A Compilation of the

Questions and Suggested Answers

In the

PHILIPPINE BAR EXAMINATIONS 2007-2013

In

REMEDIAL LAW

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ANSWERS TO BAR EXAMINATION QUESTIONS by the UP LAW COMPLEX (2007, 2009, 2010)

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PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2008)

FOREWORD

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The Author

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General Principles

Rights of the Accused; Miranda Rights (2010)

No.XI. X was arrested for the alleged murder of a 6-year old lad. He was read his Mirandarights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of non-stop interrogation. He remained quiet until, on the 3rd hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court, interpreting X's answer as an admission of guilt, convicted him.

On appeal, X's counsel faulted the trial court in its interpretation of his client's answer, arguing that X invoked his Miranda rights when he remained quiet for the first two hours of questioning. Rule on the assignment of error. (3%)

SUGGESTED ANSWER:

The assignment of error invoked by X's counsel is impressed with merit since there has been no express waiver of X's Miranda Rights. In order to have a valid waiver of the Miranda Rights, the same must be in writing and made in the presence of his counsel. The uncounselled extrajudicial confession of X being without a valid waiver of his Miranda Rights, is inadmissible, as well as any information derived therefrom.

Jurisdiction

Error of Jurisdiction vs. Error of Judgment (2012)

No.III.A. Distinguish error of jurisdiction from error of judgment. (5%)

SUGGESTED ANSWER:

An error of judgment is one which the court may commit in the exercise of its jurisdiction. Such an error does not deprive the court of jurisdiction and is correctible only by appeal; whereas an error of jurisdiction is one which the court acts without or in excess of its jurisdiction. Such an error renders an order or judgment void or voidable and is correctible by the special civil action of certiorari. (Dela Cruz vs. Moir, 36 Phil. 213; Cochingyan vs. Claribel, 76 SCRA 361; Fortich vs. Corona, April 24, 1998, 289 SCRA 624; Artistica Ceramica, Inc. vs. Ciudad Del Carmen Homeowner's Association, Inc., G.R. Nos. 167583-84, June 16, 2010).

Jurisdiction; Over the Plaintiff, Subject Matter (2009)

No.III. Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of 19,700. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York. Brigod filed a motion to dismiss the complaint on the following grounds:

(a) The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; (2%)

SUGGESTED ANSWER:

The first ground raised lacks merit because jurisdiction over the person of a plaintiff is acquired by the court upon the filing of plaintiff's complaint therewith. Residency or citizenship is not a requirement for filing a complaint, because plaintiff thereby submits to the jurisdiction of the court.

(b) The RTC does not have jurisdiction over the subject matter of the action involving real property with an assessed value of P19,700.00; exclusive and original jurisdiction is with the Municipal Trial Court where the defendant resides; (3%) and

SUGGESTED ANSWER:

The second ground raised is also without merit because the subject of the litigation, Rescission of Contract, is incapable of pecuniary estimation the exclusive original jurisdiction to which is vested by law in the Regional Trial Courts. The nature of the action renders the assessed value of the land involved irrelevant.

Jurisdiction; RTC (2009)

No.II. Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan.

(a) May the action prosper? Explain.

SUGGESTED ANSWER:

No, the action may not prosper, because under R.A. No. 7691, exclusive original jurisdiction in civil actions which involve title to, or possession of real property or any interest therein is determined on the basis of the assessed value of the land involved, whether it should be P20,000 in the rest of the



Philippines, outside of the Manila with the courts of the first level or with the Regional Trial Court. The assessed value of the parcel of land in Pampanga is different from the assessed value of the land in Bulacan. What is involved is not merely a matter of venue, which is waivable, but of a matter of jurisdiction. However, the action may prosper if jurisdiction is not in issue, because venue can be waived.

ALTERNATIVE ANSWER:

Yes, if the defendant would not file a motion to dismiss on ground of improper venue and the parties proceeded to trial.

(b) Will your answer be the same if the action was for foreclosure of the mortgage over the two parcels of land? Why or why not?

SUGGESTED ANSWER:

NO, the answer would not be the same. The foreclosure action should be brought in the proper court of the province where the land or any part thereof is situated, either in Pampanga or in Bulacan. Only one foreclosure action need be filed unless each parcel of land is covered by distinct mortgage contract.

In foreclosure suit, the cause of action is for the violation of the terms and conditions of the mortgage contract; hence, one foreclosure suit per mortgage contract violated is necessary.

[Note: The question is the same as 2008 Remedial Law Bar question No.III. See Civ.Pro Venue; Real Actions, *Infra* – JayArhSals]

Jurisdiction; RTC; Counterclaim (2008)

No.II. Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and 30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

(a) Does the RTC have jurisdiction over Ramon's counterclaim, and if so, does he have to pay docket fees therefor?

SUGGESTED ANSWER:

Yes, applying the totality rule which sums up the total amount of claims of the parties, the RTC has jurisdiction over the counter claims. Unlike in the case of compulsory counterclaims, a defendant who raises a permissive counterclaim must first pay docket fees before the court can validly acquire jurisdiction. One compelling test of



compulsoriness is the logical relation between the claim alleged in the complaint and the counterclaim (Bayer Phil, Inc. vs. C.A., G.R. No. 109269, 15 September 2000). Ramon does not have to pay docket fees for his compulsory counterclaims. Ramon is liable for docket fees only on his permissive counterclaim for the balance of the purchase price of 30 units of air conditioners in the sum of P250,000, as it neither arises out of nor is it connected with the transaction or occurrence constituting Fe's claim (Sec. 19 [8] and 33 [1], B.P. 129; AO 04-94, implementing R.A. 7691, approved March 25, 1994, the jurisdictional; amount for MTC Davao being P300,000 at this time; Alday vs. FGU Insurance Corporation, G.R. No. 138822, 23 January 2001).

(b) Suppose Ramon's counterclaim for the unpaid balance is P310,000, what will happen to his counterclaims if the court dismisses the complaint after holding a preliminary hearing on Ramon's affirmative defenses?

SUGGESTED ANSWER:

The dismissal of the complaint shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer (Sec. 3, Rule 17; Pinga vs. Heirs of German Santiago, G.R. No. 170354, June 30, 2006).

(c) Under the same premise as paragraph (b) above, suppose that instead of alleging payment as a defense in his answer, Ramon filed a motion to dismiss on that ground, at the same time setting up his counterclaims, and the court grants his motion. What will happen to his counterclaims?

SUGGESTED ANSWER:

His counterclaims can continue to be prosecuted or may be pursued separately at his option (Sec. 6, Rule 16; Pinga vs. Heirs of German Santiago, G.R. No. 170354, June 30, 2006).

Jurisdiction; RTC; MeTC (2010)

No.II. On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

(a) B Lines filed a Motion to Dismiss upon the ground that the Regional Trial Court



has exclusive original jurisdiction over "all actions in admiralty and maritime" claims. In his Reply, A contended that while the action is indeed "admiralty and maritime" in nature, it is the amount of the claim, not the nature of the action, that governs jurisdiction. Pass on the Motion to Dismiss. (3%)

SUGGESTED ANSWER:

The Motion to Dismiss is without merit and therefore should be denied. Courts of the first level have jurisdiction over civil actions where the demand is for sum of money not exceeding P300,000.00 or in Metro Manila, P400,000.00, exclusive of interest, damages, attorney's fees, litigation expenses and costs: this jurisdiction includes admiralty and marine cases. And where the main cause of action is the claim for damages, the amount thereof shall be considered in determining the jurisdiction of the court (Adm. Circular No. 09-94, June 14, 1994).

(b) The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to P10,000.

At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10,000 binds A. A countered that this was no longer in issue as B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (3%)

SUGGESTED ANSWER:

The contention of B is correct: A's contention is wrong. It was A who pleaded the Bill of Lading as an actionable document where the stipulation limits B's liability to A to P10,000.00 only. The issue raised by B does not go against or impugn the genuineness and due execution of the Bill of Lading as an actionable document pleaded by A, but invokes the binding effect of said stipulation. The oath is not required of B, because the issue raised by the latter does not impugn the genuineness and due execution of the Bill of Lading.

Katarungang Pambarangay; Parties (2009)

No.XV.B. Mariano, through his attorney-in-fact, Marcos filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply



with the mandatory barangay conciliation. Resolve the motion with reasons. (3%)

SUGGESTED ANSWER:

The motion to dismiss should be denied because the parties in interest, Mariano and Henry, do not reside in the same city/municipality, or is the property subject of the controversy situated therein. The required conciliation/mediation before the proper Barangay as mandated by the Local Government Code governs only when the parties to the dispute reside in the same city or municipality, and if involving real property, as in this case, the property must be situated also in the same city or municipality.

Civil Procedure (Rules 1-56)

Actions; Cause of Action (2013)

No.VI. While leisurely walking along the street near her house in Marikina, Patty unknowingly stepped on a garden tool left behind by CCC, a construction company based in Makati. She lost her balance as a consequence and fell into an open manhole. Fortunately, Patty suffered no major injuries except for contusions, bruises and scratches that did not require any hospitalization. However, she lost self-esteem, suffered embarrassment and ridicule, and had bouts of anxiety and bad dreams about the accident. She wants vindication for her uncalled for experience and hires you to act as counsel for her and to do whatever is necessary to recover at least Php100,000 for what she suffered.

What action or actions may Patty pursue, against whom, where (court and venue), and under what legal basis? (7%)

SUGGESTED ANSWER:

Patty may avail any of the following remedies:

a) She may file a complaint for damages arising from fault or negligence under the Rules on Small Claims against CCC Company before the MTC of Marikina City where she resides or Makati City where the defendant corporation is holding office, at her option (A.M. No. 8-8-7-SC in relation to Section 2, Rule 4, Rules of Court).

b) She may also file an action to recover moral damages based on quasi-delict under Article 2176 of the New Civil Code. The law states that, whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no

pre-existing contractual relation between the parties, is called a quasi-delict.

Under Article 2217 of the New Civil Code, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Since moral damages are incapable of pecuniary estimation, Patty should file the action before the Regional Trial Court of Marikina City where she resides or Makati City, where the defendant corporation is holding office, at her option (Section 19(1), B.P. 129).

c) Patty can also file a civil action for damages against the City of Marikina for maintaining an open manhole where she unfortunately fell. Under article 2189 of the Civil Code, provinces, cities, and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. The proper court having jurisdiction over the case is at least Php 100,000 for as long as the aggregate of the claims for damages does not exceed Php 400,000.

Actions; Specific Performance (2012)

No.IV.A. A bought a Volvo Sedan from ABC Cars for ₱ 5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car's upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)

SUGGESTED ANSWER:

A can file an action for specific performance and damages against ABC Cars since the damage to the Volvo Sedan's upholstery was caused before the delivery of the same to A, and therefore prior to the transfer of ownership to the latter. (Article 1477, New Civil Code). Under Article 1170 of the New Civil Code, those who contravene the tenor of the obligation are liable for damages. Hence, an action for specific performance against ABC Corporation to deliver the agreed Volvo Sedan in the contract, free from any damage or defects, with corresponding damages will lie against ABC Cars.

ALTERNATIVE ANSWER:



A can sue ABC Cars for specific performance or rescission because the former has contractual relations with the latter.

Appeals; Abandonment of a Perfected Appeal (2009)

No.XI.E. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal.

SUGGESTED ANSWER:

FALSE. The trial court has lost jurisdiction after perfection of the appeal and so it can no longer entertain a motion for reconsideration.

ALTERNATIVE ANSWER:

FALSE, because the appeal may be perfected as to one party but not yet perfected as to the other party who may still file a motion for reconsideration without abandonment of his right of appeal even though the appeal of the case is perfected already as to the other party.

Appeals; Modes of Appeal (2012)

No.X.A. Where and how will you appeal the following:

(1) An order of execution issued by the RTC. (1%)

SUGGESTED ANSWER:

A petition for certiorari under Rule 65 before the Court of Appeals.

