordered Dragon Insurance to pay each of X, Y, and Z to the extent of the insurance coverage, but whatever amount is agreed upon in the policy should be answered first by RM Travel and the succeeding amount should be paid by Dragon Insurance up to the amount of the insurance coverage. The excess of the claims of X, Y and Z, over and above such insurance coverage, if any, should be answered or paid by RM Travel. (BAR 2000)

**2. As a rule, an insurance contract is consensual and voluntary. The exception in the case of:**

- a. Inland Marine Insurance**
- b. Industrial Life Insurance**
- c. Motor Vehicle Liability Life Insurance**
- d. Life Insurance**

**Answer:**

c. Motor Vehicle Liability Life Insurance (BAR 2014)

**a. No fault indemnity clause**

- 1. Jose, driving his own car together with his wife Maria, were on their way home from their respective offices when a car driven by Pedro hit them from behind which was in turn hit by a gasoline tanker driven by Mario, causing the car of Jose to turn-turtle, thus, resulting in the death of Maria. All motor vehicles being insured, Jose filed his claim for the death of Maria against the "NO FAULT" Insurance, Section 378 of the Insurance Code.**

**Will Jose's claim for the death of Maria against insurers of said three motor vehicles prosper and up to what amount? Reasons.**

**Answer:**

Jose's claim for the death of Maria against the insurer of said three motor vehicles will not prosper. According to Section 378 of the Insurance Code, "Any claim for death or injury to any passenger or third-party pursuant to the provisions of this chapter shall be paid without necessity of proving fault or negligence of any kind; Provided, that for purposes of this section.

x x x x

(iii) Claim may be made against one motor vehicle only. In the case of an occupant of a vehicle, claim shall lie against the insurer of the vehicle in which the occupant is riding, mounting or dismounting from. Clearly, in the instant case, the NO-FAULT claim against the vehicle in which the deceased was riding is the one authorized, but the claim against the other vehicle will not prosper.

*Jose may claim only up to an amount not exceeding P5,000.00 pursuant to par. (i), Section 378 of the Insurance Code which provides that "the total indemnity in respect to any one person shall not exceed P5,000.00." (NOTE: amount has been adjusted to P15,000)*

**If Jose includes in the claim damage for his car, will the claim prosper? Why?**

**Answer:**

Jose's claim for damages for his car will not prosper. As may be clearly gleaned from Section 378 of the Insurance Code on NO-FAULT Insurance applies only to "any claim for death or injury to any passenger or third party". (BAR 1977)

2. **"X" owns and operates several passenger jeepneys in Metro Manila. He entered into a contract with Gold Mine Insurance & Surety Co., insuring the operation of his jeepneys against accidents with thirdparty-liability.**

**During the effectivity of the insurance, one of his jeepneys bumped "B", who had just alighted from another passenger jeepney whose driver unloaded passengers in the middle of the street. "B" suffered bodily injury as a consequence and filed a claim against the insurance company. The latter refused to pay on the ground that the driver of the jeepney from which passenger "B" alighted was guilty of negligence in unloading in the middle of the street, and that the driver of the insured operator was not at fault.**

**Can passenger "B" recover from the insurance company? Explain.**

**Answer:**

Yes, passenger "B" may recover from the insurance company. The insurance covers the operation of "X's" jeepneys against accidents with third parties; therefore, the insurance covers the liability for death or body injuries of third persons, like what happened to "B", and the claim shall be against the insurer of the directly offending vehicle (X's vehicle). Furthermore, any claim of this nature shall be paid without necessity of proving fault or negligence of any kind, provided that the total indemnity in respect of any person shall be in accordance as provided under the law. (BAR 1981)

3. **Driving his car one night, A crossed an intersection as the signal light turned green. Suddenly he saw an old woman crossing the street just a few feet from his car. He applied his brakes immediately, but just the same, he hit the woman who turned out to be senile already. He brought her to the nearest hospital where she was confined for 3 days due to her injuries. Upon her discharge, A had to pay the hospital bill which amounted to P2,000 including X-rays, doctor's fees and medicines.**

**Being covered by the compulsory liability policy required of all vehicle owners under the Insurance Code, A preferred the matter to his insurance company, which refused to reimburse him, claiming that since A was not at fault (it was admitted that he was not speeding or in any way negligent), there was no third party liability for which the insurance company could be liable under A's policy. Is the insurance company liable to reimburse A for the hospital expenses? Explain.**

**Answer:**

Yes, the insurance company is liable provided A can present the police report of the accident and the medical report as well as the hospital receipts. The Insurance Code has the "no-fault" provision imposing liability for any claim for death or injury to any third party under the compulsory motor vehicle liability insurance. Under the provision, the insurance company may be held liable for the maximum amount of P5,000 without necessity of proving fault or negligence of any kind, provided the aforementioned proofs are submitted under oath.

Note: Sec. 391 of RA No. 10607 now provides that the total indemnity in respect of any person shall not be less than P15,000.00. (BAR 1983)

**4. (1) What do you understand by the “no fault indemnity” provision in the Insurance Code? What are the rules on claims under said provision?**

**Answer:**

The “no fault indemnity” in the Insurance Code provides that any claim for death or injury to a passenger or to a third party should be paid without the necessity of proving fault or negligence of any kind, subject to the following rule:

- a. The total indemnity in respect of any person shall not be less than P15,000;
- b. The following proofs of loss, when submitted under oath, shall be sufficient evidence to substantiate the claim:
  - b.1. Police report of accident; and
  - b.2. Death certificate and evidence sufficient to establish the proper payee; or
  - b.3. Medical report and evidence of medical or hospital disbursement in respect of which refund is claimed.
- c. Claim may be made against one motor vehicle only. In the case of an occupant of a vehicle, claim, shall lie against the insurer of the vehicle in which the occupant is riding, mounting or dismounting from. In any other case, claim shall lie against the insurer of the directly offending vehicle. In all cases, the right of the party paying the claim to recover against the owner of the vehicle responsible for the accident shall be maintained. (BAR 1989)

**5. What is your understanding of a “no fault indemnity” clause found in an insurance policy?**

**Answer:**

Under the “no fault indemnity” clause any claim for the death or injury of any passenger or third party shall be paid without the necessity of proving fault or negligence of any kind. The indemnity in respect of any one person shall not exceed P15,000, provided they are under oath, the following proofs shall be sufficient:

- a) Police report of the accident; and
- b) Death certificate and evidence sufficient to establish the proper payee; or
- c) Medical report and evidence of medical or hospital disbursement in respect of which refund is claimed.

Claim may be made against one motor vehicle only. (BAR 1994)

**6. While driving his car along EDSA, Cesar sideswiped Roberto, causing injuries to the latter. Roberto sued Cesar and the third party liability insurer for damages and/or insurance proceeds. The insurance company moved to dismiss the complaint, contending that the liability of Cesar has not yet been determined with finality.**

- 1. Is the contention of the insurer correct? Explain.**
- 2. May the insurer be held liable with Cesar?**

**Answer:**

1. No, the contention of the insurer is not correct. There is no need to wait for the decision of the court determining Cesar’s liability with finality before the third party liability insurer could be sued. The occurrence of the injury to Roberto immediately gave rise to the liability of the insurer under its policy. In other words, where an insurance policy insures directly against liability, the insurer’s liability accrues immediately upon the occurrence of the injury or event upon which the liability depends.

2. The insurer cannot be held solidarily liable with Cesar. The liability of the insurer is based on contract while that of Cesar is based on tort. If the insurer were solidarily liable with Cesar, it could be made to pay more than the amount stated in the policy. This would, however, be contrary to the principles underlying insurance contracts. On the other hand, if the insurer were solidarily liable with Cesar and it is made to pay only up to the amount stated in the insurance policy, the principles underlying solidary obligations would be violated. (BAR 1996)
7. **X is a passenger of a jeepney for hire being driven by Y. the jeepney collided with another passenger jeepney being driven by Z who was driving recklessly. As a result of the collision, X suffered injuries. Both passenger jeepneys are covered by Comprehensive Motor Vehicular Insurance Coverage. If X wants to claim under the “no fault indemnity clause”, his claim will lie—**
- a) **Against the insurer of the jeepney being driven by Z who was the one at fault;**
  - b) **The claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger;**
  - c) **X has a choice against whom he wants to make his claim;**
  - d) **None of the above.**

**Answer:**

- a) The claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger. (BAR 2012)

**b. Other Rules Concerning Motor Vehicles**

**1. Authorized Driver Clause**

1. **Mayari obtained a comprehensive insurance policy on his car. The policy carried the standard “authorized driver” clause which states that the insurance company is not liable for any loss, accident or damage sustained while the car is being driven by someone other than a duly authorized driver. One day, Mayari allowed his friend, Kainigan, to drive the car. Kaibigan figured in a mishap and the car was a total loss.**

**Kaibigan had been driving for the past 5 years but it appears that his driver’s license was irregularly issued because he cannot read or write; neither did he take any of the prescribed driver’s tests. After the initial case was issued, he merely asked his wife to go to the LTC office to get a renewal of his license. Mayari did not know about the irregularity in the driver’s license of Kaibigan.**

**Can Mayari recover on the insurance policy? Explain.**

**Answer:**

Mayari cannot recover under the policy. The standard “authorized driver” clause requires that the driver at the time of the accident must be duly authorized and licensed to drive. An irregular license is not a license at all. (BAR 1986)

2. **Sheryl insured her newly acquired car, a NISSAN Maxima against any loss or damage for P50,000 and against third party liability for P20,000 with the XYZ Insurance Corp. (XYZ). Under the policy, the car**

must be driven only by an authorized driver who is either: (1) the insured, or (2) any person driving on the insured's order or with his permission: provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle and is not disqualified from driving such motor vehicle by order of a court.

During the effectivity of the policy, the car, then driven by Sheryl herself, who had no driver's license, met an accident and was extensively damaged. The estimated cost of the repair was P40,000. Sheryl immediately notified XYZ, but the latter refused to pay on the policy alleging that Sheryl violated the terms thereof when she drove it without a driver's license.

Is the insurer correct?

**Answer:**

No. the insurer is not correct in denying the claim since the proviso "that the person driving is permitted in accordance with the licensing, etc." qualifies only a person driving the vehicle, other than the insured, at the time of the accident. (BAR 1991)

## 2. Theft Clause

1. "A" was the owner of a car insured with Fortune Insurance Company for "Own Damage", "Theft", and "Third-Party-Liability" effective May 16, 1977 to May 16, 1978. On May 9, 1978, the car was brought to a machine shop for repairs. On May 11, 1978, while in the custody of the machine shop, the car was taken by one of the employees to be driven out to a certain place. While travelling along the highway, the car smashed into parked truck and suffered extensive damage.

"A" filed a claim for recovery under the policy but was refused payment. The insurance company averred that the car was not stolen and, therefore, was not covered by the "Theft Clause."

Decide the merits of the insurer's contention, with reasons.

**Answer:**

The insurer is liable to "A" under the "Theft Clause". The taking of a car even though temporary and only for a joy ride, without the car owner's consent is theft; and, therefore, insurer is liable for total loss due to car accident of insured's car wrongfully taken, without the insured's consent, from the repair shop entrusted for repairs. (*Villacorta v. Insurance Commissioner, Oct. 28, 1980, 100 SCRA 467*) (BAR 1981)

2. Rey Bautista insured his 1984 Galant with Alpha Insurance Co., Inc. for own damage, theft and thirdparty liability effective August 21, 1984 to August 20, 1985. On August 3, 1985 the car was brought to "Car Specialist", a well-known auto repair shop for general check-up. On August 11, 1985, while in the custody of the said shop, the car was taken by one of the employees of the shop and driven to a hide-out in Montalban, Rizal. While travelling along a narrow street, the car smashed into a parked gravel and sand truck and it suffered an extensive damage. Rey filed a claim for total loss with Alpha, but the claim was denied. Rey then sued Alpha to collect on the policy.

Rule on the said case stating the legal basis in support of your decision.

**Answer:**

The insurer is liable. The contract of insurance shall be interpreted, in case of doubt, in favor of the insured Rey Bautista, who is entrusting his car and key to the shop owner; its employees are presumed to have insured's (Bautista) permission. The theft clause applies, since the aforesaid act of the employees of the shop owner is within the article on theft of the Revised Penal Code. (BAR 1985)

3. **Mr. Gonzales was the owner of a car insured with Masagana Insurance Company for "Own Damage", "Theft", and "Third Party Liability" effective May 14, 1986 to May 14, 1987. On May 2, 1987, the car was brought to a machine shop for repairs. On May 11, 1987, while in the custody of the machine shop, the car was taken by one of the employees (of the machine shop) to show off to his girlfriend. While on the way to his girlfriend's house, the car smashed into a parked truck and was extensively damaged. Mr. Gonzales filed a claim for recovery under the policy but was refused payment. The insurance company averred that the car was not stolen, and therefore was not covered by the "Theft Clause".**

**Decide the merits of the insurer's contention, with reasons.**

**Answer:**

I would decide in favor of the insured. The coverage of the policy was rather comprehensive in scope. The Theft Clause particularly, at least by intendment, should cover situations of the loss of the property occasioned by the taking or use by another without the authority of the insured. Furthermore, doubts on the insurance, being a "contract by adherence" must be construed against the insurer. (BAR 1988)

4. **HL insured his brand new car with P Insurance Company for comprehensive coverage wherein the insurance company undertook to indemnify him against loss or damage to the car (a) by accidental collision xxx (b) by fire, external explosion, burglary, or theft, and (c) malicious act.**

**After a month, the car was carnapped while parked in the parking space in front of the Intercontinental Hotel in Makati. HL's wife who was driving the said car when it was carnapped was in possession of an expired driver's license, a violation of the "authorized driver" clause of the insurance company.**

1. **May the insurance company be held liable to indemnify HL for the loss of the insured vehicle? Explain.**

**Answer:**

1. Yes. The car was lost due to theft. What applies in this case is the "theft" clause, and not the "authorized driver" clause. It is immaterial that HL's wife was driving the car with an expired driver's license at the time it was carnapped.

5. **On May 26, 201, Jess insured with Jack Insurance (Jack) his 2014 Toyota Corolla sedan under a comprehensive motor vehicle insurance policy for one year. On July 1, 2014, Jess' car was unlawfully taken. Hence, he immediately reported the theft to the Traffic management Command (TMC) of the Philippine National Police (PNP), which made Jess accomplish a complaint sheet as part of its procedure. In the complaint sheet, Jess alleged that a certain Ric Silat (Silat) took possession of the subject vehicle to add accessories and improvements thereon. However, Silat failed to return the subject vehicle within the agreed 3-day period. As a result, Jess notified Jack of his claim for reimbursement of the value of the vehicle under the insurance policy. Jack refused to pay claiming that there is no theft as Jess gave Silat lawful possession of the car. Is Jack correct?**

**Answer:**

No. Jack is not correct. The “theft clause” of a comprehensive motor vehicle insurance policy has been interpreted by the Court in several cases to cover situations like (1) when one takes the motor vehicle of another without the latter’s consent even if the motor vehicle is later returned, there is theft—there being intent to gain as the use of the thing unlawfully taken constitutes gain, or (2) when there is taking of a vehicle by another person without the permission or authority from the owner thereof. (BAR 2014)

6. **On February 21, 2013, Barrack entered into a contract of insurance with Matino Insurance Company (Matino) involving a motor vehicle. The policy obligates Matino to pay Barrack the amount of P600,000 in case of loss or damage to said vehicle during the period covered, which is from February 26, 2013 to February 26, 2014.**

**On April 16, 2013, at about 9:00am, Barrack instructed his driver, JJ, to bring the motor vehicle to a nearby auto shop for tune-up. However, JJ no longer returned and despite diligent efforts to locate the said vehicle, the efforts proved futile. Resultantly, Barrack promptly notified Matino of the said loss and demanded payment of the insurance proceeds of P600,000.**

**In a letter dated July 5, 2013. Matino denied the claim, reasoning as stated in the contract that “the company shall not be liable for any malicious damage caused by the insured, any member of his family or by a person in the insured’s service. Is Matino correct in denying the claim?**

**Answer:**

No. Matino is not correct in denying the claim. An insurance company cannot deny a claim by the owner of a motor vehicle who insured it against loss or damage because the driver he employed stole it. Matino cannot invoke the provision excluding malicious damages caused by a person in the service of the insured. In common ordinary usage, loss means failure to keep possession, while malicious damage is damage resulting from the willful act of the driver. Words which have different meanings shall be understood in the sense which is most in keeping with the nature and object of the insurance contract. If a stipulation admits several meanings, it should be understood as bearing the meaning which is most adequate to render it effectual. It may be shown that the words have a local, technical or peculiar meaning and were so used and understood by the parties. (BAR 2014)

#### **F. Insurable Interest**

1. **“A” owns a house valued at P50,000 which he had insured against fire for P100,000. He obtained a loan from “B” in the amount of P100,000, and to secure payment thereof, he executed a deed of mortgage on the house, but without assigning the insurance policy to the latter. For “A’s” failure to pay the loan upon maturity, “B” initiated foreclosure proceedings and in the ensuing public sale, the house was sold by the sheriff to “B” as highest bidder. Immediately upon issuance of the sheriff’s certificate of sale in his favor, “B” insured the house against fire for P120,000 with another insurance company. In order to redeem the house, “A” borrowed P100,000 from “C” and, as security device, he assigned the insurance policy of P100,000 to “C”. However, before “A” could pay “B” his obligation of P100,000, the house was accidentally and totally burned.**

**Does “A”, “B” or “C” have any insurance interest in the house? May “A”, “B” and “C” recover under the policies? If so, how much? (BAR 1982)**

**Answer:**

As to A: He has insurable interest in his house, an existing interest, but only for P50,000, the value of the said house. But, when he assigned it to C, said A had no more interest in his insurance policy, and A cannot anymore recover on said insurance policy.

As to B: He has insurable interest on A's house, having an interest founded upon an existing interest, but only for P50,000, the value of A's house, and therefore, he can recover only the amount of P50,000.

As to C: He has no insurable interest on A's house, being mere contingent or expectant interest not founded on an actual right or valid contract to A's house; besides, the assignment to him of A's insurance policy was not approved by the insurer; hence, C cannot recover.

### 1. In Life/Health

1. **On January 4, 1983, Mr. P joined Alpha Corporation (ALPHA) as President of the company. ALPHA took out a life insurance policy on the life of Mr. P with Mutual Insurance Company, designating ALPHA as the beneficiary. ALPHA also carried fire insurance with Beta Insurance Co. on a house owned by it, but temporarily occupied by Mr. P again with ALPHA as beneficiary.**

**On September 1, 1983, Mr. P resigned from ALPHA and purchased the company house he had been occupying. A few days later, a fire occurred resulting in the death of Mr. P and the destruction of the house.**

**What are the rights of ALPHA (a) against Mutual Life Insurance Company on the life insurance policy?**

**Answer:**

- a) ALPHA can recover against Mutual Life Insurance Co. in the life insurance policy as its insurable interest in the life of the person insured, Mr. P, existed when the insurance took effect. In life insurance, insurable interest need not exist thereafter or when the loss occurred. (BAR 1984)
2. **Blanco took out a P1 M life insurance policy naming his friend and creditor, Montenegro, as his beneficiary. When Blanco died, his outstanding loan obligation to Montenegro was only P50,000. Blanco's executor contended that only P50,000 out of the insurance proceeds should be paid to Montenegro and the balance of P950,000 should be paid to Blanco's estate.**

**Is the executor's contention correct? Reason out your answer.**

**Answer:**

The contention of the executor is incorrect. The beneficiary of a life insurance need not have any insurable interest in the life of the insured.

**Alternative Answer:**

The contention of the executor is incorrect because it was Blanco himself who took out the life insurance policy on his own life, naming only Montenegro as the beneficiary. It would have been different if it was Montenegro, as creditor, who took out a life insurance policy on the life of Blanco, as a debtor. In that case, Montenegro's insurable interest in the life of Blanco would be only to the extent of P50,000, which is the amount of his credit. (BA 1987)

3. **On July 14, 1985, X, a homosexual, took an insurance policy on the life of his boyfriend, Y. In the insurance application, X misrepresented that Y was in perfect health although he knew all the time that Y was afflicted with AIDS. On October 18, 1987, Y died in a motor accident. Shortly thereafter, X filed his insurance claim.**

**Should the insurer pay? Reasons.**

**Answer:**

The insurer is not obliged to pay. Friendship alone is not the insurable interest contemplated in life insurance. Insurable interest in the life of others (other than one's own life, spouses or children) is merely to the extent of the pecuniary interest in that life.

Assuming that such pecuniary interest exists, an insurer would be liable despite concealment or misrepresentation if the insurance had been in effect for more than 2 years (incontestability clause). (BAR 1987)

4. **A obtains insurance over his life and names his neighbor B the beneficiary because of A's secret love for B. If A dies, can B successfully claim against the policy?**

**Answer:**

Yes. In life insurance, it is required that the beneficiary must have insurable interest in the life of the insured. It was the insured himself who took the policy on his own life. (BAR 1997)

5. **IS, is an elderly bachelor with no known relatives, obtained life insurance coverage for P250,000 from Starbrite Insurance Corporation, an entity licensed to engage in the insurable business under the Insurance Code of the Philippines. He also insured his residential house for twice that amount with the same corporation. He immediately assigned all his rights to the insurance proceeds to BX, a friend/companion living with him. 3 years later, IS died in a fire that gutted his insured house 2 days after he had sold it. There is no evidence of suicide or arson or involvement of BX in these events. BX demanded payment of the insurance proceeds from the 2 policies, the premiums for which IS had been faithfully paying during all the time he was alive. Starbrite, refused payment, contending that BX had no insurable interest and therefore was not entitled to receive the proceeds from IS' insurance coverage on his life and also on his property. Is Starbrite's contention valid? Explain.**

**Answer:**

Starbrite is correct with respect to the insurance coverage on the property of IS. The beneficiary in the property insurance policy or the assignee thereof must have insurable interest in the property insured. BX, a mere friend-companion of IS, has no insurable interest in the residential house of IS. BX is not entitled to receive the proceeds from IS' insurance on his property.

As to the insurance coverage on the life of IS, BX is entitled to receive the proceeds. There is no requirement that BX should have insurable interest in the life of IS. It was IS himself who took the insurance on his own life. (BAR 2000)

6. **Distinguish insurable interest in property insurance from insurable interest in life insurance.**

**Answer:**

- 1) In property insurance, the expectation of benefit must have a legal basis. In life insurance, the expectation of benefit to be derived from the continued existence of a life need not have any legal basis.



- 2) In property insurance, the actual value of the interest therein is the limit of the insurance that can validly be placed thereon. In life insurance, there is no limit to the amount of insurance that may be taken upon life.
- 3) In property insurance, an interest insured must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime. In life insurance, it is enough that insurable interest exists at the time when the contract is made but it need not exist at the time of loss. (BAR 2002)

**7. X, Co. a partnership, is composed of A (capitalist partner), B (capitalist partner) and C (industrial partner). If you were partner A, who between B and C would you have an insurable interest on, such that you may then insure him?**

- a) **No one, as there is merely a partnership contract among A, B and C.**
- b) **Both B and C, as they are your partners.**
- c) **Only C, as he is an industrial partner.**
- d) **Only B, as he is a capitalist partner.**

**Answer:**

b. Both B and C, as they are your partners. (BAR 2011)

**8. X has been a long-time household helper of Z. X's husband, Y, has also been Z's long-time driver. May Z insure the lives of both X and Y with Z as beneficiary?**

- a) **Yes, since X and Y render services to Z.**
- b) **No, since X and Y have no pecuniary interest on the life of Z arising from their employment with him.**
- c) **No, since Z has no pecuniary interest in the lives of X and Y arising from their employment with him. d. Yes, since X and Y are Z's employees.**

**Answer:**

c. No, since Z has no pecuniary interest in the lives of X and Y arising from their employment with him. (BAR 2011)

**9. For both the Life Insurance and Property Insurance, the insurable interest is required to be—**

- a) **Existing at the time of perfection of the contract and at the time of loss;**
- b) **Existing at the time of perfection and at the time of loss for property;**
- c) **Existing at the time of perfection for property insurance but for life insurance both at the time of perfection and at the time of loss;**
- d) **Existing at the time of perfection only.**

**Answer:**

b) Existing at the time of perfection and at the time of loss for property. (BAR 2012)

**10. X, a minor, contracted an insurance on his own life. Which statement is most accurate?**

- a) **The life insurance policy is void ab initio;**
- b) **The life insurance is valid provided it is with the consent of the beneficiary;**
- c) **The life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child;**
- d) **The life insurance is valid provided the disposition of the proceeds will be subject to the approval of the legal guardian of the minor.**

**Answer:**

c) The life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child. (BAR 2012)

**11. In 2010, the PNP declared Kaddafy Benjelani “Public Enemy No. 1” because of his terrorist activities in the country that have resulted in the death of thousands of Filipinos. A ransom of P15 M was placed on Kaddafy Benjelani’s head.**

**Worried about the future of their family, Kaddafy Benjelani’s estranged wife, Aurelia, secured in December 2010 a life insurance policy on his life and designated herself as beneficiary.**

**Is the policy valid and binding?**

- a) **Yes, the policy is valid and binding because Aurelia has an insurable interest on the life of Kaddafy Benjelani.**
- b) **No, the policy is not valid and binding because Kaddafy Benjelani has been officially declared a public enemy;**
- c) **Yes, the policy is valid and binding because it has been in force for more than 2 years;**
- d) **No, the policy is not valid and binding since the spouses’ estrangement removed Aurelia’s insurable interest in Benjelani’s life;**
- e) **None of the above.**

**Answer:**

a) Yes, the policy is valid and binding because Aurelia has an insurable interest on the life of Kaddafy Benjelani. (BAR 2013)

**12. Carlo and Bianca met in the La Boracay festivities. Immediately, they fell in love with each other and got married soon after. They have been cohabiting blissfully as husband and wife, but they did not have any offspring. As the years passed by, Carlo decided to take out an insurance on Bianca’s life for P1 M with him (Carlo) as sole beneficiary, given that he did not have a steady source of income and he always depended on Bianca both emotionally and financially. During the term of the insurance, Bianca died of what appeared to be a mysterious cause so that Carlo immediately requested for an autopsy to be conducted. It was established that Bianca died of a natural cause. More than that, it was also established that Bianca was a transgender all along—a fact unknown to Carlo. Can Carlo claim the insurance benefit?**

**Answer:**

Yes. Carlo can claim the insurance benefit. If a person insures the life or health of another person with himself as beneficiary, all his rights, title and interests in the policy shall automatically vest in the person insured. Carlo, as the husband of Bianca, has an insurable interest in the life of the latter. Also, every person has an insurable interest in the life and health of any person on whom he depends wholly or in part for support. The insurable interest in the life of the person insured must exist when the insurance takes effect but need not exist when the loss occurs. Thus, the subsequent knowledge of Carlo, upon the death of Bianca, that the latter is a transgender does not destroy his insurable interest on the life of the insured. (BAR 2014)

**13. A person is said to have an insurable interest in the subject matter insured where he has a relation or connection with, or concern in it that he will derive pecuniary benefit or advantage from its preservation. Which among the following subject matters is not considered insurable?**

- a) A partner in a firm on its future profits.
- b) A general creditor on the debtor's property
- c) A judgment creditor on debtor's property
- d) A mortgage creditor on debtor's mortgaged property.

**Answer:**

- a. A partner in a firm on its future profits. (BAR 2014)

**14. On July 3, 1993, Delia Sotero (Delia) took out a life insurance policy from Ilocos Bankers Life Insurance Corporation (Ilocos Life) designating Creencia Aban (Aban), her niece, as her beneficiary. Ilocos Life issued Policy No. 747, with a face value of P100,000, in Sotero's favor on August 30, 1993, after the requisite medical examination and payment of the premium.**

**On April 10, 1996, Sotero died. Aban filed a claim for the insurance proceeds on July 9, 1996. Ilocos Life conducted an investigation into the claim and came out with the following findings:**

- 6. Sotero did not personally apply for insurance coverage, as she was illiterate.
- 7. Sotero was sickly since 1990.
- 8. Sotero did not have the financial capability to pay the premium on the policy.
- 9. Sotero did not sign the application for insurance.
- 10. Aban was the one who filed the insurance application and designated herself as the beneficiary.

**For the above reasons and claiming fraud, Ilocos Life denied Aban's claim on April 16, 1997, but refunded the premium paid on the policy.**

**c. May Sotero validly designate her niece as beneficiary?**

**Answer:**

- c. Yes. Sotero may validly designate her niece, Aban, as beneficiary. Sotero had insurable interest in her own life, and could validly designate anyone as her beneficiary. (BAR 2014)

## 2. In Property

**1. A owns a house worth P500, 000.00. He insured It against fire for P250, 000.00 for the period from January 1, 1977 to January 1, 1978. At the instance of B, who is a judgment creditor of A, the said house was levied upon by the Sheriff and sold at public auction on March 15, 1977. It was adjudicated to B for P150, 000.00 at the auction sale. B insured the house against fire for P150, 000.00 for the period from March 16, 1977 to March 16, 1978. The house was accidentally burned on April 1, 1977. May A recover under his policy? Give reasons.**

**Answer:**

A can recover under his policy. A judgment debtor whose property has been seized on execution has an insurable interest therein until the right to redeem or have the same set aside has been lost. Inasmuch as the right of A to redeem has not expired, the 12 months' time after the sale having not elapsed before the loss occurred; A has an insurable interest in the house at the time of loss.

**May B recover under his policy? Give reasons.**

**Answer:**

B can recover upon his policy because as purchaser at a judicial sale he has an insurable interest in the property to the extent of the amount for which he insured it not exceeding his interest in the property. (BAR 1977)

- 2. "N" owns a condominium unit presently insured with Holy Insurance Co. for P1 Million. "N" later sells the condominium unit to "O". Somehow "O" fails to obtain the transfer of the insurance policy to his name from "N". Subsequently, fire of unknown origin destroys completely the condominium unit.**

**Who may collect the insurance proceeds?**

**Answer:**

Neither N nor O may collect. As to N; *First Alternative Reason*—An interest in property insured must exist when the insurance takes effect and when the loss occurs. Although N had insurable interest when the insurance takes effect, yet he had no more interest when the loss happened. *Second Alternative Reason*—A change of interest in any part of a thing insured unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing insured and the interest in the insurance are vested in the same person.

*As to O:* He cannot recover, because he had no insurance contract on the said condominium unit which he bought from N. (BAR 1980)

- 3. The agent in Davao of the insured "A" was employed to ship "A"'s copra to Manila and to communicate the shipment to the buyer "A" in Manila. The said agent wrote the owner of the copra announcing the sailing of the ship, but failed to state that the ship had run a ground, which fact he already knew before announcing the sailing. "A," the buyer of the copra, in all good faith, took out a marine insurance on the copra. The copra was badly damaged and was a total loss. Can the insured recover on the policy? Reason.**

**Answer:**

The insured may not recover on the policy, since the subject matter of the marine insurance at the time of contracting the insurance was already lost. An interest in property insured must exist when the insurance takes effect and when the loss occurs. (BAR 1979)

- 4. On January 4, 1983, Mr. P joined Alpha Corporation (ALPHA) as President of the company. ALPHA took out a life insurance policy on the life of Mr. P with Mutual Insurance Company, designating ALPHA as the beneficiary. ALPHA also carried fire insurance with Beta Insurance Co. on a house owned by it, but temporarily occupied by Mr. P again with ALPHA as beneficiary.**

**On September 1, 1983, Mr. P resigned from ALPHA and purchased the company house he had been occupying. A few days later, a fire occurred resulting in the death of Mr. P and the destruction of the house.**

**What are the rights of ALPHA against Beta Insurance Company on the fire insurance?**

**Answer:**

ALPHA cannot recover from Beta Insurance Co. since an interest in the property insured must exist not only when the insurance took effect but also when the loss occurs. Since the fire that destroyed the insured's house took effect after ALPHA had sold the house to Mr. P, the insurable interest of ALPHA in the property insured no longer exists when the loss occurred. (BAR 1984)

5. **On February 3, 1987, while Jose Palacio was in the hospital preparatory to a heart surgery, he called his only son, Boy Palacio, and showed the latter a will naming the son as sole heir to all the father's estate including the family mansion in Forbes Park. The following day, Boy Palacio took out a fire insurance policy on the Forbes Park mansion. One week later, the father died. After his father's death, Boy Palacio moved his wife and children to the family mansion which he inherited. On March 30, 1987, a fire occurred razing the mansion to the ground. Boy Palacio then proceeded to collect on the fire insurance he took earlier on the house.**

**Should the insurance company pay? Reasons.**

**Answer:**

In property insurance, insurable interest must exist both at the time of the taking of the insurance and at the time the risk insured against occurs. The insurable interest must be an existing interest. The fact alone that Boy Palacio was the expected sole heir of his father's estate does not give the prospective heir any existing interest prior to the death of the decedent. (BAR 1987)

6. **A piece of machinery was shipped to Mr. Pablo on the basis of C&F, Manila. Mr. Pablo insured said machinery with the Talaga Merchants Insurance Corp. (TAMIC) for loss or damage during the voyage. The vessel sank en route to Manila. Mr. Pablo then filed a claim with TAMIC which was denied for the reason that prior to delivery, Mr. Pablo had no insurable interest. Decide the case.**

**Answer:**

Mr. Pablo had an existing insurable interest on the piece of machinery he bought. The purchase of goods under a perfected contract of sale already vested equitable interest on the property in favor of the buyer even while it is pending delivery. (BAR 1991)

7. **In a civil suit, the Court ordered Benjie to pay Nat P500,000. To execute the judgment, the sheriff levied upon Benjie's registered property (a parcel of land and the building thereon), and sold the same at public auction to Nat, the highest bidder. The latter, on March 18, 1992, registered with the Register of Deeds the certificate of sale issued to him by the sheriff. Meanwhile, on January 27, 1993, Benjie insured with Garapal Insurance for P1 M the same building that was sold at public auction to Nat. Benjie failed to redeem the property by March 18, 1993.**

**On March 19, 1993, a fire razed the building to the ground. Garapal Insurance refused to make good its obligation to Benjie under the insurance contract.**

- 1. Is Garapal Insurance legally justified in refusing payment to Benjie?**
- 2. Is Nat entitled to collect on the insurance policy?**

**Answer:**

1. Yes. At the time of the loss, Benjie was no longer the owner of the property insured as he failed to redeem the property. The law requires in property insurance that a person can recover the proceeds of the policy if he has insurable interest at the time of the issuance of the policy and also at the time when the loss occurs. At the time of fire, Benjie no longer had insurable interest in the property insured.
2. No. While at the time of the loss he has insurable interest in the building, as he was the owner thereof, Nat did not have any interest in the policy. There was no automatic transfer clause in the policy that would give him such interest in the policy. (BAR 1994)

8. **A obtains a fire insurance on his house and as a generous gesture names his neighbor as the beneficiary. If A's house is destroyed by fire, can B successfully claim against the policy?**

**Answer:**

No. in property insurance, the beneficiary must have insurable interest in the property insured. B does not have insurable interest in the house insured. (BAR 1997)

9. **A businessman in the grocery business obtained from First Insurance an insurance policy for P5 M to fully cover his stocks-in-trade from the risk of fire.**

**3 months later, a fire of accidental origin broke out and completely destroyed the grocery including his stocks-in-trade. This prompted the businessman to file with First Insurance a claim for P5 M representing the full value of his goods.**

**First Insurance denied the claim because it discovered that at the time of the loss, the stock-in-trade were mortgaged to a creditor who likewise obtained from Second Insurance Company fire insurance coverage for the stocks at their full value of P5 M.**

- a) **May the businessman and the creditor obtain separate insurance coverage over the same stocks-in-trade? Explain.**
- b) **Suppose you are the Judge, how much would you allow the businessman and the creditor to recover from their respective insurers. Explain.**

**Answer:**

- a) Yes. The businessman, as owner, and the creditor, as mortgagee, have separate insurable interests in the same stocks-in-trade. Each may insure such interest to protect his own separate interest.
- b) As judge, I would allow the businessman to recover his total loss of P5 M pesos representing the full value of his goods which were lost through fire. As to the creditor, I would allow him to recover the amount to the extent of or equivalent to the value of the credit he extended to the businessman for the stocks-in-trade which were mortgaged by the businessman. (BAR 1999)

10. **IS, is an elderly bachelor with no known relatives, obtained life insurance coverage for P250,000 from Starbrite Insurance Corporation, an entity licensed to engage in the insurable business under the Insurance Code of the Philippines. He also insured his residential house for twice that amount with the same corporation. He immediately assigned all his rights to the insurance proceeds to BX, a friend/companion living with him. 3 years later, IS died in a fire that gutted his insured house 2 days after he had sold it. There is no evidence of suicide or arson or involvement of BX in these events. BX demanded payment of the insurance proceeds from the 2 policies, the premiums for which IS had been faithfully paying during all the time he was alive. Starbrite, refused payment, contending that BX had no insurable interest and therefore was not entitled to receive the proceeds from IS' insurance coverage on his life and also on his property. Is Starbrite's contention valid? Explain.**

**Answer:**

Starbrite is correct with respect to the insurance coverage on the property of IS. The beneficiary in the property insurance policy or the assignee thereof must have insurable interest in the property insured. BX, a mere friend-companion of IS, has no insurable interest in the residential house of IS. BX is not entitled to receive the proceeds from IS' insurance on his property.

As to the insurance coverage on the life of IS, BX is entitled to receive the proceeds. There is no requirement that BX should have insurable interest in the life of IS. It was IS himself who took the insurance on his own life. (BAR 2000)

**11. JQ, owner of a condominium unit, insured the same against fire with XYZ Insurance Co., and made the loss payable to his brother, MLQ. In case of loss by fire of the said condominium unit, who may recover on the fire insurance policy? State the reason/s for your answer.**

**Answer:**

JQ can recover on the fire insurance policy for the loss of the said condominium unit. He has the insurable interest as owner-insured. As beneficiary in the fire insurance policy, MLQ cannot recover on the fire insurance policy. For the beneficiary to recover on the fire or property insurance policy, it is required that he must have insurable interest in the property insured. In this case, MLQ does not have insurable interest in the condominium unit. (BAR 2001)

**12. Distinguish insurable interest in property insurance from insurable interest in life insurance.**

**Answer:**

- 1) In property insurance, the expectation of benefit must have a legal basis. In life insurance, the expectation of benefit to be derived from the continued existence of a life need not have any legal basis.
- 2) In property insurance, the actual value of the interest therein is the limit of the insurance that can validly be placed thereon. In life insurance, there is no limit to the amount of insurance that may be taken upon life.
- 3) In property insurance, an interest insured must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime. In life insurance, it is enough that insurable interest exists at the time when the contract is made but it need not exist at the time of loss. (BAR 2002)

**13. Ciriaco leased a commercial apartment from Supreme Building Corporation (SBC). One of the provisions of the 1-year lease contract states:**

**“18. x x x The LESSEE shall not insure against fire the chattels, merchandise, textiles, goods and effects placed at any stall or store or space in the leased premises without first obtaining the written consent of the LESSOR. If the LESSEE obtains fire insurance coverage without the consent of the LESSOR, the insurance policy is deemed assigned and transferred to the LESSOR for the latter’s benefit.”**

**Notwithstanding the stipulation in the contract, without the consent of SBC, Ciriaco insured the merchandise inside the premises against loss by fire in the amount of P500,000 with First United Insurance Corporation (FUIC).**

**A day before the lease contract expired, fire broke out inside the leased premises, damaging Ciriaco’s merchandise. Having learned of the insurance earlier procured by Ciriaco, SBC demanded from FUIC that the proceeds of the insurance policy be paid directly to it, as provided in the lease contract.**

**Who is legally entitled to receive the insurance proceeds? Explain.**

**Answer:**

Ciriaco is entitled to receive the proceeds of the insurance policy. The stipulation that the policy is deemed assigned and transferred to SBC is void, because SBC has no insurable interest in the merchandise of Ciriaco. (BAR 2009)

**14. X owned a house and lot. X insured the house. The house got burned. Then he sold the partially burnt house and the lot to Y. Which statement is most accurate?**

- a) X is not anymore entitled to the proceeds of the insurance policy because he already sold the partially burnt house and lot;
- b) X is still entitled to the proceeds of the insurance policy because what is material is that at the time of the loss, X is the owner of the house and lot;
- c) No one is entitled to the proceeds because ownership over the house and lot was already transferred;
- d) Y will be the one entitled to the proceeds because he now owns the partially burnt house and lot.

