

**PROPOSED ANSWERS TO THE 2018 BAR EXAMS IN COMMERCIAL LAW**  
**Dean Nilo T. Divina**

**I.**

- A.** There is no merit in the case against YB. YB only acted as an advising bank whose only obligation after determining the apparent authenticity of the letter of credit is to transmit a copy thereof to the beneficiary of the letter of credit. It has no obligation to ensure that the goods loaded for exportation corresponded with those described in the bill of lading. ( **Bank of America vs Court of Appeals, GR No. 105395** ) YB cannot be considered a confirming bank because to be one it must have assumed a direct obligation to the seller as if it has issued the letter of credit.( **Marphil Export Corporation vs. Allied Banking Corporation, GR No. 187922, September 21, 2016** ) Nether is YB a negotiating bank because it did not buy the draft of the beneficiary of the letter of credit. But even if YB acted as a confirming or negotiating bank, such kind of correspondent bank has no similar obligation to ensure that the goods shipped match with those described in the bill of lading.
- B.** The President of YEC cannot invoke as a defense the doctrine of separate juridical personality to avoid criminal liability. The law specifically makes the director, officer or any person responsible for the violation of the Trust receipt agreement criminally liable precisely for the reason that a Corporation, being a juridical entity, cannot be the subject of the penalty of imprisonment. Nevertheless, following the same doctrine of separate legal personality, he cannot be civilly liable there being no showing that he binds with YEC to pay the loan. Only YEC is liable to pay the loan covered by the letter of credit/trust receipt. **Ching vs. Secretary of Justice, 481 SCRA 609 ( 2006 ) and Section 13 of PD 115**

**II.**

- A.** Yvette cannot hold Yolanda liable on the note. This a case of incomplete and undelivered instrument insofar as Yolanda is concerned. Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, including a holder in due course as against Yolanda, whose signature was placed thereon before delivery ( Section 15 of the Negotiable instruments law )
- B.** The answer will not be the same. Now that the instrument is complete but undelivered and in the hands of Yvette, a holder in due course, a valid and intentional delivery to make all parties prior to Yvette liable is conclusively presumed under Section 16 of the NIL. Therefore, Yvette can hold Yolanda, a prior party, liable. A complete but undelivered instrument is only a personal defense not available against a holder in due course.

III.

- A. The defense is not meritorious. Where the instrument is not dated, it will be considered to be dated as of the time it was issued (Section 17 of NIL ( C ). Section 14 of NIL also concedes to the payee the prima facie authority to fill-in the blanks in a negotiable instrument. Such prima facie stands in the absence of evidence to the contrary.
- B. The defense is not meritorious. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he must disclose his principal and must indicate that he is acting on behalf of his principal ( Section 20 of NIL ).

**Alternative answer**

The defense is meritorious. Since the matter of signing the note by Yektas on behalf of YTC is known to Ysmael, then, Yektas has no personal liability as it may be inferred from the note that he is acting only in a representative capacity.

- C. The defense is not meritorious. An accommodation party signs a negotiable instrument as a maker, drawer, endorser, acceptor without receiving value therefor and only for the purpose of lending his name in another. He is liable to a holder for value notwithstanding such holder, at the time of taking the instrument, knew him only to be an accommodation party ( Section 29 of NIL )
- D. The defense is not meritorious. In stock sales, where shareholder sell a block of stock to new or existing shareholders, the transaction takes place at the shareholder level only. Because the corporation has a legal personality separate and distinct from that of its shareholders, a change in the composition of shareholders will not affect its existence nor extinguish its separate legal personality (**SME Bank vs Samson, GR No. 186641, October 8, 2013** )
- E. The defense is not meritorious. The Usury law is currently suspended in view of CB Circular 905 series of 1982 which lifted the ceiling on interest rate for loans. Moreover, if the interest rate is deemed to be unconscionable despite the absence of the Usury Law, the legal rate of interest shall be deemed to apply. Thus, the PN remains valid

**Alternative answer**

The PN remains valid because the obligation to pay the principal amount of the loan is distinct from the obligation to pay the interest on the loan.

IV.