ALTERNATIVE ANSWER:

The mode of elevation may be either by appeal (writ of error or certiorari), or by a special civil action of certiorari, prohibition, or mandamus. (Banaga vs. Majaducon cited in General Milling Corporation-Independent Labor Union vs. General Milling Corporation, G.R. No. 183122, June 15, 2011, Perez, J.).

(2) Judgment of RTC denying a petition for Writ of Amparo. (1%)

SUGGESTED ANSWER:

Any party may appeal from the final judgment or order to the Supreme Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court. the period of appeal shall be five (5) working days from the date of notice of the adverse judgment, and the appeal may raise questions of fact or law or both. (sec. 19, Rule on Writ of Amparo, A.M. No. 07-9-12-SC, 25 September 2007).



(3) Judgment of MTC on a land registration case based on its delegated jurisdiction. (1%)

SUGGESTED ANSWER:

The appeal should be filed with the Court of Appeals by filing a Notice of Appeal within 15 days from notice of judgment or final order appealed from. (Sec. 34, Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691, March 25, 1994).

(4) A decision of the Court of Tax Appeal's First Division. (1%)

SUGGESTED ANSWER:

The decision of the Court of Tax Appeals Division may be appealed to the CTA en banc.

The decisions of the Court of Tax Appeals are no longer appealable to the Court of Appeals. Under the modified appeal procedure, the decision of a division of the CTA may be appealed to the CTA en banc. The decision of the CTA en banc may in turn be directly appealed to the Supreme Court by way of a petition for review on certiorari under Rule 45 on questions of law. (Section 11, R.A. 9282, March 30, 2004).

Appeals; Modes of Appeal (2009)

No.VIII. On July 15, 2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following:

(a) Judgment of a Municipal Trial Court (MTC) pursuant to its delegated jurisdiction dismissing his client's application for land registration?

SUGGESTED ANSWER:

By notice of appeal, within 15 days from notice of judgment or final order appealed from, to the Court of Appeals;

(b) Judgment of the Regional Trial Court (RTC) denying his client's petition for a writ of habeas data?

SUGGESTED ANSWER:

By verified petition for review on certiorari under Rule 45, with the modification that appellant may raise

questions of fact or law or both, within 5 work days from date of notice of the judgment or final order to the Supreme Court (Sec. 19, A.M. No. 08-1-16-SC).

(c) Order of a family court denying his client's petition for habeas corpus in relation to custody of a minor child?

SUGGESTED ANSWER:

By notice of appeal, within 48 hours from notice of judgment or final order to the Court of appeals (Sec. 14, R.A. No. 8369 in relation to Sec. 3, Rule 41, Rules of Court).

(d) Order of the RTC denying his client's petition for certiorari questioning the Metropolitan Trial Court's denial of a motion to suspend criminal proceedings?

SUGGESTED ANSWER:

By notice of appeal, within 15 days from notice of the final order, to the Court of appeals (Majestrado vs. People, 527 SCRA 125 [2007]).

(e) Judgment of the First Division of the Court of Tax Appeals affirming the RTC decision convicting his client for violation of the National Internal Revenue Code?

SUGGESTED ANSWER:

By petition for review filed with the court of Tax Appeals (CTA) en banc, within 30 days from receipt of the decision or ruling in question (Sec. 9 [b], Rule 9, Rev. Rules of CTA).

Appeals; Modes of Appeal; RTC, CA (2009)

No. XIX.A. Distinguish the two modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals.

SUGGESTED ANSWER:

In cases decided by the Regional Trial Courts in the exercise of their original jurisdiction, appeals to the Court of Appeals shall be ordinary appeal by filing written notice of appeal indicating the parties to the appeal; specifying the judgment/final order or part thereof appealed from; specifying the court to which the appeal is being taken; and stating the material dates showing the timeliness of the appeal. The notice of appeal shall be filed with the RTC which rendered the judgment appealed from and copy thereof shall be served upon the adverse party within 15 days from notice of judgment or final order appealed from. But if the case admits of multiple appeals or is a special proceeding, a record on appeal is



required aside from the written notice of appeal to perfect the appeal, in which case the period for appeal and notice upon the adverse party is not only 15 days but 30 days from notice of judgment or final order appealed from. The full amount of the appellate court docket fee and other lawful fees required must also be paid within the period for taking an appeal, to the clerk of the court which rendered the judgment or final order appealed from (Secs. 4 and 5, Rule 41, Rules of Court). The periods of 15 or 30 days above-stated are non-extendible.

In cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction, appeal to the Court of Appeals shall be by filing a verified petition for review with the Court of Appeals and furnishing the RTC and the adverse party with copy thereof, within 15 days from notice of judgment or final order appealed from. Within the same period for appeal, the docket fee and other lawful fees required with the deposit for cost should be paid. The 15-day period may be extended for 15 days and another 15 days for compelling reasons.

Appeals; Second Notice of Appeal (2008)

No.XII. After receiving the adverse decision rendered against his client, the defendant, Atty. Sikat duly filed a notice of appeal. For his part, the plaintiff timely filed a motion for partial new trial to seek an increase in the monetary damages awarded. The RTC instead rendered an amended decision further reducing the monetary awards. Is it necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision?

SUGGESTED ANSWER:

Yes, it is necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision. In Magdalena Estate vs. Caluag (11 SCRA 333 [1964]), the Court ruled that a party must re-take an appeal within fifteen [15) days from receipt of the amended ruling or decision, which stands in place of the old decision. It is in effect, a new decision.

Certiorari; Rule 45 vs. Rule 65 (2008)

No.XXI.A. Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure?

SUGGESTED ANSWER:

The certiorari jurisdiction of the Supreme Court under the Constitution is



the mode by which the Court exercises its expanded jurisdiction, allowing it to take corrective action through the exercise of its judicial power. Constitutional certiorari jurisdiction applies even if the decision was not rendered by a judicial or quasi-judicial body, hence, it is broader than the writ of certiorari under Rule 65, which is limited to cases involving a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government and there is no other claim speedy remedy available to a party in the ordinary course of law.

Demurrer to Evidence (2009)

No.XVI.A. After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurer to evidence with leave of court. the prosecution was allowed to comment thereon. Thereafter, the court granted the demurer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurer was not in accord with law and jurisprudence, will the motion prosper?

SUGGESTED ANSWER:

NO, the motion will not prosper. With the granting of the demurrer, the case shall be dismissed and the legal effect is the acquittal of the accused. A judgment of acquittal is immediately executor and no appeal can be made therefrom. Otherwise the Constitutional protection against double jeopardy would be violated.

Demurrer to Evidence; Civil Case vs. Criminal Case (2007)

No.V. (a) Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (5%)

SUGGESTED ANSWER:

The following are the distinctions in effects of demurrer to the evidence in criminal cases from that in civil cases:

(1) In criminal cases, demurrer to the evidence requires leave of court, otherwise, the accused would lose his right to present defense evidence if filed and denied; in civil cases, no leave of court is required for filing such demurrer.

(2) In criminal cases, when such demurrer is granted, the dismissal of the case is not appealable inasmuch as the



dismissal would amount to an acquittal, unless made by a court acting without or in excess of jurisdiction; in civil cases, when such demurrer is granted, the dismissal of the case can be appealed by the plaintiff.

(3) In criminal cases, the accused loses his right to present his defense-evidence in the trial court when he filed the demurrer without prior leave of court; while in civil cases, the defendant loses his right to present his defense-evidence only if the plaintiff appealed such dismissal and the case is before the appellate court already since the case would be decide only on the basis of plaintiff's evidence on record.

Discovery; Modes of Discovery; Refusal to Comply (2010)

No.II. On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

(c) On July 21, 2009, B Lines served on A a "Notice to Take Deposition," setting the deposition on July 29, 2009 at 8:30 a.m. at the office of its counsel in Makati. A failed to appear at the deposition-taking, despite notice. As counsel for B Lines, how would you proceed? (3%)

SUGGESTED ANSWER:

As counsel for B lines (which gave notice to take the deposition), I shall proceed as follows:

(a) Find out why A failed to appear at the deposition taking, despite notice;

(b) If failure was for valid reason, then set another date for taking the deposition.

(c) If failure to appear at deposition taking was without valid reason, then I would file a motion/application in the court where the action is pending, for and order to show cause for his refusal to submit to the discovery; and

(d) For the court to issue appropriate Order provided under Rule 29 of the Rules, for noncompliance with the show-cause order, aside from contempt of court.



Discovery; Production and Inspection (2009)

No.XIII.A. Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products. To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC. Resolve BTC's motion with reasons. (3%)

SUGGESTED ANSWER:

I will deny the motion. The ingredients and chemical components of CCC's products are trade secrets within the contemplation of the law. Trade secrets may not be the subject of compulsory disclosure by reason of their confidential and privileged character. Otherwise, CCC would eventually be exposed to unwarranted business competition with others who may imitate and market the same kinds of products in violation of CCC's proprietary rights. Being privileged, the detailed list of ingredients and chemical components may not be the subject of mode of discovery under Rule 27, Section 1 which expressly makes privileged information an exception from its coverage (Air Philippines Corporation vs. Pennswell, Inc., 540 SCRA 215 [2007]).

Forum Shopping; Certification (2009)

No.III. Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of 19,700. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York. Brigod filed a motion to dismiss the complaint on the following grounds:

(c) The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize



the document. (3%) Rule on the foregoing grounds with reasons.

SUGGESTED ANSWER:

The third ground raised questioning the validity of the verification and certification of non-forum shopping for lack of certification from the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document, is likewise without merit. The required certification alluded to, pertains to official acts, or records of official bodies, tribunals, and public officers, whether of the Philippines or of a foreign country: the requirement in Sec. 24, Rule 132 of the 1997 Rules refers only to paragraph (a) of Sec. 29 which does not cover notarial documents. It is enough that the notary public who notarized the verification and certification of non-forum shopping is clothed with authority to administer oath in that State or foreign country.

Judgment; Enforcement; 5yr Period (2007)

No.X. (b) A files a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines, seven years later, A discovers that a decision was rendered by the court in here favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

SUGGESTED ANSWER:

On the assumption that the judgment had been final and executory for more than five (5) years as of A's return to the Philippines seven (7) years later, a motion for execution of the judgment is no longer availing because the execution of judgment by mere motion is allowed by the Rules only within five (5) years from entry of judgment; thereafter, and within ten (10) years from entry of judgment, an action to enforce the judgment is required.

Judgment; Execution; Judgment Obligor's Death (2009)

No.VII. Cresencio sued Dioscoro for colletion of a sum of money. During the trial, but after the presentation of plaintiff's evidence, Dioscoro died. Atty. Cruz, Dioscoro's counsel, then filed a motion to dismiss the action on the ground of his client's death. The court denied the motion to dismiss and, instead, directed counsel to furnish the court with the names and addresses of Dioscoro's heirs and ordered that the designated administrator of Dioscoro's estate be substituted as representative party.



After trial, the court rendered judgment in favor of Cresencio. When the decision had become final and executory, Cresencio moved for the issuance of a writ of execution against Dioscoro's estate to enforce his judgment claim. The court issued the writ of execution. Was the court's issuance of the writ of execution proper? Explain.

SUGGESTED ANSWER:

No, the issuance of a writ of execution by the court is not proper and is in excess of jurisdiction, since the judgment obligor is already dead when the writ was issued. The judgment for money may only be enforced against the estate of the deceased defendant in the probate proceedings, by way of a claim filed with the probate court.

Cresencio should enforce that judgment in his favor in the settlement proceedings of the estate of Dioscoro as a money claim in accordance with the Rule 86 or Rule 88 as the case may be.

Judgment; Execution; Stay (2009)

No.XII. Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgement in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ.