**Answer:**

b) X is still entitled to the proceeds of the insurance policy because what is material is that at the time of the loss, X is the owner of the house and lot. (BAR 2012)

**15. For both the Life Insurance and Property Insurance, the insurable interest is required to be—**

- a) Existing at the time of perfection of the contract and at the time of loss;
- b) Existing at the time of perfection and at the time of loss for property;
- c) Existing at the time of perfection for property insurance but for life insurance both at the time of perfection and at the time of loss;
- d) Existing at the time of perfection only.

**Answer:**

b) Existing at the time of perfection and at the time of loss for property. (BAR 2012)

### **3. Double Insurance, Over Insurance, Co-Insurance and Re-Insurance**

**1. Julie and Alma formed a business partnership. Under the business name Pino Shop, the partnership engaged in a sale of construction materials. Julie insured the stocks in trade of Pino Shop with WGC Insurance Company for P350,000. Subsequently, she again got an insurance contract with RSI for P1 M and then from EIC for P200,000. A fire of unknown origin gutted the store of the partnership. Julie filed her claims with the 3 insurance companies. However, her claims were denied separately for breach of policy condition which required the insured to give notice of any insurance effected covering the stocks in trade. Julie went to court and contended that she should not be blamed for the omission, alleging that the insurance agents for WGC, RSI and EIC knew of the existence of the additional insurance coverage and that she was not informed about the requirement that such other or additional insurance should be stated in the policy.**

**Is the contention of Julie tenable? Explain.**

**Answer:**

No. An insured is required to disclose the other insurances covering the subject matter of the insurance being applied for. (BAR 1993)

**2. Distinguish co-insurance from re-insurance.**

**Answer:**

Co-insurance is the percentage in the value of the insured property which the insured himself assumes or undertakes to act as insurer to the extent of the deficiency in the insurance of the insured property. In case of loss or damage, the insurer will be liable only for such proportion of the loss or damage as the amount of insurance bears to the designated percentage of the full value of the property insured.

Reinsurance is where the insurer procures a third party, called the reinsurer, to insure him against liability by reason of such original insurance. Basically, reinsurance is an insurance against liability which the original insurer may incur in favor of the original insured. (BAR 1994)

3. **A businessman in the grocery business obtained from First Insurance an insurance policy for P5 M to fully cover his stocks-in-trade from the risk of fire.**

**3 months later, a fire of accidental origin broke out and completely destroyed the grocery including his stocks-in-trade. This prompted the businessman to file with First Insurance a claim for P5 M representing the full value of his goods.**

**First Insurance denied the claim because it discovered that at the time of the loss, the stock-in-trade were mortgaged to a creditor who likewise obtained from Second Insurance Company for insurance coverage for the stocks at their full value of P5 M.**

**First Insurance refused to pay claiming that double insurance is contrary to law. Is this contention tenable?**

**Answer:**

The contention of First Insurance that double insurance is contrary to law is untenable. There is no law providing that double insurance is illegal per se. moreover, in the problem at hand, there is no double insurance because the insured with the First Insurance is different from the insured with the Second Insurance Company. The same is true with respect to the interests insured in the two policies. (BAR 1999)

4. **a) When does double insurance exist?  
b) What is the nature of the liability of the several insurers in double insurance? Explain.**

**Answer:**

- a) Double insurance exists where the same person is insured by two or more insurers separately with respect to the same subject matter and interest.
- b) In double insurance, the insurers are considered as co-insurers. Each one is bound to contribute ratably to the loss in proportion to the amount for which he is liable under his contract. (BAR 2005)
5. **Terrazas de Pation Verde, a condominium building, has a value of P50 M. The owner insured the building against fire with 3 insurance companies for the following amounts:**

**Northern Insurance Corp.—P20 M**

**Southern Insurance Corp.—P30 M**

**Eastern Insurance Corp.—P50 M**

- a) Is the owner's taking of insurance for the building with 3 insurers valid? Discuss.**

**b) The building was totally razed by fire. If the owner decides to claim from Eastern Insurance Corp. only P50 M, will the claim prosper? Explain.**

**Answer:**

a) The taking of insurance from the 3 insurers is valid. It is a case of “double insurance”. The Insurance Code provides that a double insurance exist where the same person is insured by several insurers separately in respect to the same subject and interest.

Double insurance is valid. What is prohibited is for the insured to recover more than his interest or value of the property pursuant to the “principle of indemnity”.

b) Yes, the owner may legally claim the entire P50 M from Eastern Insurance, Corp. The Insurance Code provides that where the insured is overinsured by double insurance, the insured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may select, up to the amount for which the insurers are severally liable under their respective contracts. Each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract. (BAR 2008)

**6. If an insurance policy prohibits additional insurance on the property insured without the insurer’s consent, such provision being valid and reasonable, a violation by the insured**

- a. Reduces the value of the policy.
- b. Avoids the policy.
- c. Offsets the value of the policy with the additional insurance’s value.
- d. Forfeits premiums already paid.

**Answer:**

a) Avoids the policy. (BAR 2011)

**7. X borrowed from CCC Bank. She mortgaged her house and lot in favor of the bank. X insured her house. The bank also got the house insured.**

- a) Is this double insurance? Explain your answer.
- b) Is this legally valid? Explain your answer.
- c) In case of damage, can X and CCC bank separately claim for the insurance proceeds?

**Answer:**

a) No, there is no double insurance. Double insurance exists where the same person is insured by several insurers separately with respect to the same subject and interest.

b) Yes, X and CCC Bank can both insure the house as they have different insurable interests therein. X, the borrower-mortgagor, has an insurable interest in the house being the owner thereof while CCC Bank, the lender, also has an insurable interest in the house as mortgagee thereof.

c) Yes. If X obtained an open policy then she could claim an amount corresponding to the extent of the damage based on the value of the house determined as of the date the damaged occurred, but not to exceed the face value of the insurance policy; however, if she obtained a valued policy then she could claim an amount corresponding to the extent of the damage based on the agreed upon valuation of the house.

As for CCC Bank, it could claim an amount corresponding to the extent of the damage but not to exceed the amount of the loan it extended to X or so much thereof as may remain unpaid. (BAR 2012)

- 8. X insured the building she owns with 2 insurance companies for the same amount. In case of damage—**
- a) X cannot claim from any of the 2 insurers because with the double insurance, the insurance coverage becomes automatically void;**
  - b) The 2 insurers will be solidarily liable to the extent of the loss;**
  - c) The 2 insurers will be proportionately liable;**
  - d) X can choose who he wants to claim against.**

**Answer:**

d) X can choose who he wants to claim against. (BAR 2012)

#### **4. Multiple or Several Interests on Same Property**

- 1. To secure a loan of P10 M, O mortgaged his building to C. in accordance with the loan arrangements, O had the property insured with Acme Insurance Company for P10 M with C as the beneficiary. C also took an insurance on the building upon his own interest with Beta Insurance Co. for P5 M.**

**The building was totally destroyed by fire, a peril insured against in both insurance policies. It was subsequently determined that the fire had been intentionally started by O and that, in violation of the loan agreement, O had been storing inflammable materials in the building.**

**How much can C recover from either or both insurance companies? What happens to the P10 M debt of O to C?**

**Answer:**

- a) C cannot recover from Acme Insurance Co. unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor. Any act of the mortgagor prior to the loss which would otherwise avoid the insurance will have the same effect. Apart from the storing of the inflammable materials, the act of the owner-mortgagor, O, caused the peril insured against.

With respect to the Beta Insurance Co., C can recover the full amount of P5 M since the act of O in intentionally starting the fire that caused the loss cannot be attributable to the mortgagee, C. The act of O in storing inflammable in the building contrary to the loan agreement does not affect the insurance policy, unless the insurance policy itself prohibited any storing of inflammable materials.

- b) The P10 M debt of O to C will be affected by the amount which C is able to collect from the insurance companies. If C is unable to recover any amount, the full amount of the debt remains. If C is able to recover P5 M from Beta insurance Co., the great weight of authority is that the mortgagee is not allowed to retain his claim against O, the mortgagor, but it passes by subrogation to the insurer to the extent of the money paid. (Palileo v. Cosio, 97 Phil. 919). In this case, Beta Ins. Co. will become entitled to collect P5 M from O, and O will continue to remain liable to C for the balance of P5 M. (BAR 1984)

2. **A businessman in the grocery business obtained from First Insurance an insurance policy for P5 M to fully cover his stocks-in-trade from the risk of fire.**

**3 months later, a fire of accidental origin broke out and completely destroyed the grocery including his stocks-in-trade. This prompted the businessman to file with First Insurance a claim for P5 M representing the full value of his goods.**

**First Insurance denied the claim because it discovered that at the time of the loss, the stock-in-trade were mortgaged to a creditor who likewise obtained from Second Insurance Company fire insurance coverage for the stocks at their full value of P5 M.**

- c) **May the businessman and the creditor obtain separate insurance coverage over the same stocks-in-trade? Explain.**  
d) **Suppose you are the Judge, how much would you allow the businessman and the creditor to recover from their respective insurers. Explain.**

**Answer:**

- c) **Yes. The businessman, as owner, and the creditor, as mortgagee, have separate insurable interests in the same stocks-in-trade. Each may insure such interest to protect his own separate interest.**
- d) **As judge, I would allow the businessman to recover his total loss of P5 M pesos representing the full value of his goods which were lost through fire. As to the creditor, I would allow him to recover the amount to the extent of or equivalent to the value of the credit he extended to the businessman for the stocks-in-trade which were mortgaged by the businessman. (BAR 1999)**
3. **To secure a loan of P10 M, Mario mortgaged his building to Armando. In accordance with the loan arrangements, Mario had the building insured with First Insurance Company for P10 M, designating Armando as the beneficiary.**

**Armando also took an insurance on the building upon his own interest with Second Insurance Company for P5 M.**

**The building was totally destroyed by fire, a peril insured against under both insurance policies. It was subsequently determined that the fire had been intentionally started by Mario and that in violation of the loan agreement, he had been storing inflammable materials in the building.**

1. **How much, if any, can Armando recover from either or both insurance companies?**

**Answer:**

Armando can receive P5 M from Second Insurance Company. As mortgagee, he had an insurable interest in the building. Armando cannot collect anything from First Insurance Company. First Insurance Company is not liable for the loss of the building. First, it was due to a willful act of Mario, who committed arson. Second, fire insurance policies contain a warranty that the insured will not store hazardous materials within the insured's premises. Mario breached this warranty when he stored inflammable materials in the building. These two factors exonerate First Insurance Company from liability to Armando as mortgagee even though it was Mario who committed them.

2. **What happens to the P10 M debt of Mario to Armando? Explain.**

**Answer:**

Since Armando would have collected P5 M from Second Insurance Company, this amount should be considered as partial payment of the loan. Armando can only collect the balance of P5 M. Second Insurance Company can recover from Mario the amount of P5 M it paid, because it became subrogated to the rights of Armando. (BAR 2010)

**4. X borrowed from CCC Bank. She mortgaged her house and lot in favor of the bank. X insured her house. The bank also got the house insured.**

**d) Is this double insurance? Explain your answer.**

**e) Is this legally valid? Explain your answer.**

**f) In case of damage, can X and CCC bank separately claim for the insurance proceeds?**

**Answer:**

d) No, there is no double insurance. Double insurance exists where the same person is insured by several insurers separately with respect to the same subject and interest.

e) Yes, X and CCC Bank can both insure the house as they have different insurable interests therein. X, the borrower-mortgagor, has an insurable interest in the house being the owner thereof while CCC Bank, the lender, also has an insurable interest in the house as mortgagee thereof.

f) Yes. If X obtained an open policy then she could claim an amount corresponding to the extent of the damage based on the value of the house determined as of the date the damage occurred, but not to exceed the face value of the insurance policy; however, if she obtained a valued policy then she could claim an amount corresponding to the extent of the damage based on the agreed upon valuation of the house.

As for CCC Bank, it could claim an amount corresponding to the extent of the damage but not to exceed the amount of the loan it extended to X or so much thereof as may remain unpaid. (BAR 2012)

**5. A house and lot is covered by a real estate mortgage (REM) in favor of ZZZ Bank. The Bank required that the house be insured. The owner of the policy failed to endorse nor assign the policy to the bank. However, the Deed of REM has an express provision which says that the insurance policy is also endorsed with the signing of the REM. Will this be sufficient?**

**a) No, insurance policy must be expressly endorsed to the bank so that the bank will have a right in the proceeds of such insurance in the event of loss;**

**b) The express provision contained in the Deed of REM to the effect that the policy is also endorsed is sufficient;**

**c) Endorsement of the Insurance Policy in any form is not legally allowed;**

**d) Endorsement of the Insurance Policy must be in a formal document to be valid.**

**Answer:**

b) No, insurance policy must be expressly endorsed to the bank so that the bank will have a right in the proceeds of such insurance in the event of loss (BAR 2012)

**G. Perfection of the Contract of Insurance**

**1. Antarctica Life Assurance Corporation (ALAC) publicly offered a specially designed insurance policy covering persons between the ages of 50 to 75 who may be afflicted with serious and debilitating illnesses.**

Quirco applied for insurance coverage, stating that he was already 80 years old. Nonetheless, ALAC approved his application.

Quirco then requested ALAC for the issuance of a cover note while he was trying to raise funds to pay the insurance premium. ALAC granted the request. 10 days after he received the cover note, Quirco had a heart seizure and had to be hospitalized. He then filed a claim on the policy.

a) Can ALAC validly deny the claim on the ground that the insurance coverage, as publicly offered was available only to persons 50 to 75 years of age? Why or why not?

**Answer:**

No. by approving the application of Quirino who disclosed that he was already 80 years old, ALAC waived the age requirement. ALAC is now stopped from raising such defense of age of the insured.

b) Did ALAC's issuance of a cover note result in the perfection of an insurance contract between Quirco and ALAC? Explain.

**Answer:**

Yes. The issuance of a cover note resulted in the perfection of the contract of insurance. In that case, it is only because there is delay in the issuance of the policy that the cover note was issued.

The cover note is a receipt whereby the company agrees to insure the insured for 60 days pending the issuance of a regular policy. No separate premium is to be paid on a cover note. It is not a separate policy but is integrated in the regular policy to be subsequently issued. (BAR 2009)

### 1. Offer and Acceptance/Consensual

1. "P" filed an application with an insurance company for a 20-year endowment policy in the amount of P50,000.00 on the life of his one-year-old daughter, supplying all the essential data in the application form, but without disclosing that his daughter was a mongoloid child. Upon "P's" payment of the annual premium, a binding deposit receipt was issued to "P" by the insurance agent, subject to processing by the company. The insurance company disapproved the insurance application stating that the plan applied for was not available for minors below seven years old, and offered another plan. The insurance agent did not inform "P" of the disapproval nor of the alternative plan offered, and instead, strongly recommended that the company reconsider and approve the insurance application.

As fate would have it, "P's" daughter died. "P" sought payment of the proceeds of the insurance but the company refused on the grounds that there was concealment of a material fact in the insurance application form and that it had rejected the application. "P" contended, on the other hand, that the binding deposit receipt constituted a temporary contract of life insurance.

**How would you resolve the issue?**

**Answer:**

The insurance company is not liable. The binding deposit receipt is merely conditional and does not insure outright. Where an agreement is made between the applicant and the agent, no liability shall attach until the

principal (insurance company) approves the risk. The binding deposit receipt is subordinated to the act of the insurance company in approving or rejecting the application; thus, in life insurance, a “binding slip” or “binding receipt” does not insure by itself; and, when as in this case the application was disapproved, before the death of the insured, there was no perfected contract of insurance in order to make the company liable. (*Great Pacific Life Ass. Co. v. C.A.*, April 30, 1979; 89 SCRA 549.) (BAR 1980)

2. **On June 1, 2011, X mailed to Y Insurance, Co. his application for life insurance, with payment for 5 years of premium enclosed in it. On July 21, 2011, the insurance company accepted the application and mailed, on the same day, its acceptance plus the cover note. It reached X’s residence on August 11, 2011. But, as it happened, on August 4, 2011, X figured in a car accident. He died a day later. May X’s heir recover on the insurance policy?**
- a. **Yes, since under the Cognition Theory, the insurance contract was perfected upon acceptance by the insurer of X’s application.**
  - b. **No, since there is no privity of contract between the insurer and X’s heirs.**
  - c. **No, since X had no knowledge of the insurer’s acceptance of his application before he died.**
  - d. **Yes, since under the Manifestation Theory, the insurance contract was perfected upon acceptance of the insurer of X’s application.**

**Answer:**

c. No, since X had no knowledge of the insurer’s acceptance of his application before he died. (BAR 2011)

- a. Delay in Acceptance
- b. Delivery of Policy

1. **On September 25, 2013, Danny Marcial (Danny) procured an insurance on his life with a face value of P5 M from RN Insurance Company (RN), with his wife Tina Marcial (Tina) as sole beneficiary. On the same day, Danny issued an undated check to RN for the full amount of the premium. On October 1, 2013, RN issued the policy covering Danny’s life insurance. On October 5, 2013, Danny met a tragic accident and died. Tina claimed the insurance benefit, but RN was quick to deny the claim because at the time of Danny’s death, the check was not yet encashed and therefore the premium remained unpaid.**

**Is RN correct? Will your answer be the same if the check is dated October 15, 2013?**

**Answer:**

No. RN is not correct. After the issuance of the check by Danny for the full amount of the premium, the unconditional delivery of an insurance policy of RN to Danny corresponding to the terms of the application ordinarily consummates the contract, and the policy as delivered becomes the final contract between the parties. Where the parties, so intend, the insurance becomes effective at the time of the delivery of the policy notwithstanding the fact that the check was not yet encashed. My answer will still be the same even if the check is dated October 15, 2013 since an acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment for the purpose of making the policy binding. (BAR 2014)

NB Another answer to the second question is that the insured may recover since the loss occurred prior to the date of the PDC. Acceptance of the PDC as a mode of premium payment is effectively a grant of credit.

- c. Transfer of Policy

- 1. The policy of insurance upon his life, with a face value of P100,000, was assigned by Jose, a married man with 2 legitimate children, to his nephew, Y as security for a loan of P50,000. He did not give the insurer any written notice of such assignment despite the explicit provision to that effect in the policy. Jose died. Upon the claim on the policy by the assignee, the insurer refused to pay on the ground that it was not notified of the assignment. Upon the other hand, the heirs of Jose contended that Y is not entitled to any amount under the policy because the assignment without due notice to the insurer was void. Resolve the issues.**

**Answer:**

A life insurance is assignable. A provision, however, in the policy stating that written notice of such an assignment should be given to the insurer is valid. The failure of the notice of assignment would thus preclude the assignee from claiming rights under the policy. The failure of notice did not, however, avoid the policy; hence, upon the death of Jose, the proceeds would, in the absence of a designated beneficiary, go to the estate of the insured. The estate, in turn, would be liable for the loan of P50,000 owing in favor of Y. (BAR 1991)

**d. Kinds of Policy**

- 1. In 1964, Jose constructed a house worth P50,000.00, which he insured against fire for the same amount. The insurance for the same amount was renewed every year. In 1974, when the house was already worth P100,00.00 on account of inflationary prices (in case of a rebuilding), one-fifth (1/5) of the house was destroyed by fire. As nothing illegal about the contract, how much, if any, can Jose successfully recover from the Insurance Company? Reason.**

**Answer:**

If the fire policy is a *valued* one, then Jose can recover 1/5 of P50,000.00. i.e., P10,000.00. Under the Insurance Code, the valuation in a valued policy is conclusive between the parties in the absence of fraud. So Jose cannot claim that since his house was worth P100,00.00 at the time of the loss, he should be able to recover P20,000.00 (actual value of loss—1/5 of P100,00.00)

If the policy is an *open* policy then under the law, appraisal of loss is made after the fire. Since the house was worth P100,00.00 at such time, then the loss of Jose is P20,000.00 and he can recover this amount under such an open policy. (BAR 1975)

**2. Premium Payment**

- 1. A insured his house against loss by fire for P100,000.00. The policy provides that the insurer shall be liable "if the property insured shall be damaged or destroyed by fire after payment of premium, at anytime from, from June 15, 1976 to June 15, 1977." The policy was delivered to A on June 14, 1976. Instead of paying the premium in cash, A issued a promissory note dated June 15, 1976, for the amount of premium, payable within 30 days. The note was accepted. On June 29, 1976, the property insured was burned. The insurer refused to pay on the ground that the premium had not been paid, and the note did not have the effect of payment as its value had not been realized at the time the house was burned. Decide with reasons.**

**Answer:**

Since the case given took place after the effectivity of the Insurance Code, it must be governed by its provisions. Section 77 thereof provides: "Notwithstanding any agreement to the contrary, no policy or contract of insurance

issued by an insurance company is valid and binding unless and until the premium thereof has been paid..." Considering that this cited provision replaces Section 72 of old Insurance Act expressly permitting the granting of credit extension, the only conclusion is that the law-making power intended by the amendment to disallow any agreement postponing payment of premium, including a grant of credit extension. The issuance of a promissory note postpones payment by granting credit extension. Therefore, the insurer is not liable under this express provision of the new Insurance Code. The case of *Capital Insurance & Surety Co. v. Plastic Era Co* which held that acceptance of a promissory note constitutes waiver of the stipulation that the insurer will be liable only after the payment of premium and that in the absence of stipulation as to mode of payment, a promissory note constitutes payment, took place before the Insurance Code came into effect and was based on Section 72 of the old Insurance Act. It can therefore not be made applicable to the given case. (BAR 1976)

**NB Under the amendatory law, credit extension of not more than 90 days is allowed. The acceptance of the PN is tantamount to a grant of credit. Since the loss occurred during the credit period, the insured may recover**

- 2. On December 17, 1975, a fire policy, insuring a building and its contents, was delivered to the insured company. By agreement, it was allowed to pay the premium within 30 days. On January 8, 1976, it paid the premium by means of a check postdated January 16, 1976. The check was deposited by the insurance company only on February 20, but the check bounced, although January 19, the insured has a sufficient bank balance. On January 18, two days after the premium became due, the insured property was burned and became a total loss.**

**Can the insurance company cancel the policy for non-payment of premium? Give reasons for your answers.**

**Answer:**

Yes, the insurance company can cancel the policy for nonpayment of the premium. The new Insurance Code provides that notwithstanding any agreement to contrary, no policy or contract of insurance is valid and binding unless and until the premium thereof has been paid. (BAR 1978)

**NB. Same observation as the previous answer**

- 3. The Peninsula Insurance Company offered to insure Francis' brand new car against all risks in the sum of P1 M per year. The policy was issued with the premium fixed at P60,000 payable in 6 months. Francis only paid the first two months installments. Despite demands, he failed to pay the subsequent installments. 5 months after the issuance of the policy, the vehicle was carnapped. Francis filed with the insurance company a claim for its value. However, the company denied his claim on the ground that he failed to pay the premium resulting in the cancellation of the policy.**

**Can Francis recover from the Peninsula Insurance Company?**

**Answer:**

Yes, Francis can recover from Peninsula considering that his car was carnapped before the 6 month period to pay the premium installments expired. An insurance premium can be paid in installments, and the insurance contract became valid and binding upon payment of the first premium. When the insurer granted a credit term for the payment of the premium, it is liable when the loss occurred before the expiration of such term. It could not deny liability on the ground that payment was not made in full, for the reason that it agreed to accept installment payments. For the same reason, it could not validly cancel the policy, more so, without giving notice to the insured of its cancellation. (BAR 2006)

4. **Alfredo took out a policy to insure his commercial building against fire. The broker for the insurance company agreed to give a 15-day credit within which to pay the insurance premium. Upon delivery of the policy on May 15, 2006, Alfredo issued a postdated check payable on May 30, 2006. On May 28, 2006, a fire broke out and destroyed the building owned by Alfredo.**
- a) **May Alfredo recover on the insurance policy?**
  - b) **Would your answer in a) be the same if it as found that the proximate cause of the fire was an explosion and that fire was but the immediate cause of the loss and there is no excepted peril under the policy?**
  - c) **If the fire was found to have been caused by Alfredo's own negligence, can he still recover on the policy?**

**Reason briefly in a, b and c.**

**Answer:**

- a) Yes, Alfredo may recover on the policy. It is valid to stipulate that the insured will be granted credit term for the payment of premium. Payment by means of a check which was accepted by the insurer, bearing a date prior to the loss, would be sufficient. The subsequent effects of encashment retroact to the date of the check.
  - b) Yes, recovery under the insurance contract is allowed if the cause of the loss was either the proximate or the immediate cause as long as an excepted peril, if any, was not the proximate cause of the loss.
  - c) Yes, mere negligence on the part of the insured will not prevent recovery under the insurance policy. The law merely prevents recovery when the cause of loss is the willful act of the insured, alone or in connivance with others. (BAR 2007)
5. **Enrique obtained from Seguro Insurance Company a comprehensive motor vehicle insurance to cover his top of the line Aston Martin. The policy was issued on March 31, 2010 and, on even date, Enrique paid the premium with a personal check postdated April 6, 2010.**

**On April 5, 2010, the car was involved in an accident that resulted in its total loss.**

**On April 10, 2010, the drawee bank returned Enrique's check with the notation "Insufficient Funds." Upon notification, Enrique immediately deposited additional funds with the bank and asked the insurer to redeposit the check.**

**Enrique thereupon claimed indemnity from the insurer. Is the insurer liable under the insurance coverage? Why or why not?**

**Answer:**

The insurer is not liable under the insurance policy. Under Art 1249 of the Civil Code, the delivery of a check produces the effect of payment only when it is encashed. The loss occurred on April 5, 2010. When the check was deposited, it was returned on April 10, 2010, for insufficiency of funds. The check was honored only after Enrique deposited additional funds with the bank. Hence, it did not produce the effect of payment. (BAR 2010)

6. **Stable Insurance Co. (SIC) and St. Peter Manufacturing Co. (SPMC) have had a long-standing insurance relationship with each other; SPMC secured the comprehensive fire insurance on its plant and facilities**

from SIC. The standing business practice between them has been to allow SPMC a credit period of 90 days from the renewal of the policy within which to pay the premium.

Soon after the new policy was issued and before premium payments could be made, a fire gutted the covered plant and facilities to the ground. The day after the fire, SPMC issued a manager's check to SIC for the fire insurance premium, for which it was issued a receipt; a week later SPMC issued its notice of loss.

SIC responded by issuing its own manager's check for the amount of the premiums SPMC had paid, and denied SPMC's claim on the ground that under the "cash and carry" principle governing fire insurance, no coverage existed at the time the fire occurred because the insurance premium had not been paid.

**Is SPMC entitled to recover for the loss from SIC?**

**Answer:**

SPMC is entitled to recover for the loss from SIC. SIC granted a credit term to pay the premiums. This is not against the law, because the standing business practice of allowing SPMC to pay the premiums after 60 or 90 days, was relied upon in good faith by SPMC. SIC is in estoppel. (BAR 2013)

- a. Non-Default Options in Life Insurance
- b. Reinstatement of a Lapsed Policy of Life Insurance
- c. Refund of Premiums

**1. Name at least 3 instances when an insured is entitled to a return of the premium paid.**

**Answer:**

Three instances when an insured is entitled to a return of premium paid are:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.
2. Where the insurance is made for a definite period of time and the insured surrenders his policy, to such portion of the premium as corresponds with the unexpired time at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.
3. When the contract is voidable on account of the fraud or misrepresentation of the insurer or of his agent or on account of facts the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy. (BAR 2000)

#### H. Rescission of Insurance Contracts

**1. Shipowner X, in applying for a marine insurance policy from ABC, Co., stated that his vessel usually sails middle of August and with normally 100 tons of cargo. It turned out later that the vessel departed on the first week of September and with only 10 tons of cargo. Will this avoid the policy that was issued?**

- a. Yes, because there was breach of implied warranty.
- b. No, because there was no intent to breach an implied warranty.
- c. Yes, because it relates to a material representation.

d. No, because there was only representation of intention.

**Answer:**

d. No, because there was only representation of intention. (BAR 2011)

**2. When X insured his building, X indicated in the application that it is a residential building, but actually the building was being used as a warehouse for some hazardous materials. What is the effect on the insurance policy, if any?**

- a. The insurance policy can be cancelled because of the change in the use;
- b. The insurance policy will automatically be changed;
- c. The insurance policy need not be changed;
- d. The insurance policy is fixed regardless of the changes in the use.

**Answer:**

Any of the above should be given full credit. (BAR 2012)

### 1. Concealment

**1. In a non-medical insurance contract (one where the company waives medical examination) the insured failed to disclose that she had once been operated on, although the information on this matter was supposed to have been supplied the company. Within the proper period, may the Insurance Company have the contract rescinded? Reasons.**

**Answer:**

Yes, the Insurance Company can rescind the contract on the ground of misrepresentation or concealment of material fact. The fact of the insured's operation is material to the insurer, who may have refused to issue the life policy had it known of such fact. This is even more true in a non-medical insurance where no medical exam is made and the information given by the insured concerning his past health and diseases is a very important factor which the insurer takes into consideration in deciding to issue the policy. (BAR 1975)

**2. Pedro Reyes applied for fire insurance on his house. In his application, it was asked the following question: "Is the house insured with another Insurance Company? If so, for how much?" His answer was "No". The fact, however, is that the house had been insured with the FGU for P100,000.00. the application was approved and made a part of the policy. Subsequently, a fire occurred in a neighboring house, and spread to the house of Pedro Reyes which was completely burned. Demand for payment having been refused by the insurer, Pedro Reyes filed a complaint. May he recover? Reason.**

**Answer:**

No, Pedro Reyes may not recover. He was guilty of concealment or misrepresentation of a material fact. The fact of the existence of the other insurance is material because had he answered truthfully, the insurer would probably have charged him higher premium, or would have made further inquiries, or would have imposed some other conditions in the policy to protect its interest. The existence of a large amount of insurance increases the moral hazard or the temptation to commit arson. Concealment of a material fact is a ground for rescission and is a valid defense of an insurer in an action based on the policy. (BAR 1976)

**3. A fire insurance policy in favor of the insured contained a stipulation that the insured shall give notice to the company of any insurances already effected or which may subsequently be effected, covering the property insured and that unless such notice be given before the occurrence of any loss, all benefits shall**

**be forfeited. The face of the policy bore the annotation "Co-insurance declared." The things insured were burned. It turned out that several insurances were obtained on the same goods for the same term. The insurer refused to pay on the ground of concealment. May the insured recover? Reason.**

**Answer:**

Yes, the insured may recover since there is no concealment. The face of the policy bore already the annotation, "Co-insurance declared" which is a notice to the insurer as to the existence of other insurance contracts on the property insured. (Gen. Insurance & Surety Corporation v. Ng Hua, L-14373, Jan. 30, 1960) (BAR 1979)

- 4. Marine insurance was secured upon goods on board a ship which departed from Madagascar to Manila, without any disclosure to the insurer of the fact that the ship had been reported at Lloyd of London as seen at sea, deep in water and leaky. This report turned out later to be wrong because the ship was at no time during the voyage leaky or in trouble, but was lost through another insured risk. The insurer refuses to pay the insured, claiming concealment. The insured counters that the fact not disclosed was erroneous and did not increase the risk and therefore immaterial. Decide the dispute with reasons.**

**Answer:**

The insured may not recover from the insurer. The information that the ship in question was seen at sea, deep in water and leaky, although erroneous, was material, and its concealment entitled the insurer to rescind the contract of insurance. (BAR 1979)

- 5. In June 1981, Juan applied for a life insurance policy with a double indemnity provision in case of death by accident. Despite an express inquiry in the application form for insurance, he did not mention the fact that he had suffered from viral hepatitis the previous year. As Juan had fully recovered from the disease, the medical examination performed by the insurance company's physician did not reveal such previous illness, and showed that Juan was healthy and was an insurable risk. The policy was issued forthwith.**

**In March 1983, Juan died in an automobile accident. Subsequent investigation revealed that Juan was negligent in not having his brakes checked.**

**The insurance company refused to pay Juan's wife, the designated beneficiary, on two grounds: that Juan was guilty of fraudulent concealment of his liver ailment, and that Juan's death was caused by his own negligence.**

**The policy is silent as to the effect of the insured's negligence on the right to recover thereunder. Juan's wife insists that she has a right to recover because Juan's death was caused by an accident which had nothing to do whatsoever with his liver ailment. She therefore insists on double indemnity.**

**a) Is she entitled to any indemnity? Explain.**

**b) If Juan's accident occurred in July 1983, would your answer be the same?**

**Answer:**

- a) No, she is not entitled to any indemnity. Although Juan did not die of a liver ailment, the fact of his concealment vitiated the insurer's consent to the contract of insurance. Under the Insurance Code, concealment of a material fact is a ground for rescission. And materiality is determined not by the event which caused the death but by the probable and reasonable influence of the fact concealed upon the other party in forming his estimate of the disadvantages of the proposed contract, or in making inquiries. If the insurer had known of Juan's previous liver ailment, it would in all probabilities have at least made more detailed inquiries about it or make a special examination of his liver function, or perhaps even charge a higher premium because of the greater risk

involved. The concealment was therefore of a material fact, relieving the insurer from any liability on the policy, regardless of the cause of death. Since the insurer is relieved from liability, the question as to whether the event was an accident or not becomes moot. In any case, under the Insurance Code, negligence of the insured or of others does not exonerate the insurer.

b) My conclusion would be different. The insurer would be liable despite the fraudulent concealment because the policy has become uncontestable since more than 2 years had elapsed from the date thereof. (BAR 1983)

6. **X applied for life insurance with Metropolitan Life Insurance Company. The application contained this question: "Have you ever had any ailment or disease of x x x (b) the stomach or intestines, liver, kidney, or genitourinary organ?" X, a laundrywoman who has no medical knowledge answered "No". the application was approved, premium was paid and 6 months later, X died from cancer of the stomach. The post medical examination of X shows that she had the cancer at the time she applied for a policy. Can the beneficiary of X collect on the policy? Reasons.**

**Answer:**

The beneficiary of X cannot collect on the policy. Concealment, as a defense against liability by the insurer, may either be intentional or unintentional. Lack of knowledge on the part of the insured about her ailment will not preclude the insurer from raising the defense. The insurer may be held in estoppel only if, having known of the concealed or misrepresented fact, still accepts the payment of premium which is not the situation in this case. (BAR 1989)

7. **Juan procured a "non-medical" life insurance from Good Life Insurance. He designed his wife, Petra, as the beneficiary. Earlier, in his application in response to the question as to whether or not he had ever been hospitalized, he answered in the negative. He forgot to mention his confinement at the Kidney Hospital.**

**After Juan died in a plane crash, Petra filed a claim with Good Life. Discovering Juan's previous hospitalization, Good Life rejected Petra's claim on the ground of concealment and misrepresentation. Petra sued Good Life, invoking good faith on the part of Juan.**

**Will Petra's suit prosper? Explain.**

**Answer:**

No. Petra's suit will not prosper (assuming that the policy of life insurance has been in force for a period of less than 2 years from the date of its issue). The matters which Juan failed to disclose was material and relevant to the approval and issuance of the insurance policy. They would have affected Good Life's action on his application, either by approving it with the corresponding adjustment for a higher premium or rejecting the same. Moreover, a disclosure may have warranted a medical examination of Juan by Good Life in order for it to reasonably assess the risk involved in accepting the application. In any case, good faith is no defense in concealment. The waiver of a medical examination in the "non-medical" life insurance from Good Life makes it even more necessary that Juan supply complete information about his previous hospitalization for such information constitutes an important factor which Good Life takes into consideration in deciding whether to issue the policy or not.

If the policy of life insurance has been in force for a period of 2 years or more from the date of its issue (on which point the given facts are vague) then Good Life can no longer prove that the policy is *void ab initio* or is rescindable by reason of the fraudulent concealment or misrepresentation of Juan. (BAR 1996)

8. **The assured answers "No" to the question in the application for a life policy. "Are you suffering from any form of heart illness?" In fact, the assured has been a heart patient for many years. On September 7, 1991,**

**the assured is killed in a plane crash. The insurance company denies the claim for insurance proceeds and returns the premium paid.**

**Is the decision of the insurance company justified?**

**Answer:**

Assuming that the incontestability clause does not apply because the policy has not been in force for 2 years from date of issue, during the lifetime of the insured, the decision of the insurance company not to pay is justified. There was fraudulent concealment. It is not material that the insured died of a different cause than the fact concealed. The fact concealed, that is the heart ailment, is material to the determination by the insurance company whether or not to accept the application for insurance and to require the medical examination of the insured.