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- A. Yes, by express provision of law, in case of death or injuries to passengers, common carriers are presumed to have been fault or to have acted negligently unless they proved that they exercised extraordinary diligence ( Art. 1756 of the Civil Code)
- B. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person with a due regard for all the circumstances or simply put, with extraordinary diligence . (Art. 1755 of the Civil Code )
- C. My answer will be different. A common carrier is responsible for death or injuries caused by willful acts of other passengers or strangers, only if the common carrier's employees through the exercise of the diligence of a good father of a family could have prevented the act ( Art 1763 of the Civil Code ). **GV. Florida Transport vs Heirs of Romeo Battung, Jr, GR no. 208802, 14 October 2015 )**

**V.**

YFC is correct. Actions or proceedings against the surety of the insolvent debtor that filed a petition for rehabilitation are not subject to the stay order. Consequently, the suit may continue against him. ( Section 18 ( c ) of FRIA )

**VI.**

- A. Yang is not correct. The insured shall have the right to change the beneficiary he designated in the policy unless he has expressly waived this right in the policy. There is nothing in the life insurance policy taken by Yang which indicated that the designation of Ying is irrevocable. As such, it is deemed to be revocable.
- B. Yessel has no insurable interest on the life of Yin because she cannot be lawfully designated as beneficiary. Persons who are proscribed to become donees under the rules on donation cannot be designated as beneficiary in life insurance. These include persons in illicit relations as in the case of Yin and Yeseel. Yinsel, however, has insurable interest on the life of Yin. There is no proscription in naming an illegitimate child as a beneficiary. **Heirs of Loreta Maramag vs Maramag, GR No. 181132, June 5, 2009**

**VII.**

- A. A foreign Corporation which owns the Copyright to foreign films and exclusive distribution rights in the Philippines and appointed an attorney in-fact to file criminal cases on behalf of the corporation is not doing business in the Philippines because the contract was executed abroad and the hiring of the attorney-in-fact is merely for the protection of its property rights. **Columbia Pictures vs Court of Appeals (261 SCRA 144)**

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- B. It will be the same. Mere passive investment in equity and voting the equity shares of the corporation to elect its director in the board of a domestic corporation is not tantamount to doing business.
- C. While options are securities, the option was granted only to Yelp Pictures and not to the public. As a consequence, the option need not be registered with the SEC.

**VIII.**

- A. In acquiring 75% of the total capital stock of YCC, YEI should be required to do a mandatory tender offer. By acquiring the combined 75% shareholdings of YMI and YCI in YCC, YEI effectively owns 45% of YCC. Add that to the 20% it directly owns in YCC, YEI now owns and controls 65% of YCC. Once a person singly or in concert with others acquires more than 50% of the voting stock of a public company, mandatory tender offer rule. The tender offer rule covers not only direct acquisition but also indirect acquisition or any type of acquisition. Whatever may be the method by which control of a public company is obtained either through the direct purchase of its stocks or through indirect means, mandatory tender offer rule applies. **Cemco Holdings vs National Life Insurance Company, 529 SCRA 2007**
- B. Yolly cannot be held liable for insider trading. Insider trading is the buying and selling of securities by an insider while in the possession of a material non-public information. While Yolly is an insider because, she has access to material non-public information by reason of her relationship with the Issuer, she did not, however, buy or sell securities. She is liable, however, for having communicated material non-public information about the issuer to any broker who by virtue of such communication becomes an insider considering that Yolly, the insider communicating the information knows or has reason to believe that the broker will likely buy or sell a security of the issuer while in possession of such information ( Section 27.3 of the SRC ) The law makes no distinction that the insider is buying for himself or for the account of another. As such, it is immaterial that the broker purchased securities for the account of Yolly's husband. The information about the MTO is also material as it will likely affect the decision of a reasonable person to buy or sell the securities.

**IX.**

YI's Board should not heed the demand of its preferred shareholders. While the preferred shares are cumulative and participating, the holders thereof are entitled to dividends only if the unrestricted retained earnings are sufficient to pay such dividends. Dividends are declared based on unrestricted retained earnings and not on the amount of net profit. **Republic Planters Bank vs Agana, GR No. 51765, March 3, 1997 )** Section 43 of the Corporation Code

**Alternative answer**

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The dividends paid to the holders of the common shares should be recalled and added to the dividends due to the holder of the preferred shares. Holders of common shares are entitled to receive dividends only after the dividends due to the holder of preferred shares shall have been fully paid.