(a) How can mike stay the execution of the MTC judgment? (2%)

SUGGESTED ANSWER:

Execution shall issue immediately upon motion, unless Mike (a) perfects his appeal to the RTC, (b) files a sufficient supersedeas bond to pay the rents, damages and costs accruing up to the time of the judgment appealed from, and (c) deposits monthly with the RTC during the pendency of the appeal the amount of rent due from time to time (Rule 70, Sec. 19).

(b) Mike appealed to the Regional Trial Court, which affirmed the MTC decision. Mike then filed a petition for review with the Court of Appeals. The CA dismissed the petition on the ground that the sheriff had already executed the MTC decision and had ejected Mike from the premises, thus rendering the appeal moot and academic. Is the CA correct? (3%) Reasons.

SUGGESTED ANSWER:

NO. The Court of Appeals is not correct. The dismissal of the appeal is wrong, because the execution of the RTC judgment is only in respect of the



eviction of the defendant from the leased premises. Such execution pending appeal has no effect on the merits of the ejectment suit which still has to be resolved in the pending appeal. Rule 70, Sec. 21 of the Rules provides that the RTC judgment against the defendant shall be immediately executor, "without prejudice to a further appeal" that may be taken therefrom (Uy vs. Santiago, 336 SCRA 680 [2000]).

Judgment; Execution; Successors in Interest (2008)

No.XV. Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

After trial, the court rendered judgment ordering Roscoe to reconvey the entire southern half to Salvio. The judgment became final and executory. A writ of execution having been issued, the sheriff required Roscoe, Carlo and Nina to vacate the southern half and yield possession thereof to Salvio as the prevailing party. Carlo and Nina refused, contending that they are not bound by the judgment as they are not parties to the case. Is the contention tenable? Explain fully. (4%)

SUGGESTED ANSWER:

As a general rule, no stranger should be bound to a judgment where he is not included as a party. The rule on transfer of interest pending litigation is found in Sec. 19, Rule 3, 1997 Rules of Civil Procedure. The action may continue unless the court, upon motion directs a person to be substituted in the action or joined with the original party. Carlo is not bound by the judgment. He became a co-owner before the case was filed (Matuguina Integrated Wood Products, Inc. vs. C.A., G.R. No. 98310, 24 October 1996; Polaris vs. Plan, 69 SCRA 93; See also Asset Privatization Trust vs. C.A., G.R. No. 121171, 29 December 1998).

However, Nina is a privy or a successor in interest and is bound by the judgment even if she is not a party to the case



(Sec. 19, Rule 3, 1997 Rules of Civil Procedure; Cabresos vs. Tiro, 166 SCRA 400 [1998]). A judgment is conclusive between the parties and their successors-in-interest by title subsequent to the case (Sec. 47, Rule 39, 1997 Rules of Civil Procedure).

Judgment; Foreign Judgments; Foreign Arbitral Award (2007)

No.I. (a) What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

SUGGESTED ANSWER:

Judgments of foreign courts are given recognition in our courts thus:

In case of judgment upon a specific thing, the judgment is conclusive upon the title to the thing, unless otherwise repelled by evidence of lack of jurisdiction, want of due notice to the party, collusion, fraud, or clear mistake of law or fact (Rule 39, Sec. 48 [a], Rules of Court); and

In case of judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by subsequent title, unless otherwise repelled by evidence on grounds above stated (Rule 39, Sec. 48 [b], Rules of Court).

However, judgments of foreign courts may only be enforced in the Philippines through an action validly heard in the Regional Trial Court. Thus, it is actually the judgment of the Philippine court enforcing the foreign judgment that shall be executed.

(b) Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)

SUGGESTED ANSWER:

No, a foreign arbitral award cannot be enforced in the Philippines under the rules on recognition and enforcement of foreign judgments above-stated. A foreign arbitral award is not a foreign judgment, and pursuant to the Alternative Dispute Resolution Act of 2004 (R.A. No. 9285), in relation to 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the recognition and enforcement of the foreign arbitral awards shall be in accordance with the rules of procedure to be promulgated by the Supreme Court. At present, the Supreme Court is yet to promulgate rules of procedure on the subject matter.

(c) How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein who has assets in the Philippines? Explain briefly. (2%)

SUGGESTED ANSWER:



Yes, a global injunction issued by a foreign court to prevent dissipation of funds against a defendant who has assets in the Philippines may be enforced in our jurisdiction, subject to our procedural laws.

As a general rule, no sovereign is bound to give effect within its dominion to a judgment or order of a tribunal of another country. However, under the rules of comity, utility and convenience, nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries (St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc., 505 SCRA 30[2006]; Asiavest Merchant Bankers [M] Berhad v. Court of Appeals, 361 SCRA 489 [2001]).

Judgment; Judgment on the Pleadings (2012)

No.VII.B. Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

SUGGESTED ANSWER:

The Plaintiff should file a Motion for Judgment on the Pleadings because the failure of the defendant to answer a request for admission results to an implied admission of all the matters which an admission is requested. Hence, a motion for judgment on the pleadings is the appropriate remedy where the defendant is deemed to have admitted the matters contained in the Request for admission by the plaintiff. (Rule 34 in connection with Sec.2, Rule 26, Rules of Court).

Judgment; Judgment on the Pleadings (2009)

No.IX. Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1M, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5M. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5M. at the pre-trial, Modesto marked and



identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of P0.5M, which Ernesto did not dispute.

After pre-trial, Modesto filed a motion for judgment on the pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons.

SUGGESTED ANSWER:

Modesto's motion for judgment on the pleadings should be denied. While it is true that under the actionable document rule, Ernesto's failure to deny under oath the promissory note in his answer amounted to an implied admission of its genuineness and due execution, his allegation in his answer that he was coerced into signing the promissory note tendered an issue which should be tried. The issue of coercion is not inconsistent with the due execution and genuineness of the instrument. Thus, Ernesto's failure to deny the genuineness of the promissory note cannot be considered a waiver to raise the issue that he was coerced in signing the same. Said claim of coercion may also be proved as an exception to the Parol Evidence Rule.

On the other hand, Ernesto's motion for summary judgment may be granted. Modesto's answer to Ernesto's counterclaim – that he owed the latter a sum less than what was claimed – amounted to an admission of a material fact and if the amount thereof could summarily be proved by affidavits, deposition, etc., without the need of going to trial, then no genuine issue of fact exists.

ALTERNATIVE ANSWER:

Modesto's motion for judgment on the pleadings should be denied because there is an issue of fact. While Ernesto did not specifically deny under oath the promissory note attached to Modesto's complaint as an actionable document, such non-denial will not bar Ernesto's evidence that Modesto coerced him into signing the promissory note. Lack of consideration, as a defense, does not relate to the genuineness and due execution of the promissory note.

Likewise, Ernesto's motion for summary judgment should be denied because there is an issue of fact – the alleged coercion – raised by Ernesto which he has yet to prove in a trial on its merits. It is axiomatic that summary judgment is not proper or valid whent there is an issue of fact remaining which requires a hearing. And this is so with respect to the coercion alleged by Ernesto as his defense, since coercion is not capable of being established by documentary evidence.



Petition for Relief (2007)

No.II. (b) A defendant who has been declared in default can avail of a petition for relief from the judgment subsequently rendered in the case. (3%)

SUGGESTED ANSWER:

False. The remedy of petition for relief from judgment is available only when the judgment or order in question is already final and executor, i.e., no longer appealable. As an extraordinary remedy, a petition for relief from judgment may be availed only in exceptional cases where no other remedy is available.

Petition for Relief; Injunction (2009)

No.XVII. Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

(a) How may Patricio prevent the sale of the property on execution?

SUGGESTED ANSWER:

Patricio may file a Petition for Relief with preliminary injunction (Rule 38), posting a bond equivalent to the value of the property levied upon; or assail the levy as invalid if ground exists. Patricio may also simply pay the amount required by the writ and the costs incurred therewith.

(b) If Orencio is the purchaser of the property at the execution sale, how much does he have to pay?

SUGGESTED ANSWER:

Orencio, the judgment creditor should pay only the excess amount of the bid over the amount of the judgment.

(c) If the property is sold to a third party at the execution sale, what can Patricio do to recover the property?

SUGGESTED ANSWER:

Patricio can exercise his right of legal redemption within 1 year from date of registration of the certificate of sale by paying the amount of the purchase price with interests of 1% monthly, plus assessment and taxes paid by the purchaser, with interest thereon, at the same rate.

Pleadings; Amendment of Complaint (2009)



No.X. Upon termination of the pre-trial, the judge dictated the pre-trial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.

(a) If, immediately upon receipt of his copy of the pre-trial order, plaintiff's counsel should move for its amendment to include a fourth (4th) triable issue which he allegedly inadvertently failed to mention when the judge dictated the order. Should the motion to amend be granted? Reasons. (2%)

SUGGESTED ANSWER:

Depending on the merit of the issue sought to be brought in by the amendment, the motion to amend may be granted upon due hearing. It is a policy of the Rules that parties should be afforded reasonable opportunity to bring about a complete determination of the controversy between them, consistent with substantial justice. With this end in view, the amendment before trial may be granted to prevent manifest injustice. The matter is addressed to the sound and judicious discretion of the trial court.

(b) Suppose trial had already commenced and after the plaintiff's second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5th) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiff's counsel? Reasons. (3%)

SUGGESTED ANSWER:

The motion may be denied since trial had already commenced and two witnesses for the plaintiff had already testified. Courts are required to issue pre-trial Order after the pre-trial conference has been terminated and before trial begins, precisely because the reason for such Order is to define the course of the action during the trial. Where trial had already commenced, more so the adverse party had already presented witnesses, to allow an amendment would be unfair to the party who had already presented his witnesses. The amendment would simply render nugatory the reason for or purpose of the pre-trial Order.

Sec.7 of Rule 18 on pre-trial in civil actions is explicit in allowing a modification of the pre-trial Order "before" trial begins to prevent manifest injustice.

Pleadings; Amendment of Complaint (2008)

No.XI. Arturo lent P1M to his friend Robert on the condition that Rober execute a promissory note for the loan and a real



estate mortgage over his property located in Tagaytay City. Rober complied. In his promissory note dated September 20, 2006, Robert undertook to pay the loan within a year from its date at 12% per annum interest. In June 2007, Arturo requested Robert to pay ahead of time but the latter refused and insisted on the agreement. Arturo issued a demand letter and when Robert did not comply, Arturo filed an action to foreclose the mortgage. Robert moved to dismiss the complatint for lack of cause of action as the debt was not yet due. The resolution of the motion to dismiss was delayed because of the retirement of the Judge.

(a) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging Robert's debt had in the meantime become due but that Robert still refused to pay. Should the amended complaint be allowed considering that no answer has been filed?

SUGGESTED ANSWER:

No, the complaint may not be amended under the circumstances. A complaint may be amended as of right before answer (Sec. 2, Rule 10; See Ong Peng vs. Custodio, G.R. No. 14911, 12 March 1961; Toyota Motors [Phils} vs. C.A., G.R. No. 102881, 07 December 1992; RCPI vs. C.A., G.R. No. 121397, 17 April 1997, citing Prudence Realty & Dev't. Corp. vs. C.A., G.R. No. 110274, 21 March 1994; Soledad vs. Mamangun, 8 SCRA 110), but the amendment should refer to facts which occurred prior to the filing of the original complaint. It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending (Swagman Hotels & Travel, Inc. vs. C.A., G.R. No. 161135, 08 April 2005).

(b) Would your answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint?

SUGGESTED ANSWER:

A supplemental complaint may be filed with leave of court to allege an event that arose after the filing of the original complaint that should have already contained a cause of action (Sec. 6, Rule 10). However, if no cause of action is alleged in the original complaint, it cannot be cured by the filing of a supplement or amendment to allege the subsequent acquisition of a cause of action (Swagman Hotels & Travel, Inc. vs. C.A., G.R. No. 161135, 08 April 2005).



Pleadings; Counterclaim (2010)

No.VI. Antique dealer Mercedes borrowed P1,000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.