However, if the incontestability clause applies to the insurance policy covering the life of the insured had been in force for 2 years from the issuance thereof, the insurance company would not be justified in denying the claim for the proceeds of the insurance and in returning the premium paid. In that case, the insurer cannot prove the policy void ab initio or rescindable by reason of fraudulent concealment or misrepresentation of the insured. (BAR 1997)

- 9. Renato was issued a life insurance policy on January 2, 1990. He concealed the fact that 3 years prior to the issuance of his life insurance policy, he had been seeing a doctor about his heart ailment.**

**On March 1, 1992, Renato died of heart failure. May the heirs file a claim on the proceeds of the life insurance policy of Renato?**

**Answer:**

Yes. The life insurance policy in question was issued on January 2, 1990. More than 2 years had elapsed when Renato, the insured, died on March 1, 1992. The incontestability clause applies. (BAR 1998)

- 10. "A" applied for a non-medical life insurance. The insured did not inform the insurer that one week prior to his application for insurance, he was examined and confined at St. Luke's Hospital where he was diagnosed for lung cancer. The insured soon thereafter died in a plane crash. Is the insurer liable considering that the fact concealed had no bearing with the cause of death of the insured? Why?**

**Answer:**

No. The concealed fact is material to the approval and issuance of the insurance policy. It is well settled that the insured need not die of the disease he failed to disclose to the insurer. It is sufficient that his non-disclosure misled the insurer in forming his estimate of the risks of the proposed insurance policy or in making inquiries. (BAR 2001)

- 11. X, in the hospital for kidney dysfunction, was about to be discharged when he met his friend Y. X told Y the reason for his hospitalization. A month later, X applied for an insurance covering serious illness from ABC Insurance, Co., where Y was working as Corporate Secretary. Since X had already told Y about his hospitalization, he no longer answered a question regarding it in the application form. Would this constitute concealment?**

- a. Yes, since the previous hospitalization would influence the insurer in deciding whether to grant X's application.**
- b. No, since Y may be regarded as ABC's agent and he already knew of X's previous hospitalization.**
- c. Yes, it would constitute concealment that amounts to misrepresentation on X's part.**
- d. No, since the previous illness is not a material fact to the insurance coverage.**

**Answer:**

- a. Yes, since the previous hospitalization would influence the insurer in deciding whether to grant X's application. (BAR 2011)

**12. An insured, who gains knowledge of a material fact already after the effectivity of the insurance policy, is not obliged to divulge it. The reason for this is that the test of concealment of material fact is determined.**

- a. At the time of the issuance of the policy.
- b. At any time before the payment of premium.
- c. At the time of the payment of the premium.
- d. At any time before the policy becomes effective.

**Answer:**

- d. any time before the policy becomes effective. (BAR 2011)

**13. Benny applied for life insurance for P1.5 M. the insurance company approved his application and issued an insurance policy effective Nov. 6, 2008. Benny named his children as his beneficiaries. On April 6, 2010, Benny died of hapatoma, a liver ailment.**

The insurance company denied the children's claim for the proceeds of the insurance policy on the ground that Benny failed to disclose in his application 2 previous consultations with his doctors for diabetes and hypertension, and that he had been diagnosed to be suffering from hepatoma. The insurance company also rescinded the policy and refunded the premiums paid.

**Was the insurance company correct?**

**Answer:**

The insurance company correctly rescinded the policy because of concealment. Benny did not disclose that he was suffering from diabetes, hypertension, and hepatoma. The concealment is material because these are serious ailments. Benny died less than 2 years from the date of the issuance of the policy. (BAR 2013)

**14. On May 13, 1996, PAM, Inc. obtained a P15 M fire insurance policy from Ilocano Insurance covering its machineries and equipment effective for 1 year or until May 14, 1997. The policy expressly stated that the insured properties were located at "Sanyo Precision Phils. Building, Phase III, Lots 4 and 6, Block 15, PEZA, Rosario Cavite." Before its expiration, the policy was renewed on "as is" basis for another year until May, 13, 1998. The subject properties were later transferred to Pace Factory also in PEZA. On October 12, 1997, during the effectivity of the renewed policy, a fire broke out at the Pace Factory which totally burned the insured properties.**

The policy forbade the removal of the insured properties unless sanctioned by Ilocano. Condition 9(c) of the policy provides that "the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy x x x (c) if the property insured is removed to any building or place other than in that which is herein stated to be insured." PAM claims that it has substantially complied with notifying Ilocano for the insurance coverage. Is Ilocano liable under the policy?

**Answer:**

Ilocano is not liable under the policy. With the transfer of the location of the subject properties, without notice and without insurer's consent, after the renewal of the policy, the insured clearly committed concealment, misrepresentation and a breach of material warranty. The Insurance Code provides that a neglect to communicate that which a party knows and ought to communicate, is called concealment. A concealment entitles the injured party to rescind a contract of insurance in case of an alteration in the use or condition of the thing insured. An alteration in the use or condition of a thing insured from that to which it is limited by the policy made without the consent of the insurer, by means within the control of the insured, and increasing the risks, entitles the insurer to rescind the contract of fire insurance. (BAR 2014)

## 2. Misrepresentation/Omissions

1. A, an agent of life insurance company X, induced B who has been suffering from advance tuberculosis **to apply for P10,000.00 life insurance which B did and he (B) requested A to fill the application form. Thru the connivance of the physician, it was made to appear in the application that B is in good health and the P10,000.00 life insurance policy was issued by X to B. If B dies of tuberculosis, may his beneficiaries recover?**

### Answer:

It depends. The insurer is bound when its agent writes a false answer into the application without the knowledge of the insured, in which case his (insured) beneficiaries may recover, but a collusion between the agent and the insured in misrepresenting the facts will vitiate the policy; thus, in the instant case, if A obtained from B a correct and truthful answer to interrogatories contained in the application but without the knowledge of B filed in false answer and thru the connivance with the company physician, it was made to appear that B is in good health, the insurer cannot assert the falsity of such answers as a defense to liability on the policy. (BAR 1976)

2. **On October 18, 1980, P, took out a life insurance policy and named his only son Q as beneficiary. The policy was silent with regard to any change of beneficiary. P later learned that Q was hooked on drugs and immediately notified the insurance company in writing that he is substituting his sister, R, as his beneficiary in place of Q. P later died of advanced tuberculosis. In the application form filled up by the agent of the insurance company prior to the issuance of the life insurance policy by the insurance company, the agent, without the knowledge of P, filled in a false answer and made it appear that P was in good health. Upon P's death, Q claimed the proceeds of the insurance policy contending that as designated beneficiary, he cannot be changed without his consent, he having acquired a vested right to the proceeds of the policy.**

**Can the insurance company refuse liability on the policy? Reasons.**

### Answer:

No, the insurer cannot escape liability. The insurance agent is an agent not of the insured but of the insurer and the latter must thus suffer for the misconduct of the agent. The result would have been different had the false answer been made by the agent in connivance with the insured. (BAR 1988)

NB An alternative answer in view of the case of *Phil am vs Florendo* 2012, if the insured has sufficient education and he affixed his signature on the policy after the same was filled-up by the agent, the SC held that the insured is bound by what is contained ( and impliedly, not contained in the policy ). Based on this case, the insurer can refuse liability on the policy.

### 3. Breach of Warranties

1. **Pabaya paid for a fire insurance policy on his multi storey building. At the time he applied for the insurance, he told the representative of the insurance company that he planned to assign a security guard on every floor of the building right away. Except for the ground floor, no security guards were assigned. 11 months after the policy was issued, the building was gutted by fire which started on the third floor. Unknown to Pabaya, the insurance company had incorporated his planned undertaking in the policy.**

**Can Pabaya recover on the fire insurance policy?**

**Answer:**

Pabaya can recover under the insurance policy. The statement of Pabaya that he planned to assign a security guard on every floor of the insured building, whether incorporated in the policy or not, did not amount to firm commitment so as to constitute an express warranty or representation. The facts indicate that it was simply planned, not obligatory or promissory, undertaking. (BAR 1986)

2. **Julie and Alma formed a business partnership. Under the business name Pino Shop, the partnership engaged in a sale of construction materials. Julie insured the stocks in trade of Pino Shop with WGC Insurance Company for P350,000. Subsequently, she again got an insurance contract with RSI for P1 M and then from EIC for P200,000. A fire of unknown origin gutted the store of the partnership. Julie filed her claims with the 3 insurance companies. However, her claims were denied separately for breach of policy condition which required the insured to give notice of any insurance effected covering the stocks in trade. Julie went to court and contended that she should not be blamed for the omission, alleging that the insurance agents for WGC, RSI and EIC knew of the existence of the additional insurance coverage and that she was not informed about the requirement that such other or additional insurance should be stated in the policy.**

**May she recover on her fire insurance policies? Explain.**

**Answer:**

No, because she is guilty of violation of a warranty/ condition. (BAR 1992)

3. **To secure a loan of P10 M, Mario mortgaged his building to Armando. In accordance with the loan arrangements, Mario had the building insured with First Insurance Company for P10 M, designating Armando as the beneficiary.**

**Armando also took an insurance on the building upon his own interest with Second Insurance Company for P5 M.**

**The building was totally destroyed by fire, a peril insured against under both insurance policies. It was subsequently determined that the fire had been intentionally started by Mario and that in violation of the loan agreement, he had been storing inflammable materials in the building.**

**How much, if any, can Armando recover from either or both insurance companies?**

**Answer:**

Armando can receive P5 M from Second Insurance Company. As mortgagee, he had an insurable interest in the building. Armando cannot collect anything from First Insurance Company. First Insurance Company is not liable for the loss of the building. First, it was due to a willful act of Mario, who committed arson. Second, fire insurance

policies contain a warranty that the insured will not store hazardous materials within the insured's premises. Mario breached this warranty when he stored inflammable materials in the building. These two factors exonerate First Insurance Company from liability to Armando as mortgagee even though it was Mario who committed them. (BAR 2010)

## I. Claims Settlement and Subrogation

### 1. Notice and Proof of Loss

### 2. Guidelines on Claims Settlement

#### a. Unfair Claims Settlement; Sanctions

#### b. Prescription of Action

1. Robin insured his building against fire with EFG Assurance. The insurance policy contained the usual stipulation that any action or suit must be filed within 1 year after the rejection of the claim.

After his building burned down, Robin filed his claim for fire loss with EFG. On February 28, 1994, EFG denied Robin's claim. On April 3, 1994, Robin sought reconsideration of the denial, but EFG reiterated its position. On March 20, 1995, Robin commenced judicial action against EFG.

Should Robin's action be given due course? Explain.

#### Answer:

No, Robin's action should not be given due course. His filing of the request for reconsideration did not suspend the running of the prescriptive period of 1 year stipulated in the insurance policy. Thus, when Robin commenced judicial action against EFG on March 20, 1995, his ability to do so had already prescribed. The 1 year period is counted from February 28, 1994 when EFG denied Robin's claim, not from the date (presumably after April 3, 1994) when EFG reiterated its position denying Robin's claim. The reason for this rule is to insure that claims against insurance companies are promptly settled and that insurance suits are brought by the insured while the evidence as to the origin and cause of the destruction has not yet disappeared. (BAR 1996)

#### c. Subrogation

1. A helicopter of ABC Co. collided with XYZ's tramway steel cables in its logging area in Surigao resulting in the destruction of the helicopter and death of two pilots. ABC Co. insured at its expense the helicopter and death of two pilots. ABC Co. insured at its expense the helicopter for P80,000.00 and the two pilots (life insurance) for P50,000.00 each, and as a result of the crash, the insurer paid ABC Co. a total indemnity of P180,000.00. Nevertheless, ABC Co sustained additional damages of about P100,000.00 which were not covered by insurance.

- 1) ABC Co. sued XYZ to recover not only the additional damages, but also the P180,000 which was already compensated by the insurer. Decide. Give reasons.
- 2) What right/recourse, if any, has the insurer in order to be reimbursed for the amount it paid to ABC Co? Give reasons.

#### Answer:

- 1) ABC Co may bring the action against XYZ for its claim for the additional damages not covered by insurance, but not for the P180,000 covered by the insurance. If a property is insured and the owner received indemnity from the insurer, the latter is deemed subrogated to the rights of the insured against the wrongdoer, and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency.
  - 2) The insurer is deemed subrogated to the rights of ABC Co against XYZ to the extent of P80,000 insurance paid for the helicopter only, but not for the life insurance of the two dead pilots, since subrogation in the New Civil Code refers only to property, and not to the life insurance. (*Philippine Air Lines, Inc. v. Herald Lumber Co.*, G.R. L-11497, August 16, 1957; *for both 1 and 2 answers.*) (BAR 1978)
2. **“L” borrows P50,000 from “M” payable 360 days after date, at 12% interest per annum. To secure the loan, “L” mortgages his house and lot in favor of “M”. To protect himself from certain contingencies, “M” insures the house for the full amount of the loan with Rock Insurance Company. A fire breaks out and burns the house and “M” collects from the insurance company the full value of the insurance.**

**Upon maturity of the loan, the insurance company demands payment from “L”. The latter refuses to pay on the ground that the loan had been extinguished by the insurance payment which “M” received from the insurance company. He argues that he has not entered into any loan or contract of whatever nature with the insurance company. He further contends that it is bad enough to lose a house but it is worse if one has to pay off a paid obligation to somebody who has not extended any loan to him. Besides, he states, that the insurance payment should inure to his benefit because he owns the house.**

**Pass upon the merits of “L’s” contentions.**

**Answer:**

Neither the loan of L was extinguished by the insurance payment which M received from the insurance company; nor the insurance payment inures to L’s benefit; what was then insured was the interest of M, the secured creditor, and not the interest of L, so the proceeds shall be applied exclusively to the proper interest of M.

L’s argument that he has not entered into any loan or contract of whatever nature with the insurance company is also untenable. When the secured creditor’s interest in the mortgaged property of the mortgagor, L, was insured and said property would be burned, the insurance company had to pay the insured, M, and payment by the insurer to the insured creates legal subrogation and makes the insurer an assignee on equity to run after the mortgagor, L. Said right of the insurer is not dependent upon nor does it grow out of, any privity of contract, or upon written assignment of claim, and payment to insured makes the insurer an assignee in equity; thus, L’s consent to said subrogation is not necessary. (*Art. 2207, N.C.C.; Fireman’s Fund Insurance Co. v. Jamila & Co.*, April 7, 1976; 70 SCRA 323) (BAR 1980)

3. **Raul’s truck bumped the car owned by Luz. The car was insured by Cala Insurance. For the damage caused, Cala paid Luz P5,000 in amicable settlement. Luz executed a release claim, subrogating Cala to all her rights against Raul. When Cala demanded reimbursement from Raul, the latter refused saying that he had already paid Luz P4,500 for the damage to the car as evidenced by a release of claim executed by Luz discharging Raul.**

**So Cala demanded reimbursement from Luz, who refused to pay, saying that the total damage to the car was P9,500. Since Cala paid P5,000 only, Luz contends that she was entitled to go after Raul to claim the additional P4,500.**

1. **Is Cala, as subrogee of Luz, entitled to reimbursement from Raul?**
2. **May Cala recover what it has paid Luz?**

**Answer:**

1. No. Luz executed a release in favor of Raul.
2. Yes. Cala lost its right against Raul because of the release executed by Luz. Since the release was made without the consent of Cala, Cala may recover the amount of P5,000. (BAR 1994)

4. **Where the insurer was made to pay the insured for a loss covered by the insurance contract, such insurer can run after the third person who caused the loss through subrogation. What is the basis for conferring the right of subrogation to the insurer?**
- a. **Their express stipulation in the contract of insurance.**
  - b. **The equitable assignment that results from the insurer's payment of the insured.**
  - c. **The insured's formal assignment of his right to indemnification to the insurer.**
  - d. **The insured's endorsement of its claim to the insurer.**

**Answer:**

- b. The equitable assignment that results from the insurer's payment of the insured. (BAR 2011)

5. **ELP Insurance, Inc. issued a Marine Policy No. 888 in favor of FCL Corp. to insure the shipment of 132 bundles of electric copper cathodes against all risks. Subsequently, the cargoes were shipped on board the vessel "M/V Menchu" from Leyte to Pier 10, North Harbor, Manila.**

**Upon arrival, FCL Corp. engaged the services of CGM, Inc. for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants in Valenzuela City. The goods were loaded on board 12 trucks owned by CGM, Inc., driven by its employed drivers and accompanied by its employed truck helpers. Of the 12 trucks en route to Valenzuela City, only 11 reached the destination. One truck, loaded with 11 bundles of copper cathodes, failed to deliver its cargo.**

**Because of this incident, FCL Corp. filed with ELP Insurance, Inc. a claim for insurance indemnity in the amount of P1.5 M. After the requisite investigation and adjustment, ELP Insurance, Inc. paid FCL Corp. the amount of P1,350,000.00 as insurance indemnity.**

**ELP Insurance, Inc., thereafter, filed a complaint for damages against CGM, Inc. before the RTC, seeking reimbursement of the amount it had paid to FCL Corp. for the loss of the subject cargo. CGM, Inc. denied the claim on the basis that it is not privy to the contract entered into by and between FCL Corp. and ELP Insurance, Inc., and hence, it is not liable therefor. If you are the judge, how will you decide the case?**

**Answer:**

**CGM, Inc. should be held liable for damages against ELP Insurance, Inc. The insurer, upon happening of the risk insured against and after payment to the insured is subrogated to the rights and cause of action of the latter. As such, the insurer has the right to seek reimbursement for all the expenses paid. (BAR 2014)**

**V. Transportation Laws A. Common Carrier vs. Private Carrier**

- 1. Mabuhay Lines, Inc. a common carrier, entered into a contract with Company X, whereby it agreed to furnish Company X, for a fixed amount, a bus for a company excursion on its anniversary day. It was agreed that Company X would have the use of the bus and its driver from 7:00 am to 7:00 pm on the stipulated date, and that the bus driver would be obliged to follow the instructions of the company's general manager as to the places to be visited. Company X agreed to bear the cost of the gasoline consumed.**

**The transportation contract signed by Company X contained a stipulation that Mabuhay Lines, Inc. would be exempt from liability on account of acts or omissions of its employees.**

**On the return trip from the excursion site, the bus had an accident and several employees of Company X were injured.**

**State the liability, if any, of Mabuhay Lines, Inc.**

**Answer:**

Although a common carrier, Mabuhay Lines, Inc. was not acting as such in the instant case but as a private carrier. Accordingly, the provision applicable to a common carrier in respect of extraordinary diligence cannot be imposed upon the bus company.

The stipulation limiting the liability of Mabuhay Lines, Inc. is valid and the bus company cannot be held liable for the injuries suffered by the employees of Company X on the basis of the contract of carriage. However, the employees who were injured may proceed against the bus company on the basis of a *quasi-delict* (culpa aquiliana) but the party charging negligence or wrong doing has the burden of proving the same.

It has been held that a common carrier is exempt from the application of the strict public policy governing common carriers where the carrier is not acting as such but as a private carrier. Such strict public policy has no force where the public at large is not involved, as when the carrier charters its bus totally for the use of a single party. (*Home Ins. Co. v. American Steamship Agencies, Inc. vs. Luzon Stevedoring Corp. L-25599, April 24, 1968*)

Article 1745 of the Civil Code declaring a stipulation that the common carrier shall not be responsible for the acts or omissions of his or its employees as unreasonable unjust and contrary to public policy is not applicable here since Company X and the bus company have entered into a contract for private carriage. Likewise, the presumption created under Article 1756 of the Civil Code, that in case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence, finds no application here. (BAR 1984)

- 2. During the elections last May, AB, a congressional candidate in Marinduque, chartered the helicopter owned by Lode Mining Corporation (LMC) for use in the election campaign. AB paid LMC the same rate normally charged by companies regularly engaged in the plane chartering business. In the charter agreement between LMC and AB, LMC expressly disclaimed any responsibility for the acts or omissions of its pilot or for the defective condition of the plane's engine. The helicopter crashed killing AB. Investigations disclosed that pilot error was the cause of the accident. LMC now consults you on its possible liability for AB's death in the light of the above findings.**

**How would you reply to LMC's query?**

**Answer:**

I would reply to LMC's query as follows:

LMC may not be held liable for the death of AB. A stipulation with a private carrier that would disclaim responsibility for simple negligence of the carrier's employees is a valid stipulation. Such a stipulation, however, will not hold in cases of liability for gross negligence or bad faith. (BAR 1987)

3. **Alejandro Camaling of Alegria, Cebu, is engaged in buying copra, charcoal, firewood and used bottles and in reselling them in Cebu City. He uses 2 big Isuzu trucks for the purpose; however, he has no certificate of public convenience or franchise to do business as a common carrier. On the return trips to Alegria, he loads his trucks with various merchandise of other merchants in Alegria and the neighboring municipalities of Badian and Ginatilan. He charges them freight rates much lower than the regular rates. In one of the return trips, which left Cebu City at 8:30pm, 1 cargo truck was loaded with several boxes of sardines, valued at P100,000, belonging to one of his customers, Pedro Rabor. While passing the zigzag road between Carcar and Barili, Cebu, which is midway between Cebu City and Alegria, the trucks was hijacked by 3 armed men who took all the boxes of sardines and kidnapped the driver and his helper, releasing them in Cebu City only 2 days later.**

**Pedro Rabor sought to recover from Alejandro the value of the sardines. The latter contends that he is not liable therefor because he is not a common carrier under the Civil Code and, even granting for the sake of argument that he is, he is not liable for the occurrence of the loss as it was due to a cause beyond his control.**

**If you were the Judge, would you sustain the contention of Alejandro?**

**Answer:**

If I were the Judge, I would hold Alejandro as having engaged as a common carrier. A person who offers his services to carry passengers or goods for a fee is a common carrier regardless of whether he has a certificate of public convenience or not, whether it is his main business or incidental to such business, whether it is scheduled or unscheduled service, and whether he offers his services to the general public or to a limited few.

I will however, sustain the contention of Alejandro that he is not liable for the loss of the goods. A common carrier is not an insurer of the cargo. If it can be established that the loss, despite the exercise of extraordinary diligence, could not have been avoided, liability does not ensue against the carrier. The hijacking by 3 armed men of the truck used by Alejandro is one of such cases. (BAR 1991)

4. **AM Trucking, a small company, operates 2 trucks for hire on selective basis. It caters to only a few customers, and its trucks do not make regular or scheduled trips. It does not even have a certificate of public convenience.**

**On one occasion, Reynaldo contracted AM to transport, for a fee, 100 sacks of rice from Manila to Tarlac. However, AM failed to deliver the cargo, because its truck was hijacked when the driver stopped in Bulacan to visit his girlfriend.**

**May Reynaldo hold AM liable as a common carrier? Explain.**

**Answer:**

Reynaldo may hold AM liable as a common carrier. The facts that AM operates only 2 trucks for hire on a selective basis, caters only to a few customers, does not make regular or scheduled trips, and does not have a certificate of public convenience are of no moment as the law (i) does not distinguish between one whose principal business activity is the carrying of persons or goods or both and one who does such carrying only as an ancillary activity, (ii) avoids making any distinction between a person or enterprise offering transportation service on a regular or

scheduled basis and one offering such service on an occasional, episodic or unscheduled basis, and (iii) refrains from the general public and one who offers services or solicits business only from a narrow segment of the general population. (BAR 1996)

**5. Define a common carrier?**

**Answer:**

A common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water or air for compensation, offering its services to the public. (BAR 1996)

**6. What is the test for determining whether or not one is a common carrier?**

**Answer:**

The test for determining whether or not one is a common carrier is whether the person or entity, for some business purpose and with general or limited clientele, offers the service of carrying or transporting passengers or goods or both for compensation. (BAR 1996)

**7. X has a Tamaraw FX among other cars. Every other day during the workweek, he goes to his office in Quezon City using his Tamaraw FX and picks up friends as passengers at designated points along the way. His passengers pay him a flat fee for the ride, usually P20 per person, one way. Although a lawyer, he never bothered to obtain a license to engage in this type of income-generating activity. He believes that he is not a common carrier within the purview of the law. Do you agree with him? Explain.**

**Answer:**

No. I do not agree with X. A common carrier holds himself out to the public as engaged in the business of transporting persons or property from place to place, for compensation, offering his services to the public generally. The fact that X has a limited clientele does not exclude him from the definition of a common carrier. The law does not make any distinction between one whose principal business activity is the carrying of persons or goods or both, and the one who does such carrying only as an ancillary activity or in the local idiom, as a "sideline" (BAR 2000)

**8. Name 2 characteristics which differentiate a common carrier from a private carrier.**

**Answer:**

Two characteristics that differentiate a common carrier from a private carrier are:

1. A common carrier offers its service to the public; a private carrier does not.
2. A common carrier is required to observe extraordinary diligence; a private carrier is not required. (BAR 2002)

**1. Extraordinary Diligence and Presumption of Negligence**

**1. A and his classmates take a bus from UP to Quiapo. On the way, another Quiapo-bound bus tries to overtake them. A and his classmates dare the bus driver to run faster and race with the other bus. The driver takes their dare, to the delight of A and his friends who cheered him. On rounding the curve, the bus driver fails to slow down and the bus turns turtle, resulting in the death of A and injuries to the other passengers.**

**The bus carried the following sign: "Do not talk to driver while bus is on motion, otherwise the company will not assume liability for any accident."**

**Explain briefly the extent of the liability, if any, of the bus company, giving the legal provisions and principles involved.**

**Answer:**

The bus company is liable for damages to A's heirs and to all the injured passengers. Under the Civil Code, a common carrier is duty bound to exercise extraordinary diligence in carrying its passengers through the negligence or willful acts of its employees even if the latter have acted beyond the scope of their authority or in violation of their orders. This liability cannot be eliminated or limited by stipulation or by posting notices. Although it may be urged that A was guilty of contributory negligence, such an argument loses its force in the face of the driver's recklessness in taking the dare. And even if such argument would be accepted, at most it can only mitigate the amount of damages, since the proximate cause of the accident was the driver's willful and reckless act in running a race with the other bus. (BAR 1983)

2. **The vessel M/V Sweet Perceptions, commanded by Kapitan, its captain, was unloading goods at a private wharf in Naval, Leyte, when the ship bumped the wharf of the pier causing it to collapse into the sea. It turned out that Kapitan failed to drop the vessel's bow anchors and to fasten the vessel properly to the pier. The vessel was pushed by the combined action of the currents in the Biliran Island Strait and the usual southwest monsoon winds of the season. As a result, Pantalan, the owner of the wharf, lost not only the wharf but also the goods that had just been unloaded on the pier pending their delivery to him. Pantalan sued both the owner of the M/V Sweet Perceptions and kapitan for the loss of the cargoes and the destruction of the wharf of the pier. The vessel's owner, who is in Manila, states that he exercised due diligence in the selection and supervision of Kapitan.**

**Can the vessel's owner and kapitan be held liable for the loss of the wharf and the cargoes? Explain.**

**Answer:**

The vessel's owner is not liable for the loss of or damage to the wharf but he can be held liable for the loss of the cargo. The cause of action on the loss of or damage to the wharf is one of *culpa acquillana* where due diligence in the selection and supervision of employees is a valid defense against liability. That defense, however, is not available for the loss of the cargo since the cause of action is one of *culpa contractual* (the goods had not yet been delivered to the consignee). (BAR 1986)

3. **(1) X took the Benguet Bus from Baguio going to Manila. He deposited his maleta in the baggage compartment of the bus common to all passengers. He did not declare his baggage nor pay its charges contrary to the regulations of the bus company. When X got off, he could not find his baggage which obviously was taken by another passenger. Determine the liability of the bus company.**

**Answer:**

The bus company is liable for the loss of the maleta. The duty of extraordinary diligence in the vigilance over the goods is due on such goods as are deposited or surrendered to the common carrier for transportation. The fact that the maleta was not declared nor the charges paid thereon would not be consequential so long as it was received by the carrier for transportation. (BAR 1989)

4. **X, an 80-year old epileptic, boarded the S/S Tamaraw in Manila going to Mindoro. To disembark, the passengers have to walk thru a gang plank. While negotiating the gang plank, X slipped and fell into the waters. X was saved from drowning, brought to a hospital but after a month died from pneumonia. Except for X, all the passengers were able to walk thru the gang plank. What is the liability of the owner of S/S Tamaraw?**

**Answer:**

The owner of S/S Tamaraw is liable for the death of X in failing to exercise utmost diligence in the safety of passengers. Evidently, the carrier did not take the necessary precautions in ensuring the safety of passengers in the boarding of and disembarking from the vessel. Unless shown to the contrary, a common carrier is presumed to have been negligent in cases of death or injury to its passengers. Since X has not completely disembarked yet, the obligation of the ship-owner to exercise utmost diligence still then subsisted and he can still be held (BAR 1989)

5. **In a court case involving claims for damages arising from death and injury of bus passengers, counsel for the bus operator files a demurrer to evidence arguing that the complaint should be dismissed because the plaintiffs did not submit any evidence that the operator or its employees were negligent. If you were the judge, would you dismiss the complaint?**

**Answer:**

No. in the carriage of passengers, the failure of the common carrier to bring the passengers safely to their destination immediately raises the presumption that such failure is attributable to the carrier's fault or negligence. In the case at bar, the fact of death and injury of the bus passengers raises the presumption of fault or negligence on the part of the carrier. The carrier must rebut such presumption. Otherwise, the conclusion can be properly made that the carrier failed to exercise extraordinary diligence as required by law. (BAR 1997)

6. **Why is the defense of due diligence in the selection and supervision of an employee not available to a common carrier?**

**Answer:**

The defense of due diligence in the selection and supervision of an employee is not available to a common carrier because the degree of diligence required of a common carrier is not the diligence of a good father of a family but extraordinary diligence, i.e., diligence of the greatest skill and utmost foresight (BAR 2002)

## 2. Liabilities of Common Carriers

1. **While docking his vessel, "Taurus", the master, thru negligence, damaged the wharf and the merchandise loaded on the deck. The owner of the wharf and the damaged merchandise sued the owner of the vessel and the master of the vessel for the damage.**

**Questions:**

- (1) What is the basis of the liability of the owner of the vessel with respect to the damage to the wharf?**
- (2) With respect to the damage to the merchandise?**
- (3) Does the defense of exercise of diligence of a good father of a family lie? Reason.**

**Answer:**

- (1) The basis of the liability of the shipowner with respect to the damaged wharf is tort. There was damage due to negligence without any preexisting contractual relations between the parties.
- (2) The basis of the liability with respect to the merchandise on deck is the contract of carriage. There was a breach of contract because the goods were not carried safely to their destination due to the negligence of the master.
- (3) The defense of exercise of the diligence of a good father of a family will lie in case of tort but not in case of contract. In the latter, such defense is not available because the contract was to carry the goods safely and unless loss is due to caso fortuito or force majeure, there is a breach of contract. The due diligence of the shipowner is against his employee, the master. (BAR 1976)

2. **X, a businessman boarded a PANTRANCO bus bound for Dagupan City where he would meet Y, to arrange a business transaction. Somewhere in San Fernando, Pampanga, Z, the Deputy Sheriff of Pampanga, intercepted and seized the PANTRANCO but at the instance of W who had earlier obtained from the court a writ of attachment. As a result of the seizure by the Sheriff, X failed to reach Dagupan City where he was supposed to transact business. Feeling aggrieved by the loss of an otherwise juicy transaction, sued PANTRANCO for breach of contract. Decide with reasons.**

**Answer:**

It is undeniable that there is a pre-existing contractual relation of carriage between X and the PANTRANCO Bus and that X failed to reach his destination in breach of the PANTRANCO Bus' obligation to transport him to the same. However, it is notable that there was no fraud, bad faith, malice or wanton attitude on the part of the carrier.

In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation and which the parties have foreseen at the time the obligation was constituted.

In the case at bar, it can reasonably be assumed that the claim for damages refers to the profits which X failed to obtain. In determining the extent of the liability of PANTRANCO Bus the first paragraph of Art. 2201 of the Civil Code is applicable. Under this provision, the company is liable for all the natural and probable consequences of the breach of the obligation which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted. In this regard the loss of profits from the would-be business transaction is not only a natural and probable consequences of the breach; it could have been reasonably foreseen by the parties at the time X boarded the bus. At that time he was bound for Dagupan City to arrange a business transaction and we can very well assume that the said transaction would be consummated and that he could have possibly gained from the said transaction. Therefore, the claim for damages will prosper. (BAR 1977)

3. **Peter So hailed a taxicab owned and operated by Jimmy Cheng and driven by Hermie Cortez. Peter asked Cortez to take him to his office in Malate. On the way to Malate, the taxicab collided with a passenger jeepney, as a result of which Peter was injured, i.e., he fractured his left leg. Peter sued Jimmy for damages, based upon a contract of carriage, and Peter won. Jimmy wanted to challenge the decision before the Supreme Court on the ground that the trial court erred in not making an express finding as to whether or not Jimmy was responsible for the collision and, hence, civilly liable to Peter. He went to see you for advice. What will you tell him? Explain your answer.**

**Answer:**

I will counsel Jimmy to desist from challenging the decision. The action of Peter being based on culpa contractual, the carrier's negligence is presumed upon the breach of contract. The burden of proof instead would lie on Jimmy to establish that despite an exercise of utmost diligence the collision could not have been avoided. (BAR 1990)

4. **Marino was a passenger on a train. Another passenger, Juancho, had taken a gallon of gasoline placed in a plastic bag into the same coach where Marino was riding. The gasoline ignited and exploded causing injury to Marino who filed a civil suit for damages against the railway company claiming that Juancho should have been subjected to inspection by its conductor.**

The railway company disclaimed liability resulting from the explosion contending that it was unaware of the contents of the plastic bag and invoking the right of Juancho to privacy.

- a) **Should the railway company be held liable for damages?**

**Answer:**

No. The railway company is not liable for damages. In overland transportation, the common carrier is not bound nor empowered to make an examination on the contents of packages or bags, particularly those hand carried by passengers.

- b) If it were an airline company involved, would your answer be the same? Explain your answer briefly.**

**Answer:**

No. If it were an airline company, the common carrier should be made liable. In the case of air carriers, it is not lawful to carry flammable materials in passenger aircrafts, and airline companies may open and investigate suspicious packages and cargoes. (BAR 1992)

- 5. X was riding a suburban utility vehicle (SUV) covered by a comprehensive motor vehicle liability insurance (CMVLI) underwritten by FastPay Insurance Company when it collided with a speeding bus owned by RM Travel, Inc. the collision resulted in serious injuries to X; Y, a passenger of the bus; and Z, a pedestrian waiting for a ride at the scene of the collision. The police report established that the bus was the offending vehicle. The bus had a CMVLI policy issued by Dragon Insurance Corporation, X, Y and Z jointly sued RM Travel and Dragon Insurance for indemnity under the Insurance Code of the Philippines. The lower court applied the “no-fault” indemnity policy of the statute, dismissed the suit against RM Travel, and ordered Dragon insurance to pay indemnity to all three plaintiffs. Do you agree with the court’s judgment? Explain.**

**Answer:**

No. The cause of action of Y is based on the contract of carriage, while that of X and Z is based on torts. The court should not have dismissed the suit against RM Travel. The court should have ordered Dragon Insurance to pay each of X, Y, and Z to the extent of the insurance coverage, but whatever amount is agreed upon in the policy should be answered first by RM Travel and the succeeding amount should be paid by Dragon Insurance up to the amount of the insurance coverage. The excess of the claims of X, Y and Z, over and above such insurance coverage, if any, should be answered or paid by RM Travel. (BAR 2000)

- 6. Nelson owned and controlled Sonnel Construction Company. Acting for the company, Nelson contracted the construction of a building. Without first installing a protective net atop the sidewalks adjoining the construction site, the company proceeded with the construction work. One day a heavy piece of lumber fell from the building. It smashed a taxicab which at that time had gone offroad and onto the sidewalk in order to avoid the traffic. The taxicab passenger died as a result.**

- a) Assume that the company had no more account and property in its name. As counsel for the heirs of the victim, who will you sue for damages, and what theory will you adopt?**

- b) Could the heirs hold the taxicab owner and driver liable? Explain.**

**Answer:**

- a) As counsel for the heirs of the victim, I will sue Sonnel Construction Company and Nelson for gross negligence which constitutes a quasi-delict. As an officer and controlling stockholder of Sonnel Construction Company, Nelson is solidarily liable with the corporation for quasi-delict.

b) Yes, the heirs can hold the taxicab owner and the driver solidarily liable for breach of contract of carriage and for quasi-delict. The common carrier has the duty to safely transport its passenger, which it failed to do in this case. It cannot escape liability by passing the blame to Nelson and Sonnel Construction Company as the taxicab driver himself is concurrently negligent. (BAR 2008)

7. **X, while driving his Toyota Altis, tried to cross the railway tract of PNR along Blumentritt Avenida Ext., Manila. The train as it approached Blumentritt, applied its horn as a warning to all the vehicles that might be crossing the railway tract, but there was really nobody manning the crossing. X was listening to his iPod touch, hence, he did not hear the sound of the horn of the train and so his car was hit by the train. As a result of the accident, X suffered some injuries and his car was totally destroyed as a result of the impact. Is PNR liable?**

- a) **PNR is not liable because X should have known that he was crossing a place designated as crossing for train, and therefore should have been more careful;**
- b) **PNR is a liable because Railroad companies owe to the public a duty of exercising a reasonable degree of care to avoid injury to person and property at railroad crossings which means a flagman or a watchman should have been posted to warn the public at all times;**
- c) **PNR is not liable because it blew its horn when it was about to cross the railway along Blumentritt Avenida Ext.;**
- d) **PNR is not liable because X was negligent, for listening to his iPod touch while driving.**

**Answer:**

a) PNR is not liable because X should have known that he was crossing a place designated as crossing for train, and therefore should have been more careful. (BAR 2012)

### **B. Defenses of Common Carriers**

1. **Suppose "A" was riding on an airplane of a common carrier when the accident happened and "A" suffered serious injuries. In an action by "A" against the common carrier, the latter claimed that (1) there was a stipulation in the ticket issued to "A" absolutely exempting the carrier from liability from the passenger's death or injuries and notices were posted by the common carrier dispensing with the extraordinary diligence of the carrier, and (2) "A" was given a discount on his plane fare thereby reducing the liability of the common carrier with respect to "A" in particular.**

- a) **Are those valid defenses?**
- b) **What are the defenses available to any common carrier to limit it from liability?**

**Answer:**

a) No. These are not valid defenses because they are contrary to law as they are in violation of the extraordinary diligence required of common carriers.

b) The defenses available to any common carrier to limit or exempt it from liability are: observance of extraordinary diligence, or the proximate cause of the incident is a fortuitous event or force majeure, act or omission of the shipper or owner of the goods, the character of the goods or defects in the packing or in the containers, and order or act of competent public authority, without the common carrier being guilty of even simple negligence. (BAR 2001)

2. **One of the passenger buses owned by Continental Transit Corporation (CTC), plying its usual route, figured in a collision with another bus owned by Unniversla Transport Inc. (UTI). Among those injured inside the CTC bus were: Romeo, a stow away; Samuel, a pickpocket then in the act of robbing his seatmate when the collision occurred; Teresita, the bus driver's mistress who usually accompanied the driver on his trips for free; and Uriel, a holder of a free riding pass he won in a raffle held by CTC.**

**What, if any, are the valid defenses that CTC and UTI can raise in the respective actions against them? Explain.**

**Answer:**

With respect to Romeo, Samuel and Teresita, since there was no pre-existing contractual relationship between them and CTC, CTC can raise the defense that it exercised the due diligence of a good father of a family in the selection of its driver.

It can raise the same defense against Uriel if there is a stipulation that exempts it from liability for simple negligence, but not for willful acts or gross negligence.

CTC can also raise against all the plaintiffs the defense that the collision was due exclusively to the negligence of the driver of UTI, and this constitutes a fortuitous event, because there was no concurrent negligence on the part of its own driver.

CTC can also raise against Samuel the defense that he was engaged in a seriously illegal act at the time of the collision, which can render him liable for damages on the basis of quasi-delict.