**X.**

- A.** Yes Ynchon has a cause of action to file the petition for mandamus to compel the corporation to register the 500 shares in the corporation's books. In **Andaya vs Rural Bank of Cabadbaran, GR No. 188769, August 3, 2016**, the Supreme Court (abandoning its previous ruling in *Ponce vs Alsons Cement*) ruled that the transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of transfer and the corresponding issuance of stock certificates even without the written authority from the seller to cancel the certificate and register the shares in the books of the corporation.
- B.** Ynchon should be the one to pay the remaining balance but without prejudice to his right to recover from Ybarra. The effect of the sale of the shares was to extinguish the obligation of the seller to the Corporation to pay whatever is the balance in the contract of subscription. The sale of shares to the buyer with the consent of the corporation effectively resulted in novation. ( **Interport Resources Corporation vs. Securities Specialist Inc. GR No. 154069, June 6, 2016** )

**XI.**

- A.** Ynctic's AOI cannot be amended to remove appraisal right of the stockholders on matters requiring their approval in cases where the law grants them such appraisal right, like:
  - i) In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superiors to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
  - ii) In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets;
  - iii) In case of merger, ( Section 81 of the Corporation Code )
  - iv) In case of investment of funds in the secondary purpose of the corporation or another business ( Section 42)

Appraisal right is a statutory right. It cannot be denied to the stockholders in cases where the law allows such right. For all the other matters under the Corporation Code which require

ratificatory approval of the shareholders, the AOI may be formally amended to remove appraisal right because the right does not exist anyway in those cases.

- B.** Any provision or matter stated in the AOI may be amended by a Majority vote of the board of directors and the vote or written assent of the stockholders representing at least 2/3s of the outstanding capital stock. Stockholders cannot exercise any appraisal right in case of amendment to the articles of incorporation to increase capital stock because this is not one of the cases allowed by law where appraisal right may be exercised ( Articles 81 and 42 of the Corporation Code.

## **XII.**

- A.** The doctrine of separate juridical personality is a principle of law which ordains that the corporation has a separate legal personality from the stockholders, directors and officers composing it. The limited liability rule, on the other hand, means that the liability of a stockholder who is not a director, officer or agent of the corporation, is limited to his subscription to the capital stock of the corporation.

### **Alternative answer**

The following answer should also be given credit because the question may be construed as to whether this defense is pertinent under the second question.

The limited liability rule, also known as the real or the hyphotecary nature of maritime law, simply means that that the liability of the shipowner or Ship agent arising from the transportation of goods and passengers is limited to their interest in the vessel which is hyphotecated for such obligations or which stands as a guaranty for their settlement. This rule may be best explained by the doctrine: No vessel, no liability. **(Aboitiz Shipping Corporation vs General Accident Fire and Life Assurance Corporation, 217 SCRA 359 )**

- B.** Yokada cannot validly invoke the doctrine of separate juridical personality and limited liability. Yokada acted in bad faith in withdrawing 300m for his personal account. Having acted in bad faith, he becomes solidarily liable with the corporation. Further, having issued securities to the public without prior approval of the SEC is also another basis to hold him solidarily liable with the issuer corporation.

### **Alternative answer**

It is respectfully suggested that an examinee who answers that the limited liability rule is a maritime law concept and has no bearing to the issue, should also be given credit.

**XIII.**

- A.** YBC Bank cannot unilaterally increase the interest rates on the loan. A stipulation allowing the bank to increase the interest rate unilaterally is a sole potestative condition which violates the principle of mutuality of contract and as such is null and void. ( **PNB vs Padilla SCRA 259 SCRA 174**)
- B.** YBC Bank is not a mortgagee buyer in good faith. As a bank, it should have exercised due diligence to determine who the actual and true owner of the real property is prior to the grant of the loan. Also, Yamsuan has a prior right to the property being the first buyer.