Mercedes filed in February 2009 her Answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a dacion en pagoagreement in which her vintage P1,000,000 Rolex watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a "frivolous lawsuit." She accordingly prayed for P50,000 damages.

(a) Benjamin soon after moved for the dismissal of the case. The trial court accordingly dismissed the complaint. And it also dismissed the Counterclaim.

Mercedes moved for a reconsideration of the dismissal of the Counterclaim. Pass upon Mercedes' motion. (3%)

SUGGESTED ANSWER:

Mercedes' Motion for Reconsideration is impressed with merit: the trial courts should not have dismissed her counter-claim despite the dismissal of the Complaint.

Since it was the plaintiff (Benjamin) who moved for the dismissal of his Complaint, and at a time when the defendant (Mercedes) had already filed her Answer thereto and with counterclaim, the dismissal of the counterclaim without conformity of the defendant-counterclaimant. The Revised Rules of Court now provides in Rule 17, Sec. 2 thereof that "If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim x x x x."

(b) Suppose there was no Counterclaim and Benjamin's complaint was not dismissed, and judgment was rendered against Mercedes for P1,000,000. The judgment became final and executory and a writ of execution was correspondingly issued.

Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at P1.2 million.



The Sheriff, however, on request of Benjamin, seized Mercedes' 17th century ivory image of the La Sagrada Familia estimated to be worth over P1,000,000.

Was the Sheriff's action in order? (3%)

SUGGESTED ANSWER:

No, the Sheriff's action was not in order. He should not have listened to Benjamin, the judgment oblige/ creditor, in levying on the properties of Mercedes, the judgment obligor/debtor. The option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment, is vested by law (Rule 39, Sec. 9 (b) upon the judgment obligor, Mercedes, not upon the judgment obligee, Benjamin, in this case. Only if the judgment obligor does not exercise the option, is the Sheriff authorized to levy on personal properties if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

Pleadings; Counterclaim (2007)

No.II. (d) A counderclain is a pleading. (2%)

SUGGESTED ANSWER:

True. A counterclaim is a pleading by which a defending party makes a claim against an opposing party (Sec. 6, Rule 6, Rules of Court).

Pleadings; Motion (2007)

No.II. (c) A motion is a pleading. (2%)

SUGGESTED ANSWER:

False. A motion is not a pleading but a mere application for relief other than by a pleading (Rule 15, Sec. 1, Rules of Court).

Pleadings; Motions; Bill of Particulars (2008)

No.V. Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

(a) Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion?

SUGGESTED ANSWER:



There is no need to set the motion for hearing. The duty of the clerk of court is to bring the motion immediately to the attention of the judge, who may act on it at once (Sec. 2, Rule 12).

(b) If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order?

SUGGESTED ANSWER:

Yes, the judge may dismiss the case for failure of the plaintiff to comply with its order (Sec. 3, Rule 17) or order the striking out of the pleading and may issue any other order at its discretion (Sec. 4, Rule 12).

Pleadings; Motions; Omnibus Motion Rule (2010)

No.V. Charisse, alleging that she was a resident of Lapu-Lapu City, filed a complaint for damages against Atlanta Bank before the RTC of Lapu-Lapu City, following the dishonor of a check she drew in favor of Shirley against her current account which she maintained in the bank's local branch.

The bank filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action, but it was denied. It thus filed an Answer.

(a) In the course of the trial, Charisse admitted that she was a US citizen residing in Los Angeles, California and that she was temporarily billeted at the Pescado Hotel in Lapu-Lapu City, drawing the bank to file another motion to dismiss, this time on the ground of improper venue, since Charisse is not a resident of Lapu-Lapu City.

Charisse opposed the motion citing the "omnibus motion rule." Rule on the motion. (3%)

SUGGESTED ANSWER:

The bank's second motion to dismiss which is grounded on improper venue, should be denied. The improper venue of an action is deemed waived by the bank's filing an earlier motion to dismiss without raising improper venue as an issue, and more so when the bank filed an Answer without raising improper venue as an issue after its first motion to dismiss was denied.

Under the "omnibus motion rule" (Rule 15, Sec. 8, Rules of Court) which governs the bank's motion to dismiss, such motion should include all objections then available; otherwise, all objections not so included shall be deemed waived.



Although the improper venue became known only in the course of the trial, the same should not be allowed to obstruct or disturb the proceedings since venue of civil actions is defined for the convenience of the parties, nay jurisdictional.

ALTERNATIVE ANSWER:

The "omnibus motion rule" should not apply, because the improper venue became known and thus available only to the movant bank after the motions to dismiss were filed and resolved by the court, and in the course of the trial of the case. In fairness to the defendant bank, it should not be precluded by the "omnibus motion rule" from raising objection to the improper venue only when said ground for objection became known to it.

The court may not resolve the second motion to dismiss precisely because of the "omnibus motion rule", since the bank filed an earlier motion to dismiss but did not raise the ground of improper venue, and subsequently filed an Answer wherein the improper venue has not again been raised. Hence, the question of improper venue has become moot and academic.

The only grounds not barred by the "omnibus motion rule" are (a) lack of jurisdiction over the subject matter; (b) litis pendencia; and (c) bar by prior judgment or by statute of limitations.

(b) Suppose Charisse did not raise the "omnibus motion rule," can the judge proceed to resolve the motion to dismiss? Explain. (3%)

SUGGESTED ANSWER:

Yes, the judge can proceed to resolve the motion to dismiss, because the ground raised therefor became known to the movant only during the trial, such that it was only then that the objection became available to him.

(c) Suppose the judge correctly denied the second motion to dismiss and rendered judgment in favor of Charisse, ordering the bank to pay her P100,000 in damages plus legal interest. The judgment became final and executory in 2008. To date, Charisse has not moved to execute the judgment. The bank is concerned that its liability will increase with the delay because of the interest on the judgment award.

As counsel of the bank, what move should you take? (3%)

SUGGESTED ANSWER:

As counsel of the bank, I shall recommend to the bank as judgment



obligor, to make a tender of payment to the judgment oblige and thereafter make a consignation of the amount due by filing an application therefor placing the same at the disposal of the court which rendered the judgment (Arts. 1256 and 1258, Civil Code).

Subpoena; Viatory Right of Witness (2009)

No.XI.B. The viatory right of a witness served with a subpoena ad testificandum refers to his right not to comply with the subpoena.

SUGGESTED ANSWER:

FALSE. The viatory right of a witness, embodied in Sec. 10, Rule 21 of the Rules of Civil Procedure, refers to his right not to be compelled to attend upon a subpoena, by reason of the distance from the residence of the witness to the place where he is to testify. It is available only in civil cases (People vs. Montejo, 21 SCRA 722 [1965]).

Summons; By Publication (2008)

No.I. Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon moition, the court ordered the Publication of the summons for three weeks in a local tabloid, Bulgar. Linda, an OFW vacationing in the Philippines, saw the summons in Bulgar and brought a copy of the tabloid when she returned to Singapore. Linda showed the tabloid and the page containing the summons to Mary Rose, who said, "Yes I know, my kumara Anita scanned and e-mailed that page of Bulgar to me!"

Did the court acquire jurisdiction over Mary Rose?

SUGGESTED ANSWER:

Partition is an action quasi in rem. Summons by publication is proper when the defendant does not reside and is not found in the Philippines, provided that a copy of the summons and order of the court are sent by registered mail to the last known address of the defendant (Sec. 15, Rule 14). Publication of the notice in Bulgar, a newspaper of general circulation, satisfies the requirements of summons by publication (Perez vs. Perez, G.R. No 145368, 28 March 2005).

Summons; Served by Email (2009)

No.I.E. Summons may be served by mail.



SUGGESTED ANSWER:

FALSE. Rule 14 of the Rules of Court, on Summons, provide only for serving Summons (a) to the defendant in person; or (b) if this is not possible within a reasonable time, then by substituted service in accordance with Sec. 7 thereof; or (c) if any of the foregoing two ways is not possible, then with leave of court, by publication in accordance with the same Rule.

ALTERNATIVE ANSWER:

TRUE, but only in extraterritorial service under Sec. 15 of the Rule on Summons where service may be effected "in any other manner the court may deem sufficient."

Summons; Valid Service (2013)

No.I. Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie's office secretary, Esther, received the summons at Charlie's office.

Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence ex parte. Ten days later, Charlie filed his verified answer, raising the defense of full payment with interest.

(A) Was there proper and valid service of summons on Charlie? (3%)

SUGGESTED ANSWER:

No. There is no showing that earnest efforts were exerted to personally serve the summons on the defendant before substituted service was resorted to: hence, the service of summons was improper.

In an action strictly in personam like a complaint for a sum of money, personal service on the defendant is the preferred mode of service, that is, by handing a copy of the summons to the defendant in person. If defendant, for excusable reasons, cannot be served with the summons within a reasonable period, then substituted service can be resorted to (Manotoc vs. Court of Appeals, G.R. No. 130974, August 16, 2006, Velasco, J.).

Otherwise stated, it is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to

find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service (Galura vs. Math-Agro Corporation, G.R. No. 167230, August 14, 2009, 1st Division, Carpio, J.).

ALTERNATIVE ANSWER:

Yes. If earnest efforts were exerted to serve the summons in persons but the same proved futile, then substituted service through defendant's secretary is valid.

In Gentle Supreme Philippines, Inc. vs. Ricardo Consulta, G.R. No. 183182, September 1, 2010, the Supreme Court held that it is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge. Consequently, the substituted service of summons to the defendant's secretary in the office is valid.

(B) If declared in default, what can Charlie do to obtain relief? (4%)

SUGGESTED ANSWER:

If Charlie is declared in default, he has the following remedies to wit:

1) he may, at any time after discovery of the default but before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake, or excusable neglect, and that he has a meritorious defense;

2) if judgment has already been rendered when he discovered the default, but before the same has become final and executor, he may file a motion for new trial under Section 1(a) of Rule 37:

3) if he discovered the default after the judgment has become final and executor, he may file a petition for relief under Section 2 of Rule 38; and

4) he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (B.D. Longspan Builders, Inc. vs. R.S. Ampeloquio Realty Development, G.R. No. 169919, September 11, 2009).

[Note: there are additional remedies to address judgments by default: Motion for Reconsideration (Rule 37), Annulment of Judgment (Rule 47) and Petition for Certiorari (Rule 65)].

ALTERNATIVE ANSWER:



The court committed grave abuse of discretion when it declared the defending party in default despite the latter's filing of an Answer. Thus, a petition for certiorari under Rule 65 is the proper remedy.

In San Pedro Cineplex Properties vs. Heirs of Manuel Humada Enano, G.R. No. 190754, November 17, 2010, the Supreme Court held that where the answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted. Thus, it was error to declare the defending party in default after the Answer was filed (See Sablas vs. Sablas, G.R. No. 144568, July 3, 2007).

After all, the defect in the service of summons was cured by Charlie's filing of a verified answer raising only the defense of full payment. The belated filing of verified Answer amounts to voluntary submission to the jurisdiction of the court and waiver of any defect in the service of summons.

Trial; Court of Appeals as Trial Court (2008)

No.XXI.B. Give at least three instances where the Court of Appeals may act as a trial court?

SUGGESTED ANSWER:

The Court of Appeals may act as a trial court in the following instances:

(1) In annulment of judgments (Sec. 5 & 6, Rule 47)

(2) When a motion for new trial is granted by the Court of Appeals (Sec. 4, Rule 53)

(3) A petition for Habeas Corpus shall be set for hearing 9Sec. 12, Rule 102)

(4) To resolve factual issues in cases within its original and appellate jurisdiction (Sec. 12, Rule 124)

(5) In cases of new trial based on newly discovered evidence (Sec. 14, Rule 124 of the Rules on Criminal Procedure).