Since UTI had no pre-existing contractual relationship with any of the plaintiffs, it can raise the defense that it exercised due diligence in the selection and supervision of its driver, that the collision was due exclusively to the negligence of the driver of CTC, and that Samuel was committing a seriously illegal act at the time of the collision. (BAR 2009)

3. **B, while drunk, accepted a passenger in his taxicab. B then drove the taxi recklessly, and inevitably, it crashed into an electric post, resulting in serious physical injuries to the passengers. The latter then filed a suit for tort against B's operator, A, but A raised the defense of having exercised extraordinary diligence in the safety of the passenger. Is his defense tenable?**
- a. **Yes, as a common carrier can rebut the presumption of negligence by raising such a defense.**
  - b. **No, as in tort actions, the proper defense is due diligence in the selection and supervision of the employee by the employer.**
  - c. **No, as B, the common carrier's employee, was obviously negligent due to his intoxication.**
  - d. **Yes, as a common carrier can invoke extraordinary diligence in the safety of passengers in tort cases.**

**Answer:**

- a. No, as in tort actions, the proper defense is due diligence in the selection and supervision of the employee by the employer. (BAR 2011)

## C. Vigilance over Goods

### 1. Exempting Causes

#### a. Requirement of Absence of Negligence

1. **Because of spillage of the rice during the trip from Davao to Manila due to the bad condition of the sacks, there was a shortage in the rice delivered by the Provident Lines Inc. to the consignee XYZ Import and Export Corporation. The carrier accepted the shipment, knowing that the sacks had holes and some had broken strings. When sued, Provident Lines, Inc. alleged that the loss was caused by the spillage of the rice on account of the defective condition of the sacks, at the time it received the shipment, and therefore, it cannot be held liable. Decide. Give reasons.**

**Answer:**

The maritime carrier is liable. Where the fact of improper packing is known to the carrier or its servants, or apparent upon ordinary observations, but the carrier accepts the goods notwithstanding such conditions, it is not relieved of liability for loss or injury resulting therefrom. (*Southern Lines, Inc. v. Court of Appeals*, 4 SCRA 259) (BAR 1978)

2. **Archipelago Lines, Inc., a carrier, accepted for shipment from Iloilo to Manila a cargo consisting of 800 sacks of rice, knowing that some sacks had big holes and others had their openings just loosely tied with strings. Due to spillage of the rice during the trip, there was shortage in the rice delivered by the carrier to the consignee. When sued, Archipelago Lines, Inc. interposed the defense that the carrier was not liable because the spillage was due to the defective condition of the sacks.**

**As a judge, how would you rule on the liability of the carrier? Reasons.**

**Answer:**

As a judge, I would rule that the Archipelago Lines, Inc., the carrier, is liable for the shortage in the rice delivered to the consignee. If the fact of improper packing is known to the carrier or its servants, or apparent upon ordinary observant, but the carrier accepts the goods notwithstanding such condition, it is not relieved of liability for loss or injury resulting therefrom. (*Southern Lines, Inc. v. Court of Appeals, January 31, 1962; 4 SCRA 259*) (BAR 1984)

3. **Philip Mauricio shipped a box of cigarettes to a dealer in Naga City through Bicol Bus Company (BBC). When the bus reached Lucena City, the bus developed engine trouble. The driver brought the bus to a repair shop in Lucena where he was informed by the mechanic that an extensive repair was necessary, which would take at least 2 days. While the bus was in the repair shop, Typhoon Coring lashed Quezon Province. The cargoes inside the bus, including Mauricio's cigarettes, got wet and were totally spoiled. Mauricio sued BBC for damage to his cargoes. Decide.**

**Answer:**

The BBC is liable for damages to the cargoes lost by Mauricio. A natural disaster would relieve liability if it is the proximate and only cause of the damage. The carrier itself, in this case, had been negligent. The presumption of negligence in culpa contractual is not overcome by engine trouble which does not preclude its having been due to the fault of the common carrier. The fact that an extensive repair work was necessary which, in fact, took 2 days to complete somehow justifies an impression that the engine trouble could have been detected, if not already known, well before the actual breakdown. (BAR 1987)

4. **Alejandro Camaling of Alegria, Cebu, is engaged in buying copra, charcoal, firewood and used bottles and in reselling them in Cebu City. He uses 2 big Isuzu trucks for the purpose; however, he has no certificate of**

**public convenience or franchise to do business as a common carrier. On the return trips to Alegria, he loads his trucks with various merchandise of other merchants in Alegria and the neighboring municipalities of Badian and Ginatilan. He charges them freight rates much lower than the regular rates. In one of the return trips, which left Cebu City at 8:30pm, 1 cargo truck was loaded with several boxes of sardines, valued at P100,000, belonging to one of his customers, Pedro Rabor. While passing the zigzag road between Carcar and Barili, Cebu, which is midway between Cebu City and Alegria, the trucks was hijacked by 3 armed men who took all the boxes of sardines and kidnapped the driver and his helper, releasing them in Cebu City only 2 days later.**

**Pedro Rabor sought to recover from Alejandro the value of the sardines. The latter contends that he is not liable therefor because he is not a common carrier under the Civil Code and, even granting for the sake of argument that he is, he is not liable for the occurrence of the loss as it was due to a cause beyond his control.**

**If you were the Judge, would you sustain the contention of Alejandro?**

**Answer:**

If I were the Judge, I would hold Alejandro as having engaged as a common carrier. A person who offers his services to carry passengers or goods for a fee is a common carrier regardless of whether he has a certificate of public convenience or not, whether it is his main business or incidental to such business, whether it is scheduled or unscheduled service, and whether he offers his services to the general public or to a limited few.

I will however, sustain the contention of Alejandro that he is not liable for the loss of the goods. A common carrier is not an insurer of the cargo. If it can be established that the loss, despite the exercise of extraordinary diligence, could not have been avoided, liability does not ensue against the carrier. The hijacking by 3 armed men of the truck used by Alejandro is one of such cases. (BAR 1991)

- 5. M. Dizon Trucking (DIZON) entered into a hauling contract with Fairgoods Corporation (FAIRGOODS) whereby the former bound itself to haul the latter's 2,000 sacks of soya bean meal from Manila Port Area to Calamba, Laguna. To carry out faithfully its obligation DIZON subcontracted with Enrico Reyes the delivery of 400 sacks of the soya bean meal. Aside from the driver, three male employees of Reyes rode on the truck with the cargo. While the truck was on its way to Laguna two strangers suddenly stopped the trucks and hijacked the cargo. Investigation by the police disclosed that one of the hijackers was armed with a bladed weapon while the other was unarmed. For failure to deliver the 400 sacks, FIARGOODS sued Dizon for damages. DIZON in turn set up a third-party complaint against Reyes which the latter resisted on the ground that the loss was due to force majeure.**

**Did the hijacking constitute force majeure to exculpate Reyes from any liability to DIZON? Discuss fully.**

**Answer:**

No. the hijacking in this case cannot be considered force majeure. Only one of the two hijackers was armed with a bladed weapon. As against 4 male employees of Reyes, 2 hijackers, with only one of them being armed with a bladed weapon, cannot be considered force majeure. The hijackers did not act with grave or irresistible threat, violence or force. (BAR 1995)

- 6. AM Trucking, a small company, operates 2 trucks for hire on selective basis. It caters to only a few customers, and its trucks do not make regular or scheduled trips. It does not even have a certificate of public convenience.**

**On one occasion, Reynaldo contracted AM to transport, for a fee, 100 sacks of rice from Manila to Tarlac. However, AM failed to deliver the cargo, because its truck was hijacked when the driver stopped in Bulacan to visit his girlfriend.**

**May AM set up the hijacking as a defense to defeat Reynaldo's claim?**

**Answer:**

AM may not set up the hijacking as a defense to defeat Reynaldo's claim as the facts given do not indicate that the same was attended by the use of grave or irresistible threat, violence or force. It would appear that the truck was left unattended by its driver and was taken while he was visiting his girlfriend. (BAR 1996)

- 7. Star Shipping Lines accepted 100 cartons of sardines from Master to be delivered to 555 Company of Manila. Only 88 cartons were delivered, however, these were in bad condition.**

**555 Company claimed from Star Shipping Lines the value of the missing goods, as well as the damaged goods. Star Shipping Lines refused because the former failed to present a bill of lading.**

**Resolve with reasons the claim of 555 Company.**

**Answer:**

Star Shipping Lines should pay the claim of 555 Company. The mere fact that some cartons were lost and the 88 cartons were damaged is sufficient proof of the fault of Star Shipping Lines. The fact that 555 Company failed to present a bill of lading makes no difference, because it was the actual consignee. Moreover, under Art. 353 of the Code of Commerce, the surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its obligation. If surrender of the original bill of lading is not possible, acknowledgment of delivery by signing the delivery receipt suffices. (BAR 2005)

#### **b. Absence of Delay**

- 1. A, in Manila, shipped on board a vessel of B, chairs to be used in the restaurant of consignee C in Cebu. No date for delivery or indemnity for delay was stipulated. The chairs, however, were not claimed promptly by C and were shipped by mistake back to Manila, where it was discovered and re-shipped to Cebu. By the time the chairs arrived, the date of inauguration of the movie house passed by and it had to be postponed. C brings action for damages against B, claiming loss of profits during the Christmas season when he expected the movie house to be opened. Decide the case with reasons.**

**Answer:**

C, may bring action for damages against B for loss of profits. The obligation of the carrier to carry cargo includes the duty not to delay their transportation, so that if the carrier is guilty of delay in the shipment of the cargo, causing damages to consignee, it will be liable. (*Tan Liao v. American President Lines*, L-7280, January 20, 1956) (BAR 1979)

#### **c. Due Diligence to Prevent or Lessen the Loss**

- 2. Contributory Negligence
- 3. Duration of Liability

- a. Delivery of Goods to Common Carrier
- b. Actual or Constructive Delivery

1. **The liability of a common carrier for the goods it transports begins from the time of**
- a. **Conditional receipt.**
  - b. **Constructive receipt.**
  - c. **Actual receipt.**
  - d. **Either actual or constructive receipt.**

**Answer:**

d. Either actual or constructive receipt. (BAR 2011)

**c. Temporary Unloading or Storage**

1. **S delivered 10 boxes of cellphones to Trek Bus Liner, for transport from Manila to Ilocos Sur on the following day, for which S paid the freightage. Meanwhile, the boxes were stored in the bus liner's bodega. That night, however, a robber broke into the bodega and stole S's boxes. S sues Trek Bus Liner for contractual breach but the latter argues that S has no cause of action based on such breach since the loss occurred while the goods awaited transport. Who is correct?**
- a. **The bus liner since the goods were not lost while being transported.**
  - b. **S since the goods were unconditionally placed with T for transportation**
  - c. **S since the freightage for the goods had been paid.**
  - d. **The bus liner since the loss was due to a fortuitous event.**

**Answer:**

b. S since the goods were unconditionally placed with T for transportation. (BAR 2011)

**4. Stipulation for Limitation of Liability**

**a. Void Stipulations**

1. **Discuss whether or not the following stipulations in a contract of carriage of a common carrier are valid:**

**A stipulation limiting the sum that may be recovered by the shipper or owner to 90% of the value of the goods in case of loss due to theft.**

**Answer:**

The stipulation is considered unreasonable, unjust and contrary to public policy under Article 1745 of the Civil Code. (BAR 2002)

**b. Limitation of Liability to Fixed Amount**

1. **In the plane ticket stub of Air Manila Inc. (AMI), there appears a statement that the liability “if any loss or damage of checked baggage or for delay in the delivery thereof” of the AMI “is limited to its value and unless the passenger declares in advance a higher valuation and pays an additional charge therefore, the value shall be conclusively deemed not to exceed P100 for each ticket.” A passenger whose baggage was lost in transit from Manila to Cebu sued for a higher amount, i.e. P5,000. May AMI successfully claim that the above statement precludes the plaintiff from asking more than P100? Decide. Give reasons for your answer.**

**Answer:**

No. AMI may not successfully claim that the plaintiff was precluded from asking more than P100 for each ticket. The liability of a common carrier may by contract be limited to a fixed amount, but said agreement must be in writing and signed by the shipper or owner of the goods, besides the other requirements of the law, but said requirements have not been shown to have been met by the carrier, AMI. (*Shewaran v. Philippine Airlines*, L20099, July 7, 1966) (BAR 1978)

2. **A, in Holland, shipped on board a vessel owned by B, 500 cases of canned milk to consignee C in Iloilo. Upon arrival, the vessel discharged the canned milk into the custody and possession of the arrastre operator appointed by the Bureau of Customs. In the Bill of Lading, it was stipulated that the vessel is no longer liable for the cargo upon its delivery to the hands of the customs authorities. The cargo checker of the arrastre found the cargo to be in good order. Upon delivery to the consignee, a marine surveyor found 20 cases of milk missing. C sued B for the value of the 20 missing cases on the ground that under the contract of carriage B was obliged to deliver the cargo safely to the consignee and that the stipulation limiting the liability of the carrier is contrary to morals and public policy. B disclaims liability for short delivery. Decide the dispute, with reasons.**

**Answer:**

Yes, B may disclaim liability for short delivery. The stipulation is valid because nothing therein is contrary to morals or public policy, said stipulation being adopted to mitigate the responsibility of the carrier. (BAR 1979)

3. **Juan, a paying passenger, noted the stipulation at the back of the bus ticket stating that the liability of the bus company is limited to P1,000 in case of injuries to its passengers and P500 in case of loss or damage to baggage caused by the negligence or willful acts of its employees.**

**Upon arrival at his destination, Juan got into an altercation with the ticket conductor, who pulled out a knife and inflicted several wounds on Juan. The bus driver intervened, heaping abusive language on Juan and completely destroying Juan’s baggage which contained expensive goods worth P3,000. The hospital expenses for Juan would probably amount to at least P6,000.**

**Give the extent of liability of the bus company, with reasons.**

**Answer:**

The bus company’s liability for the injuries inflicted upon Juan is at least P6,000, notwithstanding the stipulation limiting its liability, and only for P500, the amount stipulated in the bus ticket, as the damage and destruction to Juan’s baggage.

With respect to the injuries inflicted upon Juan, common carriers are liable for the death or injuries to passengers through the negligence or willful acts of the former’s employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers. The common carrier’s

responsibility for these acts cannot be eliminated or limited by stipulation by the posting of notices, by statements on the tickets or otherwise.

The rule is different with respect to a stipulation limiting the carrier's liability for the loss, destruction or deterioration of goods shipped. Under Article 1750, Civil Code, a contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances and has been fairly and freely agreed upon. (BAR 1984)

4. **Martin Nove shipped an expensive video equipment to a friend in Cebu. Martin had bought the equipment from Hong Kong for U.S. \$5,000. The equipment was shipped through M/S Lapu-Lapu under a bill of lading which contained the following provision in big bold letters:**

**“The limit of the carrier’s liability for any loss or damage to cargo shall be P200 regardless of the actual value of such cargo, whether declared by shipper or otherwise.”**

**The cargo was totally damaged before reaching Cebu. Martin Nove claimed for the value of his cargo (\$5,000 or about P100,000) instead of just P200 as per the limitation on the bill of lading.**

**Is there any legal basis for Nove’s claim?**

**Answer:**

There is legal basis for the claim of Martin Nove. The stipulation limiting the carrier's liability up to a certain amount “regardless of the actual value of such cargo, whether declared by its shipper or otherwise,” is violative of the requirement of the “Civil Code that such limiting stipulations should be fairly and freely agreed upon (Arts. 1749-1750 Civil Code). A stipulation that denies to the shipper the right to declare the actual value of his cargoes and to recover, in case of loss or damage, on the basis would be invalid. (BAR 1987)

5. **X shipped thru M/V Kalayaan, spare parts worth P500,000. The bill of lading limits the liability of the carrier to P50,000 and contains a notation indicating the amount of the letter of credit (i.e. P500,000) which X obtained from a bank to import the spare parts. The spare parts were not delivered to X so X sued the carrier for P500,000. Decide.**

**Answer:**

The limit of liability stipulated in the bill of lading is subordinated to a declaration therein of the actual value of the goods. Since the bill of lading itself contains a notation indicating the true value of the goods shipped (supported by the letter of credit), X can sue the carrier on the basis of such true value. (BAR 1989)

NB In one case, the Supreme Court held the the insertion of an invoice number or the letter of credit number covering the shipment is not tantamount to a declaration of higher value ( Unsworth Transport International vs Court of Appeals, GR No. 166250, July 26, 2010). The higher valuation must be declared in the bill of lading itself or in the letter of credit but the amount of which must be incorporated in the bill of lading.

### **c. Limitation of Liability in Absence of Declaration of Greater Value**

1. **A takes a plane from Manila bound for Cagayan de Oro via Cebu, where there was a change of planes. A arrived Cagayan de Oro safely, but to his dismay, his two suitcases were left behind in Cebu. The airline company assured him that the suitcases would come in the next flight, but they never did.**

A claims P1,000 damages for the loss of both suitcases, but the airline is willing to pay only P400 on the ground that the airline ticket stipulates that unless a higher value is declared, any claim for loss cannot exceed P200 for each piece of luggage.

A had not declared a greater value, despite the fact that the clerk had called his attention to the stipulation in the ticket.

**Is A entitled to P1,000 or only P400? Explain.**

**Answer:**

A is entitled to only P400. Under the Civil Code, a stipulation limiting a common carrier's liability to the value of the goods as stated on the bill of lading unless the shipper declares a greater value, is binding. Under Art. 1754, this provision of Art 1749, along with others, is made applicable to a passenger's baggage which is not in his personal custody. A cannot claim lack of knowledge of the limitation since his attention was called to it. He can therefore not insist on claiming P1,000. (BAR 1983)

- 2. Dona Buding checked in at the PAL counter of the Manila Domestic Airport on a flight to Bacolod. Noticing that Dona Buding had two big baggages being checked in, the counter clerk called her attention to the stipulation in the plane ticket and asked if she was going to make any declaration on the value of the same, but Dona Buding just looked at him and did not say anything. The plane arrived in Bacolod, but the two baggages could nowhere be found. PAL promised to deliver the two baggages the next day, but it never did.**

Dona Buding sued PAL, claiming P10,000 damages for the loss of the two baggages. PAL answered that it was liable only for P200 for the plane ticket clearly stipulated that: "That total liability of the carrier for lost or damaged baggage is limited to P100 per baggage, unless the passenger declares a higher valuation in excess of P100 but not in excess, however, of a total valuation of P1,000, and unless additional charges are paid pursuant to Carrier's Tariffs." The trial court ruled in favor of PAL.

**Comment on the legality of the court's decision.**

**Answer:**

The ruling of the trial court against Dona Buding is legal, being in accordance with the New Civil Code on Common Carriers. As stipulation that the common carrier's liability is limited to the value of the goods appearing in the bill of lading, unless the shipper or owner declares a greater value, is binding. (*Art. 1749 NCC; Freixas & Co. v. Pacific Mail Steamship Co., 42 Phil. 198*) (BAR 1985)

- 3. X took a plane from Manila bound for Davao via Cebu where there was a change of planes. X arrived in Davao safely but to his dismay, his two suitcases were left behind in Cebu. The airline company assured X that the suitcases would come in the next flight but they never did.**

X claimed P2,000 for the loss of both suitcases, but the airline was willing to pay only P500 because the airline ticket stipulated that unless a higher value was declared, any claim for the loss cannot exceed P250 for each piece of luggage. X however reasoned out that he did not sign the stipulation and in fact had not even read it.

**X did not declare a greater value despite the fact that the clerk had called his attention to the stipulation in the ticket. Decide the case.**

**Answer:**

Even if he did not sign the ticket, X is bound by the stipulation that any claim for loss cannot exceed P250 for each luggage. He did not declare a higher value. X is entitled to P500 for the two luggages lost. (BAR 1998)

**4. Discuss whether or not the following stipulations in a contract of carriage of a common carrier are valid:**

**A stipulation that in the event of loss, destruction or deterioration of goods on account of the defective condition of the vehicle used in the contract of carriage, the carrier's liability is limited to the value of the goods appearing in the bill of lading unless the shipper or owner declares a higher value.**

**Answer:**

The stipulation limiting the carrier's liability to the value of the goods appearing in the bill of lading unless the shipper or owner declares a higher value, is expressly recognized in Article 1749 of the Civil Code. (BAR 2002)

**5. Liability for Baggage of Passengers**

**a. Checked-In Baggage**

- 1. X took a plane from Manila bound for Davao via Cebu where there was a change of planes. X arrived in Davao safely but to his dismay, his two suitcases were left behind in Cebu. The airline company assured X that the suitcases would come in the next flight but they never did.**

X claimed P2,000 for the loss of both suitcases, but the airline was willing to pay only P500 because the airline ticket stipulated that unless a higher value was declared, any claim for the loss cannot exceed P250 for each piece of luggage. X however reasoned out that he did not sign the stipulation and in fact had not even read it.

X did not declare a greater value despite the fact that the clerk had called his attention to the stipulation in the ticket. Decide the case.

**Answer:**

Even if he did not sign the ticket, X is bound by the stipulation that any claim for loss cannot exceed P250 for each luggage. He did not declare a higher value. X is entitled to P500 for the two luggages lost. (BAR 1998)

**b. Baggage in Possession of Passengers**

- 1. Pasahero, a paying passenger, boarded a Victory Liner bus bound for Olongapo. He chose a seat at the front near the bus driver. Pasahero told the bus driver that he had valuable items in his bag which was placed near his feet. Since he had not slept 24 hours, he requested the driver to keep an eye on the bag should he doze off during the trip.**

- a) While Pasahero was asleep, another passenger took the bag away and alighted at Guagua, Pampanga. Is Victory Liner liable to Pasahero? Explain.**

**b) Supposing the two armed men staged a hold-up while the bus was speeding along the North Expressway. One of them pointed a gun at Pasahero and stole not only his bag but also his wallet as well. Is Victory Liner liable to Pasahero? Explain.**

**Answer:**

- a) The responsibility of common carriers in the case of loss or damage to hand-carried baggage is governed by the rule on necessary deposits. The common carrier is thus liable for the loss of the personal property caused by its employees or by strangers.
- b) The use of arms (in the staging of the holdup) is force majeure under the rule on necessary deposits. Accordingly, Pasahero may not hold Victory Liner liable. (BAR 1986)

**2. X boarded an air-conditioned Pantranco Bus bound for Baguio. X was given notice that the carrier is not liable for baggage brought in by passengers. X kept in his custody his attache case containing \$10,000. In Tarlac, all the passengers, including X, were told to get off and to take their lunch, the cost of which is included in the ticket. X left his attaché case on his seat as the door of the bus was locked. After lunch and when X returned to the bus, he discovered that his attaché case was missing. A vendor said that a man picked the lock of the door, entered the bus and ran away with the attaché case. What, if any, is the liability of the carrier?**

**Answer:**

Hand-carried pieces of luggage of passengers are governed by the rules on necessary deposit. Under Article 2000 of the Civil Code the responsibility of the depository shall, among other cases, include the loss of property of the guest caused by strangers but not that which may proceed from force majeure. Article 2001 of the same Code considers an act of a thief as not one of force majeure unless done with the use of arms or through an irresistible force. Accordingly, the carrier may, given the factual setting in the problem, still be held liable. (BAR 1989)

#### **D. Safety of Passengers**

**1. X brought 7 sacks of palay to the PNR. He paid his freight charges and was issued Way Bill No. 1. The cargo was loaded on the freight wagon of the train. Without any permission, X boarded the freight wagon and not the passenger coach. Shortly after the train started, it was derailed. The freight wagon fell on its side, killing X. There is no evidence that X bought a ticket or paid his fare at the same time that he paid the freight charges for his cargo. Is X passenger of PNR?**

**Answer:**

No, X was not a "passenger". A "stowaway", being a trespasser, has been held to assume the risk of damage. (BAR 1989)

**2. One of the passenger buses owned by Continental Transit Corporation (CTC), plying its usual route, figured in a collision with another bus owned by Unniversla Transport Inc. (UTI). Among those injured inside the CTC bus were: Romeo, a stow away; Samuel, a pickpocket then in the act of robbing his seatmate when the collision occurred; Teresita, the bus driver's mistress who usually accompanied the driver on his trips for free; and Uriel, a holder of a free riding pass he won in a raffle held by CTC.**

**Will a suit for breach of contract of carriage filed by Romeo, Samuel, Teresita, and Uriel against CTC prosper? Explain.**

**Answer:**

Romeo cannot sue for breach of contract of carriage. A stowaway like Romeo, who secures passage by fraud, is not a passenger.

Samuel and Teresita cannot sue for breach of contract of carriage. The elements in the definition of a passenger are: an undertaking of a person to travel in the conveyance provided by the carrier and an acceptance by the carrier of the person as a passenger. Samuel did not board the bus to be transported but to commit robbery. Teresita did not board the bus to be transported but to accompany the driver while he was performing his work

Uriel can sue for breach of contract of carriage. He was a passenger although he was being transported gratuitously, because he won a free riding pass in a raffle held by CTC. (BAR 2008)

NB Pls note that this question has been asked three times but with different answers, the answer above is the better answer.

3. **In a contract of carriage, the common carrier is liable for the injury or death of a passenger resulting from its employee's fault although the latter acted beyond the scope of his authority. This is based on the**
- a. **Rule that the carrier has an implied duty to transport the passenger safely.**
  - b. **Rule that the carrier has an express duty to transport the passenger safely.**
  - c. **Doctrine of Respondeat Superior.**
  - d. **Rule in culpa aquiliana.**

**Answer:**

a. Rule that the carrier has an implied duty to transport the passenger safely. (BAR 2011)

4. **Fil-Asia Air Flight 916 was on a scheduled passenger flight from Manila when it crashed as it landed at the Cagayan de Oro airport; the pilot miscalculated the plane's approach and undershot the runway. Of the 150 people on board, 10 passengers died at the crash scene.**

**Of the 10 who died, one was a passenger who managed to leave the plane but was run over by an ambulance coming to the rescue. Another was an airline employee who hitched a free ride to Cagayan de Oro and who was not in the passenger manifest.**

**It appears from the Civil Aeronautics Authority investigation that the co-pilot who had control of the plane's landing had less than the required flying and landing time experience, and should not have been in control of the plane at the time. He was allowed to fly as a co-pilot because of the scarcity of pilots—Philippine pilots have been recruited by foreign airlines under vastly improved flying terms and wages so that newer and less trained pilots are being locally deployed. The main pilot, on the other hand, had a very high level of blood alcohol at the time of the crash.**

**You are part of the team that the victims hired to handle the case for them as a group. In your case conference, the following questions came up:**

- a. **Explain the causes of action legally possible under the given facts against the airline and the pilots; whom will you specifically implead in these causes of action?**

**b. How will you handle the cases of the passenger run over by the ambulance and the airline employee allowed to hitch a free ride to Cagayan de Oro?**

**Answer:**

a) A complaint for breach of contract of carriage can be filed against Fil-Asia air for failure to exercise extraordinary diligence in transporting the passengers safely from their point of embarkation to their destination.

A complaint based on a quasi-delict can be filed against the pilots because of their fault and negligence. FilAsia Air can be included for negligence in the selection and supervision of the pilots.

A third cause of action may be a criminal prosecution for reckless imprudence resulting in homicide against two pilots. The airline will be subsidiarily liable for the civil liability only after the pilots are convicted and found to be insolvent.

b) It is the driver of the ambulance and his employer who should be held liable for damages, because a passenger was run over. This is in accordance with Articles 2176 and 2180 of the Civil Code. There could also be a criminal prosecution for reckless imprudence resulting in homicide against the ambulance driver and the consequent civil liability.

Since the airline employee was being transported gratuitously, Fil-Asia Air was not required to exercise extraordinary diligence for his safety and only ordinary care. (BAR 2013)

NB The better answer in lieu of the last sentence is that the liability of the airline, as a common carrier, can not be dispensed with or lessened by stipulation. But when the passenger is carried gratuitously, a stipulation limiting liability for negligence is valid except for willful acts or gross negligence. While the airline employee was being carried gratuitously, the facts do not show that there is a such stipulation limiting the liability of the common carrier. Thus, the airline is liable for full amount of damages under to the law to the heirs of the airline employee passenger

**1. Void Stipulations**

**1. Suppose "A" was riding on an airplane of a common carrier when the accident happened and "A" suffered serious injuries. In an action by "A" against the common carrier, the latter claimed that (1) there was a stipulation in the ticket issued to "A" absolutely exempting the carrier from liability from the passenger's death or injuries and notices were posted by the common carrier dispensing with the extraordinary diligence of the carrier, and (2) "A" was given a discount on his plane fare thereby reducing the liability of the common carrier with respect to "A" in particular.**

**c) Are those valid defenses?**

**Answer:**

c) No. These are not valid defenses because they are contrary to law as they are in violation of the extraordinary diligence required of common carriers. (BAR 2001)

## 2. Duration of Liability

### a. Waiting for Carrier or Boarding of Carrier

1. **A bus of GL Transit on its way to Davao stopped to enable a passenger to alight. At that moment, Santiago, who had been waiting for a ride, boarded the bus. However, the bus driver failed to notice Santiago who was still standing on the bus platform, and stepped on the accelerator. Because of the sudden motion, Santiago slipped and fell down, suffering serious injuries.**

**May Santiago hold GL Transit liable for breach of contract of carriage? Explain.**

**Answer:**

Santiago may hold GL liable for breach of contract of carriage. It was the duty of the driver, when he stopped the bus, to do no act that would have the effect of increasing the peril to a passenger such as Santiago while he was attempting to board the same. When a bus is not in motion there is no necessity for a person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. It is the duty of common carriers of passengers to stop their conveyances for a reasonable length of time in order to afford passengers an opportunity to board and enter, and they are liable for injuries suffered by boarding passengers resulting from the sudden starting up or jerking of their conveyances while they are doing so. Santiago, by stepping and standing on the platform of the bus, is already considered a passenger and is entitled to all the rights and protection pertaining to a contract of carriage. (BAR 1996)

2. **City Railways, Inc. (CRI) provides train service, for a fee, to commuters from Manila to Calamba, Laguna. Commuters are required to purchase tickets and then proceed to designated loading and unloading facilities to board the train. Ricardo Santos purchased a ticket for Calamba and entered the station. While waiting, he had an altercation with the security guard of CRI leading to a fistfight. Ricardo Santos fell on the railway just as the train was entering the station. Ricardo Santos was run over by the train. He died.**

**In the action for damages files by the heirs of Ricardo Santos, CRI interposed lack of cause of action, contending that the mishap occurred before Ricardo Santos boarded the train and that it was not guilty of negligence. Decide.**

**Answer:**

CRI is liable. It has a contract of carriage with Ricardo, created from the moment the latter purchased a ticket and entered the station. The duty of a common carrier like the CRI is to provide safety to its passengers, not only during the course of the trip, but as long as they are within its premises and where they ought to be in pursuance to the contract of carriage. Furthermore, a common carrier is liable for the death of or injuries to passengers through the negligence or willful act of its employees, pursuant to Art. 1759 of the Civil Code, to wit:

“Art. 1759. Common carriers are liable for the death of or injuries to passengers through the negligence or willful acts of the former’s employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.

The liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.” (BAR 2008)

3. **P, a sales girl in a flower shop at the Ayala Station of the Metro Rail Transit (MRT) bought two tokens or tickets, one for her ride to work and another for her ride home. She got to her flower shop where she usually worked from 8:00am-5:00pm. At about 3:00pm, while P was attending to her duties at the flower**

shop, two crews of the MRT got into a fight near the flower shop, causing injuries to P in the process. Can P sue the MRT for contractual breach as she was within the MRT premises where she would shortly take her ride home?

- a. No, since the incident took place, not in the MRT train coach, but at the MRT station.
- b. No, since P had no intention to board an MRT train coach when the incident occurred.
- c. Yes, since she already had a ticket for her ride home and was in the MRT's premises at the time of the incident.
- d. Yes, since she bought a round trip ticket and MRT had a duty while she was at its station to keep her safe for her return trip.

**Answer:**

b. No, since P had no intention to board an MRT train coach when the incident occurred. (BAR 2011)

### b. Arrival at Destination

1. X, an 80-year old epileptic, boarded the S/S Tamaraw in Manila going to Mindoro. To disembark, the passengers have to walk thru a gang plank. While negotiating the gang plank, X slipped and fell into the waters. X was saved from drowning, brought to a hospital but after a month died from pneumonia. Except for X, all the passengers were able to walk thru the gang plank. What is the liability of the owner of S/S Tamaraw?

**Answer:**

The owner of S/S Tamaraw is liable for the death of X in failing to exercise utmost diligence in the safety of passengers. Evidently, the carrier did not take the necessary precautions in ensuring the safety of passengers in the boarding of and disembarking from the vessel. Unless shown to the contrary, a common carrier is presumed to have been negligent in cases of death or injury to its passengers. Since X has not completely disembarked yet, the obligation of the ship-owner to exercise utmost diligence still then subsisted and he can still be held (BAR 1989)

### 3. Liability for Acts of Others

#### a. Employees

1. Juan, a paying passenger, noted the stipulation at the back of the bus ticket stating that the liability of the bus company is limited to P1,000 in case of injuries to its passengers and P500 in case of loss or damage to baggage caused by the negligence or willful acts of its employees.

Upon arrival at his destination, Juan got into an altercation with the ticket conductor, who pulled out a knife and inflicted several wounds on Juan. The bus driver intervened, heaping abusive language on Juan and completely destroying Juan's baggage which contained expensive goods worth P3,000. The hospital expenses for Juan would probably amount to at least P6,000.

Give the extent of liability of the bus company, with reasons.

**Answer:**

The bus company's liability for the injuries inflicted upon Juan is at least P6,000, notwithstanding the stipulation limiting its liability only for P500, the amount stipulated in the bus ticket, as the damage and destruction to Juan's baggage.

With respect to the injuries inflicted upon Juan, common carriers are liable for the death or injuries to passengers through the negligence or willful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers. The common carrier's responsibility for these acts cannot be eliminated or limited by stipulation by the posting of notices, by statements on the tickets or otherwise.

The rule is different with respect to a stipulation limiting the carrier's liability for the loss, destruction or deterioration of goods shipped. Under Article 1750, Civil Code, a contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances and has been fairly and freely agreed upon. (BAR 1984)

**3. The AAA Bus Company picks up passengers along EDSA, X, the conductor, while on board the bus, drew his gun and randomly shot the passengers inside. As a result, Y, a passenger, was shot and died instantly. Is AAA Bus Company liable?**

- a) **The bus company is not liable for as long as the bus company can show that when they hired X, they did the right selection process;**
- b) **The bus company cannot be held liable because what X did is not part of his responsibility;**
- c) **The bus company is liable because common carriers are liable for the negligence or willful act of its employees even though they acted beyond the scope of their responsibility;**
- d) **The bus company is not liable because there is no way that the bus company can anticipate the act of X.**

**Answer:**

c) The bus company is liable because common carriers are liable for the negligence or willful act of its employees even though they acted beyond the scope of their responsibility. (BAR 2012)

#### **b. Other Passengers and Strangers**

**1. Pasahero, a paying passenger, boarded a Victory Liner bus bound for Olongapo. He chose a seat at the front near the bus driver. Pasahero told the bus driver that he had valuable items in his bag which was placed near his feet. Since he had not slept 24 hours, he requested the driver to keep an eye on the bag should he doze off during the trip.**

**c) There have been incidents of unknown persons throwing stones at passing vehicles from the overpasses in the North Expressway. While the bus was traversing the superhighway, a stone hurled from the Sto. Domingo overpass smashed the front windshield and hit Pasahero in the face. Pasahero lost an eye and suffered other injuries. Can Pasahero hold the bus company liable for damages? Explain.**

**Answer:**

c) Pasahero can hold the bus company liable because of its failure to exercise utmost diligence. Since incidents of stone-throwing had earlier been known, it behooved upon the common carrier to warn its passengers against

seating themselves close to the windshield or to provide other precautionary measures for its passengers. (BAR 1986)

2. **Mariter, a paying bus passenger, was hit above her left eye by a stone hurled at the bus by an unidentified bystander as the bus was speeding through the National Highway. The bus owner's personnel lost no time in bringing Mariter to the provincial hospital where she was confined and treated.**

**Mariter wants to sue the bus company for damages and seeks your advice whether she can legally hold the bus company liable?**

**Answer:**

Mariter cannot legally hold the bus company liable. There is no showing that any such incident previously happened so as to impose an obligation on the part of the personnel of the bus company to warn the passengers and to take the necessary precaution. Such hurling of a stone constitutes fortuitous event in this case. The bus company is not an insurer. (BAR 1994)

3. **Antonio, a paying passenger, boarded a bus bound for Batangas City. He chose a seat at the front row, near the bus driver, and told the bus driver that he had valuable items in his hand-carried bag which he then placed beside the driver's seat. Not having slept for 24 hours, he requested the driver to keep an eye on the bag should he doze off during the trip. While Antonio was asleep, another passenger took the bag away and alighted at Calamba, Laguna. Could the common carrier be held liable by Antonio for the loss?**

**Answer:**

Yes. Ordinarily, the common carrier is not liable for acts of other passengers. But the common carrier cannot relieve itself from liability if the common carrier's employees could have prevented the act or omission by exercising due diligence. In this case, the passenger asked the driver to keep an eye on the bag which was placed beside the driver's seat.