**XIV.**

- A.** The insurer cannot raise the issue of concealment because only material facts known to the insured at the time of the issuance of the policy should be disclosed to the insurer. ( Section 28 of the IC ) Yate's previous cancer diagnosis is no longer a material fact at the time she procured the policy.
- B.** Yes, the insurer is liable. The rule is that the insurer in life insurance is liable in case of suicide only when it is committed after the policy has been in force for a period of two years from the date of issue or last reinstatement. The rule, however, admits of an exception so that when suicide is committed in the state of insanity, it shall be compensable regardless of the date of commission. ( Section 183 of the Insurance Code ). In the given facts, Yate was diagnosed with psychotic tendency that graduated into extreme despondency. Thus, even though Yate committed 36 months from issuance of the policy, the insurer is liable.

**XV.**

- A.** Aling Yoling cannot successfully obtain court relief to prohibit Aling Yasmin from using the brand name " Ysmaellas " in her product on the basis of Aling Yoling's copyright. The brand name " Ysmaellas " is proper subject of trademark, not copyright. They cannot be interchanged. The copyright on a trade name or mark does not guarantee her the right

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to the exclusive use of the same for the reason that it is not a proper subject of said intellectual right. ( **Kho vs. Court of Appeals, GR NO. 115758, March 19, 2002; Juan vs Juan, GR No. 221372, August 23, 2017** ).

The registration of a copyright is only a proof of the recording of the copyright but not a condition precedent for the copyright to subsist and for copyright infringement suit whereas registration of a trademark is an indispensable requisite for any trademark infringement suit.

- B. Aling Yasmien can seek injunctive relief against Aling Yoling from using the brand name “ Ysmaellas “ because of the doctrine of prior use. It is ownership of the trademark that confers the right to register. Registration does not confer ownership. Since Aling Yasmin was the first one to use the brand or trade name in commerce, then she is considered the owner thereof. **EY Industrial Sales vs Shen Dar 634 SCRA 363**
- C. NO, Aling Yoling cannot seek the cancellation of Aling Yasmin’s trademark registration of the brand name “ Ysmaellas on the ground of well-known brand because the well-known mark rule only applies to a mark which is well-known internationally and in the Philippines ( Section 123 ( E ) of the Intellectual Property Code ). Nevertheless, she can seek the cancellation of the trademark for being the prior user even though the mark is not well-known.

**XVI.**

- A. Yosha’s invention is still patentable despite the fact he had sold several models to the public before the formal application for registration of the patent was filed with the IPO. It is true that an invention shall not be considered new if it forms part of a prior art and that prior art shall consist of everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention. This, however, presupposes that the one who has made available the patentable invention to the public is a person other than the applicant for patent.
- B. Yosha can no longer prevent anyone who has possession of the earlier models from using them even if Yosha is able to properly register the patent with the IPO. One of the limitations of patent rights is the use of the patented product which has been put on the market in the Philippines by the owner of the product insofar as such use is performed after the product has been so put on the said market ( Section 172 of the IP Code )

**XVII.**

- A. CSC is correct in dismissing the case. The E-commerce law does not cover or allow e-filing or facsimile transmission as a mode of filing of pleadings in administrative cases. **Torres vs PAGCOR, GR 193531, December 6, 2011**



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- B.** No, Yvan's bank cannot be ordered by the court to disclose if there were unreasonable increases in his bank deposit when the alleged acts were committed. The inquiry into bank deposits allowable under RA 1405 must be premised on the fact that the money deposited in the account is itself the subject of the action. Otherwise, the inquiry will amount to an impermissible encroachment into one's right to privacy. **(BSB Group vs Go, GR No. 168644, February 16, 2010)**

**XVIII.**

- A.** Yes, the legal position of YB in requiring written permission from the depositor is correct. The AMLC cannot order the bank to inquire into the bank account of any depositor on mere suspicions of acts of graft and bribery without his written consent or a bank inquiry order issued by the competent court.
- B.** The AMLC has no power to order a banking institution to reveal matters relating to bank accounts without a bank inquiry order issued by the competent court about the existence of probable cause that the deposits, funds or investments of the person relate to unlawful activities under the Anti-Money Laundering law. However, bank inquiry order is not necessary and as such, the AMLA may order the disclosure of information about bank accounts if the predicate crime/s is/are : a) hijacking, b) kidnapping, c) violation of the terrorism financing act, d) murder, e) arson and, f) violation of the dangerous drugs law ( Section 11 of AMLA )