(6) In Cases involving claims for damages arising from provisional remedies

(7) In Amparo proceedings (A.M. No. 07-9-12-SC)

Venue; Real Actions (2012)

No.III.B. A, a resident of Quezon City, wants to file an action against B, a resident of

Pasay, to compel the latter to execute a Deed of Sale covering a lot situated in Marikina and that transfer of title be issued to him claiming ownership of the land. Where should A file the case? Explain. (5%)

SUGGESTED ANSWER:

A should file the case in Marikina, the place where the real property subject matter of the case is situated. An action for specific performance would still be considered a real action where it seeks the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance of real property. (Gochan vs. Gochan, 423 Phil. 491, 501 [2001]; Copioso vs. Copioso, 391 SCRA 325 [2002])

Venue; Real Actions (2008)

No.III. (a) Angela, a resident of Quezon City, sued Antonio, a resident of Makati City before the RTC of Quezon City for the reconveyance of two parcels of land situated in Tarlac and Nueva Ecija, respectively. May her action prosper?

SUGGESTED ANSWER:

No, the action will not prosper because it was filed in the wrong venue. Since the action for reconveyance is a real action, it should have been filed separately in Tarlac and Nueva Ecija, where the parcels of land are located (Section 1, Rule 4; United Overseas Bank of the Philippines vs. Rosemoore Mining & Development Corp., et al., G.R. nos. 159669 & 163521, March 12, 2007). However, an improperly laid venue may be waived, if not pleaded in a timely motion to dismiss (Sec. 4, Rule 4). Without a motion to dismiss on the ground of improperly laid venue, it would be incorrect for the Court to dismiss the action for improper venue.

(b) Assuming that the action was for foreclosure on the mortgage of the same parcels of land, what is the proper venue for the action?

SUGGESTED ANSWER:

The action must be filed in any province where any of the lands involved lies – either in tarlac or in Nueva Ecija, because the action is a real action (BPI vs. Green, 57 Phil. 712; Sec. 1, Rule 4; Bank of America vs. American Realty Corp., G.R. No. 133876, 29 December 1999). However, an improperly laid venue may be waived if not pleaded as a ground for dismissal (Sec. 4, Rule 4).

[Note: The question is the same as 2009 Remedial Law Bar question No.II. See



Jurisdiction: Jurisdiction; RTC, *Supra* – JayArhSals]

Provisional Remedies (Rules 57-61)

Attachment; Bond (2008)

No.VI. After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio's favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Porfirio moved to charge the plaintiff's attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff's attachment bond from all liability for the damages. Rule on Porfirio's motion.

SUGGESTED ANSWER:

Porfirio's motion to charge the plaintiff's attachment bond is proper. The filing of the counterbond by the defendant does not mean that he has waived his right to proceed against the attachment bond for damages. Under the law (Sec. 20, Rule 57), an application for damages on account of improper, irregular, or excessive attachment is allowed. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

Moreover, nothing shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award. (D.M. Wenceslao & Associates, Inc. vs. Readycon Trading & Construction Corp., G.R. No. 154106, 29 June 2004).

Attachment; Garnishment (2008)

No.VII. (a) The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you are the counsel of the judgment oblige, what steps would you take to reach the deposit to satisfy the judgment?

SUGGESTED ANSWER:



I will ask for a writ of garnishment against the deposit in the bank (Sec. 9[c], Rule 57).

ALTERNATIVE ANSWER:

I shall move the court to apply to the satisfaction of the judgment the property of the judgment obligor or the money due him in the hands of another person or corporation under Sec. 40, Rule 39.

(b) If the bank denies holding the deposit in the name of the judgment obligor but your client's informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit?

SUGGESTED ANSWER:

I will move for the examination under oath of the bank as a debtor of the judgment debtor (Sec. 37, Rule 39). I will ask the court to issue an Order requiring the judgment obligor, or the person who has property of such judgment obligor, to appear before the court and be examined in accordance with Secs. 36 and 37 of the Rules of Court for the complete satisfaction of the judgment award (Co vs. Sillador, A.M. No. P-07-2342, 31 August 2007).

ALTERNATIVE ANSWER:

The judgment oblige may invoke the exception under Sec. 2 of the Secrecy of Bank Deposits Act. Bank Deposits may be examined upon order of a competent court in cases if the money deposited is the subject matter of the litigation (R.A. 1405).

Attachment; Kinds of Attachment (2012)

No.IX.B. Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)

SUGGESTED ANSWER:

PRELIMINARY ATTACHMENT- is a provisional remedy under Rule 57 of the Rules of Court. it may be sought at the commencement of an action or at any time before entry judgment where property of an adverse party may be attached as security for the satisfaction of any judgment, where this adverse party is about to depart from the Philippines, where he has intent to defraud or has committed fraud, or is not found in the Philippines. An affidavit and a bond is required before the preliminary attachment issues. It is discharged upon the payment of a counterbond.



GARNISHMENT- is a manner of satisfying or executing judgment where the sheriff may levy debts, credits, royalties, commissions, bank deposits, and other personal property not capable of manual delivery that are in the control or possession of third persons and are due the judgment obligor. Notice shall be served on third parties. The third party garnishee must make a written report on whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much fund or credits the garnishee holds for the judgment obligor. Such garnish amounts shall be delivered to the judgment oblige-creditor (Rule 39, Sec.9 [c]).

LEVY ON EXECUTION- is a manner of satisfying or executing judgment where the sheriff may sell property of the judgment obligor if he is unable to pay all or part of the obligation in cash, certified bank check or any other manner acceptable to the oblige. If the obligor does not chose which among his property may be sold, the sheriff shall sell personal property first and then real property second. He must sell only so much of the personal and real property as is sufficient to satisfy judgment and other lawful fees. (Rule 39, Sec.9 [b]).

WARRANT OF SEIZURE- is normally applied for, with a search warrant, in criminal cases. The warrant of seizure must particularly describe the things to be seized. While it is true that the property to be seized under a warrant must be particularly described therin and no other property can be taken thereunder, yet the description is required to be specific only insofar as the circumstances will ordinarily allow. An application for search and seizure warrant shall be filed with the following: (a) Any court within whose territorial jurisdiction a crime was committed. (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

WARRANT OF DISTRAINT AND LEVY- is remedy available to local governments and the BIR in tax cases to satisfy deficiencies or delinquencies in inheritance and estate taxes, and real estate taxes. Distraint is the seizure of personal property to be sold in an authorized auction sale. Levy is the



issuance of a certification by the proper officer showing the name of the taxpayer and the tax, fee, charge, or penalty due him. Levy is made by writing upon said certificate the description of the property upon which levy is made.

Attachment; Preliminary Attachment (2012)

No.VIII.A. (a) A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. 8 moves to lift the attachment. Rule on this. (5%)

SUGGESTED ANSWER:

I will grant the motion since no levy on attachment pursuant to the writ shall be enforced unless it is preceded or contemporaneously accompanied by service of summons. There must be prior or contemporaneous service of summons with the writ of attachment. (Rule 57, Sec.5, Rules of Court).

Injunction; Preliminary Injunction (2009)

No.I.C. A suit for injunction is an action in rem.

SUGGESTED ANSWER:

FALSE. A suit for injunction is an action in personam. In the early case of Auyong Hian vs. Court of Tax Appeals [59 SCRA 110 [1974]), it was held that a restraining order like an injunction, operates upon a person. It is granted in the exercise of equity of jurisdiction and has no in rem effect to invalidate an act done in contempt of an order of the court except where by statutory authorization, the decree is so framed as to act in rem on property. (Air Materiel Wing Savings and Loan Association, Inc. vs. manay, 535 SCRA 356 [2007]).

Special Civil Actions (Rules 62-71)

Certiorari; Petition for Certiorari, Rule 65 (2012)

No.I. (a) After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused's petition for review, reversed the investigating prosecutor's finding of probable cause. Upon order of the

DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

"Based on the review by the DOJ Secretary of the findings of the investigating prosecutor during the preliminary investigation, the Court agrees that there is no sufficient evidence against the accused to sustain the allegation in the information. The motion to withdraw Information is, therefore, granted."

If you were the private prosecutor, what should you do? Explain. (5%)

SUGGESTED ANSWER:

If I were the private prosecutor, I would file a petition for certiorari under Rule 65 with the Court of Appeals (Cerezo vs. People, G.R. No.185230, June 1, 2011). It is well-settled that when the trial court is confronted with a motion to withdraw and Information (on the ground of lack of probable cause to hold the accused for trial based on resolution of the DOJ Secretary), the trial court has the duty to make an independent assessment of the merits of the motion. It may either agree or disagree with the recommendation of the Secretary. Reliance alone on the resolution of the Secretary would be an abdication of the trial court's duty and jurisdiction to determine a prima facie case. The court must itself be convinced that there is indeed no sufficient evidence against the accused. Otherwise, the judge acted with grave abuse of discretion if he grants the Motion to Withdraw Information by the trial prosecutor. (Harold Tamargo vs. Romulo Awingan et. al. G.R. No. 177727, January 19, 2010).

ALTERNATIVE ANSWER:

If I were the private prosecutor, I would file a Motion for Reconsideration of the Order of the trial court. if the same has been denied, I would file a petition for review on certiorari under Rule 45 on pure question of law, which actually encompasses both the criminal and civil aspects thereof. The filing of the petition is merely a continuation of the appellate process.

Certiorari; Petition for Certiorari; Contempt (2012)

No.IV.B. Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of

indirect contempt. If you were X's lawyer, what would you do? Why? (5%)

SUGGESTED ANSWER:

If I were X's Lawyer, I would file a petition for certiorari under Rule 65. The judge should not have acted on Y's motion to declare X in contempt. The charge of indirect contempt is initiated through a verified petition. (Rule 71, Sec. 4, Rules of Court). The writ was not directed to X but to the sheriff who was directed to deliver the property to Y. As the writ did not command the judgment debtor to do anything, he cannot be guilty of the facts described in Rule 71 which is "disobedience of or resistance to a lawful writ, process, order, judgment, or command any court." the proper procedure is for the sheriff to oust X availing of the assistance of peace officers pursuant to Section 10 (c) of Rule 39 (Lipa vs. Tutaan, L-16643, 29 September 1983; Medina vs. Garces, L-25923, July 15, 1980; Pascua vs. Heirs of Segundo Simeon, 161 SCRA 1; Patagan et. al. Vs. Panis, G.R. No. 55630, April 8, 1988).

Expropriation; Motion to Dismiss (2009)

No.XIV.A. The Republic of the Philippines, through the department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

(a) Will Jovito's motion to dismiss prosper? Explain

SUGGESTED ANSWER:

NO. the present Rule of Procedure governing expropriation (Rule 67), as amended by the 1997 Rules of Civil Procedure, requires the defendant to file an Answer, which must be filed on or before the time stated in the summons. Defendant's objections and defenses should be pleaded in his Answer not in a motion.

(b) As judge, will you grant the writ of possession prayed for by DPWH? Explain

SUGGESTED ANSWER:

NO. the expropriation here is governed by Rep. Act No. 8974 which requires



100% payment of the zonal value of the property as determined by the BIR, to be the amount deposited. Before such deposit is made, the national government thru the DPWH has no right to take the possession of the property under expropriation.

Forcible Entry; Remedies (2013)

No.V. The spouses Juan reside in Quezon City. With their lottery winnings, they purchased a parcel of land in Tagaytay City for P100,000.00. In a recent trip to their Tagaytay property, they were surprised to see hastily assembled shelters of light materials occupied by several families of informal settlers who were not there when they last visited the property three (3) months ago.

To rid the spouses' Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (7%)

SUGGESTED ANSWER:

As counsel for spouses Juan, I will file a special civil action for Forcible Entry. The Rules of Court provide that a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth may at anytime within 1 year after such withholding of possession bring an action in the proper Municipal Trial Court where the property is located. This action which is summary in nature seeks to recover the possession of the property from the defendant which was illegally withheld by the latter (Section 1, Rule 70, Rules of Court).