If the driver exercised due diligence, he could have prevented the loss of the bag. (BAR 1997)

4. **P rode a Sentinel Liner bus going to Baguio from Manila. At a stop-over in Tarlac, the bus driver, the conductor, and the passengers disembarked for lunch. P decided, however, to remain in the bus, the door of which was not locked. At this point, V, a vendor, sneaked into the bus and offered P some refreshments. When P rudely declined, V attacked him, resulting in P suffering from bruises and contusions. Does he have cause to sue Sentinel Liner?**
- a. **Yes, since the carrier's crew did nothing to protect a passenger who remained in the bus during the stop-over.**
  - b. **No, since the carrier's crew could not have foreseen the attack.**
  - c. **Yes, since the bus is liable for anything that goes wrong in the course of the trip.**
  - d. **No, since the attack on P took place when the bus was at a stop-over.**

**Answer:**

- a. Yes, since the carrier's crew did nothing to protect a passenger who remained in the bus during the stopover. (BAR 2011)

#### 4. Extent of Liability for Damages

#### 5. Registered Owner Rule (Kabit-system)

1. **A is a registered owner of a truck for hire. He sold the truck to B and possession was immediately delivered to B who operated the same. The truck, however, remained registered in the name of A. while operating the truck, B's driver ran over a child who died thereafter. The heirs of the child sued A for damages. A's defense is that he cannot be held liable as he had already sold the truck to B and it was B's driver who was responsible for the accident. Decide with reasons.**

**Answer:**

A is liable to the heirs of the victim. As far as third persons without knowledge are concerned, the registered owner of a motor vehicle is its true owner regardless of any unregistered sale of the vehicle. (BAR 1976)

2. **A was driving a jeepney registered in the name of B. The jeepney, while being driven negligently by A, hit and injured X, so X sued B for damages. The defense of B was that he had sold the jeepney to C and that X should sue C. Rule on B's defense with reasons.**

**Answer:**

Assuming the said jeepney in question to be not a common carrier or public service, and A was the driver of C, the actual owner, although not yet registered in his name, then C, and not B (the registered owner), shall be liable to X. Employer C shall be liable for damages caused by his employee acting within the scope of his assigned task. (Art. 2180, Civil Code) (BAR 1979)

3. **Mr. Villa, a franchise holder and the registered owner of a truck for hire, entered into a lease contract with Mrs. Santos for the lease by the latter of said truck. The lease contract was not brought to the knowledge of the Land Transportation, Franchising, and Regulatory Board and was therefore not approved by the Land Transportation, Franchising, and Regulatory Board. One stormy night, the said truck which was speeding along EDSA, skidded and ran over X who died on the spot. The parents of X brought an action for damages against Mr. Villa for the death of their son.**

- a) **Will the action against Mr. Villa prosper? Reasons.**
- b) **What recourse, if any, does X have?**

**Answer:**

- a) Yes, the action will prosper. Both the registered owner and the actual user or operator of a motor vehicle are liable for damages sustained in the operation thereof. Hence, the action against Villa can prosper.
- b) The heirs of X may likewise bring an action for tort against Mrs. Santos and/or the driver of the vehicle. The latter may also be charged criminally. (BAR 1988)

4. **Johnny owns a Sarao jeepney. He asked his neighbor Van if he could operate the said jeepney under Van's certificate of public convenience. Van agreed and, accordingly, Johnny registered his jeepney in Van's name.**

**On June 10, 1990, one of the passenger jeepneys operated by Van bumped Tomas. Tomas was injured and in due time, he filed a complaint for damages against Van and his driver for the injuries he suffered. The court rendered judgment in favor of Tomas and ordered Van and his driver, jointly and severally, to pay Tomas actual and moral damages, attorney's fees, and cost.**

**The Sheriff levied on the jeepney belonging to Johnny but registered in the name of Van. Johnny filed a third-party claim with the Sheriff alleging ownership of the jeepney levied upon and stating that the jeepney was registered in the name of Van merely to enable Johnny to make use of Van's certificate of public convenience.**

**May the Sheriff proceed with the public auction of Johnny's jeepney? Discuss the reasons.**

**Answer:**

Yes, the Sheriff may proceed with the auction sale of Johnny's jeepney. In contemplation of law as regards the public and third persons, the vehicle is considered the property of the registered operator. (BAR 1990)

- 5. Baldo is a driver of Yellow Cab Company under the boundary system. While cruising along the South Expressway, Baldo's cab figured in a collision, killing his passenger, Pietro. The heirs of Pietro sued Yellow Cab Company for damages, but the latter refused to pay to the heirs, insisting that it is not liable because Baldo is not an employee.**

**Resolve with reasons.**

**Answer:**

Yellow Cab Company is liable because there exists an employer-employee relationship between a jeepney owner and a driver under the boundary system arrangement in accordance with Art. 103 of the RPC. Indeed to exempt from liability the owner of a public vehicle who operates it under the "boundary system" on the ground that he is a mere lessor would not only abet a flagrant violation of the Public Service Law but also to place the riding public at the mercy of reckless and irresponsible drivers reckless because the measure of their earnings depends largely on the number of trips they make and, hence, the speed at which they drive; and irresponsible because most, if not all of them, are in no position to pay the damages they might cause. (BAR 2005)

- 6. Procopio purchased an Isuzu passenger jeepney from Enteng, a holder of a certificate of public convenience for the operation of public utility vehicle plying the Calamba-Los Banos route. While Procopio continued offering the jeepney for public transport services he did not have the registration of the vehicle transferred in his name. Neither did he secure for himself a certificate of public convenience for its operation. Thus, per the records of the LTFRB, Enteng remained its registered owner and operator. One day, while the jeepney was travelling southbound, it collided with a tenwheeler truck owned by Emmanuel. The driver of the truck admitted responsibility for the accident, explaining that the truck lost its brakes.**

**Procopio sued Emmanuel for damages, but the latter moved to dismiss the case on the ground that Procopio is not the real party in interest since he is not the registered owner of the jeepney.**

**Resolve the motion with reasons.**

**Answer:**

The motion to dismiss should be denied. The rule enjoining the registered owner of the motor vehicle under the "kabit system" from proving another person is the owner is intended to protect third parties. Since this case does not involve liability of the registered owner to third parties, and it is the owner of the motor vehicle who is seeking compensation for damages, the rule is not applicable. (BAR 2005)

- 7. Discuss the "kabit system" in land transportation and its legal consequences.**

**Answer:**

The “kabit system” is an arrangement whereby a person who has been granted a certificate of public convenience allows another who owns a motor vehicle to operate under his certificate for a fee or a percentage of the earnings. The owner of the certificate of public convenience and the actual owner of the motor vehicle should be held jointly and severally liable for damages to third persons as a consequence of the negligent operation of the motor vehicle. (BAR 2005)

8. **X owns a fleet of taxicabs. He operates it through what is known as boundary system. Y drives one of such taxicabs and pays X a fixed amount of P1,000 daily under the boundary system. This means that anything above P1,000 would be the earnings of Y. Y, driving recklessly, hit an old lady crossing the street. Which statement is most accurate?**
- a) **X as the owner is exempt from liability because he was not the one driving;**
  - b) **X as the owner is exempt from liability because precisely the arrangement is one under the “boundary system”;**
  - c) **X will not be exempt from liability because he remains to be the registered owner and the boundary system will not allow the circumvention of the law to avoid liability;**
  - d) **Y is the only one liable because he drove recklessly.**

**Answer:**

b) X will not be exempt from liability because he remains to be the registered owner and the boundary system will not allow the circumvention of the law to avoid liability. (BAR 2012)

9. **X owns a passenger jeepney covered by Certificate of Public Convenience. He allowed Y to use its Certificate of Convenience for a consideration. Y therefore was operating the passenger jeepney under the same Certificate of Public Convenience (Kabit System) under the name of X. the passenger jeepney met an accident. Who will be liable?**
- a) **Y, the one actually operating the jeepney, will be liable to the injured party;**
  - b) **X will be the one liable to the injured party despite the fact that it is Y who is actually operating the jeepney, because while the Kabit System is tolerated, the public should not be inconvenienced by the arrangement;**
  - c) **X will not be held liable if he can prove that he is not the owner anymore;**
  - d) **Public Policy dictates that the real owner, even not the registered one, will be hld liable.**

**Answer:**

b) X will be the one liable to the injured party despite the fact that it is Y who is actually operating the jeepney, because while the Kabit System is tolerated, the public should not be inconvenienced by the arrangement. (BAR 2012)

## **E. Bill of Lading**

### **1. Three-Fold Character**

1. **JRT, Inc. entered into a contract with C. Co. of Japan to export anahaw fans valued at \$23,000. As payment thereof, a letter of credit was issued to JR, Inc. by the buyer. The letter of credit required was issued to JR, Inc. by the buyer. The letter of credit required the issuance of an on-board bill of lading and prohibited the transshipment. The President of JRT, inc. then contracted a shipping agent to ship the anahaw fans through O Containers Lines, specifying the requirements of the letter of credit. However, the bill of lading issued by**

the shipping lines bore the notation “received for shipment” and contained an entry indicating transshipment in Hongkong. The President of JRT, Inc, personally received and signed the bill of lading and despite the entries, he delivered the corresponding check in payment of the freight.

The shipment was delivered at the port of discharge but the buyer refused to accept the anahaw fans because there was no on-board bill of lading, and there was transshipment since the goods were transferred in Hongkong from MV Pacific, the feeder vessel, to MV Oriental, a mother vessel. The same cannot be considered transshipment because both vessels belong to the same shipping company.

JRT, Inc. further argued that assuming there was transshipment, it cannot be deemed to have agreed thereto even if it signed the bill of lading containing such entry because it has made known to the shipping lines from the start that transshipment was prohibited under the letter of credit and that, therefore, it had no intention to allow transshipment of the subject cargo. Is the argument tenable? Reason.

**Answer:**

No. JRT is bound by the terms of the bill of lading when it accepted the bill of lading with full knowledge of its contents which included transshipment in Hongkong. Acceptance under such circumstances makes the bill of lading binding contract. (BAR 1993)

**2. a) What do you understand by a “bill of lading”?**

**b) Explain the two-fold character of a “bill of lading.”**

**Answer:**

a) A bill of lading may be defined as written acknowledgment of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named therein or on his order.

b) A bill of lading has two-fold character, namely, (a) it is a receipt of goods to be transported; and (b) it constitutes a contract of carriage of the goods. (BAR 1998)

NB. In the 2015 Bar exams, one of the questions in Mercantile law required an explanation on the three-fold character of the bill of lading. In addition to the two-fold character referred to in the previous bar exams, the third character of the bill of lading is that it serves as evidence of the existence of the contract of carriage.

## 2. Delivery of Goods

**1. If a shipper, without changing the place of delivery changes the consignment or consignee of the goods (after said goods had been delivered to the carrier), under what condition will the carrier be required to comply with the new orders of the shipper?**

**Answer:**

If the shipper should change the consignee of the goods, without changing their destination, the carrier shall comply with the new order provided the shipper returns to the carrier the bill of lading, and a new one is issued showing the novation of the contract. All expenses for the change must be paid by the shipper. (BAR 1975)

**2. JRT, Inc. entered into a contract with C. Co. of Japan to export anahaw fans valued at \$23,000. As payment thereof, a letter of credit was issued to JR, Inc. by the buyer. The letter of credit required was issued to JR, Inc. by the buyer. The letter of credit required the issuance of an on-board bill of lading and prohibited the transshipment. The President of JRT, inc. then contracted a shipping agent to ship the anahaw fans through O Containers Lines, specifying the requirements of the letter of credit. However, the bill of lading issued by**

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The shipment was delivered at the port of discharge but the buyer refused to accept the anahaw fans because there was no on-board bill of lading, and there was transshipment since the goods were transferred in Hongkong from MV Pacific, the feeder vessel, to MV Oriental, a mother vessel. The same cannot be considered transshipment because both vessels belong to the same shipping company.

Was there transshipment? Explain.

**Answer:**

Yes. Transshipment is the act of taking cargo out of one ship and loading it in another. It is immaterial whether or not the same person, firm or entity owns the 2 vessels. (BAR 1993)

3. X is a trader of school supplies in Calapan, Oriental Mindoro. To bring the school supplies to Calapan, it has to be transported by a vessel. Because there were so many passengers, the 2 boxes of schools supplies were loaded but the shipping company was not able to issue the Bill of lading. So, on board, the Ship Captain issued instead a “shipping receipt” to X indicating the 2 boxes of school supplies being part of the cargo of the vessel. Which phrase therefore, is the most accurate?
- a) The owner of the vessel is not liable because no bill of lading was issued to X hence, no contract of carriage was perfected;
  - b) It is possible to have a contract of carriage of cargo even without a bill of lading, and the “shipping receipt” would be sufficient;
  - c) The only acceptable document of title is a Bill of Lading;
  - d) None of the above.

**Answer:**

c) It is possible to have a contract of carriage of cargo even without a bill of lading, and the “shipping receipt” would be sufficient. (BAR 2012)

- a. Period of Delivery
- b. Delivery Without Surrender of Bill of Lading

1. For a cargo of machinery shipped from abroad to a sugar central in Dumaguete, Negros Oriental, the Bill of Lading (B/L) stipulated “To Shipper’s Order,” with notice of arrival to be addressed to the Central. The cargo arrived at its destination and was released to the Central without surrender of the B/L on the basis of the latter’s undertaking to hold the carrier free and harmless from any liability.

Subsequently, a Bank to whom the Central was indebted claimed the cargo and presented the original of the B/L stating that the Central had failed to settle its obligations with the Bank.

Was there misdelivery by the carrier to the sugar central considering the non-surrender of the B/L? Why?

**Answer:**

There was no misdelivery to the carrier since the cargo was consigned to the sugar central per the “Shipper’s

Order". (BAR 1992)

**NB In one case, the Supreme Court also held that the consignee may obtain delivery of the goods even without the surrender of the bill of lading as an acknowledgment receipt suffices..**

### c. Refusal of Consignee to Take Delivery

### 3. Period for Filing Claims

- 1. X shipped several boxes of goods from Manila to Cebu on board a vessel owned by Mabuhay Lines, Inc., the consignee, several boxes externally appeared to have been damaged. The proprietor of Y Dry Goods, Inc. paid the freight charges upon receipt of the goods. However, when the boxes were opened 2 days later, it was discovered that the contents of all the boxes had been damaged.**

**The proprietor of Y Dry Goods, Inc. seeks your advice on whether he may proceed against the carrier for damages. State your answers with reasons.**

**Answer:**

No action for damages to the goods may be maintained against the carrier.

With respect to a claim arising from damages caused to the goods contained in the boxes where the damage was ascertainable from the outside part of the packages, Article 366 of the Code of Commerce requires that the claim against the carrier must be made at the time of the receipt.

With respect to the goods contained in the boxes where the damage was not ascertainable from the outside part of the packages and such damage was only ascertainable upon the opening of the boxes, the claim against the carrier must be made within 24 hours following receipt of the merchandise.

It does not appear that the proprietor of Y Dry Goods, Inc. made any claim for damages to the goods within the periods set forth in Article 366. Moreover, as he paid the freight charges upon his receipt of the goods shipped, it is too late for the proprietor of Y Dry Goods Inc. to make a claim against the carrier for damages to the goods. (BAR 1984)

### 4. Period for Filing Actions

### F. Maritime Commerce

- 1. The goods imported from the United States were unloaded by the carrier in Manila. While in the custody of the arrastre operator, part of the shipment worth P1,000 was lost. Does the case involve admiralty and maritime commerce so that the action for short delivery has to be filed in the Court of First Instance regardless of the amount? Reasons.**

**Answer:**

No, the matter does not involve admiralty or maritime commerce which relate only to incidents occurring during the sea voyage.

## 1. Charter Parties

### a. Bareboat/Demise Charter

1. **Tirso Molina charters a vessel owned and operated by Star Shipping Co., a common carrier, for the purpose of transporting two tractors to his logging concession. The crane operator of the shipping company somehow negligently puts the tractors in a place where they would tilt each other. During the trip, a strong wind hits the vessel, causing severe damage to the tractors.**

**Tirso Molina sues the shipping company for damages. The latter cites a stipulation in the charter agreement exempting the company from liability from loss or damage arising from the negligence of its agents. Tirso Molina countered by stating that the aforementioned stipulation is against public policy and, therefore, null and void.**

**Is the stipulation valid? Would you hold the shipping company liable?**

**Answer:**

Yes, the stipulation in the charter party is valid, and Star Shipping Co. is not liable. The Civil Code provides on common carriers should not apply where the common carrier is not acting as such but as a private carrier, as in the case in the above problem. A common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier. As a private carrier, a stipulation exempting the owner (Star Shipping Co.) from liability for the negligence of its agent is valid, being not against public policy. (*Home Insurance Co. v. American Steamship Agencies*, April 4, 1968; 23 SCRA 24) (Bar 1980)

2. **“C” Company shipped 20,000 bags of soy beans through the S/S Melon, owned and operated by “X” Shipping Lines, consigned to the Toyo Factory and insured by the Surety Insurance Co., against all risks. “C” Company hired the entire vessel, with the option to go north or south, loading, stowing and discharging at its risk and expense. The owner and shipper agreed on a stipulation exempting the owner from liability for the negligence of its agents.**

**When the cargo was delivered to the consignee, there were shortages amounting to P10,500. The insurance company paid for the damage and sought reimbursement from the “X” Shipping Lines as carrier.**

**Is the carrier liable? Select the correct answer from the following and explain.**

The carrier is:

- (A) Liable, because the stipulation exempting its owner from liability for the negligence of its agent is against public policy, hence, void.
- (B) Liable, because in case of loss, destruction or deterioration of goods, common carriers are presumed at fault under Art. 1735 of the Civil Code.
- (C) Not liable because it exercised due diligence in stowing the goods.
- (D) Not liable because it is not a common carrier and the parties to a contract, as such, may enter into a stipulation exempting the owner from liability for the negligence of its agents.

**Answer:**

The carrier is not liable. A common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier. The provisions of the New Civil Code on common carriers should not be applied where the carrier is not acting as such but as a private carrier. As a private carrier, a stipulation exempting the ship-owner from liability for the negligence of its agents is not against public policy and is deemed valid. (*Home Insurance Co. v. American Steamship Agencies, Inc.*, April 4, 1968; 23 SCRA 25) (BAR 1981)

3. **X owns the ship M/V Aguinaldo. He bareboat chartered the ship to Y who appointed all its crew members from the captain down to its last official. Y then transported a shipment of 10,000 bags of sugar belonging to Z. Thru the negligence of the ship captain, half of the sugar was damaged due to sea water. Since Y is bankrupt, Z sued the captain and X. Will the suit prosper?**

**Answer:**

The action could prosper against the ship captain whose negligence caused the damage but not against X who merely was a lessor of the vessel and who was neither a party to the contract for the shipment of the goods nor an employer of the ship captain. (BAR 1989)

- b. Time Charter
- c. Voyage/Trip Charter

1. **The Saad Development Corp. enters into a voyage charter with the XYZ Shipping Corp. over the latter's vessel, the M/V Lady Love. Before the Saad Development Corp. could load it, XYZ Shipping Corp. sold M/V Lady Love to Oslob Maritime Corp., which decided to load it for its own account.**

- a) **May YZ Shipping Corp. validly ask for the rescission of the charter party? If so, can Saad Development Corp. recover damages? To what extent?**

**Answer:**

XYZ Shipping Corporation may ask for the rescission of the charter party if, as in this case, it sold the vessel before the charterer has begun to load the vessel and the purchaser loads it for his own account. Saad Development Corp. may recover damages to the extent of its losses.

- b) **If Oslob Maritime Corp. did not load it for its own account, is it bound by the charter party?**

**Answer:**

If Oslob Maritime Corp. did not load M/V Lady Love for its own account, it would be bound by the charter party, but XYZ Shipping would have to indemnify Oslob Maritime if it was not informed of the Charter Party at the time of sale.

2. **The term "owner pro hac vice of the vessel." In what kind of charter party does this obtain?**

**Answer:**

The term "owner pro hac vice of the vessel", is generally understood to be the charterer of a vessel in the case of bareboat or demise charter. (BAR 1991)

## 2. Liability of Ship Owners and Shipping Agents

1. **"S" shipped goods from Australia on board a foreign vessel owned and operated by "X", a shipping company, based in Australia and represented in the Philippines by "R". The goods were consigned to "T" of Manila and insured by "U" against all risks. Upon arrival in Manila Bay, the goods were discharged from the vessel to a lighter owned by the Bay Brokerage Co.**

**When delivered to and received by "T", the goods were found to have sustained losses or damages. Evidence disclosed that the damage occurred while the goods were in the custody of the carrier.**

**The insurance company paid the amount of the loss but sought reimbursement from "X" and/or "R". "R" disclaimed any liability alleging that he is a mere agent of "X", and having acted as agent of a disclosed principal is, therefore, not liable.**

- a) **Can the insurance company recover from "R"? Reasons.**
- b) **What is the liability, if any, of Bay Brokerage Co.? Explain.**

**Answer:**

- a) Yes, the insurance company can recover from "R". A ship agent ("R") under the Code of Commerce is liable solidarily with its principal (X), in an amount representing the value of the good lost or damaged.  
(*Switzerland General Insurable Co., Ltd. v. Ramirez, February 21, 1980; 96 SCRA 297*)
  - b) The Bay Brokerage Co. is not liable. The evidence disclosed that the damage occurred while the goods were yet in the custody of the carrier, before that goods were discharged from the vessel to a lighter owned by the Bay Brokerage Co. (BAR 1981)
2. **X Mining Co. shipped a cargo of machineries on board the S/S Good Ship which was chartered by the Able Shipping Co., a foreign corporation represented in the Philippines by its agent, Best Lines, Inc. When the goods were delivered to the consignee, Y Corporation, they were found to have sustained losses. The insurer, Sunshine Insurance Co., paid for the losses, thereby subrogating itself to the rights of X Mining Company or Y Corporation vis-à-vis the shipping company and the shipping agent.**

**Upon arrival of the S/S Good Ship in Manila, Best Lines, Inc. took charge of the following: (a) unloading of the cargo and issuing of cargo receipts in its own name for the purpose of evidencing the condition and discharge of the cargo from the vessel to the arrastre operator and/or unto the barge lighters; (b) filing and processing of claims against the vessel S/S Good Ship for damages/ losses sustained by the cargo.**

**When Sunshine Insurance Co. sued both Able Shipping Co. and Best Lines, Inc. the latter contended that it was a disclosed agent and could not therefore be held liable, despite the insolvency of Able Shipping Co.**

**Rule on the contention of Best Lines, Inc., with reasons.**

**Answer:**

On the basis of the activities performed by Best Lines, Inc. upon the arrival of the S/S Good Ship in Manila, it is clear that Best Lines, Inc. is the entity that represents the vessel in the port of Manila and hence is a ship agent within the meaning and context of Article 586 of the Code of Commerce: "the person who represents the vessel in the port in which she happens to be." Considering the peculiar relationship of the parties, Best Lines, Inc. cannot be considered as a "mere agent" of a disclosed principal under the civil law on agency as distinguished from a ship agent within the context of the Code of Commerce. Our Supreme Court has held that the doctrine having reference to the

relation between principal and agents cannot be applied in the case of ship agents and ship owners. (*Yu Biao Suntua & Co. v. Ossorio*, 43 Phil. 51) (BAR 1984)

The Code of Commerce provides that the ship agent shall be liable for indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried.

The insolvency of Able Shipping Co. has no bearing insofar as the liability of Best Lines, Inc. is concerned. The law does not make the liability of the ship agent dependent upon the solvency or insolvency of the ship owner.

Best Lines, Inc., as ship agent, is liable solidarily with its principal, Able Shipping Co., for the amount of the losses damages sustained by the goods. (*Switzerland General Insurance Co., Ltd. V. Ramirez*, 96 SCRA 297 1980)

### a. Liability for Acts of Captain

- 1. Pablo Esparadon, a duly-licensed ship captain of the M/V Don Jose was drunk while he was on duty as such, and while M/V Don Jose was sailing from Manila to the Visayas. As a consequence thereof, the M/V Don Jose rammed another vessel near Corregidor, causing both vessel to sink completely and thus become total losses. The cargo owners of both sunken vessels sued the owner of the M/V Don Jose for their losses.**

**Is the shipowner of M/V Don Jose liable? Explain your answer.**

**Answer:**

No. the shipowner of M/V Don Jose is not liable. The civil liability of the shipowner of a vessel, in maritime collision which is caused by the fault of the captain, as in this problem (being drunk), is merely co-existent with his interest in the vessel (M/V Don Jose), such that the total loss thereof, results in the extinction of such liability. (*Urrutia & Co. v. Baco River Plantation Co.*, 26 Phil. 362; *Guan v. Cia Maritime* (SC), 38 Off. Gaz. 2536; etc) (BAR 1978)

- 2. X chartered the ship of Y to transport his logs from Zamboanga to Manila. In the course of their voyage, the ship met a storm and had to dock in Cebu for 3 days. Z, the captain of the ship, borrowed P20,000 from X on the pretext that he would need the money for the repair of the ship. Z misappropriated the money and converted it to his own benefit. What is the liability of Y, if any?**

**Answer:**

A ship-owner would only be liable for contracts made by the captain (a) when duly authorized or (b) even when unauthorized, for ship repairs, or for equipping or provisioning the vessel when the proceeds are invested therein. Since the loan by the captain from X does not fall under any of the foregoing cases, the amount borrowed shall be considered a personal liability of Z, the captain, and Y, the ship-owner, cannot thus be held liable (BAR 1989)

- 3. MV Mariposa, one of five passenger ships owned by the Marina Navigation Company, sank off the coast of Mindoro while en route to Iloilo City. More than 200 passengers perished in the disaster. Evidence showed that the ship captain ignored typhoon bulletins issued by PAGASA during the 24-hour period immediately prior to the vessel's departure from Manila. The bulletins warned all types of sea crafts to avoid the typhoon's expected path near Mindoro. To make matters worse, he took more load than was allowed for the ship's rated capacity. Sued for damages by the victim's surviving relatives, Marina Navigation Company contended: (1) that its liability, if any, had been extinguished with the sinking of MV Mariposa; and (2) that assuming it had not been so extinguished, such liability should be limited to the loss of the cargo. Are these contentions meritorious in the context of applicable provisions of the Code of Commerce?**

**Answer:**

Yes. The contentions of Marina Navigation Company are meritorious. The captain of MV Mariposa is guilty of negligence in ignoring the typhoon bulletins issued by PAGASA and in overloading the vessel. But only the captain of the vessel MV Mariposa is guilty of negligence. The shipowner is not. Therefore, the shipowner can invoke the doctrine of limited liability. (BAR 2000)

4. **Under a charter party XXO Trading Company shipped sugar to Coca-Cola Company through SS Negros Shipping Corp., insured by Capitol Insurance Company. The cargo arrived but with shortages. Coca-Cola demanded from Capital Insurance Co. P500,000 in settlement for XXO Trading. The MM RTC, where the civil suit was filed, “absolved the insurance company, declaring that under the Code of Commerce, the shipping agent is civilly liable for damages in favor of third persons due to the conduct of the carrier’s captain, and the stipulation in the charter party exempting the owner from liability is not against public policy. Coca-Cola appealed. Will its appeal prosper? Reason briefly.**

**Answer:**

No. The appeal of Coca-Cola will not prosper. Under Article 587 of the Code of Commerce, the shipping agent is civilly liable for damages in favor of third persons due to the conduct of the carrier’s captain, and the shipping agent can exempt himself therefrom only by abandoning the vessel with all his equipment and the freight he may have earned during the voyage. On the other hand, assuming there is bareboat charter, the stipulation in the charter party exempting the owner from liability is not against public policy because the public at large is not involved. (BAR 2004)

**b. Limited Liability Rule**

1. **a) Explain the limited liability rule or the so called real or hypothecary nature of maritime law.**

**Answer:**

a) under the real or hypothecary nature of maritime law, the liability of the ship owner or agent, arising from the operation of a ship, is limited to the vessel, equipment and freight during the voyage, so that if ship owner or agent would abandon the vessel, equipment and freight, his liability would be extinguished. However, if the vessel would sink and never be recovered, that would also extinguish the liability of the ship owner or agent, unless those would be insured, and in this case it would suffice to surrender the insurance to the creditors to extinguish his liability. (*Abueg v. San Diego, 44 Off. Gaz. 80*)

2. **Captain Hook, the ship captain of M.V. Peter Pan, overloaded the M.V. Peter Pan, as a consequence of which the vessel sank in the middle of the Sulu Sea, and nothing whatsoever was recovered. The owners of the cargo and the heirs of the three passengers of the vessel filed an action for damages in the amount of P500,000 against Mr. Wendy, the owner.**

**Will the action prosper? Reasons.**

**Answer:**

The total loss or the lawful abandonment of the vessel precludes further liability on the part of the shipowner, except to the extent of earned freightage or proceeds of insurance, if any, for the loss of cargo arising from the

“conduct of the captain in the care of goods”. This right of abandonment likewise applies to collisions and shipwreck but in the latter case only for unpaid wages.

Accordingly, the action filed by the owners of the lost cargo, absent any remaining value of the vessel, earned freightage or insurance proceeds, may not prosper. **The action filed by the heirs of the deceased passengers may, however, prosper since, except in collisions, the shipowners are not granted the right of abandonment. (BAR 1988)**

**NB The highlighted portion is not accurate. First, the question does not contemplate abandonment but total loss of the vessel when it sank. Second, under the limited liability rule, the ship owner is also not liable for death or injuries caused to passengers due to the negligence of the captain unless the ship owner himself is guilty of negligence.**

- 3. X, a rich trader, boarded the M/V Cebu, a small vessel with a value of P3 M and owned by Y, plying the route Cotabato to Pagadian City. X had in his possession a diamond worth P5 M. the vessel had a capacity of 40 passengers. Near Pagadian, the vessel met squally weather and was hit by a six foot waves every three seconds. Soon, water entered the engine room and the hull of the vessel. The patron of the vessel ordered the distribution of life belts to the passengers. He told them the vessel was sinking and for them to take care of themselves. The vessel turned out to be overloaded by 20 passengers and had no sufficient life belts. X failed to get a life belt and died when the vessel totally sunk. The heirs of X sued Y for P10 M damages. Y raised as a defense of limited liability.**

**Answer:**

The doctrine of limited liability does not apply when death or injury or damage sustained is attributable to the fault or negligence of the shipowner or shipagent or to concurring fault or negligence of the shipowner or shipagent or captain (or patron) of the vessel. Undoubtedly, the shipowner himself, was guilty of such fault or negligence in not making certain that the passenger vessel is not overloaded, as well as and is having failed to provide sufficient life belts on board the vessel. (BAR 1989)

- 4. In a collision between M/T Manila, a tanker, and M/V Don Claro, an inter-island vessel, M/V Don Claro sank and many of its passengers drowned and died. All its cargoes were lost. The collision occurred at nighttime but the sea was calm, the weather fair and visibility was good. Prior to the collision and while still 4 nautical miles apart, M/V Don Claro already sighted M/T Manila on its radar screen. M/T Manila had no radar equipment. As for speed, M/V Don Claro was twice as fast as M/T Manila.**

**At the time of the collision, M/T Manila failed to follow Rule 19 of the International Rules of the Road which required 2 vessels meeting head on to change their course by each vessel steering to starboard (right) so that each vessel may pass on the port side (left) of the other. M/T Manila signaled that it would turn to port side and steered accordingly, thus resulting in the collision. M/T Don Claro’s captain was off-duty and was having a drink at the ship’s bar at the time of the collision.**

- a) If M/V Don Claro was at fault, may the heirs of the passengers who died and the owners of the cargoes recover damages from the owner of said vessel?**

**Answer:**

Yes, but subject to the doctrine of limited liability. The doctrine is to the effect that the liability of the shipowners would only be to the extent of any remaining value of the vessel, proceeds of insurance, if any, and earned freightage. Given the factual settings, the shipowner himself was not guilty of negligence and, therefore, the doctrine can well apply. (BAR 1991)

5. Toni, a copra dealer, loaded 1,000 sacks of copra on board the vessel M/V Tonichi (a common carrier engaged in coastwise trade owned by Ichi) for shipment from Puerto Galera to Manila. The cargo did not reach Manila because the vessel capsized and sank with all its cargo. When Toni sued Ichi for damages based on breach of contract, the latter invoked the “limited liability rule”

What do you understand of the “rule” invoked by Ichi?

**Answer:**

By “limited liability rule” is meant that the liability of a ship owner for damages in case of loss is limited to the value of the vessel involved. His other properties cannot be reached by the parties entitled to damages. (BAR 1994)

6. Explain these two doctrines in Maritime accidents— The Doctrine of Limited Liability XXX

**Answer:**

Under the “doctrine of limited liability” the exclusively real and hypothecary nature of maritime law operates to limit the liability of the shipowner to the value of the vessel, earned freightage and proceeds of the insurance. However, such doctrine does not apply if the shipowner and the captain are guilty of negligence. (BAR 1997)

NB This should read such doctrine does not apply if the shipowner solely or together with the ship captain are guilty of negligence.

7. Thinking that the impending typhoon was still 24 hours away, MV Pioneer left port to sail for Leyte. That was a miscalculation of the typhoon signals by both the ship-owner and the captain as the typhoon came earlier and overtook the vessel. The vessel sank and a number of passengers disappeared with it.

Relatives of the missing passengers claimed damages against the shipowner. The shipowner set up the defense that under the doctrine of limited liability, his liability was co-extensive with his interest in the vessel. As the vessel was totally lost, his liability had also been extinguished.

- a) How will you advise the claimants? Discuss the doctrine of limited liability in maritime law.  
b) Assuming that the vessel was insured. May the claimants go after the insurance proceeds?

**Answer:**

- a) Under the doctrine of limited liability in maritime law, the liability of the shipowner arising from the operation of a ship is confined to the vessel, equipment, and freight, or insurance, if any, so that if the shipowner abandoned the ship, equipment, and freight, his liability is extinguished. **However, the doctrine of limited liability does not apply when the shipowner or captain is guilty of negligence.**

**NB The highlighted portion is not accurate. The limited liability rule still applies even though the captain is negligent but not when the shipowner is at fault.**

- b) Yes. In case of a lost vessel, the claimants may go after the proceeds of the insurance covering the vessel. (BAR 1999)

8. **X Shipping Company spent almost a fortune in refitting and repairing its luxury passenger vessel, the MV Marina, which plied the inter-island routes of the company from La Union in the north to Davao City in the south. The MV Marina met an untimely fate during its post-repair voyage. It sank off the coast of Zambales while en route to La Union from Manila. The investigation showed that the captain alone was negligent. There were no casualties in that disaster. Faced with a claim for the payment of the refitting and repair, X Shipping Company asserted exemption from liability on the basis of the hypothecary or limited liability rule under Article 587 of the Code of Commerce. Is X Shipping Company's assertion valid? Explain.**

**Answer:**

No. the assertion of X Shipping Company is not valid. The total destruction of the vessel does not affect the liability of the shipowner for repairs on the vessel completed before its loss. (BAR 2000)

**c. Exceptions to Limited Liability**

1. **What are the exceptions to the said rule? Explain.**

- a) Some exceptions to the above rule are any of the 2 succeeding enumerations, among others:
- 1) In case the voyage is not maritime, but only in river, bay, or gulf;
  - 2) In the case of the expenses for equipping, repairing or provisioning the vessel;
  - 3) In case the vessel is not a common, but special carrier; and
  - 4) In case the vessel would totally sink or be a total loss, due to shipowner's or ship agent's own fault.
- (BAR 1985 and 1994)

NB. The following exceptions should be added :

1. **Wages of crewmen**
2. **If the vessel is insured in which case, the insurance proceeds stand for the vessel**
3. **The vessel is not abandoned ( unless the vessel sinks resulting in total loss because abandonment is not necessary in case of total loss )**

**3. Accidents and Damages in Maritime Commerce**

**a. General Average and Particular Average**

1. **The vessel "General Mascardo" was loaded with 5,000 tons of gold and copper concentrates by Syndicated Ores, Inc. (the charterer) for delivery to the U.S. The master of the vessel issued the corresponding bill of lading which contained a prohibition against the loading of dangerous cargo per se or cargo which may become dangerous and make the voyage unsafe. The master has had 10 years of experience as captain, but this was his first experience with cargo of gold and copper concentrates. The cargo was loaded, stowed and trimmed at the sole risk and expense of Syndicated Ore, Inc. While enroute to its destination, the vessel met a typhoon and because of the heavy stress, the shifting boards or compartments constructed by Syndicated broke, causing the cargo of ore concentrates to shift. Since the vessel was listing on its side to almost 14° for several hours, the master, in the hope of saving the vessel, decided to jettison some of the cargo belonging to other shippers. At this point, a powerful tugboat offered to help in maneuvering the vessel, which the master accepted on no-cure no pay basis. To save the vessel and the remaining cargo, the master, after consulting with his officers, deviated to Japan, the nearest port, instead of proceeding to the U.S. Thereafter, the cargo of gold and copper concentrates were examined by international surveyors who declare that the moisture content of said concentrates was beyond transportable limit and the same was**

much higher than as certified by Syndicated. The master and the shipowner, after declaring that the cargo was of dangerous nature and condition, unloaded the cargo in Japan, abandoned the voyage and informed the cargo owners to transship their cargo at their own cost and expense. The master and the shipowner also slapped a lien on said cargo for freight up to Japan as well as other expenses.

- a) Was there a general average situation? Did the vessel have the right to jettison other cargo, hire salvors and deviate the vessel to Japan?
- b) Assuming Syndicated Ores, Inc. refused general average, may the vessel declare the cargo as dangerous, unload the same, store the cargo in Japan and abandon the voyage, at the same time slapping a lien on cargo for freightage, expenses for unloading, expenses for jettison, salvage and/or general average?
- c) Does Syndicated Ores, Inc. have the right to insist that the vessel carry the cargo to the U.S. per bill of lading, or that the shipowner hire a substitute vessel to complete the contracted voyage in accordance with the "extraordinary diligence" required of common carriers in the carriage of goods?

**Answer:**

- a) As to general average— *First suggested answer:* No, there was no general average situation, the requisites of a general average being absent

NB The better answer is there is no general average because the increase in the moisture content of the concentrates did not pose common danger to the vessel and the cargo and the formalities required for general average were not complied with.

*Second suggested answer:* Assuming that the missing facts for requirements (there are four requisites) were present, then there was general average. (*A. Magsaysay, Inc. v. Agan, L-6393, Jan. 31, 1955*)

As to Jettison— *First suggested answer:* Since the requisites of a general average were not existing, the captain had no right to jettison other cargo.

*Second suggested answer:* If the requisites of general average were present (there are four), then the captain had the right to jettison the other cargo.

As to hiring salvor— *First suggested answer:* Yes, because the cargo of the vessel was beyond the control of the crew.

*Second suggested answer:* No, because the requisites of a valid salvage claim were not present (there are three)

As to deviation— *First suggested answer:* The vessel/captain had no right to deviate the vessel to Japan because the requisites of arrival under stress were not present.

*Second suggested answer:* Yes, the vessel/captain had the right to deviate the vessel to Japan, because made in good faith, upon reasonable grounds of belief in its necessity to avoid a peril.

- b) It depends. If the requisites of law as to general average, salvage work and deviation of the vessel to Japan, would not be present or satisfied, as discussed above, under question letter (a), then the vessel/captain may not do these acts/things stated in question letter (b) to the prejudice of the shipper. If otherwise, the vessel/captain may.

c) It depends. If during the voyage the vessel should become unseaworthy, the captain shall be obliged to charter at his expense another one in good condition to carry the cargo to its destination, U.S.A. If the captain should not furnish thru indolence or malice, a vessel to take the cargo to its destination, the shippers may charter one at the expense of the captain/shipowner. (BAR 1982)

**2. The MV Maliksi, laden with cargo, was on its way from Manila to Davao. Typhoon Bebeng which had been last reported as leaving the Philippine area, suddenly changed its course without giving enough time for warning, and met MV Maliksi with all her strength. In order to lighten the vessel and prevent it from sinking, the Captain, after taking the proper steps, decided to jettison part of the cargo. Among those jettisoned were 20 barrels of petroleum which had been loaded on deck with the consent of the shipper, Juan Reyes. Some big crates below deck were also jettisoned.**

**The storm gradually subsided, and the MV Maliksi, although it suffered some damage, remained seaworthy and continued on its way to Davao. Visibility was still poor so that the vessel kept its light on.**

**About 2 hours later, the captain and the crew of the MV Maliksi suddenly saw another ship, without any lights on, was a few meters away from its port side and would apparently cross its path. They blew their whistles to warn the other vessel, at the same time trying to veer from its path. In spite of this, the MV Maliksi was hit on its port side and subsequently sank. It appeared that the watch of the other vessel, the MV Malakas, had fallen asleep.**

**The MV Malakas took the captain and the crew of MV Maliksi on board, and was able to salvage part of the MV Maliksi's cargo and carried this also on board.**

**Discuss briefly the rights and/or liabilities, if any, of Juan Reyes, the owners of the crates jettisoned, the owners of the cargo saved, and the owners of MV Maliksi and the MV Malakas, respectively.**

**Answer:**

Juan Reyes and the other owners of the cargo jettisoned are entitled to contribution for general average. All the requisites for the proper general average are present: the jettisoning was made deliberately for the purpose of saving both the vessel and its cargo from imminent danger, and the vessel was saved. This right to contribution subsists although the ship subsequently sank because the sinking was due to another and subsequent accident. Juan Reyes has the right to contribution although his goods were loaded on deck because petroleum due to its inflammable nature, is allowed to be and in fact must be loaded on deck and not in the hold (Art. 855 Code of Commerce) Besides, Reyes knew and consented to his cargo being loaded on deck. However, only the cargo saved from both risks (i.e. typhoon and collision) can be made subject to such contribution, after deducting the expenses for saving them. The cargo saved during the typhoon but lost as a result of the collision cannot be made to contribute although they also benefited from the jettisoning. Their complete loss extinguished any obligation on their part to be subject to contribution for general average.