An ejectment case is designed to restore , through summary proceedings, the physical possession of any land or building to one who has been illegally deprived of such possession, without prejudice to the settlement of parties' opposing claims of juridical possession in an appropriate proceedings (Heirs of Agapatio T. Olarte and Angela A. Olarte et. al. vs. Office of the President of the Philippines et al., G.R. No. 177995, June 15, 2011, Villarama, Jr., J.).

In Abad vs. Farrales, G.R. No. 178635, April 11, 2011, the Supreme Court held that two allegations are indispensable in actions for forcible entry to enable first level courts to acquire jurisdiction over them: first, that the plaintiff had prior physical possession of the property; and, second, that the defendant deprived him of such possession by means of force,



intimidation, threats, strategy, or stealth.

However, before instituting the said action, I will first endeavour to amicably settle the controversy with the informal settlers before the appropriate Lupon or Barangay Chairman. If there is no agreement reached after mediation and conciliation under the Katarungang Pambarangay Law, I will secure a certificate to file action and file the complaint for ejectment before the MTC of Tagaytay City where the property is located since ejectment suit is a real action regardless of the value of the property to be recovered or claim for unpaid rentals (BP 129 and RULE 4, Section 1 of the Revised Rules on Civil Procedure).

In the aforementioned complaint, I will allege that Spouses Juan had prior physical possession and that the dispossession was due to force, intimidation and stealth. The complaint will likewise show that the action was commenced within a period of one (10 year from unlawful deprivation of possession, and that the Spouses Juan is entitled to restitution of possession together with damage costs.

Foreclosure; Certification Against Non Forum Shopping (2007)

No.X. (a) RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a motion to dismiss the counterclaim on the ground that Bank V's Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule. (5%)

SUGGESTED ANSWER:

A certification against forum shopping is required only in initiatory pleadings. In this case, the counterclaim pleaded in the defendant's Answer appears to have arisen from the plaintiff's complaint or compulsory in nature and thus, may not be regarded as an initiatory pleading. The absence thereof in the Bank's Answer is not a fatal defect. Therefore, the motion to dismiss on the ground raised lacks merit and should be denied (UST v. Suria, 294 SCRA 382 [1998]).

On the other hand, if the counterclaim raised by the defendant Bank's Answer was not predicated on the plaintiff's claim or cause of action, it is considered a permissive counterclaim. In which case, tit would partake an initiatory pleading which requires a certification against forum shopping. Correspondingly, the motion to dismiss



based on lack of the required certificate against forum shopping should be granted.

Jurisdiction; Unlawful Detainer (2010)

No.III. Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for accion publiciana.

Anabel appealed the dismissal to the RTC which affirmed it and accordingly dismissed her appeal. She elevates the case to the Court of Appeals, which remands the case to the RTC. Is the appellate court correct? Explain. (3%)

SUGGESTED ANSWER:

Yes, the Court of Appeals is correct in remanding the case to the RTC for the latter to try the same on the merits. The RTC, having jurisdiction over the subject matter of the case appealed from MTC should try the case on the merits as if the case was originally filed with it, and not just to affirm the dismissal of the case.

R.A. No. 7691, however, vested jurisdiction over specified accion publiciana with courts of the first level (Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts) in cases where the assessed value of the real property involved does not exceed P20,000.00 outside Metro Manila, or in Metro Manila, where such value does not exceed P50,000.00.

Jurisdiction; Unlawful Detainer (2008)

No.IV. Filomeno brought an action in the Metropolitan Trial Court (METC) of Pasay City against Marcelino pleading two causes of action. The first was a demand for the recovery of physical possession of a parcel of land situated in Pasay City with an assessed value of 40,000; the second was a claim for damages of 500,000 for Marcelino's unlawful retention of the property. Marcelino filed a motion to dismiss on the ground that the total amount involved, which is 540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct?

SUGGESTED ANSWER:

No, Metropolitan or Municipal trial Courts have exclusive jurisdiction over a complaint for forcible entry and unlawful detainer regardless of the amount of the claim for damages (Sec. 33 [2], B.P. 129).



Also, Sec. 3, Rule 70 gives jurisdiction to the said courts irrespective of the amount of damages. This is the same provision in the Revised Rules of Summary Procedure that governs all ejectment cases (Sec. 1[A][1], Revised Rule on Summary Procedure). The Rule, however, refers to the recovery of a reasonable amount of damages. In this case, the property is worth only P40,000, but the claim for damages is P500,000.

Mandamus (2012)

No.X.B. A files a Complaint against 8 for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B's Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge "unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office", 8 files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)

SUGGESTED ANSWER:

No, mandamus will not lie. The proper remedy is a petition for prohibition. (Serana vs. Sandiganbayan, G.R. No. 162059, January 22, 2008). The dismissal of the case based on improper venue is not a ministerial duty. Mandamus does not lie to comple the performance of a discretionary duty. (Nilo Paloma vs. Danilo Mora, G.R. No. 157783, September 23, 2005).

Partition; Non-joinder (2009)

No.XV.A. Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Herando and Inocencio, the other co-owners of the property. As Judge, will you grant the motion to dimiss? Explain. (3%)

SUGGESTED ANSWER:

NO, because the non-joinder of parties is not a ground for dismissal of action (Rule 3, Sec. 11). The motion to dismiss should be denied.

Unlawful Detainer; Preliminary Conference (2007)

No. VIII.(a) X files an unlawful detainer case against Y before the appropriate Metropolitan Trial Court. In his answer, Y avers as a special and affirmative defense that he is a tenant of X's deceased father in whose name the property remains



registered. What should the court do? Explain briefly. (5%)

SUGGESTED ANSWER:

The court should hold a preliminary conference not later than thirty (30) days after the defendant's Answer was filed, since the case is governed by summary procedure under Rule 70, Rules of Court, where a Reply is not allowed. The court should receive evidence to determine the allegations of tenancy. If tenancy had in fact been shown to be the real issue, the court should dismiss the case for lack of jurisdiction.

If it would appear that Y's occupancy of the subject property was one of agricultural tenancy, which is governed by agrarian laws, the court should dismiss the case because it has no jurisdiction over agricultural tenancy cases. Defendant's allegation that he is a "tenant" of plaintiff's deceased father suggests that the case is one of landlord-tenant relation and therefore, not within the jurisdiction of ordinary courts.

Unlawful; Detainer; Prior Possession (2008)

No.XVII. Ben sold a parcel of land to Del with right to repurchase within one(1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Del had never been in possession of the property. Is Ben correct?

SUGGESTED ANSWER:

No, for unlawful detainer, the defendant need not have been in prior possession of the property. This is upon the theory that the vendee steps into the shoes of the vendor and succeeds to his rights and interests. In contemplation of law, the vendee's possession is that of the vendor's (Maninang vs. C.A., G.R. No. 121719, 16 September 1999; Dy Sun vs. Brillantes, 93 Phil. 175 [1953]); (Pharma Industries, Inc., vs. Pajarillaga, G.R. No. L-53788, 17 October 1980).

Special Proceedings (Rules 72-109)

Absentee; Declaration of Absence vs. Declaration of Presumptive Death (2009)



No.V. Frank and Gina were married on June 12, 1987 in Manila. Barely a year after the wedding, Frank exhibited a violent temperament, forcing Gina, for reasons of personal safety, to live with her parents. A year thereafter, Gina found employment as a domestic helper in Singapore, where she worked for ten consecutive years. All the time she was abroad, Gina had absolutely no communications with Frank, nor did she hear any news about him. While in Singapore, Gina met and fell in love with Willie.

On July 4, 2007, Gina filed a petition with the RTC of manila to declare Frank presumptively dead, so that she could marry Willie. The RTC granted Gina's petition. The office of the Solicitor General (OSG) filed a notice of Appeal with the RTC, stating that it was appealing the decision of the Court of Appeals on questions of fact and law.

(a) Is a petition for declaration of Presumptive Death a special proceeding?

SUGGESTED ANSWER:

No. the petition for Declaration of Presumptive Death provided in Art. 41 of the "Family Code" is not the special proceeding governing absentees under Rule 107 of the Rules of Court whose rules of procedure will not be followed (Republic vs. C.A., 458 SCRA [2005]). Said petition for Declaration of Presumptive Death under Article 41 of the Family Code is a summary proceeding, authorized for purposes only of remarriage of the present spouse, to avoid incurring the crime of bigamy. Nonetheless, it is in the nature of a special proceeding, being an application to establish a status or a particular fact in court.

ALTERNATIVE ANSWER:

A petition for declaration of presumptive death may be considered a special proceeding, because it is so classified in the Rules of Court (Rule 107, Rules of Court), as differentiated from an ordinary action which is adversarial. It is a mere application or proceeding to establish the status of a party or a particular fact, to viz: that a person has been unheard of for a long time and under such circumstance that he may be presumed dead.

(b) As the RTC judge who granted Gina's petition, will you give due course to the OSG's notice of appeal?

SUGGESTED ANSWER:

NO. Appeal is not a proper remedy since the decision is immediately final and executor upon notice to the parties under Art. 247 of the Family



Code(Republic vs Bermudez-Lorino, 449 SCRA 57 [2005]). The OSG may assail RTC's grant of the petition only on the premise of grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy should be by certiorari under Rule 65 of the Rules of Court.

Cancellation or Correction; Notice (2007)

No.VII. (a) B files a petition for cancellation of the birth certificate of her daughter R on the ground of the falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was service on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals, saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed saying that the publication of the court order was sufficient compliance with due process. Rule. (5%)

SUGGESTED ANSWER:

R's petition for annulment of judgment before the Court of Appeals should be granted. Although there was publication of the court order acting the petition to cancel the birth certificate, reasonable notice still has to be served on R as she has an interest affected by the cancellation. (Sec. 3 and 4, Rule 108, Rules of Court) She is an indispensable party (Republic v. Benemerito, 425 SCRA 488 [2004]), and notice has to be served on her, not for the purpose of vesting the court with jurisdiction, but to comply with the requirements of fair play and due process (Ceruila v. Delantar, 477 SCRA 134 [2005]).

ALTERNATIVE ANSWER:

The petition for annulment of judgment should not be granted. While R is an indispensable party, it has been held that the failure to service notice on indispensable parties is cured by the publication made because the action is one in rem (Alba v. Court of Appeals, 465 SCRA 495 [2005]; Barco v. Court of Appeals, 420 SCRA 39 [2005]).

Habeas Corpus (2007)

No.IV. Husband H files a petition for declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for



habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule.

SUGGESTED ANSWER:

The motion to dismiss the petition for habeas corpus should be granted to avoid multiplicity of suits. The question of who between the spouses should have custody of their minor child could also be determined in the petition for declaration of nullity of their marriage which is already pending in the RTC of Pasig City. In other words, the petition filed in Pasig City, praying for custody of the minor child is unnecessary and violates only the cardinal rules of procedure against multiplicity of suits. Hence, the latter suit may be abated by a motion to dismiss on the ground of litis pendentia (Yu v. Yu, 484 SCRA 485 [2006]).

Habeas Corpus; Bail (2008)

No.XIX. After Alma had started serving her sentence for violation of BP 22, she filed a petition for a writ of habeas corpus, citing Vaca vs CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct –

(a) Under Rule 102?

SUGGESTED ANSWER:

No, Alma, who is already convicted by final judgment, cannot be entitled to bail under Sec. 14, Rule 102. The provision presupposes that she had not been convicted as yet. It provides that if she is lawfully imprisoned or restrained for an offense not punishable by death, she may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge (Sec. 14, Rule 102; Celeste vs. People, 31 SCRA 391; Vicente vs. Judge Majaducon, A.M. No. RTJ-02-1698, 23 June 2005; San Pedro vs. Peo, G.R. No. 133297, 15 August 2002).



(b) Under the Rules of criminal procedure?