The owner of the MV Malakas is of course liable for the damages to the MV Maliksi as well as to the owner of the cargo lost due to the collision, because such collision was due to the negligence of its watchman. However, such civil liability is limited to the value of the vessel MV Malakas with all its appurtenances and freightage earned during the voyage. Unless of course it is covered by insurance. (BAR 1983)

3. **MV SuperFast, a passenger-cargo vessel owned by SF Shipping Company plying the inter-island routes, was on its way to Zamboanga City from the Manila port when it accidentally, and without fault or negligence of anyone on the ship, hit a huge floating object. The accident caused damage to the vessel and loss of an accompanying crated cargo of passenger PR. In order to lighten the vessel and save it from sinking and in order to avoid risk of damage to or loss of the rest of the shipped items (none of which was located on the deck), some had to be jettisoned. SF Shipping had the vessel repaired at its port of destination. SF Shipping thereafter filed a complaint demanding all the other cargo owners to share in the total repair costs incurred by the company and in the value jettisoned cargoes. In answer to the complaint, the shippers' sole contention was that, under the Code of Commerce, each damaged party should bear its or his own damage and those that did not suffer any loss or damage were not obligated to make any contribution in favor of those who did. Is the shippers contention valid? Explain.**

**Answer:**

No. the shippers' contention is not valid. The owners of the cargo jettisoned, to save the vessel from sinking and to save the rest of the cargoes, are entitled to contribution. The jettisoning of said cargoes constitute general average loss which entitles the owners thereof to contribution from the owner of the vessel and also from the owners of the cargoes saved.

SF Shipping is not entitled to contribution/reimbursement for the cost of repairs on the vessel from the shippers. (BAR 2000)

4. **Global Transport Services, Inc (GTSI) operates a fleet of cargo vessels plying interisland routes. One of its vessels, MV Donna Juana, left the port of Manila for Cebu laden with, among other goods, 10,000 television sets consigned to Romualdo, a TV retailer in Cebu.**

When the vessel was about 10 nautical miles away from Manila, the ship captain heard on the radio that a typhoon which, as announced by PAG-ASA, was on its way out of the country, had suddenly veered back into Philippine territory. The captain realized that MV Dona Juana would traverse the storm's path, but decided to proceed with the voyage. True enough, the vessel sailed into the storm. The captain ordered the jettison of the 10,000 television sets, along with some other cargo, in order to lighten the vessel and make it easier to steer the vessel out of the path of the typhoon. Eventually, the vessel, with its crew intact, arrived safely in Cebu.

- a) **Will you characterize the jettison of Romualdo's TV sets as an average? If so, what kind of an average, and why? If not, why not?**

**Answer:**

The jettison of Romualdo's TV sets resulted in a general average loss, which entitles him compensation or indemnification from the shipowner and the owners of the cargoes saved by the jettison.

- b) **Against whom does Romualdo have a cause of action for indemnity of his lost TV sets? Explain.**

**Answer:**

Romualdo has a cause of action for his lost TV sets against the shipowner and the owners of the cargoes saved by the jettison. The jettison of the TV sets resulted in a general average loss, entitling Romualdo to indemnity for the lost TV sets. (BAR 2009)

5. **What are the types of averages in marine commerce?**

**Answer:**

The types of averages are particular and general average. Particular averages include all expenses and damages caused to the vessel or to the cargo which did not inure to the common benefit and profit of all the persons interested in the vessel and the cargo. General averages include all damages and expenses which are deliberately caused to save the vessel, its cargo, or both at the same time, from real and known risk. (BAR 2010)

6. **An importer of Christmas toys loaded 100 boxes of Santa Clause talking dolls aboard a ship in Korea bound for Manila. With the intention of smuggling ½ of his cargo, he took a bill of lading for only 50 boxes to save the more precious cargo.**

**Is the importer entitled to receive any indemnity for average?**

**Answer:**

No. The importer is not entitled to receive any indemnity for average. In order that the goods jettisoned may be included in the general average and the owner be entitled to indemnity, it is necessary that their existence on board be proven by means of the bill of lading. (BAR 2010)

**b. Collisions**

1. **Vessel “U” and “V” collided with each other causing damage to both vessels. Vessel “U” had the last clear chance to avoid the collision but failed to do so.**
- 1) **Is the doctrine of last clear chance in tort applicable to collisions of vessels at sea under the Code of Commerce? Which vessel should shoulder liability for the damage suffered by both vessels and by the cargo?**
  - 2) **Assume that the negligence of the captain of vessel “U” was the proximate cause of collision, while the negligence of the captain of vessel “V” was merely contributory. To which vessel should the collision be deemed imputable?**

**Answer:**

- 1) The doctrine of last clear chance in tort is not applicable to collision of vessels at sea under the Code of Commerce, and the case is deemed as if the collision is imputable to both vessels; thus, each one of the vessels shall suffer her own damage, and both shall be solidarily liable for the damages occasioned to their cargoes. (*C. B. Williams v. Yangco*, 27 Phil. 68; *Sarasola v. Sontua*, 47 Phil 365.)
  - 2) The collision shall be deemed imputable also to both vessels, as in the preceding answer to No. 1 question. Since the “doctrine of contributory negligence” in tort is not also applicable to collisions of vessel at sea under the Code of Commerce, the case is deemed as if the collision is imputable to both vessels. (*Gov’t of the P.I. v. Phil. Steamship Co. Inc.*, 44 Phil. 359) (BAR 1980)
2. **In a collision between M/T Manila, a tanker, and M/V Don Claro, an inter-island vessel, M/V Don Claro sank and many of its passengers drowned and died. All its cargoes were lost. The collision occurred at nighttime but the sea was calm, the weather fair and visibility was good. Prior to the collision and while still 4 nautical miles apart, M/V Don Claro already sighted M/T Manila on its radar screen. M/T Manila had no radar equipment. As for speed, M/V Don Claro was twice as fast as M/T Manila.**

**At the time of the collision, M/T Manila failed to follow Rule 19 of the International Rules of the Road which required 2 vessels meeting head on to change their course by each vessel steering to starboard (right) so that each vessel may pass on the port side (left) of the other. M/T Manila signaled that it would turn to port side and steered accordingly, thus resulting in the collision. M/T Don Claro's captain was off-duty and was having a drink at the ship's bar at the time of the collision.**

**b) Who would you hold liable for the collision?**

**Answer:**

I could hold the 2 vessels liable. In the problem given, whether on the basis of the factual settings or under the doctrine of inscrutable fault, both vessels can be said to have been guilty of negligence. The liability of the 2 carriers for the death or injury of passengers and for the loss of or damage to the goods arising from the collision is solidary. Neither carrier may invoke the doctrine of last clear chance which can only be relevant, if at all, between the 2 vessels but not on the claims made by passengers or shippers. (BAR 1991)

- 3. Two vessels coming from opposite directions collided with each other due to fault imputable to both. What are the liabilities of the two vessels with respect to the damage caused to them and their cargoes? Explain.**

**Which party should bear the damage to the vessels and the cargoes if the cause of the collision was a fortuitous event? Explain.**

**Answer:**

Each vessel must bear its own damage. Both of them are at fault.

No party shall be held liable since the cause of the collision is fortuitous event. The carrier is not an insurer. (BAR 1995)

- 4. A severe typhoon was raging when the vessel SS Masdaam collided with the M/V Princess. It is conceded that the typhoon was the major cause of collision, although there was a very strong possibility that it could have been avoided if the captain of the SS Masdaam was not drunk and the captain of the M/V Princess was not asleep at the time of the collisions.**

**Who should bear the damages to the vessels and their cargoes?**

**Answer:**

The shipowners of the SS Masdaam and M/V Princess shall each bear their respective loss of vessels. For the losses and damages suffered by their cargoes, both shipowner are solidarily liable. (BAR 1998)

### **c. Doctrine of Inscrutable Fault**

- 1. There was a severe typhoon when the vessel M/V Fortuna collided with M/V Suerte. It is conceded that the typhoon was a major cause of the collision, although there was a strong possibility that it could have avoided if the captain of M/V Fortuna was not asleep at the time of the collision.**

**Who should bear the damages to the vessels and their cargoes?**

**Answer:**

Under the doctrine of inscrutable fault, neither of the carriers may go after the other.

The shippers may claim damages against the shipowners and the captains of both vessels, having been both negligent. Their liability is solidary.

The shipowners have the right to recover damages from the master of the vessels who were both guilty of negligence. The presence of a typhoon in the area had in fact warranted a greater degree of alertness on their part. (BAR 1987)

- 2. If it cannot be determined which of the vessels was at fault resulting in the collision, which party should bear the damage caused to the vessels and the cargoes? Explain.**

**Answer:**

Each of them should bear their respective damages. Since it cannot be determined as to which vessel is at fault. This is under the doctrine of “inscrutable fault”. (BAR 1995; 1997)

**d. Salvage**

- 1. If the cargo of a vessel is saved entirely by another vessel, who in the latter vessel will be entitled to salvage reward?**

**Answer:**

If the cargo of a vessel is saved entirely by another vessel, the salvage reward shall be divided between the owner, the captain, and the remainder of the crew of the latter vessel, so as to give the owner a half, the captain a fourth, and all the remainder of the crew the other fourth, in the absence of an agreement to the contrary. (BAR 1975)

- 2. About 8:00 pm of March 20, 1974, X as captain of the MV Christina, received an S.O.S. or distressed signal by blinkers, from the MV Rosario, owned by Y. answering the S.O.S. call, X altered the course of his vessel which was then sailing from Dumaguete City, and headed towards the beckoning MV Rosario. X found MV Rosario to be in trouble due to engine failure and the loss of her propeller, for which reason, it was drifting slowly southward from Negros Island towards Borneo in the open China Sea, at the mercy of a moderate easterly wind. About 8:25 pm on the same day, the MV Christina succeeded in getting near the MV Rosario—in fact as near as about 7 meters from the latter ship. With the consent and knowledge of the captain and/or master of the MV Rosario, X caused the MV Rosario to be tied to, or well-secured and connected with tow lines from the MV Christina. The MV Christina had the MV Rosario in tow and proceeded towards the direction of Dumaguete City, as evidenced by a written certificate to this effect executed by the Master, the Chief Engineer, the Chief Officers, and the Second Engineer of the MV Rosario, who were then on board the ship at the time of the occurrence stated above.**

**Did the service rendered by X to Y constitute “salvage” or “towage”? Why?**

**Answer:**

The circumstance all show that there was no marine peril, and the vessel was not a quasi-derelect, as to warrant a valid salvage claim for the towing of the vessel. X’s service to Y can be considered as a quasi-contract of “towage” because in consenting to X’s offer to tow the vessel, Y thereby impliedly entered into a juridical relation of “towage” with the owner of the towing vessel, captained by X.

**May X recover from Y compensation for such service? Why?**

**Answer:**

No. Where the contract created is one of towage, only the owner of the towing vessel, to the exclusion of the crew of said vessel, may be entitled to compensation. (*Barios v. Carlos A. Go Thong & Co.*, 7 SCRA 535) (BAR 1977)

- 3. While at sea, the captain of vessel A received distress signals from vessel B, and vessel A responded and found vessel B with engine failure and drifting off course. Upon acceptance by vessel B and towed it safely to port. There was no grave marine peril because the sea was smooth and vessel B was far from the rocks. In a suit for compensation for towage, who are entitled to recover, the owner, the crew, or both? Give brief reasons.**

**Answer:**

Where the contract created is one for towage, and not for salvage, like that stated in the question, only the shipowner of the towing vessel, to the exclusion of the crew of the said vessel, may be entitled to compensation. The towage in question was not salvage of the vessel B, since there was no marine peril which would endanger the said vessel. (*Barrios v. Carlos A. Go Thong & Co.*, L-17192, March 30, 1963)

**When as a result of a successful salvage, both ship A and the cargo therein are saved, against whom should the salvage allowance be charged and in what proportion, if any?**

**Answer:**

The salvage allowance shall be a charge on the owner of the ship or ship itself, and the owners of the cargo or cargo itself, so salvaged, and in proportion to their respective value. (BAR 1979)

#### **e. Maritime Protest**

- 1. In the morning of April 2, 1977, the South-bound FS-90 belonging to William Lines, Inc. reached the waters of the Verde island Passage. About the same time, the M.S. General Del Pilar, another interisland vessel owned by the General Shipping, was likewise in the same waters, steaming northward to Manila. The vessels, coming from the opposite directions and towards each other, suddenly collided at a certain point of the passage which resulted in the sinking of FS-190, together with all its cargoes, part of which belonged to Tanya, who was a paying passenger and Rafael, who was a shipper.**

**Tanya and Rafael brought an action in court to recover for their losses and for damages arising from the collision.**

**Were they under obligation to file a maritime protest for a successful maintenance of the action? Why?**

**Answer:**

No, Tanya and Rafael are not under obligation to file maritime protest. Art. 835 of the Code of Commerce states that "the action for recovery of damages and losses arising from collisions cannot be admitted without a previous protest or declaration presented by the captain within 24 hours before the competent authority of the point where the collision took place, or of the first port of arrival." Therefore, a marine protest is required to be made by the master of the vessel not by the passenger or shipper. (BAR 1977)

- 2. Explain a maritime protest.**

**Answer:**

Maritime Protest—a written statement by the master of vessel, attested by a proper judicial officer or a notary, to the effect that damage suffered by the ship or her voyage was caused by storms or other perils of the sea, without any negligence or misconduct on his part. (BAR 1977)

3. **Captain Hook, the ship captain of M.V. Peter Pan, overloaded the M.V. Peter Pan, as a consequence of which the vessel sank in the middle of the Sulu Sea, and nothing whatsoever was recovered. The owners of the cargo and the heirs of the three passengers of the vessel filed an action for damages in the amount of P500,000 against Mr. Wendy, the owner.**

**Explain a maritime protest. When and where should it be filed?**

**Answer:**

A maritime protest is a sworn statement stating the circumstances of collision which must be presented within 24 hours before the competent authority of the port nearest to where the collision had taken place or the first port of arrival or, if it occurs in a foreign country, the Philippine consular representative. An action to recover losses and damages arising from collisions cannot be admitted if such protest, however, will not prejudice such action by owners of cargo who were not on board the vessel or who were not in a condition to make known their wishes. (BAR 1988)

4. **Two vessels figured in a collision along the Straits of Guimaras resulting in considerable loss of cargo. The damaged vessels were safely conducted to the Port of Iloilo. Passenger A failed to file a maritime protest. B, a non-passenger but a shipper who suffered damage to his cargo, likewise did not file a maritime protest at all.**

a) **What is a maritime protest?**

b) **Can A and B successfully maintain an action to recover losses and damages arising from the collision? Reason briefly.**

**Answer:**

- a) A maritime protest is a sworn statement made within 24 hours after a collision in which the circumstances thereof are declared or made known before a competent authority at the point of accident or the first port of arrival if in the Philippines or the Philippine consul in a foreign country.
- b) B, the shipper, can successfully maintain an action to recover losses and damages arising from the collision notwithstanding his failure to file a maritime protest since the filing thereof is required only on the part of A, who, being a passenger of the vessel at the time of the collision, was expected to know the circumstances of the collision. A's failure to file a maritime protest will therefore prevent him from successfully maintaining an action to recover his losses and damages. (BAR 2007)

**4. Carriage of Goods by Sea Act (COGSA)**

**a. Application**

1. **The goods imported from the United States were unloaded by the carrier in Manila. While in the custody of the arrastre operator, part of the shipment worth P1,000 was lost. Does the case involve admiralty and**

maritime commerce so that the action for short delivery has to be filed in the Court of First Instance regardless of the amount? Reasons.

**Answer:**

a) No, the matter does not involve admiralty or maritime commerce which relate only to incidents occurring during the sea voyage.

2. Akiro of Tokyo, Japan sent various goods to his friend Juan in Cebu City, Philippines, through one of the vessels of Worthwell Shippers, Inc., an American corporation. En route to Cebu City, the vessel had two stops, first in Hong Kong, and second, in Manila.

While travelling from Tokyo to Hong Kong, the goods were damaged.

What law will govern?

- a) Japanese law;
- b) Hong Kong law;
- c) Chinese law;
- d) Philippine law;
- e) American law.

**Answer:**

d) Philippine law (BAR 2013)

#### b. Notice of Loss or Damage

1. Under the provisions of Section 3 of the Carriage of Goods by Sea Act, notice must be given of loss or damage to the goods. Within what period must notice be given, if the loss or damage is not apparent? Does the term "loss" in this Act cover delivery to the wrong person? Explain.

**Answer:**

Notice of loss must be given within three days from the delivery of the goods, if the loss is not apparent. The Supreme Court has held in one case that "loss" under this Act does not cover misdelivery or delivery to the wrong person. (BAR 1975)

2. RC imported computer motherboards from the USA and had them shipped to Manila aboard an oceangoing cargo ship owned by BC Shipping Company. When the cargo arrived at the Manila seaport and delivered to RC, the crate appeared intact; but upon inspection of the contents, RC discovered that the items inside had all been badly damaged. He did not file any notice of damage or anything with anyone, least of all with BC Shipping Company. What he did was to proceed directly to your office to consult you about whether he should have given a notice of damage and how long a time he had to initiate a suit under the provisions of the COGSA. What would you advise be?

**Answer:**

My advice would be that RC should give notice of the damage sustained by the cargo within 3 days and that he has to file the suit to recover the damage sustained by the cargo within 1 year from the date of the delivery of the cargo to him. (BAR 2000)

NB It has to be added though that the failure to give notice of loss or damage does not preclude the consignee from filing a suit against the common carrier and ship agent provided that the suit is filed within one year from the date the goods are delivered or should have been delivered.

### c. Period of Prescription

1. **The plaintiff, as subrogee of the consignee, sued the defendant, a contractor and operator of arrastre service in the port of Manila, for its failure to deliver one case of merchandise consisting of electronic spare parts shipped from Europe which it received from the carrier. The action was brought within the period of 4 years, but after the lapse of 1 year, from the date the goods should have been delivered. Invoking the provisions of the Carriage of Goods by Sea Act, the lower court dismissed the complaint on the ground that it was filed after 1 year from the time that the cause of action accrued.**

**Was the lower court justified in dismissing the complaint? Why?**

**Answer:**

("BONUS" since it refers to "arrastre services", excluded from the coverage of the "MERCANTILE LAW") (BAR 1978)

NB There is a similar question in the 2104 Bar exams on the prescriptive period to file a suit against the arrastre operator. The answer is 4 years from receipt of the arrastre operator. The 1 year period to file a suit under COGSA does not apply to an arrastre operator.

2. **A local consignee sought to enforce judicially a claim against the carrier for loss of a shipment of drums of lubricating oil from Japan under the COGSA after the carrier had rejected its demand. The carrier pleaded in its Answer the affirmative defense of prescription under the provisions of the same Act inasmuch as the suit was brought by the consignee after 1 year from delivery of the goods. In turn, the consignee contended that the period of prescription was suspended by the written extrajudicial demand it had made against the carrier within the 1-year period, pursuant to Article 1155 of the Civil Code providing that the prescription of actions is interrupted when there is a written extrajudicial demand by the creditors.**

**a) Has the action, in fact, prescribed? Why?**

**Answer:**

The action taken by the local consignee has, in fact, prescribed. The period of 1 year under the COGSA is not interrupted by a written extrajudicial demand. The provision of Article 1155 of the Civil Code merely apply to the prescriptive periods provided for in said Code and not the special laws except when otherwise provided.

**b) If the consignee's action were predicated on misdelivery or conversion of the goods, would your answer be the same? Explain briefly.**

**Answer:**

If the consignee's action were predicated on misdelivery or conversion of the goods, the provisions of the COGSA would be inapplicable. In these case, the Civil Code prescriptive periods, including Art. 1155 of the Civil Code, will apply. (BAR 1992)

NB This should mean 10 years from the date the goods should have been delivered.

**3. What is the prescriptive period for actions involving lost or damaged cargo under the Carriage of Goods by Sea Act?**

**Answer:**

One (1) year after delivery of the goods or the date when the goods should have been delivered. (BAR 1995)

**4. AA entered into a contract with BB thru CC to transport ladies' wear from Manila to France with transshipment at Taiwan. Somehow the goods were not loaded at Taiwan on time. Hence, when the goods arrived in France, they arrived "off-season" and AA was paid only for ½ the value by the buyer. AA claimed damages from the shipping company and its agent. The defense of the respondents was prescription.**

**Considering that the ladies' wear suffered "loss value", as claimed by AA, should the prescriptive period be one year under the COGSA, or 10 years under the Civil Code? Explain briefly.**

**Answer:**

The applicable prescriptive period is 10 years under the Civil Code. The 1-year prescriptive period under the COGSA applies in cases of loss or damage to the cargo. The term "loss" as interpreted by the Supreme Court in Mitsui O.S.K. Lines, contemplates a situation where no delivery at all was made by the carrier of the goods because the same had perished or gone out of commerce deteriorated or decayed while in transit. In the present case, the shipment of ladies' wear was actually delivered. The "loss of value" is not the total loss contemplated by the COGSA (BAR 2004; 2010)

**5. Akiro of Tokyo, Japan sent various goods to his friend Juan in Cebu City, Philippines, through one of the vessels of Worthwell Shippers, Inc., an American corporation. En route to Cebu City, the vessel had two stops, first in Hong Kong, and second, in Manila.**

**Assuming Philippine law is to be applicable and Juan fails to file a claim with the carrier, may he still commence an action to recover damages with the court?**

- a) No, the failure to file a claim with the carrier is a condition precedent for recovery;
- b) Yes, provided he files the complaint within 10 years from delivery;
- c) Yes, provided he files the complaint within 10 years from discovery of the damage;
- d) Yes, provided he files the complaint within 1 year from delivery;
- e) Yes, provided he files the complaint within 1 year from discovery of the damage;

**Answer:**

d) Yes, provided he files the complaint within 1 year from delivery. (BAR 2013)

**6. On December 1, 2010, Kore A Corporation shipped from South Korea to LT Corporation in Manila some 300,000 sheets of high-grade special steel. The shipment was insured against all risk by NA Insurance (NA). The carrying vessel arrived at the Port of Manila on January 10, 2011. When the shipment was discharged, it was noted that 25,000 sheets were damaged and in bad order. The entire shipment was turned over to the custody of ATI, the arrastre operator, on January 21, 2011 for storage and safekeeping, pending its withdrawal by the consignee's authorized customs broker, RVM.**

On January 26 and 29, 2011, the subject shipment was withdrawn by RVM from the custody of ATI. On January 29, 2011, prior to the withdrawal of the last batch of the shipment, a joint inspection of the cargo was conducted per the Request for bad Order Survey (RBO) dated January 28, 2011. The examination report showed that 30,000 sheets of steel were damaged and in bad order.

NA Insurance paid LT Corporation the amount of P30 M for the 30,000 sheets that were damaged, as shown in the Subrogation Receipt dated January 13, 2013. Thereafter, NA Insurance demanded reparation against ATI for the goods damaged in its custody, in the amount of P5 M. ATI alleged that the COGSA applies in this case since the goods were shipped from a foreign port to the Philippines. NA Insurance claims that the COGSA does not apply, since ATI is not a shipper or carrier. Who is correct?

**Answer:**

NA Insurance is correct. ATI should be ordered to pay NA Insurance notwithstanding the lapse of the one year prescriptive period for filing a suit under the COGSA. The term "carriage of goods" under Section 1 in COGSA, covers the period from the time when the goods are loaded to the time when they are discharged from the ship infer that the period of time when the goods have been discharged from the ship and given to the custody of the arrastre operator is not covered by the COGSA. The COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator. (BAR 2014)

**d. Limitation of Liability**

**5. Bottomry**

- 1. Under what conditions, if any, may a ship captain borrow on bottomry for his own transactions?**

**Answer:**

The captain may borrow on bottomry for his own transactions on the portion of the vessel he owns, provided no money has been previously borrowed on the whole vessel, and there is no other lien or obligation chargeable against the vessel. He must state his interest in the vessel. (BAR 1975)

- 2. "S", a shipowner, secure a loan on bottomry for P1 Million from "T" for the repair of a vessel, payable 120 days after date (estimated time for the return voyage), and as security for its repayment mortgages the keel and bottom of the vessel. In addition to the usual terms and conditions for this type of loan, "T", because of the risk of losing his money, imposes an interest rate of 30% to which "S" reluctantly agrees.**

**Could "S" later on question the validity of the interest rate of 30% as being violative of the Usury Law?**

**Answer:**

No, S cannot question the validity of the interest rate of 30% as being violative of the Usury Law. In usury statute, it is essential to constitute usury, that the principal sum be repayable absolutely; and therefore, usury statute has no application to loans on bottomry; thus the perils of marine navigation have been always considered sufficient to take bottomry or respondentia loans out of the usury law. (*Lloyd v. Scott*, 4 Pet. 205, 7 L. Ed. 833; *Laughlin v. Irwin*, 262 Ill. App. 40; *Webb on usury*, p.47)

**Note:** The Usury Law is now legally non-existent pursuant to CB Circular 905. (BAR 1980)

- 3. Gigi obtained a loan from JOJO Corporation, payable in installments. Gigi executed a chattel mortgage in favor of JOJO whereby she transferred "in favor of JOJO, its successors and assigns, all her title, rights xxx to**

a vessel of which GIGI is the absolute owner." The chattel mortgage was registered with the Philippine Coast Guard pursuant to PD No. 1521. Gigi defaulted and had a total accountability of P3 M. But JOJO could not foreclose the mortgage on the vessel because it sank during a typhoon.

Meanwhile, Lutang Corporation which rendered salvage for refloating the vessel sued Gigi.

Whose lien should be given preference, that of JOJ or of Lutang?

**Answer:**

Lutang Corporation's lien should be given preference. The lien of JOJO by virtue of a loan on bottomry was extinguished when the vessel sank. Under such loan on bottomry JOJO acted not only as creditor but also as insurer. JOJO's right to recover the amount of the loan is predicated on the safe arrival of the vessel at the port of destination. The right was lost when the vessel sank.

### G. The Warsaw Convention

#### 1. Applicability

#### 2. Limitation of Liability

##### a. Liability to Passengers

##### b. Liability for Checked Baggage

1. A shipped 13 pieces of luggage through LG Airlines from Teheran to Manila as evidenced by LG Air Waybill which disclosed that the actual gross weight of the luggage was 180Kg. Z did not declare an inventory of the contents or the value of the 13 pieces of luggage. After the said pieces of luggage arrived in Manila, the consignee was able to claim from the cargo broker only 12 pieces, with a total weight of 174Kg. X advised the airlines of the loss of one of the 13 pieces of luggage and of the contents thereof. Efforts of the airlines to trace the missing luggage were fruitless. Since the airlines failed to comply with the demand of X to produce the missing luggage, X filed an action for breach of contract with damages against LG Airlines. In its answer, LG Airlines of the carrier, if any, with respect to cargo to a sum of \$20 per kilo or \$9.07 per pound, unless a higher value is declared in advance and additional charges are paid by the passenger and the conditions of the contract as set forth in the air waybill. Expressly subject the contract of the carriage of cargo to the Warsaw Convention. May the allegation of LG Airlines be sustained? Explain.

**Answer:**

Yes. Unless the contents of a cargo are declared or the contents of a lost luggage are proved by the satisfactory evidence other than the self-serving declaration of one party, the contract should be enforced as it is the only reasonable basis to arrive at a just award. The passenger or shipper is bound by the terms of the passenger ticket or the waybill. (BAR 1993)

2. X took PAL Flight PR 102 to Los Angeles, USA. She had 2 luggage checked-in and was 2 baggage checks. When X reached Los Angeles, 1 of the 2 checked-in luggage could not be found. Which statement is most accurate?
  - a) PAL is liable for the loss of the checked-in-luggage under the provision of the Warsaw Convention on Air Transport;
  - b) PAL is liable for the loss only if the baggage check expressly states that the airline shall be liable in case of loss;

- c) PAL cannot be held liable because that is the risk that a passenger takes when she checks-in her baggage;
- d) PAL can only be held liable if it can be proven that PAL was negligent.

**Answer:**

a) PAL is liable for the loss of the checked-in-luggage under the provision of the Warsaw Convention on Air Transport. (BAR 2012)

**c. Liability for Hand carried Baggage**

**3. Willful Misconduct**

**H. Public Service Act**

3. On September 1, 1971, then Public Service Commission in BC Case No. 70-3496 made permanent and effective immediately the provisional increase of rates by PLDT previously so authorized on the ground among others, that public interest would be served thereby.

Pending appeal to the Supreme Court of BC Case No. 70-3496, PLDT filed on February 27, 1973 with the Board of Communications (successor to the Public Service Commission) another application for an across-the-board increase of 40% of its present authorized rates docketed as BC Case No. 73-011.

On April 27, 1973, the Board of Communications issued an Order which provisionally authorized PLDT to charge a 35% across-the-board increase of its present authorized rates subject to the conditions stated therein.

**In the case at bar, has the Board of Communications, as successor to the defunct Public Service Commission, the power to amend, modify or revoke rates to be charged by the PLDT? Explain.**

**Answer:**

The power of the Board of Communications, as successor to the defunct Public Service Commission, to amend, modify or revoke or establish rates in lieu of those set forth in the final decision is affirmed in Section 16 (c) of the Public Service Act, as amended (*PLDT v. Medina*, 20 SCRA 659), which rates shall immediately be operative (Sec. 33, Public Service Act), as amended, provided a new case is filed therefore under separate docket in the Public Service Commission. The 1973 BC Case No. 73-011 is new and separate from the 1970 BC Case No. 703496.

**May the order or decision of said Board on rates be stayed by a petition for certiorari in the Supreme Court? Why?**

**Answer:**

The order or decision of the Board for Public Service Commission and now the Board of Communications cannot be stayed by the institution of a petition for certiorari, or other special remedies in the Supreme Court, unless the Supreme Court shall so direct. (*Gonzales v. Public Service Commission*, 61 SCRA 504) (BAR 1977)

4. The City of Manila passed an ordinance banning provincial buses from the city. The ordinance was challenged as invalid under the Public Service Act by X who has a certificate of public convenience to operate auto-trucks with fixed routes from certain towns in Bulacan and Rizal to Manila and within Manila.

Firstly, he claimed that the ordinance was null and void because, among other things, it in effect amends his certificate of public convenience, a thing which only the Public Service Commission can do so under Section 16(m) of the Public Service Act. Under said section, the Commission is empowered to amend, modify or revoke a certificate of public convenience after notice and hearing. Secondly, he contended that even if the ordinance was valid, it is only the Commission which can require compliance with its provisions under Section 17(j) of said Act and since the implementation of the ordinance was without sanction or approval of the Commission, its enforcement was unauthorized and illegal.

1. May the reliance of X on Section 16(m) of the Public Service Act be sustained? Explain.
2. Was X correct in his contention that under Section 17 (j) of the public Service Act it is only the Commission which can require compliance with the provision of the ordinance? Explain.

**Answer:**

1. No. The power vested in the public Service Commission under Section 16(m) is subordinate to the authority of the City of Manila under Section 18(hh) of its revised charter, to superintend, regulate or control the streets of the City of Manila.
  2. No. The powers conferred by law upon the Public Service Commission were not designed or supersede the regulatory power of local governments over motor traffic in the streets subject to their control. (BAR 1993)
5. Angelene is a customer of Meralco Electric Company (MECO). Because of the abrupt rise of the electricity rates. Angelene complained with MECO insisting that she should be charged the former rates. However, Angelene did not tender any payment.

When MECO's employees served the first 48-hour notice of disconnection, Angelene protested. MECO, however, did not implement the 48-hour notice of disconnection. Instead, its employees examined Angelene's electric meter, changed the same, and installed another. Still, Angelene made no tender of payment.

MECO served a second 48-hour notice of disconnection on June 22, 1984. It gave Angelene until 5:00pm of June 25, 1984, within which to pay. As no payment had been made, MECO cut Angelene's electric service on June 28, 1984.

Angelene contends that the 48-hour written notice of disconnection rule cannot be invoked by MECO when there is a bona fide and just dispute as to the amount due as her electric consumption rate.

**Is Angelene's contention valid?**

**Answer:**

No. Angelene's only legal recourse in this case was to pay the electric bill under protest. Her failure to do so justified Meralco to cut the electric service. (BAR 1994)

6. WWW Communications Inc., is an e-commerce company whose present business activity is limited to providing its clients with all types of information technology hardware. It plans to re-focus its corporate direction of gradually converting itself into a full convergence organization. Towards this objective, the company has been aggressively acquiring telecommunications businesses and broadcast media enterprises, and consolidating their corporate structures. The ultimate plan is to have only two organizations: one to own the facilities of the combined businesses and to develop and produce content materials, and another to operate the facilities and provide mass media and commercial

telecommunications services. WWW Communications will be the flagship entity which will own the facilities of the conglomerate and provide content to the other new corporation which, in turn, will operate those facilities and provide the services. WWW seeks your professional advice on whether or not its reorganized business activity would be considered a public utility requiring a franchise or certificate or any other form of authorization from the government. What will be your advice? Explain.

**Answer:**

The reorganized business activity of WWW Communications Inc. would not be considered a public utility requiring a franchise or certificate or any other form of authorization from the government. It owns the facilities, but does not operate the same. (BAR 2000)

7. CG, a customer, sued MERALCO in the MM RTC to disclose the basis of the computation of the purchased power adjustment (PPA). The trial court ruled it had no jurisdiction over the case because, as contended by the defendant, the customer not only demanded a breakdown of MERALCO's bill with respect to PPA but questioned as well the imposition of the PPA, a matter to be decided by the Board of Energy, the regulatory agency which should also have jurisdiction over the instant suit.