SUGGESTED ANSWER:

Under the Rules of Criminal Procedure, Rule 114, Sec. 24 clearly prohibits the grant of bail after conviction by final judgment and after the convict has started to serve sentence. In the present case, Alma had already started serving her sentence. She cannot, therefore, apply for bail (Peo. vs. Fitzgerald, G.R. No. 149723, 27 October 2006).

Habeas Corpus; Jurisdiction; Sandiganbayan (2009)

No.XI.C. In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of habeas corpus.

SUGGESTED ANSWER:

FALSE. The Sandiganbayan may grant petitions for Habeas corpus only in aid of its appellate jurisdiction (R.A. 7975, as amended by R.A 8249), not in the exercise of "original" jurisdiction.

Letters of Administration; Interested Person (2008)

No.XVIII. Domencio and Gen lived without benefit of marriage for 20 years, during which time they purchased properties together. After Domencio died without a will, Gen filed a petition for letters of administration. Domencio's siblings opposed the same on the ground that Gen has no legal personality. Decide.

SUGGESTED ANSWER:

A petition for letters of administration may be filed by any "interested person" (Sec. 2, Rule 79, Rules of Court). Gen would be considered an interested person if she was not married to Domenico, because she can claim co-ownership of the properties left by him under their property regime of a union without marriage under conditions provided in the Family Code 9Arts. 147-148, Family Code; San Luis vs. San Luis, G.R. No. 133743, February 6, 2007).

Probate of Will (2010)

No.XIV. Czarina died single. She left all her properties by will to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.

Duqueza soon instituted an action for probate of Czarina's will. Marco, on the other hand, instituted intestate proceedings. Both actions were consolidated before the RTC of Pasig. On



motion of Marco, Duqueza's petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%)

SUGGESTED ANSWER:

The petition for probate of Czarina's will, as filed by Duquesa should not be dismissed on mere motion of Marco who instituted intestate proceedings. The law favors testacy over intestacy, hence, the probate of the will cannot be dispensed with. (See Sec. 5, Rule 75) Thus, unless the will – which shows the obvious intent to disinherit Marco – is probated, the right of a person to dispose of his property may be rendered nugatory (See Seanio vs. Reyes, G.R. Nos. 140371-72, Nov. 27, 2006). Besides, the authority of the probate court is generally limited only to a determination of the extrinsic validity of the will. In this case, Marco questioned the intrinsic validity of the will.

Probate of Will (2007)

No.VIII. (b) The heirs of H agree among themselves that they will honor the division of H's estate as indicated in her Last Will and Testament. To avoid the expense of going to court in a Petition for Probate of the Will, can they instead execute an Extrajudicial Settlement Agreement among themselves? Explain briefly. (5%)

SUGGESTED ANSWER:

The heirs of H cannot validly agree to resort to extrajudicial settlement of his estate and do away with the probate of H's last will and testament. Probate of the will is mandatory (Guevarra v. Guevarra, 74 Phil. 479 [1943]). The policy of the law is to respect the will of the testator as manifested in the other dispositions in his last will and testament, insofar as they are not contrary to law, public morals and public policy. Extrajudicial settlement of an estate of a deceased is allowed only when the deceased left no last will and testament and all debts, if any, are paid (Rule 74, Sec. 1, Rules of Court).

Probate of Will; Jurisdictional Facts (2012)

No.X.C. What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

SUGGESTED ANSWER:

The jurisdictional facts in a petition for probate are: (1) that a person died



leaving a will; (2) in case of a resident, that he resided within the territorial jurisdiction of the court; and (3) in the case of a non-resident, that he left an estate within such territorial jurisdiction.

The jurisdictional facts shall be contained in a petition for allowance of will.

Probate of Will; Application of Modes of Discovery (2008)

No.XIII. An heir/oppositor in a probate proceeding filed a motion to remove the administrator on the grounds of neglect of duties as administrator and absence from the country. On his part the heir/oppositor served written interrogatories to the administrator preparatory to presenting the latter as a witness. The administrator objected, insisting that the modes of discovery apply only to ordinary civil actions, not special proceedings. Rule on the matter.

SUGGESTED ANSWER:

No, the administrator is not correct. Modes of discovery apply also to special proceedings. Sec. 2, Rule 72 states that in the absence of special provisions, the rules provided for in ordinary actions shall be, as far as practicable, applicable in special proceedings.

Probate of Will: Will Outside of the Philippines (2010)

No.XV. Pedrillo, a Fil-Am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity.

Upon Pedrillo's demise, his will was duly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US$1,000 per month for the next 15 years.

Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo's will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate.

Winston now files in the Makati RTC a motion to compel XYZ to account for all sums in its possession forming part of Pedrillo's estate. Rule on the motion. (5%)

SUGGESTED ANSWER:

The motion should be denied. Makati RTC has no jurisdiction over XYZ of hongkong. The letters of administration



granted to Winston only covers all Pedrillo's estate in the Philippines. (Rule 77, Sec. 4) This cannot cover the annuities in Hongkong.

At the outset, Makati RTC should not have taken cognizance of the petition filed by Winston, because the will does not cover any property of Pedrillo located here in the Philippines.

Settlement of Estate (2010)

No.XVI. Sal Mineo died intestate, leaving a P1 billion estate. He was survived by his wife Dayanara and their five children.

Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%)

SUGGESTED ANSWER:

The opposition should be overruled for lack of merit. The allegation that there was a genuine effort to settle the estate amicably before the filing of the petition is not required by the Rules. Besides, a petition for issuance of letters of administration may be contested on either of two grounds : (1) the incompetency of the person for whom letters are prayed therein; and (2) the contestant's own right to the administration. (Sec. 4, Rule 9).

Settlement of Estate (2009)

No.XVIII. Pinoy died without a will. His wife, Rosie and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate.

Rosie and the Three Children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed.

Are Rosie and the Three Children Correct? Explain.

SUGGESTED ANSWER:

NO, the contention is not correct. Suzy can file a complaint to annul the extrajudicial settlement and she can recover what is due her as such heir if her status as an illegitimate child of the deceased has been established. The



publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is intended for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. She can file the action therefor within four (4) years after the settlement was registered.

Criminal Procedure (Rules 110-127)

Actions; Commencement of an Action (2012)

No.V. X was arrested, en flagrante, for robbing a bank. After an investigation, he was brought before the office of the prosecutor for inquest, but unfortunately no inquest prosecutor was available. May the bank directly file the complaint with the proper court? If in the affirmative, what document should be filed? (5%)

SUGGESTED ANSWER:

Yes, the bank may directly file the complaint with the proper court. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person (Section 6, Rule 112 of the Revised Rules of Criminal Procedure).

Actions; Commencement of an Action; Criminal, Civil (2013)

No.III. While in his Nissan Patrol and hurrying home to Quezon City from his work in Makati, Gary figured in a vehicular mishap along that portion of EDSA within the City of Mandaluyong. He was bumped from behind by a Ford Expedition SUV driven by Horace who was observed using his cellular phone at the time of the collision. Both vehicles - more than 5 years old – no longer carried insurance other than the compulsory third party liability insurance. Gary suffered physical injuries while his Nissan Patrol sustained damage in excess of Php500,000.

(A) As counsel for Gary, describe the process you need to undertake starting from the point of the incident if Gary would proceed criminally against Horace, and identify the court with jurisdiction over the case. (3%)

SUGGESTED ANSWER:



A) As counsel for Gary, I will first have him medically examined in order to ascertain the gravity and extent of the injuries sustained from the accident. Second, I will secure an accurate police report relative to the mishap unless Horace admits his fault in writing, and request Gary to secure a car damage estimate from a car repair shop. Third, I will ask him to execute his Sinumpaang Salaysay. Thereafter, I will use his Sinumpaang Salaysay or prepare a Complaint-affidavit and file the same in the Office of the City Prosecutor of Mandaluyong City (Sections 1 and 15 Rule 110, Rules of Criminal Procedure).

This being a case of simple negligence and the penalty for the offense does not exceed six months imprisonment, the court with original and exclusive jurisdiction is the Metropolitan Trial Court of Mandaluyong City.

(B) If Gary chooses to file an independent civil action for damages, explain briefly this type of action: its legal basis; the different approaches in pursuing this type of action; the evidence you would need; and types of defenses you could expect. (5%)

SUGGESTED ANSWER:

An independent civil action is an action which is entirely distinct and separate from the criminal action. Such civil action shall proceed independently of the criminal prosecution and shall require only a preponderance of evidence. Section 3 of Rule 111 allows the filing of an independent civil action by the offended party based on Article 33 and 2176 of the New Civil Code.

The different approaches that the plaintiff can pursue in this type of action are as follows:

(a) File the independent civil action and prosecute the criminal case separately.

(b) File the independent civil action without filing the criminal case.

(c) File the criminal case without need of reserving the independent civil action.

Aside from the testimony of Gary, the pieces of evidence that would be required in an independent civil action are the medical report and certificate regarding the injuries sustained by Gary, hospital and medical bills including receipt of payments made police report and proof of the extent of damage sustained by his car and the Affidavit of witnesses who saw Horace using his cellular phone at the time the incident happened.

I will also present proof of employment of Gary such as payslip in order to prove



that he was gainfully employed at the time of the mishap, and as a result of the injuries he suffered, he was not able to earn his usual income thereof. I will also present the attending Doctor of Gary to corroborate and authenticate the contents of the medical report and abstract thereof. The evidence required to hold defendant Horace liable is only preponderance of evidence.

The types of defenses that may be raised against this action are fortuitous event, force majeure or acts of God. The defendant can also invoke contributory negligence as partial defense. Moreover, the defendant can raise the usual defenses that the: (a) plaintiff will be entitled to double compensation or recovery, and (b) defendant will be constrained to litigate twice and therefore suffer the cost of litigation twice.

Actions; Commencement of an Action; Party (2013)

No.II. Yvonne, a young and lonely OFW, had an intimate relationship abroad with a friend, Percy. Although Yvonne comes home to Manila every six months, her foreign posting still left her husband Dario lonely so that he also engaged in his own extramarital activities. In one particularly exhilarating session with his girlfriend, Dario died. Within 180 days from Dario's death, Yvonne gives birth in Manila to a baby boy. Irate relatives of Dario contemplate criminally charging Yvonne for adultery and they hire your law firm to handle the case.

(A) Is the contemplated criminal action a viable option to bring? (3%)

SUGGESTED ANSWER:

No. Section 5 of Rule 110 provides that the crimes of adultery and concubinage shall not be prosecuted except upon complaint filed by the offended spouse. Since the offended spouse is already dead, then the criminal action for Adultery as contemplated by offended party's relatives is no longer viable.

Moreover, it appears that the adulterous acts of Yvonne were committed abroad. Hence, the contemplated criminal action is not viable as the same was committed outside of the Philippine courts.

(B) Is a civil action to impugn the paternity of the baby boy feasible, and if so, in what proceeding may such issue be determined? (5%)

SUGGESTED ANSWER:



Yes, under Article 171 of the Familyy Code, the heirs of the husband may imougn the filiation of the child in the following cases:

a) If the husband should die before the expiration of the period fixed for bringing his action:

b) If he should die after the filing of the complaint, without having desisted therefrom; or

c) If the child was born after the death of the husband.

Since Dario is already dead when the baby was, his heirs have the right to impugn the filiation of the child.

Consequently, the heirs may impugn the filiation either by a direct action to impugn such filiation or raise the same in a special proceeding for settlement of the estate of the decedent. In the said proceeding, the Probate court has the power to determine questions as to who are the heirs of the decedent (Reyes vs. Ysip, et. al., 97 Phil. 11, Jimenez vs. IAC, 184 SCRA 367).

Incidentally, the heirs can also submit the baby boy for DNA testing (A.M. No. 6-11-5-SC, Rules on DNA Evidence) or even blood-test in order to determine paternity and filiation.