**Is the trial court's ruling correct or not? Reason briefly.**

**Answer:**

The trial court's ruling is correct. As held in Manila Electric Company v. Court of Appeals, 27 SCRA 41& (1997), the Board of Energy had the power to regulate and fix power rates to be charged by franchised electric utilities like MERALCO. In fact, pursuant to E.O. No. 478 (April 17, 1998), this power has been transferred to the Energy Regulatory Board (now the Energy regulatory Commission). Under Section 43(u) of the Electric Power Industry Reform Act of 2001, the Energy Regulatory Commission has original and exclusive jurisdiction over all cases contesting power rates. (BAR 2004)

8. Under the Public Service Act, an administrative agency has the power to approve provisionally the rates of public utilities without a hearing in case of urgent public needs. The exercise of this power is
- a. Supervisory
  - b. Absolute
  - c. Discretionary
  - d. Mandatory

**Answer:**

c. Discretionary. (BAR 2011)

### 1. Certificate of Public Convenience

1. A was granted by the Board of Transportation a certificate of public convenience to operate 50 provincial buses, plying between Ilocos Norte and Manila passing through Rizal Avenue Extension then right on Doroteo Jose. Because of traffic congestion between the hours of 7 and 9 o'clock in the morning, and 4 to 8 o'clock in the evening, a municipal ordinance was passed prohibiting provincial buses from entering Manila on those hours but allowing them to use one shuttle bus for every 5 buses. A challenged the validity of the ordinance, on the ground that it infringes on his certificate of public convenience, and that he had

**acquired a vested right to enter Manila at anytime of the day, thru aforementioned route. Decide with reasons.**

**Answer:**

The ordinance is valid. Under its charter, the City of Manila has the power to regulate the use of its streets. This charter is a special law and therefore prevails over the Public Service Act. Consequently, the power of the BOT to grant certificates is subject to this provision of the charter of Manila. A has thus not acquired any vested right as alleged by him. (*Lagman v. City of Manila*, G.R. No.- L-23305, June 30, 1966) (BAR 1976)

- 2. A bus line's service between Manila and Malolos is satisfactory. A new road is opened between said points, and a new carrier applies for a certificate of public convenience to operate a bus line along the new road. The old bus line opposes, claiming that it should first be given an opportunity to extend its service. Which party should prevail? Reason.**

**Answer:**

Where all conditions being equal, priority in the filing of the application for a certificate of public convenience becomes an important factor in the granting thereof; so the new carrier who applies first shall prevail. (*Batangas Transportation Co., v. Orlanes*, 52 Phil., 455). (BAR 1979)

- 3. The Continental Marble Corporation filed with the Board of Energy an application for Certificate of Public Convenience for the purpose of supplying electric power and light to its factory and its employees living within its compound. The application was opposed by the Norzagaray Electric & Power Co., Inc., contending that the Continental Marble Corporation has not secured a franchise to operate and maintain an electric plant.**

**Rule on the merits of the oppositor's contention with supporting reasons.**

**Answer:**

A franchise in this case is not necessary to operate and maintain an electric plant. Such a franchise necessary only in order to operate and maintain an electric line or power plant and line for business purpose, that is, to render service to the general public for compensation. Clearly, therefore, it should not be made to apply to Continental Marble Corporation which will only supply the electric power and light to its factory and its employees living within its compound. (*Teresa Electric & power Co., Inc. v. Public Service Commission*, Sept. 25, 1967; 21 SCRA 198) (BAR 1981)

- 4. Acme Transportation Co. has a certificate of public convenience to operate buses in Southern Luzon and Eastern Visayas, including the Manila-Bicol-Samar-Leyte route. In order to get to Samar, its buses take a ferry from Matnog, Sorsogon, across the babuyan Channel, an 8-Km ride more or less to the coastal town of Allen in Samar. Acme Transportation Co. finds that the fees it pays for the ferry come to a quite substantial amount each year and it calculates that it will be more economical to have its own ferry to transport its buses. It therefore applies for an authorization to operate such a ferry as an additional unit of equipment for the exclusive use of its buses on the Manila-Leyte route.**

**X Lighterage Service Co. which has been operating a ferry service on said route for the past 6 years, objects on the following grounds: (a) the certificate of public convenience of Acme is to operate land transportation and this does not include ferry service which is already inter-island shipping. It therefore needs a new certificate of public convenience to operate inter-island transportation, a mere authority to acquire and operate an additional unit not being sufficient, and (b) granting that the operation of said ferry is within Acme's certificate of public convenience, X Lighterage Service Co. is a prior operator, and since it**

**is giving adequate service, there is no need for an additional ferry service on said route. In fact, Acme Transportation Co. has been availing itself of the ferry service of X Lighterage Service Co. for several years.**

**Decide with reasons.**

**Answer:**

Acme may be given the permit it seeks. As to the first objection, it is generally held that where a ferry service which connects two points on opposite sides of an arm of the sea such as a bay or the like, and which does not involve too great a distance or too long a time to navigate, it is considered merely a continuation or extension of the highway. Therefore, the ferry service in question may still be considered land transportation within the scope of Acme's present certificate of public convenience. There is no need for Acme to obtain another certificate for inter-island transportation. As to the second objection, even assuming that X, a prior operator, is rendering adequate service and there is no need for a new ferry operator on said route, Acme's petition is to use the ferry for its purposes exclusively, and therefore will not compete with X. The fact that X will lose Acme as a customer is no justification to prevent the latter from ferrying its own buses to lessen its expenses, as long as it does not offer its services to others. (BAR 1983)

- 5. Antonio was granted a Certificate of Public Convenience (CPC) in 1986 to operate a ferry between Mindoro and Batangas using the motor vessel "MV Lotus". He stopped operations in 1988 due to unserviceability of the vessel.**

**In 1989, Basilio was granted a CPC for the same route. After a few months, he discovered that Carlos was operating on his route under Antonio's CPC. Because Basilio filed a complaint for illegal operations with the Maritime Industry Authority, Antonio and Carlos jointly filed an application for sale and transfer of Antonio's CPC and substitution of the vessel "MV Lotus" with another owned by Carlos.**

**Should Antonio's and Carlos' joint application be approved? Give your reasons.**

**Answer:**

The joint application of Antonio and Carlos for the sale and transfer of Antonio's CPC and substitution of the vessel MV Lotus with another vessel owned by the transferee should not be approved. The CPC and "MV Lotus" are inseparable. The unserviceability of the vessel covered by the certificate had likewise rendered ineffective the certificate itself, and the holder thereof may not legally transfer the same to another. (BAR 1992)

- 6. Robert is a holder of a certificate of public convenience to operate a taxicab service in Manila and suburbs. One evening, one of his taxicab units was boarded by 3 robbers as they escaped after staging a hold-up. Because of said incident, the LTFRB revoked the certificate of public convenience of Robert on the ground that said operator failed to render safe, proper and adequate service as required under Section 19(a) of the Public Service Act.**
- a. Was the revocation of the certificate of public convenience of Robert justified? Explain.**
  - b. When can the Commission (Board) exercise its power to suspend or revoke certificate of public convenience?**

**Answer:**

- a) No. A single hold-up incident which does not link Robert's taxicab cannot be construed that he rendered a service that is unsafe, inadequate and improper.

b) Under Section 19(a) of the Public Service Act, the Commission (Board) can suspend or revoke a certificate of public convenience when the operator fails to provide a service that is safe, proper or adequate, and refuses to render any service which can be reasonably demanded and furnished. (BAR 1993)

7. **Pepay, a holder of a certificate of public convenience, failed to register the complete number of units required by her certificate. However, she tried to justify such failure by the accidents that allegedly befell her, claiming that she was so shocked and burdened by the successive accidents and misfortunes that she did not know what she was doing, she was confused and thrown off tangent momentarily, although she always has the money and financial ability to buy new trucks or repair the destroyed one. Are the reasons given by Pepay sufficient grounds to excuse her from completing her units? Explain.**

**Answer:**

No. The reasons given by Pepay are not sufficient grounds to excuse her from completing her units. The same could be undertaken by her children or by other authorized representatives. (BAR 1993)

8. **What requirements must be met before a certificate of public convenience may be granted under the Public Service Act?**

**Answer:**

The following are the requirements for the granting of a certificate of public convenience, to wit:

- a) The applicant must be a citizen of the Philippines, or a corporation, co-partnership or association organized under the laws of the Philippines and at least 60% of the stock or paid-up capital of which must belong to citizens of the Philippines.
  - b) The applicant must prove public necessity.
  - c) The applicant must prove that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner.
  - d) The applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation. (BAR 1995)
9. **The Batong Bakal Corporation filed with the Board of Energy an application for a Certificate of Public Convenience for the purpose of supplying electric power and lights to the factory and its employees living within the compound. The application was opposed by the Bulacan Electric Corporation, contending that the Batong Bakal Corporation has not secured a franchise to operate and maintain an electric plant.**

**Is the opposition's contention correct?**

**Answer:**

No. A certificate of public convenience may be granted to Batong Bakal Corporation, though not possessing a legislative franchise, if it meets all the other requirements. There is nothing in the law nor the Constitution, which indicates that a legislative franchise is necessary or required for an entity to operate as supplier of electric power and light to its factory and its employees living within the compound. (BAR 1998)

## **2. Prior Operator Rule**

1. **Mr. Mangasiwa applied for a certificate of public convenience to operate 5 jeepneys from Batasang Pambansa area to Cubao, Quezon City. The application was opposed by Hallelujah Transit and Kingdom**

Bus Co., which were already serving the area. They invoked the “prior or old operator rule” in their opposition. Mangasiwa, in turn, invoked the “prior applicant rule”.

**Discuss the “prior or old operator rule” and the limitations or provisos on its application. In case of conflict between the “prior or old operator rule” and the “prior applicant rule”, which rule shall prevail? Explain.**

**Answer:**

The “prior or old operator rule” allows an existing franchised operator to invoke preferential right to render the public service within the authorized territory as long as he does so satisfactorily and economically. In case of conflict between the “prior or old operator rule” and the “prior applicant rule”, the former will apply as long as again the operator is able to render satisfactory and economically service. (BAR 1986)

### XIII. Intellectual Property Code (Exclude Implementing Rules & Regulations)

#### A. Intellectual Property Rights in General

1. Intellectual Property Rights
2. Differences between Copyrights, Trademarks and Patent

**1. Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example.**

**Answer:**

A stamped or marked container of goods can be registered as a trademark. An original ornamental design or model for articles of manufacturer can be copyrighted. An ornamental design cannot be patented, because aesthetic creations cannot be patented. However, it can be registered as an industrial design. Thus, a container of goods which has an original ornamental design can be registered as a trademark, can be copyrighted, and can be registered as an industrial design. (BAR 2010)

#### 3. Technology Transfer Arrangements

**1. Enumerate 3 stipulations that are prohibited in technology transfer agreements.**

**Answer:**

The following stipulations are prohibited in technology transfer agreements:

- a. Those that contain restrictions regarding the volume and structure of production;
- b. Those that prohibit the use of competitive technologies in no-exclusive agreement; and
- c. Those that establish a full or partial purchase option in favor of the licensor. (BAR 2010)

**2. What contractual stipulations are required in all technology transfer agreements?**

**Answer:**

The following stipulations are required in all technology transfer agreements:

- a. The laws of the Philippines shall govern its interpretation and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal place of business;
- b. Continued access to improvements in techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;
- c. In case it shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country;
- d. The Philippine taxes on all payments relating to the technology transfer agreement shall be borne by the licensor. (BAR 2010)

## B. Patents

### 1. Patentable Inventions

1. **X invented a method of improving the tenderness of meat by injecting an enzyme solution into the live animal shortly before a slaughter. Is the invention patentable?**

**Answer:**

To be patentable, the invention must be new and should consist in a useful machine, manufactured product or process. Among those that cannot be patented are processes which are not directed to making or improving a commercial product. Viewed from the above light, X may lawfully patent his invention. (BAR 1989)

NB As an alternative answer, a process or improvement of process that related to any field of human activity, requires an inventive activity and is industrially applicable may be patented. It is submitted that all the elements of patent are present in this case.

2. **Cezar works in a car manufacturing company owned by Joab. Cezar is quite innovative and loves to tinker with things. With the materials and parts of the car, he was able to invent a gas-saving device that will enable cars to consume less gas. Francis, a co-worker, saw how Cezar created the device and likewise, came up with a similar gadget, also using scrap materials and spare parts of the company. Thereafter, Francis filed an application for registration of his device with the Bureau of Patents. 18 months later, Cezar filed an application for registration his device with the Bureau of Patents.**

**Is the gas-saving device patentable? Explain.**

**Answer:**

It is patentable because it is new, it involves an inventive step and it is industrially applicable. (BAR 2005)

3. **Dr. Nobel discovered a new method of treating Alzheimer's involving a special method of diagnosing the disease, treating it with a new medicine that has been discovered after long experimentation and field testing, and novel mental isometric exercises. He comes to you for advice on how he can have his discoveries protected. Can he legally protect his new method of diagnosis, the new medicine, and the new method of treatment? If no, why? If yes, how?**

**Answer:**

Dr. Nobel can be protected by a patent for the new medicine as it falls within the scope of Section 21 of the Intellectual Property Code. But no protection can be legally extended to him for the method of diagnosis and method of treatment which are expressly non-patentable. (BAR 2010)

**2. Non-Patentable Inventions**

1. **X invented a bogus coin detector which can be used exclusively on self-operating gambling devices otherwise known as one-armed bandits. Can X apply for a patent?**

**Answer:**

X may not apply for the patent since the gambling device mentioned in the problem itself is prohibited and against public order. But if the machine is used in legalized gambling such as in cases of exclusive use of casinos established by the government, such device can be patented. (BAR 1989)

2. **Supposing that Albert Einstein were alive today and he filed with the Intellectual Property Office (IPO) an application for patent for his theory of relativity expressed in the formula  $E=mc^2$ . The IPO disapproved Einstein's application on the ground that his theory of relativity is not patentable.**

**Is the IPO's action correct?**

**Answer:**

Yes. The IPO's action is correct that the theory of relativity is not patentable. Under Section 22.1 of the Intellectual Property Code (RA 8293), "Discoveries, scientific theories and mathematical methods" are not patentable. (BAR 2006)

**3. Ownership of a Patent**

1. **X works as a research computer engineer with the Institute of Computer Technology, a government agency. When not busy with his work, but during office hours, he developed a software program for law firms that will allow efficient monitoring of the cases, which software program is not at all related to his work. Assuming the program is patentable, who has the right over the patent?**

- a) X;
- b) Institute of Computer Technology;
- c) Neither X nor the Institute Computer Technology can claim patent right over the invention;
- d) X and the employer of X will jointly have the rights over the patent.

**Answer:**

a) X. (BAR 2012)

**a. Right to a Patent**

1. **Che-che invented a device that can convert rainwater to automobile fuel. She asked Macon, a lawyer, to assist in getting her invention patented. Macon suggested that they form a corporation with other friends and have the corporation apply for a patent, 80% of the shares of stock thereof to be subscribed by Che-Che and 5% by Macon. The corporation was formed and the patent application was filed. However, Che-che died 3 months later of a heart attack.**

**Franco, the estranged husband of Che-che, contested the application of the corporation of the corporation and filed his own patent application of the corporation and filed his own patent application as the sole surviving heir of Che-che. Decide the issue with reasons.**

**Answer:**

The estranged husband of Che-che cannot successfully contest the application. The rights over inventions accrue from the moment of creation and as a right it can lawfully be assigned. Once the title thereto is vested in the transferee, the latter has the right to apply for its registration. The estranged husband of Che-che, if not disqualified to inherit, merely would succeed to the interest of Che-che. (BAR 1990)

NB As an alternative answer, the estranged husband can successfully contest the application. There is really no assignment here but subscription to shares of stock of the corporation with the patent as the consideration. Patent can only be issued to the inventor, heirs or assigns. There being no assignment in accordance with the provisions of the IPC, the husband, as heir, is entitled to the patent.

2. **Cezar works in a car manufacturing company owned by Joab. Cezar is quite innovative and loves to tinker with things. With the materials and parts of the car, he was able to invent a gas-saving device that will enable cars to consume less gas. Francis, a co-worker, saw how Cezar created the device and likewise, came up with a similar gadget, also using scrap materials and spare parts of the company. Thereafter, Francis filed an application for registration of his device with the Bureau of Patents. 18 months later, Cezar filed an application for registration his device with the Bureau of Patents.**

**Supposing Joab got wind of the inventions of his employees and also laid claim to the patents, asserting that Cezar and Francis were using his materials and company time in making the devices, will his claim prevail over those of his employees? Explain.**

**Answer:**

The claim of Joab will not prevail over those of his employees, even if they used his materials and company time in making the gas-saving device. The invention of the gas-saving device is not part of their regular duties as employees. (BAR 2005)

- b. First-to-File Rule
- c. Inventions Created Pursuant to a Commission
- d. Right of Priority

- 4. Grounds for Cancellation of a Patent
- 5. Remedy of the True and Actual Inventor

1. **Basilio invents and secures registration of patent of a mini-threshing machine which he manufactures. Rudy, his employee, assisted him in the actual making of the machine. Later, after resigning from his**

**employment with Basilio, Rudy bought tools and equipments to manufacture similar mini-threshing machine which he sold for his own benefit.**

**What legal steps will you take if you were hired as counsel of Basilio to protect his rights?**

**Answer:**

As counsel for Basilio, I will institute the following steps:

“Within 4 years from the commission of acts of infringement, I will bring a civil action for infringement of patent before the proper court to recover from the infringer damages sustained by reason of the infringement. In the same civil action I will secure an injunction to enjoin the infringer from the use of such patented invention.”

NB We have to add that Basilio may also pray for attorney’s fees, costs of suit and the issuance of writ of preliminary injunction to restrain further acts of infringement during the pendency of the case. An order to seize and impound tools, equipments and paraphernalia used in connection with the infringement may also be prayed for.

“If after a final judgment is rendered by the Court against the infringer, he repeated the infringement, I will again institute a civil action for damages with a prayer for the issuance of a writ of injunction, as well as criminal action for repetition of infringement.” (BAR 1977)

NB After finality, the preliminary injunction shall be converted into a final injunction and the seized tools, equipment and paraphernalia used to commit the acts of infringement may be destroyed and declared outside channels of commerce

- 2. “I” has invented a certain device, which when attached to the engine of a motor vehicle would cut the consumption of gasoline by 50%. Without securing a patent therefore, he started manufacturing the gadget in large quantities and promoted it sales.**

**An ingenious “J” bought one gadget, dismantled and studied it, and in due time was himself manufacturing an identical device. Before offering it for sale, “J” secured a patent for his device which he called “Gasopid”.**

**“I” learns of the patent and desires to secure his own patent but fearing that he might be sued for infringement of patent, seeks your legal advice.**

**How can you help him? Explain briefly.**

**Answer:**

It depends. “I” may still apply for a patent of his invention, he being the first true and actual inventor, and have the patent of “J” be cancelled, for having been issued to one who is not the true and actual inventor; provided that “I” shall file the application for patent within 1 year from the time of his sale of his said device in the Philippines; otherwise, without those requirements above-stated, “I” may no longer apply for a patent on his said invention. (*Secs. 9, 10 and 28 Patent Law*) (BAR 1981)

NB The better answer under the IPC is that I, being the first true and actual inventor but was deprived of the patent without his consent, may file an action in court and pray for his substitution as patentee, or at his option,

cancel the patent and award actual and other damages in his favor if warranted by the circumstances. The action should be filed within one year from the date of publication of the patent application.

**3. Ferdie is a patent owner of a certain invention. He discovered that his invention is being infringed by Johann.**

**What are the remedies available to Ferdie against Johann?**

**Answer:**

The following are the remedies available to Ferdie against Johann:

- a. Seize and destroy
- b. Injunction
- c. Damages in such amount may have been obtained from the use of the invention if properly transacted which can be more than what the infringer (Johann) received.
- d. Attorney's fees and costs. (BAR 1993)

NB The better answer in lieu of # c is as follows :

- a. He may file with the court an action for damages to recover the profits which he would have made without the infringement and if the same can not determined, reasonable royalty. Whenever the circumstances warrant, the court may award Other damages provided that it does not exceed 3x the amount of actual damages.

Items a, b and d should be maintained.

**4. Cezar works in a car manufacturing company owned by Joab. Cezar is quite innovative and loves to tinker with things. With the materials and parts of the car, he was able to invent a gas-saving device that will enable cars to consume less gas. Francis, a co-worker, saw how Cezar created the device and likewise, came up with a similar gadget, also using scrap materials and spare parts of the company. Thereafter, Francis filed an application for registration of his device with the Bureau of Patents. 18 months later, Cezar filed an application for registration his device with the Bureau of Patents.**

**Assuming that it is patentable, who is entitled to the patent? What, if any, is the remedy of the losing party?**

**Answer:**

Francis is entitled to the patent, because he had the earlier filing date. The remedy of Cezar is to file a petition in Court for the cancellation of the patent of Francis on the ground that he is the true and actual inventor, and ask for his substitution as patentee. (BAR 2005).

## **6. Rights Conferred by a Patent**

**1. Nestor Dionisio invented a space age revolutionary mini room air-conditioner and was able to secure the registration patent and issuance of patent certificate for said invention by the Philippines' Patent Office. He immediately went into commercial production and sale of his invention. Later, Carlos Asistio, who used to be Nestor's plant manager, organized his own company, and engaged in the manufacture of exactly the same mini-room air-conditioners for his own outfit and which he sold for his own benefit.**

**As counsel of Dionisio, what legal steps would you take to protect his rights and interests? Discuss.**

**Answer:**

As counsel of Nestor Dionisio, the registrant of a patent for an air-conditioner, I may file with the RTC the action for infringement of patent against Carlos Asistio. My client, being the patentee, has the exclusive right to make, use and sell his invention, and he is entitled to recover damages and even injunction against the infringer. (BAR 1985)

NB See comments to previous questions for complete answer

- 2. For years, Y has been engaged in the parallel importation of famous brands, including shoes carrying the foreign brand MAGIC. Exclusive distributor X demands that Y cease importation because of his appointment as exclusive distributor of MAGIC shoes in the Philippines.**

**Y countered that the trademark MAGIC is not registered with the Intellectual Property Office as a trademark and therefore no one has the right to prevent its parallel importation.**

- 1. Who is correct? Why?**

**Answer:**

X is correct. His rights under his exclusive distributorship agreement are property rights entitled to protection. The importation and sale by Y of MAGIC shoes constitutes unfair competition. Registration of the trademark is not necessary in case of an action for unfair competition.

- 2. Suppose the shoes are covered by a Philippine patent issued to the brand owner, what would your answer be? Explain.**

**Answer:**

A patent for a product confers upon its owner the exclusive right of importing the product. The importation of a patented product without authorization of the owner of a patent constitutes infringement of the patent. X can prevent the parallel importation of such shoes by Y without its authorization. (BAR 2010)

NB Shoes can not be the subject of patent for invention for it lacks the elements of novelty, originality and precedence.

## **7. Limitations of Patent Rights**

### **a. Prior User**

- 1. X invented a device which, through the use of noise, can recharge a cellphone battery. He applied for and was granted a patent on his device, effective within the Philippines. As it turns out, a year before the grant of X's patent, Y, also an inventor, invented a similar device which he used in his cellphone business in Manila. But X files an injunctive suit against Y to stop him from using the device on the ground of patent infringement. Will the suit prosper?**

- a. No, since the correct remedy for X is a civil action for damages.
- b. No, since Y is a prior user in good faith.
- c. Yes, since X is the first to register his device for patent registration.
- d. Yes, since Y unwittingly used X's patented invention.

**Answer:**

b. No, since Y is a prior user in good faith. (BAR 2011)

### b. Use by the Government

## 8. Patent Infringement

- 1. In an action for infringement of patent, the alleged infringer defended himself by stating (1) that the patent issued by the Patent Office was not really an invention which was patentable; (2) that he had no intent to infringe so that there was no actionable case for infringement; and (3) that there was no exact duplication of the patentee's existing patent but only a minor improvement.**

**With those defenses, would you exempt the alleged violator from liability? Why?**

**Answer:**

I would not exempt the alleged violator from liability for the following reasons:

- 1. A patent once issued by the Patent Office raises a presumption that the article is patentable; it can, however be shown otherwise. A mere statement or allegation is not enough to destroy that presumption.
- 2. An intention to infringe is not necessary nor an element in a case for infringement of a patent.
- 3. There is no need of exact duplication of the patentee's existing patent such as when the improvement made by another is merely minor. To be independently patentable, an improvement of an existing patented invention must be a major improvement. (BAR 1992)

A better answer in #3, under the doctrine of equivalents, infringement is committed if the accused product introduced only minor innovations or improvement but performs the same function in the same way to accomplish the same result. Exact duplication of the patentee's existing patent is not necessary for infringement to lie.

### a. Tests in Patent Infringement

#### i. Literal Infringement

- 1. Nestor Dionisio invented a space age revolutionary mini room air-conditioner and was able to secure the registration patent and issuance of patent certificate for said invention by the Philippines' Patent Office. He immediately went into commercial production and sale of his invention. Later, Carlos Asistio, who used to be Nestor's plant manager, organized his own company, and engaged in the manufacture of exactly the same mini-room air-conditioners for his own outfit and which he sold for his own benefit.**

**As counsel of Dionisio, what legal steps would you take to protect his rights and interests? Discuss.**

**Answer:**

As counsel of Nestor Dionisio, the registrant of a patent for an air-conditioner, I may file with the RTC the action for infringement of patent against Carlos Asistio. My client, being the patentee, has the exclusive right to make, use and sell his invention, and he is entitled to recover damages and even injunction against the infringer. (BAR 1985)

## ii. Doctrine of Equivalents

### b. Defenses in Action for Infringement

**1. Ferdie is a patent owner of a certain invention. He discovered that his invention is being infringed by Johann.**

**If you were the lawyer of Johann in the infringement suit, what are the defenses that your client can assert?**

**Answer:**

These are the defenses that can be asserted in an infringement suit:

- a. Patent is invalid
- b. Patent is not new or patentable
- c. Specification of the invention does not comply with Sec.14
- d. Patent was issued not to the true and actual inventor, designer or author of the utility model or the plaintiff did not derive his rights from the true and actual inventor, designer or author of the utility model. (BAR 1993)

## 9. Licensing

- a. Voluntary
- b. Compulsory

**1. Compulsory Licensing of Inventions which are duly patented may be dispensed with or will be allowed exploitation even without agreement of the patent owner under certain circumstances, like national emergency, for reason of public interest, like national security, etc. The person who can grant such authority is—**

- a) The Director General of the Intellectual Property Office;
- b) The Director of Legal Affairs of the Intellectual Property Office;
- c) The owner of the Patent right;
- d) Any agent of the owner of the Patent right.

**Answer:**

b) The Director of Legal Affairs of the Intellectual Property Office. (BAR 2012)

## 10. Assignment and Transmission of Rights

- Che-che invented a device that can convert rainwater to automobile fuel. She asked Macon, a lawyer, to assist in getting her invention patented. Macon suggested that they form a corporation with other friends and have the corporation apply for a patent, 80% of the shares of stock thereof to be subscribed by Che-Che and 5% by Macon. The corporation was formed and the patent application was filed. However, Che-che died 3 months later of a heart attack.**

**Franco, the estranged husband of Che-che, contested the application of the corporation of the corporation and filed his own patent application of the corporation and filed his own patent application as the sole surviving heir of Che-che. Decide the issue with reasons.**

**Answer:**

The estranged husband of Che-che cannot successfully contest the application. The rights over inventions accrue from the moment of creation and as a right it can lawfully be assigned. Once the title thereto is vested in the transferee, the latter has the right to apply for its registration. The estranged husband of Che-che, if not disqualified to inherit, merely would succeed to the interest of Che-che. (BAR 1990)

NB See previous comment on distinction between assignment and subscription and that assignment to be valid must comply with the formalities prescribed by the IPC.

## C. Trademarks

- (a) What is the objective of the law in protecting trademarks? (b) What are the territorial limits of a trademark?**

**Answer:**

(a) The purpose of the law in protecting trademarks is two-fold object: to protect the owners in his property and to protect the public from being deceived by reason of a misleading claim.

(b) Trademarks acknowledge no territorial boundaries of states or nations, but extends to every market where the trader's goods have become known and identified by the use of his mark. (BAR 1982)

- 2. Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example.**

**Answer:**

A stamped or marked container of goods can be registered as a trademark. An original ornamental design or model for articles of manufacturer can be copyrighted. An ornamental design cannot be patented, because aesthetic creations cannot be patented. However, it can be registered as an industrial design. Thus, a container of goods which has an original ornamental design can be registered as a trademark, can be copyrighted, and can be registered as an industrial design. (BAR 2010)

1. Definition of Marks, Collective Marks, Trade Names
2. Acquisition of Ownership of Mark

1. S Development Corporation sued Shangrila Corporation for using the “S” logo and the tradename “Shangrila”. The former claims that it was the first to register the logo and the tradename in the Philippines and that it had been using the same in its restaurant business.

Shangrila Corporation counters that it is in an affiliate of an international organization which has been using such logo and tradename “Shangrila” for over 20 years.

However, Shangrila Corporation registered the tradename and logo in the Philippines only after the suit was filed.

- a) Which of the 2 corporations has a better right to use the logo and the tradename? Explain.
- b) How does the international affiliation of Shangrila Corporation affect the outcome of the dispute? Explain.

**Answer:**

- a) S Development Corporation has a better right to use the logo and tradename, since it was the first to register the logo and tradename.
- b) Since Shangrila Corporation is not the owner of the logo and tradename but is merely an affiliate of the international organization which has been using them it is not the owner and does not have the rights of an owner. (BAR 2005)

### 3. Acquisition of Ownership of Trade Name

1. “Eagleson Refillers, Co.,” a firm that sells water to the public, opposes the trade name application of “Eagleson Laundry, Co.,” on the ground that such trade name tends to deceive trade circles or confuse the public with respect to the water firm’s registered trade name. Will the opposition prosper?

- a. Yes, since such use is likely to deceive or confuse the public.
- b. Yes, since both companies use water in conducting their business.
- c. No, since the companies are not engaged in the same line of business.
- d. No, since the root word “Eagle” is a generic name not subject to registration.

**Answer:**

- c) No, since the companies are not engaged in the same line of business. (BAR 2011)

### 4. Non-Registrable Marks

1. X applies for registration in his favor the tradename “Loving Care” for a hair dye on the ground that he has been using said tradename for almost 3 years before filing his application. Y opposes the application on the ground that he has been using the tradename “Loving Care” with the same design for hair pomade which is registered in his name since 1963. X replied that although the said trademark

was registered in Y's name it was however, for a different article. Can X's application be sustained? Reasons.

**Answer:**

X's application cannot be sustained. Although the trademark he applied for is for a different article, hair dye and hair pomade are both preparations for hair grooming, and the use of the same mark for both is likely to confuse or deceive purchasers as to the origin and source of the goods. (BAR 1976)

2. In 1988, the FDA approved the labels submitted by Turbo Corporation for its new drug brand name, "Axilon". Turbo is now applying with the Bureau of Patents, Trademarks and Technology Transfer for the registration of said brand name. It was subsequently confirmed that "Accilonne" is a generic term for a class of anti-fungal drugs and is used as such by the medical professional and the pharmaceutical industry, and that it is used as generic chemical name in various scientific and professional publications. A competing drug manufacturer asks you to contest the registration of the brand name "Axilon" by Turbo.

What will be your advice?

**Answer:**

The application for registration by Turbo Corporation may be contested. The Trademark Law would not allow the registration of a trademark which, when applied to or used in connection with his products, is merely descriptive or deceptively misdescriptive of them. Confusion can result from the result from the use of "Axilon" as the generic product itself. (BAR 1990)

3. After disposing of his last opponent in only two rounds in Las Vegas, the renowned boxer Sonny Bachao arrived at the NAIA met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo shirt embroidered with the Zinch Lacoste crocodile logo appeared on the front page of every Philippine newspaper.

Lacoste International, the French firm that manufactures Lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase "*Sonny Bachao just loves Lacoste*".

When Sonny sees the Lacoste advertisements, he hires you as a lawyer and asks you to sue Lacoste International before a Philippine court:

e) XXX

f) XXX

g) For injunction in order to stop Lacoste International from featuring him in their commercials.

Will these actions prosper?

**Answer:**

The complaint for injunction to stop Lacoste International from featuring him in its advertisements will prosper. This is a violation of subsection 123.4© of the IPC and Art. 169 in relation to Article 170 of the RPC. (BAR 2008)

4. **Jinggy went to Kluwer University (KU) in Germany for his doctorate degree (Ph.D.). He completed his degree with the highest honors in the shortest time. When he came back, he decided to set-up his own graduate school in his hometown in Zamboanga. After seeking free legal advice from his high-flying lawyer-friends, he learned that the Philippines follows the territoriality principle in trademark law, i.e., trademark rights are acquired through valid registration in accordance with the law. Forthwith, Jinggy named his school the Kluwer Graduate School of Business of Mindanao and immediately secured registration with the Bureau of Trademarks. KU did not like the unauthorized use of its name by its top alumnus no less. KU sought your help. What advice can you give KU?**

**Answer:**

I will advice KU to seek for the cancellation of the Kluwer Graduate School of Business of Mindanao with the Bureau of Trademarks. Jinggy's registration of the mark "Kluwer" should not have been allowed because the law prohibits the registration of the mark "which may disparage or falsely suggests a connection with persons, living or dead, institutions, beliefs". Moreover, the Philippines is a signatory to the Paris Convention for the Protection of Intellectual Property (Paris Convention), it is obligated to assure nationals of countries of the Paris Convention that they are afforded an effective protection against violation of their intellectual property rights in the Philippines. Thus, under the Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected "without the obligation of filing or registration". (BAR 2014)

NB We can also add that Kluwer being the first one to use the trademark in commerce owns it and consequently, Jinggy has no right to have it registered in its name. It is ownership of the trademark that confers the right of registration.

### 5. Prior Use of Mark as a Requirement

1. **Does the owner of a trademark have a right of property to prevent others from manufacturing, producing, or selling the same article to which it is attached?**

**Answer:**

No. The basis of registration is actual use in commerce in the Philippines (not less than 2 months) before an application for its registration can be filed in the Patent Office, except when the Philippines is a party to a trademark treaty, in which case the trademark sought to be registered need not be in use in the Philippines. (BAR 1982)

NB.

The better answer is no. The owner of a trademark can not prevent others from manufacturing, producing or selling the same article to which the trademark is attached. The owner of the trademark can have it registered with the IPO and after registration, preclude others from adopting the same trademark for same and similar goods.

2. **Rubberworld, Inc. sought registration of the trademark "Juggler" for its casual rubber shoes in Inter Pater case No. 602 filed with the Patent Office. The registration was opposed by a Belgian Corporation**

which alleges that it owns and has not abandoned the trademark “Juggler” although it admits that it has no license to do business in the Philippines, it is not presently selling footwear under the trademark “Juggler” in the Philippines, and it has not been licensed nor does it have any agreement with any local entity or firm to sell any of its product in the Philippines.

At the trial, it was established that Rubberworld had spent a considerable amount and effort in popularizing said trademark in the Philippines, had been using the same since 1969 and had built up enormous goodwill.

Acting on the petition, the Patent Office dismissed the opposition and ordered the registration of the trademark “Juggler” in the name of Rubberworld.

**Discuss the validity of the aforesaid decision.**

**Answer:**

The action of the Patent Office in dismissing the opposition of the Belgian Corporation and ordering the registration of the trademark “Juggler” in the name Rubberworld, Inc. is valid. One of the requisites of registration is actual use in commerce of not less than 2 months of the mark or name, in the Philippines, of which Rubberworld, Inc., has complied with and spending even considerable amount and effort in popularizing said trademark in the Philippines; while, on the other hand, the Belgian Corporation, the oppositor, according to facts, has not even been selling in the Philippines the footwear under the trademark “Juggler”. (*Pagasa Industrial Corp. vs. Court of Appeals, Nov. 19, 1982; 118 SCRA 526*) (BAR 1984)

NB The answer is still correct under the IPC. However, it should be pointed out that the proof of actual use in commerce is no longer a condition for the registration of trademark.

## 6. Tests to Determine Confusing Similarity between Marks

### a. Dominancy Test

#### 1. What is the “test of dominancy”?

**Answer:**

The test of dominancy requires that if the competing trademark contains the main or essential features of another and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. Similarity in size, form and color, while relevant, is not conclusive. (BAR 1996)

#### 2. The “test of dominancy” in the Law on Trademarks, is a way to determine whether there exists an infringement of a trademark by—

- a) Determining if the use of the mark has been dominant in the market;
- b) Focusing on the similarity of the prevalent features of the competing marks which might create confusion;
- c) Looking at the mark whether they are similar in size, form or color;
- d) Looking at the mark whether there is one specific feature that is dominant.

**Answer:**

b) Focusing on the similarity of the prevalent features of the competing marks which might create confusion.  
(BAR 2012)

3. Skechers Corporation sued Inter-Pacific for trademark infringement claiming that Inter-Pacific used Skechers' registered "S" logo mark on Inter-Pacific's shoe products without its consent. Skechers has registered the trademark "SKECHERS" and the trademark "S" (with an oval design) with the Intellectual Property Office (IPO).

In its complaint, Skechers points out the following similarities: the color scheme of the blue, white and gray utilized by Skechers. Even the design and "wave-like" pattern of the mid-sole and outer sole of Inter-Pacific's shoes are very similar to Skechers' shoes, if not exact patterns thereof. On the side of Inter-Pacific's shoes, near the upper part, appears the stylized "S" placed in the exact location as that of the stylized "S" the Skechers shoes. On top of the "tongue" of both shoes, appears the stylized "S" in practically the same location and size.

In its defense, Inter-Pacific claims that under the Holistic Test, the following dissimilarities are present: the mark "S" found in Strong shoes is not enclosed in an "oval design"; the word "Strong" is conspicuously placed at the backside and insoles; the hang tags labels attached to the shoes bear the word "Strong" for Inter-Pacific and Skechers U.S.A." for Skechers; and, Strong shoes modestly priced compared to the cost of Skechers shoes.

**Under the foregoing circumstances, which is the proper test to be applied—Holistic or Dominancy Test? Decide.**

**Answer:**

The proper test to be applied is the dominancy test. Applying the dominancy test, there is a confusing similarity "Skechers" rubber shoes and "Strong" rubber shoes. The use of the stylized "S" by Inter-Pacific in its Strong Shoes infringes on the trademark "Skechers" already registered by Skechers U.S.A. with the IPO. While it is undisputed that Skechers U.S.A. stylized "S" is within an oval design, the dominant feature of the trademark is stylized "S" as it is precisely the stylized "S" which catches the eye of the purchaser. (BAR 2014)

#### b. Holistic Test

#### 7. Confusion of Goods and Confusion of Services

1. The trademark LOTUS is already registered in favor of ABC for its product, edible oil. DEF applied for the registration of the same trademark for its own product, soy sauce, assuming that the trademark applied for is in smaller type, colored differently of much smaller size, and set on a background which is dissimilar, as to yield a distinct appearance, may the application be denied on the ground that its grant would likely to cause confusion or mistake on the part of the buying public? Decide. Give reasons.

**Answer:**

Yes. The application of DEF of the trademark LOTUS for soy sauce should be granted, although the trademark LOTUS is already registered in favor of ABC for its product, edible oil. The rule is not whether the challenging mark would actually cause confusion, but whether the use of such mark would likely cause confusion on the

part of the buying public. There is quite a difference between soy sauce and edible oil; hence, it can be said that DEF's trademark LOTUS on soy sauce would likely not cause confusion on the part of the buying public. (*Acoje Mining Co., Inc. v. Director of Patents*, 38 SCRA 480) (BAR 1978)

NB We have to add that under the doctrine of unrelated goods, the owner of the registered trademark can not preclude others from adopting the same trademark for unrelated goods.

2. **Company X sold its wine under the brand "Rose" Brandy, and it became very popular. So, X registered the trademark "Rose" for its brandy. Subsequently, Company Y manufactured bicycles and sold it under the name of "Rose". Company X now sues Company Y for violation of the Trademark Law. Rule on the dispute.**

**Answer:**

No, there is no violation of the Trademark Law. Company X's registered trademark "Rose" is on its brandy (wine), while Company Y's on its bicycle. There is quite a difference between brandy (wines) and bicycles; hence, it can be said that Company Y's trademark "Rose" on bicycles would not likely cause confusion on the part of the buying public. (1979)

3. **Laberge, Inc. manufactures and markets after-shave lotion, shaving cream, deodorant, talcum powder and toilet soap, using the trademark "PRUT", which is registered with the Philippine Patent Office. Laberge does not manufacture briefs and underwear and these items are not specified in the certificate of registration.**

**JG, who manufactures briefs and underwear, wants to know whether, under our laws, he can use and register the trademark "PRUTE" for his merchandise. What is your advice?**

**Answer:**

Yes. The trademark registered in the name of Laberge, Inc. covers only after-shave lotion, shaving cream, deodorant, talcum powder and toilet soap. It does not cover briefs and underwear.

The limit of the trademark is stated in the certificate issued to Laberge, Inc. It does include briefs and underwear which are different products protected by Laberge's trademark.

JG can register the trademark "PRUTE" to cover its briefs and underwear. (BAR 1994)

**8. Well-Known Marks**

**9. Rights Conferred by Registration**

**10. Use by Third Parties of Names, etc. Similar to Registered Mark**

1. **T is the registered trademark owner of "CROCOS" which he uses on his ready-to-wear clothes. Banking on the popularity of T's trademark, B came up with his own "CROCOS" mark, which he then used for his "CROCOS" burgers. T now sues B for trademark infringement but B argues that his product is a burger, hence, there is no infringement. Is B correct?**

- a. **No, since the owner of a well-known mark registered in the Philippines has rights that extends even to dissimilar kinds of goods.**

- b. Yes, since the right of the owner of a well-known mark registered in the Philippines does not extend to goods which are not of the same kind.
- c. Yes, as B was in bad faith in coming up with his own “CROCOS” mark.
- d. No, since unlike T, he did not register his own “CROCOS” mark for his product.

**Answer:**

a. No, since the owner of a well-known mark registered in the Philippines has rights that extends even to dissimilar kinds of goods. (BAR 2011)

## 11. Infringement and Remedies

### a. Trademark Infringement

1. **SONY is a registered trademark for TV, stereo, radio, cameras, betamax and other electronic products. A local company, Best Manufacturing, Inc., produced electric fans which it sold under the trademark’s SONY without the consent of SONY. SONY sued Best Manufacturing for infringement. Decide the case.**

**Answer:**

In order that a case for infringement of trademark can prosper, the products on which the trademark is used must be of the same kind. The electric fans produced by Best Manufacturing cannot be said to be similar to such products as TV, stereo and radio sets or cameras or betamax products of SONY. (BAR 1991)

2. **What is the distinction between infringement and unfair competition?**

**Answer:**

The distinction between infringement (presumably of trademark) and unfair competition are as follows:

1. Infringement of a trademark is the unauthorized use of a trademark, whereas unfair competition is the passing off of one’s goods as those of another;
  2. Fraudulent intent is unnecessary in infringement of trademark, whereas fraudulent intent is essential in unfair competition;
  3. The prior registration of the trademark is a prerequisite to an action for infringement of trademark, whereas registration of the trademark is not necessary in unfair competition. (BAR 1996)
3. **After disposing of his last opponent in only two rounds in Las Vegas, the renowned boxer Sonny Bachao arrived at the NAIA met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo short embroidered with the Zinch Lacoste crocodile logo appeared on the front page of every Philippine newspaper.**

Lacoste International, the French firm that manufactures Lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase “*Sonny Bachao just loves Lacoste*”.

**When Sonny sees the Lacoste advertisements, he hires you as a lawyer and asks you to sue Lacoste International before a Philippine court:**

**h) For trademark infringement in the Philippines because Lacoste International used his image without his permission**

**Answer:**

Sonny Bachao cannot sue for infringement of trademark. The photographs showing him wearing a Lacoste shirt were not registered as a trademark. (BAR 2009)

- 4. In intellectual property cases, fraudulent intent is not an element of the cause of action except in cases involving:**
- a. Trademark infringement**
  - b. Copyright infringement**
  - c. Patent infringement**
  - d. Unfair competition**

**Answer:**

- a. Trademark infringement (BAR 2014)
- b. Damages
- c. Requirement of Notice

**12. Unfair Competition**

- 1. Ashley Manufacturing Company, a manufacturer in France of a certain brand of cigarette paper, appoints "X" Company the exclusive agent to sell its paper in the Philippines. Among its customers are well-known cigarette manufacturers in the Philippines.**

**"Y" Company imports from a dealer in France the same cigarette paper which Ashley Manufacturing Company produces, and sells it to several outlets. The dealer in France has no restriction whatsoever from the manufacturer regarding the sale of such paper for export, nor did "Y" Company have any dealings with "X" Company. Nonetheless, "Y" Company is fully aware of the exclusive right of "X" Company to handle the distributorship of the said cigarette paper in the Philippines.**

**Is "Y" Company liable for unfair competition under the Trademark Law, as amended, and could it be enjoined from selling said cigarette paper?**

**Answer:**

No, Y Company is not liable for unfair competition under the Trademark Law. *First Alternative Reason*—If X Company has suffered any damage, it is merely the indirect result of legitimate competition in business, from which no right of action can arise. (W.E. Olsen & Co., Inc. v. Lambert, 42 Phil 633) *Second Alternative Reason*—the requisites of unfair competition in the Trademark Law are not present. (BAR 1980)

- 2. For the past 10 years, Rubberworld Co. has been using the tradename FORMIDAS for its rubber shoes and slippers, but has never registered it in the Patent Office. Its business has flourished and it is now exporting its products to other countries.**

**The Philippine Knitting Mills Co., a new enterprise, is now selling socks manufactured by it with the label FORMIDAS, without having registered the same either as a trademark or a trade name.**

**Rubberworld Co. wants to stop Philippine Knitting Mills from using the tradename FORMIDAS, but it entertains some misgivings about its right to do so because firstly, it has not registered the tradename, and secondly, its products and those of Philippine Knitting Mills are different and; therefore, not competing items.**

**Are the doubts of Rubberworld Co. well-founded? Why?**

**Answer:**

No. Although Rubberworld has not registered the tradename, it has already acquired a goodwill and the use by another of such name would likely confuse the consuming public as to the source of the goods, especially in this case where the tradename is used on socks which like shoes and slippers are footwear. By using the wellknown tradename of Rubberworld, Philippines, Knitting Mills is taking advantage of the reputation of Rubberworld, and may even adversely affect such reputation if its goods are inferior quality. The consumers may likely identify the shoes, slippers and socks as coming from one and the same source, they are all footwear. Philippine Knitting Mills is therefore guilty of unfair competition, and can thus be enjoined from using the tradename FORMIDAS. (BAR 1981)

NB we have to add that Philippine Knitting Mills is guilty of unfair competition as it is passing off its goods as those manufactured by Rubberworld which has acquired a goodwill for its tradename Formidas. A suit for unfair competition may prosper even though the tradename is not registered. It should also be pointed out that the IPC has eliminated the requirement of registration for tradename. One may thus sue for infringement of tradename in case of unauthorized use of such tradename despite its non-registration with the IPO.

- 4. In 1979, Smash Manufacturing Company, a foreign corporation registered in New York, but not doing business in the Philippines, filed a complaint for unfair competition against Nilo Malakas. The plaintiff alleged that since 1939, it had been exporting tennis rackets under the trademark "Smash Mfg. Co.", and that after the trademark and tradename became familiar to Filipino consumers, defendant Malakas began manufacturing similar products under the same trademark and tradename which he registered with the Philippine Patent Office. Actually, after 1948, Smash Tennis rackets produced by the foreign corporation were no longer imported in the Philippines.**

**The complaint failed to allege that its trademark or tradename has been registered with the Philippine Patents Office or that the State of New York grants Philippine corporations the privilege to bring an action for unfair competition in that State. Claiming that these are conditions *sine qua non* before a foreign corporation may file suit in the Philippines, defendant Malakas filed a motion to dismiss the complaint.**

- c) How would you decide the motion to dismiss? State your reasons.**
- d) Regardless of how you decide the motion to dismiss, how would you decide the merits of the case? Does the foreign corporation have other administrative remedies?**

**Answer:**

- c) The motion of Malakas to dismiss the complaint of Smash Manufacturing Company shall be sustained. A foreign corporation may bring an action for infringement or unfair competition, provided as conditions *sine*

*qua non* that the trademark or tradename of the suing foreign corporation be registered in the Philippine Patent Office or, in the least, that it be an assignee of such registered trademark or tradename, and that the country of which the plaintiff foreign corporation is a citizen or domiciliary, grants to Filipino corporation the same reciprocal treatment, either thru treaty, convention or law. But said conditions *sine qua non* were not even stated in the complaint of the plaintiff.

- d) *First suggested answer:* This is still a case of unfair competition, although Malakas had the trademark “Smash” registered in the Philippine Patent Office, all the requisites of unfair competition being present. Its remedy is the administrative cancellation of the registration of the trademark “Smash” in the Philippine patent Office, for having obtained the registration contrary to trademark law. (Law Parke Davis & Co. v. Kiu Foo & Co., 60 Phil 928)

*Second suggested answer:* Smash manufacturing Company may have no more remedy, since its trademark “Smash” had been already abandoned for more than 30 years. (Bata Industries, Ltd. V. C.A., May 31, 1982; 114 SCRA 318) (BAR 1982)

NB Under the IPC, the owner of well-known mark which is not registered in the Philippines may oppose the registration of such well-known mark or in case it is already registered with the IPO, have the same cancelled if such well-known mark is being used for similar goods to which the mark attaches.

5. **Prince Manufacturing Co., Inc. filed a complaint for unfair competition under section 21-A of R.A. 166 against Prince Industries, Inc. the complaint substantially alleges that plaintiff is a foreign corporation organized under the laws of California, USA., with offices in San Francisco; that defendant Prince Industries, Inc. is a corporation organized under the laws of the Philippines with principal office at Sucat Road, Paranaque, Metro Manila; that plaintiff, founded in 1920 by Iver Prince, is the largest manufacturer of ball bearings with the trademark “Prince” and the tradename “Prince Manufacturing Co., Inc.” had been exported to the Philippines since 1960; that due to the superior quality and widespread use of its products by the public, the same are well known to Filipino consumers under the tradename “Prince Manufacturing Industries, Inc.” and trademark “Prince”; that long after the commencement of the use of plaintiff’s trademark and tradename in the Philippines, defendant began manufacturing and selling ball bearings under the trademark “Prince” and tradename “Prince Industries, Co.”; that defendant has registered with the Philippine Patent Office the trademark “Prince”, which registration is contrary to Sec. 4 of RA 166, as amended, and violative of plaintiff’s right to the trademark “Prince”; that the defendant not only uses the trademark “Prince” but likewise has copied the design used by plaintiff in distinguishing its trademark; and that the use thereof by defendant on its products would cause confusion in the minds of the consumers and likely deceive them as to the source or origin of the goods, thereby enabling the defendant to pass off their products as those of plaintiff.**

**Invoking the provisions of Sec. 21 A of RA 166, as amended, plaintiff prayed for damages. It also sought the issuance of a writ of injunction to prohibit defendants from using the tradename “Prince Industries Co.” and the trademark “Prince”.**

**If you were the counsel for the plaintiff, what administrative remedy would you advise your client to pursue in the event the court action fails?**

**Answer:**

Administrative cancellation of the trademark under Section 17 of RA 166 as amended. Such remedy is available to a foreign corporation as said section does not require that the trademark of the foreign corporation alleged

to have been infringed should have been registered in the Philippine Patent Office (*General Garments v. Directors of Patents, 41 SCRA 50 [1971]*) (BAR 1984)

6. **X, a dealer of low grade oil, to save on expenses, uses the containers of different companies. Before marketing to the public his low grade oil, X totally obliterates and erases the brands or marks stenciled on the containers.**

**Y brings an action against X for unfair competition upon its discovery that its containers have been used by X for his low grade oil.**

**Is there unfair competition? State briefly your reasons.**

**Answer:**

**There is no** unfair competition, unfair competition is passing off of one's goods as those of another and requires fraudulent intent on the part of the user. These elements are not present in the problem. (BAR 1988)

7. **N Corporation manufactures rubber shoes under the trademark "Jordann" which hit the Philippine Market in 1985, and registered its trademark with the Bureau of Patents, Trademarks and Technology Transfer (BPTTT) in 1990. PK Company also manufactures rubber shoes with the trademark "Javorski" which it registered with the BPTTT in 1978.**

**In 1992, PK Company adopted and copied the design of N Corporation's "Jordann" rubber shoes, both as to shape and color, but retained the trademark "Javorski" on its products.**

**May PK Company be held liable to N Corporation? Explain.**

**Answer:**

PK may be held liable for unfairly competing against N Corporation. By copying the design, shape and color of N's "Jordann" rubber shoes and using the same in its rubber shoes trademarked "Javorski", PK is obviously trying to pass off its shoes for those of N. It is of no moment that the trademark "Javorski" was registered ahead of the trademark "Jordann". Priority in registration is not material in an action for infringement of trademark. The basis of an action for unfair competition is confusing and misleading similarity in general appearance, not similarity of trademarks. (BAR 1996)

8. **What is the distinction between infringement and unfair competition?**

**Answer:**

The distinction between infringement (presumably of trademark) and unfair competition are as follows:

1. Infringement of a trademark is the unauthorized use of a trademark, whereas unfair competition is the passing off of one's goods as those of another;
2. Fraudulent intent is unnecessary in infringement of trademark, whereas fraudulent intent is essential in unfair competition;
3. The prior registration of the trademark is a prerequisite to an action for infringement of trademark, whereas registration of the trademark is not necessary in unfair competition. (BAR 1996)

13. Trade Names or Business Names

14. Collective Marks

#### D. Copyrights

**1. Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example.**

**Answer:**

A stamped or marked container of goods can be registered as a trademark. An original ornamental design or model for articles of manufacturer can be copyrighted. An ornamental design cannot be patented, because aesthetic creations cannot be patented. However, it can be registered as an industrial design. Thus, a container of goods which has an original ornamental design can be registered as a trademark, can be copyrighted, and can be registered as an industrial design. (BAR 2010)

#### 1. Basic Principles, Sections 172.2, 175 and 181

**1. Jose Santos has written many poems, some of which have been published in Panorama Magazine but never registered with the Copyright Office. Among his published works was the poem entitled "In a Rose Garden." About a year from its publication, Jose was surprised to hear over the radio a song whose lyrics were copied from his poem. It appears that music sheets of the song have been published and sold under the name of the composer, without any acknowledgment in favor of Jose.**

**Jose wants to know what his rights are and whether he can secure an injunction against the composer and/or the publisher, perhaps with damages. How will you advise him? Explain.**

**Answer:**

I would tell Santos that he has a right to file injunction proceedings to restrain the composer and/or his publisher from further committing any act of infringement of his copyright. Under the present law, copyright is acquired from the moment of the creation of the work. Registration and deposit of the work are no longer necessary for its acquisition. The moment Santos wrote his poem, he acquired the right to restrain any infringement on his copyright, as well as the right to have the infringing copies and devices impounded. However, what Santos cannot demand without such registration and deposit are damages resulting from the infringement. He is therefore not entitled to such damages. (BAR 1981)

NB Under the IPC, moral and exemplary damages may now be awarded in certain instances in the event of infringement of copyright

#### 2. Copyrightable Works

##### a. Original Works

**1. Under the Intellectual Property Code, lectures, sermons, addresses or dissertations prepared for oral delivery, whether or not reduced in writing or other material forms, are regarded as**

- a. Non-original works.
- b. Original works.
- c. Derivative works.
- d. Not subject to protection.

Answer:

b. Original works. (BAR 2011)

### b. Derivative Works

### 3. Non-Copyrightable Works

1. TRUE OR FALSE. Answer TRUE if the statement is true, or FALSE if the statement is FALSE. Explain your answer in not more than 2 sentences.

The *Denicola Test* in intellectual property law states that if design elements of an article reflect a merger of aesthetic and functional considerations, the artistic aspects of the work cannot be conceptually separable from the utilitarian aspects; thus, the article cannot be copyrighted.

Answer:

True. Applying the *Denicola Test* in *Brandir International, Inc. v. Cascade Pacific Lumber Co.* (834 F.2d 1142, 1988 Copr.L.Dec. P26), the United State Court of Appeals for the Second Circuit held that if there is any aesthetic element which can be separated from the utilitarian elements, then the aesthetic element may be copyrighted. (BAR 2009)

2. X, an amateur astronomer, stumbled upon what appeared to be massive volcanic eruption in Jupiter while peering at the planet through his telescope. The following week, X, without notes, presented a lecture on his findings before the Association of Astronomers of the Philippines. To his dismay, he later read an article in a science journal written by Y, a professional astronomer, repeating exactly what X discovered without any attribution to him. Has Y infringed on X's copyright, if any?
  - a. No, since X did not reduce his lecture in writing or other material form.
  - b. Yes, since the lecture is considered X's original work.
  - c. No, since no protection extends to any discovery, even if expressed, explained, illustrated, or embodied in a work.
  - d. Yes, since Y's article failed to make any attribution to X.

Answer:

c. No, since no protection extends to any discovery, even if expressed, explained, illustrated, or embodied in a work. (BAR 2011)

3. X came up with a new way of presenting a telephone directory in a mobile phone, which he dubbed as the "iTel" and which uses lesser time for locating names and telephone numbers. May X have his "iTel" copyrighted in his name?

- a. No, because it is a mere system or method.
- b. Yes, because it is an original creation.
- c. Yes, because it entailed the application of X's intellect.
- d. No, because it did not entail any application of X's intellect.

**Answer:**

- d. No, because it is a mere system or method. (BAR 2011)

#### 4. Rights of Copyright Owner

1. **Jose Santos has written many poems, some of which have been published in Panorama Magazine but never registered with the Copyright Office. Among his published works was the poem entitled "In a Rose Garden." About a year from its publication, Jose was surprised to hear over the radio a song whose lyrics were copied from his poem. It appears that music sheets of the song have been published and sold under the name of the composer, without any acknowledgment in favor of Jose.**

**Jose wants to know what his rights are and whether he can secure an injunction against the composer and/or the publisher, perhaps with damages. How will you advise him? Explain.**

**Answer:**

I would tell Santos that he has a right to file injunction proceedings to restrain the composer and/or his publisher from further committing any act of infringement of his copyright. Under the present law, copyright is acquired from the moment of the creation of the work. Registration and deposit of the work are no longer necessary for its acquisition. The moment Santos wrote his poem, he acquired the right to restrain any infringement on his copyright, as well as the right to have the infringing copies and devices impounded. However, what Santos cannot demand without such registration and deposit are damages resulting from the infringement. He is therefore not entitled to such damages. (BAR 1981)

NB See previous comment on award of damages under the IPC

2. **The widow of a former President commissioned Matalino to write a biography of her late husband for a fee. Upon completion of the work, the widow paid Matalino the agreed price. The biography was copyrighted. The widow, however, changed her mind upon reading the book and decided not to have it published.**
  - a) **Can the President's widow sell the property without the consent of Matalino? Explain.**
  - b) **Can the President's widow transfer the copyright without the consent of Matalino?**

**Answer:**

- a) The President's widow can sell the property without the consent of Matalino. The widow was the owner of the work that was done by Matalino pursuant to their agreement.
- b) Since the copyright is likewise owned by the widow, the transfer thereof may be effected even without the consent of Matalino. Of course, Matalino, as the creator, retains certain moral rights but consent on transfer is not among such rights. (BAR 1986)

NB Under the law, in case of commissioned work, the work belongs to the one who commissioned it but the copyright belongs to the author, unless otherwise stipulated. Thus, unless otherwise stipulated, the President's widow can not transfer the copyright since it belongs to the author..

### 3. What intellectual property rights are protected by copyright?

**Answer:**

Section 5 of PD 49 provides that Copyright shall consist the exclusive right:

- a) To print, reprint, publish, copy, distribute, multiply, sell and make photographs, photo engravings, and pictorial illustrations of the works;
- b) To make any translation or other version or extracts or arrangements or adaptation thereof; to dramatize if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute if it be a model or design;
- c) To exhibit, perform, represent, produce, or reproduce the work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscripts or any record whatsoever thereof;
- d) To make any other use or disposition of the work consistent with the laws of the land. (BAR 1995)

Under RA 8293, as amended, the following intellectual property rights are protected by copyright.

I. COPYRIGHT OR ECONOMIC RIGHTS. Copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts

- a. Reproduction of the work or substantial portion of the work;
- b. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;
- c. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;
- d. Rental of the original or a copy of an (1)audiovisual or (2)cinematographic work, a (3)work embodied in a sound recording, a (4)computer program, a (5)compilation of data and other materials or a (6)musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)
- e. Public display of the original or a copy of the work;
- f. Public performance of the work; and
- g. Other communication to the public of the work.

II. MORAL RIGHTS: The author of a work shall, independently of the economic rights have the right

- a. To require that the authorship of the works be attributed to him, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and in connection with the public use of his work;
- b. To make any alterations of his work prior to, or to withhold it from publication;

- c. To object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation; and
  - d. To restrain the use of his name with respect to any work not of his own creation or in a distorted version of his work.
4. **In 1999, Mocha Warm, an American musician, had a hit rap single called Warm Warm Honey which he himself composed and performed. The single was produced by a California record company, Galactic Records. Many noticed that some passages from Warm Warm Honey sounded eerily similar to parts of Under Hassle, a 1978 hit song by the British rock band Majesty. A copyright infringement suit was filed in the United States against Mocha Warm by Majesty. It was later settled out of court, with Majesty receiving attribution as co-author of Warm Warm Honey as well as share in the royalties.**

**By 2002, Mocha Warm was nearing bankruptcy and he sold his economic rights over Warm Warm Honey to Galactic Records for \$10,000.**

**In 2008, Planet Films, a Filipino movie producing company, commissioned DJ Chef Jean, a Filipino musician, to produce an original re-mix of Warm Warm Honey for use in one of its latest films, Astig!. DJ Chef Jean remixed Warm Warm Honey with a salsa beat, and interspersed as well a recital of a poetic stanza by John Blake, a 17<sup>th</sup> century Scottish poet. DJ Chef Jean died shortly after submitting the remixed Warm Warm Honey to Planet Films.**

**Prior to the release of Astig!, Mocha Warm learns of the remixed Warm Warm Honey and demands that he be publicly identified as the author of the remixed song in all the CD covers and publicity releases of Planet Films.**

- a) **Who are the parties or entities entitled to be credited as author of the remixed Warm Warm Honey? Reason out your answers.**
- b) **Who are the particular parties or entities who exercise copyright over the remixed Warm Warm Honey? Explain.**

**Answer:**

- a) Mocha Warm, Majesty and Chef Jean are entitled to be credited as authors of the remixed Warm Warm Honey, because it is their joint work. Mocha Warm retained his moral right to be credited as an author of the remixed Warm Warm Honey despite the sale of his economic rights to Galactic Records, because his moral rights exist independently of his economic rights. John Blake cannot be credited for the use of his work because copyright extends only during the lifetime of the author and 50 years after his death. (BAR 2008)

NB Under the amendatory law to RA 8903, the right of attribution is now in perpetuity.

5. **Eloise, an accomplished writer, was hired by Petong to write a bimonthly newspaper column for Diario de manila, a newly-established newspaper of which Petong was the editor-in-chief. Eloise was to be paid P1,000 for each column that was published. In the course of 2 months, Eloise submitted 3 columns which, after some slight editing, were printed in the newspaper. However, Diario de Manila proved unprofitable and closed only after 2 months. Due to the minimal amounts involved, Eloise chose not to pursue any claim for payment from the newspaper, which was owned by New Media Enterprises.**

- a) Does Eloise have to secure authorization from New Media Enterprises to be able to publish her *Diario de Manila* columns in her own anthology? Explain fully.
- b) Assume that New Media Enterprises plans to publish Eloise's columns in its own anthology entitled, "The Best of *Diario de Manila*". Eloise wants to prevent the publication of her columns in that anthology since she was never paid by the newspaper. Name one irrefutable legal argument Eloise could cite to enjoin New Media Enterprises from including her columns in its anthology.

**Answer:**

- a) Eloise does not have to secure the authorization of New Media, because as the author, she owns the copyright to her columns.
- b) Eloise could invoke that under the Intellectual Property Code, as the owner of the copyright to the columns, she can either "authorize or prevent" reproduction of the work, including the public distribution of the original and each of the work "by sale or other forms of transfer of ownership". While the anthology as a derivative work is protected as a new work, it does not affect the force of the copyright of Eloise upon her columns and does not imply any right to New Media to use the columns without the consent of Eloise. (BAR 2008)

**6. Apart from economic rights, the author of a copyright also has moral rights which he may transfer by way of assignment. The term of these moral rights shall last**

- a. During the author's lifetime and for 50 years after his death.
- b. Forever.
- c. 50 years from the time the author created his work.
- d. During the author's lifetime.

**Answer:**

- a. During the author's lifetime and for 50 years after his death. (BAR 2011)

NB # a is the correct answer because the question pertains to moral rights in general although as pointed out in previous comment, the right of attribution is forever.

## 5. Rules on Ownership of Copyright

**1. If today a person is granted a copyright for a book, for how long will the copyright be valid? If said person uses a pseudonym, how would this affect the length of the copyright?**

**Answer:**

A copyright endures during the lifetime of the creator and for 50 years after his death.

In case he uses pseudonym, the copyright shall last until the end of 50 years following the date of the first publication of the work. (BAR 1975)

NB We have to add with respect to pseudonymous work, unless the author is identified, in which case, the copyright subsists during his lifetime and for 50 years after his death.

- 2. The widow of a former President commissioned Matalino to write a biography of her late husband for a fee. Upon completion of the work, the widow paid Matalino the agreed price. The biography was copyrighted. The widow, however, changed her mind upon reading the book and decided not to have it published.**

**Can the President's widow sell the property without the consent of Matalino? Explain.**

**Answer:**

The President's widow can sell the property without the consent of Matalino. The widow was the owner of the work that was done by Matalino pursuant to their agreement. (BAR 1986)

- 3. Felix copyrighted the oil painting showing the oath taking of Pres. C. Aquino and Vice-President S. Laurel after the EDSA revolution. Val engaged an artist to paint the same scene for use as picture postcards. Val then started sending the picture postcards to his friends abroad. Is there a violation of Felix's copyright? Reasons.**

**Answer:**

While Felix can have a copyright on his own painting which is expressive of his own artistic interpretation of the event he has portrayed, the scene or the event itself however, is not susceptible to exclusive ownership. Accordingly, there would be no violation of Felix's copyright if another painter were to do the similar work. (BAR 1989)

- 4. Solid Investment House (SOLID) commissioned Mon Blanco and his son Steve, both noted artist, to paint a mural for the Main Lobby of the new building of SOLID for a contract price of P2 M.**

- a) Who owns the mural? Explain.**
- b) Who owns the copyright of the mural? Explain.**

**Answer:**

a) SOLID owns the mural. SOLID was the one who commissioned the artists to do the work and paid for the work in the sum of P2 M.

b) Unless there is a stipulation to the contrary in the contract, the copyright shall belong in joint ownership to SOLID and Mon Blanco and his son Steve. (BAR 1995)

- 5. BR and CT are noted artists whose paintings are highly prized by collectors. Dr. DL commissioned them to paint a mural at the main lobby of his new hospital for children. Both agreed to collaborate on the project for a total fee of P2 M to be equally divided between them. It was also agreed that Dr. DL had to provide all the materials for the painting and pay for the wages of technicians and laborers needed for the work on the project.**

**Assume that the project is completed and both BR and CT are fully paid the amount of P2 M as artists' fee by DL. Under the law on intellectual property, who will own the mural? Who will own the copyright in the mural? Why?**

**Answer:**

Under Section 178.4 of the Intellectual Property Code, in case of commissioned work, the creator (in the absence of a written stipulation to the contrary) owns the copyright, but the work itself belongs to the person who commissioned its creation. Accordingly, the mural belongs to DL. However, BR and CT own the copyright, since there is no stipulation to the contrary. (BAR 2004)

- 6. In 1999, Mocha Warm, an American musician, had a hit rap single called Warm Warm Honey which he himself composed and performed. The single was produced by a California record company, Galactic Records. Many noticed that some passages from Warm Warm Honey sounded eerily similar to parts of Under Hassle, a 1978 hit song by the British rock band Majesty. A copyright infringement suit was filed in the United States against Mocha Warm by Majesty. It was later settled out of court, with Majesty receiving attribution as co-author of Warm Warm Honey as well as share in the royalties.**

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**Prior to the release of Astig!, Mocha Warm learns of the remixed Warm Warm Honey and demands that he be publicly identified as the author of the remixed song in all the CD covers and publicity releases of Planet Films.**

**Who are the particular parties or entities who exercise copyright over the remixed Warm Warm Honey? Explain.**

**Answer:**

The copyright over the remixed Warm Warm Honey belongs to Galactic records, Majesty, and Chef Jean. The copyright of Mocha Warm belongs to Galactic Records, because he assigned it to Galactic Records. Majesty also has a copyright, because it is a co-author. The copyright of Chef Jean belongs to him even if his work was commissioned by Planet Firm, because the copyright remained with him. (BAR 2008)

NB As an alternative answer, Chef Jean should not be given copyright on the remixed Warm Warm Honey because the right to make alteration to original work belongs to the author of the original work. Che Jean should even be liable for infringement because he carried out the derivative work without the consent of Mocha Warn and Galactic Records.

- 7. While vacationing in Boracay, Valentino surreptitiously took photographs of his girlfriend Monaliza in her skimpy bikini. 2 weeks later, her photograph appeared in the Internet and in a national celebrity magazine.**

**Monaliza found out that Valentino had sold the photograph to the magazine and, adding insult to injury, uploaded them to his personal blog on the Internet.**

- 1. Monaliza filed a complaint against Valentino for damages based on, among other grounds, violation of her intellectual property rights. Does she have any cause of action? Explain.**

**Answer:**

No. Monaliza cannot sue Valentino for violation of her intellectual property rights, because she was not the one who took the pictures. She may sue Valentino instead for violation of her right to privacy. He surreptitiously took photographs of her and then sold the photographs to a magazine and uploaded them to his personal blog in the Internet.

**2. Valentino's friend Francesco stole the photographs and duplicated them and sold them to a magazine publication. Valentino sued Francesco for infringement and damages. Does Valentino have any cause of action? Explain.**

**Answer:**

No. Valentino cannot sue Francesco for infringement, because he has already sold the photographs to a magazine.

**3. Does Monaliza have any cause of action against Francesco? Explain.**

**Answer:**

Yes. Monaliza can also sue Francesco for violation of her right to privacy. (BAR 2010)

**8. T, an associate attorney in XYZ Law Office, wrote a newspaper publisher a letter disputing a columnist's claim about an incident in the attorney's family. T used the law firm's letterhead and its computer in preparing the letter. T also requested the firm's messenger to deliver the letter to the publisher. Who owns the copyright to the letter?**

- a. T, since he is the original creator of the contents of the letter.
- b. Both T and the publisher, one wrote the letter to the other who has possession of it.
- c. The law office since it was an employee and he wrote it on the firm's letterhead.
- d. The publisher to whom the letter was sent.

**Answer:**

A. T, since he is the original creator of the contents of the letter. (BAR 2011)

**9. Rudy is a fine arts student in a university. He stays in a boarding house with Bernie as his roommate. During his free time, Rudy would paint and leave his finished works lying around the boarding house. One day, Rudy saw one of his works—an abstract painting entitled Manila Traffic Jam—on display at the university cafeteria. The cafeteria operator said he purchased the painting from Bernie who represented himself as its painter and owner.**

**Rudy and the cafeteria operator immediately confronted Bernie. While admitting that he did not do the painting, Bernie claimed ownership of its copyright since he had already registered it in his name with the National Library as provided in the Intellectual Property Code.**

**Who owns the copyright to the painting? Explain.**

**Answer:**

Rudy owns the copyright to the painting because he was the one who actually created it. His rights existed from the moment of its creation. The registration of the painting by Bernie with the National Library did not confer copyright upon him. The registration is merely for the purpose of completing the records of the National

## 6. Limitations on Copyright

### a. Doctrine of Fair Use

1. **Jose Molina, Jr. inherited the musical works of his talented father, Jose Molina, Sr., who, before his death, had composed a number of well-known songs. When he was alive, the senior Molina never took the precaution of procuring copyright for his compositions, but his son, Molina Jr, who appears to be more practical-minded, succeeded in having his father's intellectual creations registered under the Copyright Law. One such composition was a song entitled "Habang Buhay", which had been popularly sung and had in fact received international acclaim long before the senior Molina's demise.**

**Vilma Aunor, a popular singer, was requested to sing "Habang Buhay" in a free cultural presentation at the Luneta Park.**

**Jose Molina, Jr. sued Vilma Aunor for infringement of copyright.**

**How would you decide the case?**

**Answer:**

I would rule in favor of Wilma Aunor. There is no infringement of copyright where the performance is "in a free cultural presentation". Additionally, the problem speaks of a musical composition that had been popularly sung and had received international acclaim long before the creator's demise, indicating that the composition must have been during the regime of the then copyright law where registration of the copyright (within 30 days in the case of Manila and 60 days elsewhere) from publication was required; otherwise, the creation under that law would thereby become public property. (BAR 1987)

2. **X copyrighted a scientific research paper consisting of 50 pages dealing with the Tasadays. Y wrote a 100-page review of X's paper criticizing X's findings and dismissing X's story as a hoax. Y's review literally reproduced 90% of X's paper. Can X sue Y for infringement of his copyright?**

**Answer:**

The Copyright Law provides that to an external compatible with fair practice and justified by scientific, critical, informatory or educational purpose, it is permissible to make quotations or excerpts from a work already made accessible to the public. Such quotations may be utilized in their original form or in translation. Viewed from the foregoing, a review by another that "literally reproduced 90%" of the research work done by X may no longer be considered as fair play, and X can sue Y for the violation of the copyright. (BAR 1989)

3. **May a person have photocopies of some pages of the book of Professor Rosario made without violating the copyright law?**

**Answer:**

Yes. The private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, is permitted, without the authorization of the owner of the copyright in the work. (BAR 1998)

NB The quoted provision applies to published work other than a book. Reproduction of a book is covered by a separate provision. If the pages copied amount to a substantial portion, there is infringement of copyright.

4. **In a written legal opinion for a client on the difference between apprenticeship and learnership, Liza quoted without permission a labor law expert's comment appearing in his book entitled "Annotations on the Labor Code."**

**Can the labor law expert hold Liza liable for infringement of copyright for quoting a portion of his book without his permission?**

**Answer:**

No. the labor law expert cannot hold Liza liable for infringement of copyright. Under Section 184.1(k) of the Intellectual Property Code, "Any use made of a work for the purpose of any judicial proceeding or for giving of professional advice by a legal practitioner" shall not constitute infringement of a copyright. (BAR 2006)

5. **The Fair Use Doctrine allows others to utilize copyrighted works under certain conditions. The factors to consider whether use is fair or not would be the purpose and character of the use, nature of the copyrighted work, amount and substantially of the portions used, and else?**

- a) **Effect of the use upon the creator of the work;**
- b) **Effect upon the potential market of the work;**
- c) **Effect of the use upon the public in general;**
- d) **Effect of the use upon the class in which the creator belongs.**

**Answer:**

b) Effect upon the potential market of the work. (BAR 2012)

### **b. Copyright Infringement**

1. **X wrote and published a story exactly similar to an unpublished copyrighted story of A. A sues X for infringement of Copyright. It was, however, conclusively proven that X was not aware that the story of A was protected by copyright. Is X liable? Answer with reasons.**

**Answer:**

X is liable for infringement of copyright. As defined, infringement of a copyright consists in the doing by any person, without the consent of owner of the copyright, of anything the sole right to which is conferred by the statute on the owner of the copyright.

Evidently, the *animus furandi*, or intention to pirate, is not an essential element of infringement; and ignorance of the copyright, or honest intention, affords no defense to an action for infringement. The author's property is absolute when perfected by copyright, and the intent of purpose of an invasion is nowhere made an excuse for it. (BAR 1977)

2. **"Q", a well-known artist, designs for "P" a personalized Christmas card with an artistic motif depicting a Philippine rural Christmas scene with a woman and a child, a nipa hut adorned with star-shaped**

lanterns and a man astride a carabao beside a tree. Underneath the design appears the name "Q". "R" orders from "Q" 500 of such Christmas cards and distributes them to his friends.

A year later, "X" copies and prints the same design for his album of Christmas cards intended for sale to the general public. Several customers order Christmas cards from "X" with the same design as that printed for "R".

"Q" files a suit against "X" claiming damages under the Copyright Law despite his failure to copyright the work mentioned above. He further claims that the printing or publication of the design he prepared for "R" was special and limited.

**Decide the case.**

**Answer:**

No, Q's suit against X claiming for damages *under the former Copyright Law* cannot prosper due to his failure to copyright his work. Failure to copyright a work renders the intellectual creation public property and the author loses the exclusive right to control subsequent publication by others. (*Santos v. McCullough Printing Co.*, Oct. 31, 1964; 12 SCRA 322) (Note: Artistic and Literary works are now protected by its mere creation under the new Copyright Law) (BAR 1980)

3. **Miss Solis wrote a script for Regal Films for the movie "One Day—Isang Araw". Ms. Badiday, while watching the movie in Ermita Theatre, discovered that the story of the movie is exactly similar to an unpublished copyrighted autobiography which she wrote. Ms. Badiday sued Miss Solis for infringement of copyright. It was however, conclusively proven that Miss Solis was not aware that the autobiography of Ms. Badiday was protected by a copyright.**

**Is Miss Solis liable? State briefly your reasons.**

**Answer:**

Yes, Miss Solis may be held liable. Animus furandi or intention to pirate is not an element of infringement; hence, an honest intention is no defense to an action for infringement. (BAR 1988)

4. **The Victoria Hotel chain reproduces videotapes, distributes the copies thereof to its hotels and makes them available to hotel guests for viewing in the hotel guest rooms. It charges a separate normal fee for the use of the videotape player.**

- 1. Can the Victoria Hotel be enjoined for infringing copyrights and held liable for damages?**
- 2. Would it make any difference if Victoria Hotel does not charge any fee for the use of the videotape?**

**Answer:**

1. Yes. Victoria Hotel has no right to use such video tapes in its hotel business without the consent of the creator/owner of the copyright.
2. No. The use of the videotapes is for business and not merely for home consumption. (BAR 1994)

5. **In an action for damages on account of an infringement of a copyright, the defendant (the alleged pirate) raised the defense that he was unaware that what he had copied was a copyright material. Would this defense be valid?**

**Answer:**

No. An intention to pirate is not an element of infringement. Hence, an honest intention is no defense to an action for infringement. (BAR 1997)

6. **Juan Xavier wrote and published a story similar to an unpublished copyrighted story of Manoling Santiago. It was, however, conclusively proven that Juan Xavier was not aware that the story of Manoling Santiago was protected by copyright. Manoling Santiago sued Juan Xavier for infringement of copyright. Is Juan Xavier liable?**

**Answer:**

Yes. Juan is liable for infringement of copyright. It is not necessary that Juan is aware that the story of Manoling was protected by copyright. The work of Manoling is protected from the time of its creation. (BAR 1998)

7. **Diana and Piolo are famous personalities in showbusiness who kept their love affair secret. They use a special instant messaging service which allows them to see one another's typing on their own screen as each letter key is pressed. When Greg, the controller of the service facility, found out their identities, he kept a copy of all the messages Diana and Piolo sent each other and published them. Is Greg liable for copyright infringement? Reason briefly.**

**Answer:**

Yes, Greg is liable for copyright infringement. Letters are among the works which are protected from the moment of their creation. The publication of the letters without the consent of their writers constitutes infringement of copyright. (BAR 2007)

8. **After disposing of his last opponent in only two rounds in Las Vegas, the renowned boxer Sonny Bachao arrived at the NAIA met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo short embroidered with the Zinch Lacoste crocodile logo appeared on the front page of every Philippine newspaper.**

Lacoste International, the French firm that manufactures Lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase "*Sonny Bachao just loves Lacoste*".

**When Sonny sees the Lacoste advertisements, he hires you as a lawyer and asks you to sue Lacoste International before a Philippine court:**

i) **XXX,**

j) **For copyright infringement because of the unauthorized use of the published photographs.**

**Answer:**

Sonny Bachao cannot sue for infringement of copyright for the unauthorized use of the photographs showing him wearing a Lacoste shirt. The copyright to the photographs belong to the newspaper which published them

inasmuch as the photographs were the result of the performance of the regular duties of the photographers. Moreover, the newspaper publishers authorized the reproduction of the photographs. (BAR 2009)

9. **X's painting of Madonna and Child was used by her mother to print some personalized gift wrapper. As part of her mother's efforts to raise funds for Bantay Bata, the mother of X sold the wrapper to friends. Y, an entrepreneur, liked the painting in the wrapper and made many copies and sold the same through National Bookstore. Which statement is most accurate?**
- a) **Y can use the painting for his use because this is not a copyrightable material;**
  - b) **X can sue Y for infringement because artistic works are protected from the moment of creation;**
  - c) **Works of art need to be copyrighted also to get protection under the law;**
  - d) **Y can use the drawing even though not copyrighted because it is already a public property having been published already.**

**Answer:**

b) X can sue Y for infringement because artistic works are protected from the moment of creation. (BAR 2012)

10. **KK is from Bangkok, Thailand. She studies medicine in the Pontifical University of Santo Tomas (UST). She learned that the same foreign books prescribed in UST are 40-50% cheaper in Bangkok. So she ordered 50 copies of each book for herself and her classmates and sold the books at 20% less than the price in the Philippines. XX, the exclusive licensed publisher of the books in the Philippines, sued KK for copyright infringement. Decide.**

**Answer:**

KK did not commit copyright infringement. Under the "first sale" doctrine, the economic rights of the author relevant to the question extend only to the first public distribution of each original copy. After the first sale of the original copies, the owner may use and re-sell the same. Hence, there is no infringement by KK since the said doctrine permitted importation and resale without the publisher's further permission. (BAR 2014)