In Jao vs. Court of Appeals, G.R. No. L-49162, July 28, 1987, the Supreme Court held that blood grouping tests are conclusive as to non-paternity, although inconclusive as to paternity. The fact that the blood type of the child is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and the alleged father are cross matched, then the child cannot possibly be that of the alleged father.

ALTERNATIVE ANSWER:

No, there is no showing in the problem of any ground that would serve as a basis for an action to impugn paternity of the baby boy.

In Concepcion vs. Almonte, G.R. No. 123450, August 31, 2005 citing Cabatania vs. Court of Appeals, the Supreme Court held that the law requires that every reasonable presumption be made in favour of legitimacy.

The presumption of legitimacy does not only flow out of declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is



grounded on the policy to protect the innocent offspring from the odium of illegitimacy. The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception.

To overthrow this presumption on the basis of Article 166 (1) (b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the husband to father the child. Sexual Intercourse is to be presumed where personal access is not disposed, unless such presumption is rebutted by evidence to the contrary.

Hence, a child born to a husband and wife during a valid marriage is presumed legitimate. Thus, the child's legitimacy may be impugned only under the strict standards provided by law (Herrera vs. Alba, G.R. No. 148220, June 15, 2005).

[Note: The Family Code is not covered by the 2013 bar Examination Syllabus for Remedial Law].

Actions; Complaint; Forum Shopping (2010)

No.IV. X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street. Lawyer L, who witnessed the incident, offered his legal services to V.

V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone.

On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his "Certification Against Forum Shopping," V made no mention of the pendency of the criminal case in Sta. Maria.

(a) Is V guilty of forum shopping? (2%)

SUGGESTED ANSWER:

No, V is not guilty of forum shopping because the case in Sta. Maria, Bulacan, is a criminal action filed in the name of the People of the Philippines, where civil liability arising from the crime is deemed also instituted therewith; whereas the case filed in Urdaneta, Pangasinan, is a civil action for quasi-

delict in the name of V and against both X and Y for all damages caused by X and Y to V, which may be beyond the jurisdiction of MTC. Hence, the tests of forum shopping, which is res adjudicate or litis pendencia, do not obtain here.

Moreover, substantive law (Art. 33, Civil Code) and Sec. 3, Rule 111, Revised Rules of Criminal Procedure, expressly authorize the filing such action for damages entirely separate and distinct from the criminal action.

(b) Instead of filing an Answer, X and Y move to dismiss the complaint for damages on the ground of litis pendentia. Is the motion meritorious? Explain. (2%)

SUGGESTED ANSWER:

No, the motion to dismiss base on alleged litis pendencia is without merit because there is no identity of parties and subject matter in the two cases. Besides, Art. 33 of the Civil Code and Rule 111, Sec. 3 of the Rules of Criminal Procedure authorize the separate civil action for damages arising from physical injuries to proceed independently.

(c) Suppose only X was named as defendant in the complaint for damages, may he move for the dismissal of the complaint for failure of V to implead Y as an indispensable party? (2%)

SUGGESTED ANSWER:

No, X may not move for dismissal of the civil action for damages on the contention that Y is an indispensable party who should be impleaded. Y is not an indispensable party but only necessary party. Besides, nonjoinder and misjoinder of parties is not a ground for dismissal of actions (Rule 3, Sec. 11, Rules of Court).

(d) X moved for the suspension of the proceedings in the criminal case to await the decision in the civil case. For his part, Y moved for the suspension of the civil case to await the decision in the criminal case. Which of them is correct? Explain. (2%)

SUGGESTED ANSWER:

Neither of them is correct. Both substantive law (Art. 33 of the Civil Code) and procedural law (Rule 111, Sec. 3, Rules of Criminal Procedure) provide for the two actions to proceed independently of each other, therefore, no suspension of action is authorized.

(e) Atty. L offered in the criminal case his affidavit respecting what he witnessed during the incident. X's lawyer wanted to cross-examine Atty. L who, however, objected on the ground of lawyer-client privilege. Rule on the objection. (2%)



SUGGESTED ANSWER:

The objection should be overruled. Lawyer-client privilege is not involved here. The subject on which the counsel would be examined has been made public in the affidavit he offered and thus, no longer privileged, aside from the fact that it is in respect of what the counsel witnessed during the incident and not to the communication made by the client to him or the advice he gave thereon in his professional capacity.

Actions; Hold Departure Order (2010)

No. XVIII. While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-way airplane ticket was purchased online using his credit card for a flight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

(a) What is the proper procedure to prevent Dina from leaving the Philippines? (2%)

SUGGESTED ANSWER:

I would advise:

(1) The filing of an appropriate criminal action cognizable by the RTC against Dina and the filing in said criminal action a Motion for the issuance of a Hold Departure Order;

(2) thereafter, a written request with the Commissioner of the Bureau of Immigration for a Watch List Order pending the issuance of the Hold Departure Order should be filed;

(3) then, the airline company should be requested to cancel the ticket issued to Dina.

(b) Suppose an Information is filed against Dina on August 12, 2008 and she is immediately arrested. What pieces of electronic evidence will Dante have to secure in order to prove the fraudulent online transaction? (2%)

SUGGESTED ANSWER:

He will have to present (a) his report to the bank that he lost his credit card (b) that the ticket was purchased after the report of the lost and (c) the purchase of one-way ticket. Dante should bring an original (or an equivalent copy) printout of: 1) the online ticket purchase using his credit card; 2) the phone call log to show that he already alerted the credit

card company of his loss; and 3) his credit card billing statement bearing the online ticket transaction.

Arrest; Warrantless Arrests & Searches (2007)

No.VI. (a) On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly. (5%)

SUGGESTED ANSWER:

No, the arresting officer may not take the arrested suspect from Pasay City to Caloocan City. The arresting officer is required to deliver the person arrested without a warrant to the nearest police station or jail (Rule 112, Sec. 5, 2000 Rules of Criminal Procedure). To be sure, the nearest police station or jail is in Pasay City where the arrest was made, and not in Caloocan City.

(b) In the course of serving a search warrant, the police find an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes, the police may take with him the "unlicensed" firearm although not covered by the search warrant. Possession of an "unlicensed firearm" is a criminal offense and the police officer may seize an article which is the "subject of an offense." Thus us especially so considering that the "unlicensed firearm" appears to be in "plain view" of the police officer when the conducted the search.

Even if the warrant was subsequently quashed, the police are not mandated to return the "unlicensed firearm." The quashal of the search warrant did not affect the validity of the seizure of the "unlicensed firearm." Moreover, returning the firearm to a person who is not otherwise allowed by law to possess the same would be tantamount to abetting a violation of the law.

Bail; Application (2012)

No.I.B. A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the



hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail saying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

SUGGESTED ANSWER:

No, the court may not entertain his petition as he has not yet been placed under arrest. A must be "literally" placed under the custody of the law before his petition for bail could be entertained by the court (Miranda vs. Tuliao, G.R. No. 158763, March 31, 2006).

ALTERNATIVE ANSWER:

Yes, a person is deemed to be under the custody of the law either when he has been arrested or has surrendered himself to the jurisdiction of the court. the accused who is confined in a hospital may be deemed to be in the custody of the law if he clearly communicates his submission to the court while he is confined in the hospital. (Paderanga vs. Court of Appeals, G.R. No. No. 115407, August 28, 1995).

Discovery; Production and Inspection (2009)

No.XI.A. The accused in a criminal case has the right to avail of the various modes of discovery.

SUGGESTED ANSWER:

TRUE. The accused has the right to move for the production or inspection of material evidence in the possession of the prosecution. It authorizes the defense to inspect, copy or photograph any evidence of the prosecution in its possession after obtaining permission from the court (Rule 116, Sec. 10; Webb vs. De Leon, 247 SCRA 652 [1995]).

ALTERNATIVE ANSWER:

FALSE. The accused in criminal case only has the right to avail of conditional examination of his witness before a judge, or, if not practicable, a member of a Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. (sec.12 &13, Rule 119).

Modes of discovery under civil actions does not apply to criminal proceedings because the latter is primarily governed by the REVISED RULES OF CRIMINAL PROCEDURE (Vda. de Manguerravs Risos – 563 SCRA 499).



Information; Motion to Quash (2009)

No.IV. Pedrito and Tomas, Mayor and Treasurer, respectively, of the Municipality of San Miguel, Leyte, are charged before the Sandiganbayanfor violation of Section 3(e), RA no. 3019 (Anti-Graft and Corrupt Practices Act). The information alleges, among others, that the two conspired in the purchase of several units of computer through personal canvass instead of a public bidding, causing undue injury to the municipality.

Before arraignment, the accused moved for reinvestigation of the charge, which the court granted. After reinvestigation, the Office of the Special Prosecutor filed an amended information duly singed and approved by the Special Prosecutor, alleging the same delictual facts, but with an additional allegation that the accused gave unwarranted benefits to SB enterprises owned by Samuel. Samuel was also indicted under the amended information.

Before Samuel was arraigned, he moved to quash the amended information on the ground that the officer who filed had no authority to do so. Resolve the motion to quash with reasons.

SUGGESTED ANSWER:

The motion to quash filed by Samuel should be granted. There is no showing that the special prosecutor was duly authorized or deputized to prosecute Samuel. Under R.A. No. 6770, also known as the Ombudsman Act of 1989, the Special Prosecutor has the power and authority, under the supervision and control of the Ombudsman, to conduct preliminary investigation and prosecute criminal cases before the Sandiganbayan and perform such other duties assigned to him by the Ombudsman (Calingin vs. Desierto, 529 SCRA 720 [2007]).

Absent a clear delegation of authority from the Ombudsman to the Special Prosecutor to file the information, the latter would have no authority to file the same. The Special Prosecutor cannot be considered an alter ego of the Ombudsman as the doctrine of qualified political agency does not apply to the office of the Ombudsman. In fact, the powers of the office of the Special Prosecutor under the law may be exercised only under the supervision and control and upon authority of the Ombudsman (Perez vs. Sandiganbayan, 503 SCRA 252 [2006]).

ALTERNATIVE ANSWER:

The motion to quash should be denied for lack of merit. The case is already filed in court which must have been done with the approval of the Ombudsman, and thus the Special Prosecutor's office of the Ombudsman



takes over. As it is the court which ordered the reinvestigation, the Office of the Special Prosecutor which is handling the case in court, has the authority to act and when warranted, refile the case. The amendment made is only a matter of form which only particularized the violation of the same provision of Rep. Act 3019, as amended.

Information; Motion to Quash (2009)

No.XVI.B. A criminal information is filed in court charging Anselmo with homicide. Anselmo files a motion to quash information on the ground that no preliminary investigation was conducted. Will the motion be granted? Why or why not?

SUGGESTED ANSWER:

NO, the motion to quash will not be granted. The lack of preliminary investigation is not a ground for a motion to quash under the Rules of Criminal Procedure. Preliminary investigation is only a statutory right and can be waived. The accused should instead file a motion for reinvestigation within five (5) days after he learns of the filing in Court of the case against him (Sec. 6, Rule 112, as amended).

Jurisdiction; Complex Crimes (2013)

No.VIII. On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

A) Where should Police Inspector Masigasig bring the felon for criminal processing? To Silang, Cavite where he is bound; to Makati where the bus actually was when the felonies took place; or back to Valenzuela where he is stationed? Which court has jurisdiction over the criminal cases? (3%)

SUGGESTED ANSWER:

Police Inspector Masigasig should bring the felon to the nearest police station or jail in Makati City where the bus actually was when the felonies took place. In cases of warrantless arrest, the person arrested without a warrant shall be forthwith delivered to the nearest police



station or jail and shall be proceeded against in accordance with section 7 of Rule 11 (Section 113, Rules of Criminal Procedure). Consequently, the criminal case for robbery and illegal possession of firearms can be filed in Regional Trial Court of Makati City or on any of the places of departure or arrival of the bus.

(B) May the charges of robbery and illegal possession of firearm be filed directly by the investigating prosecutor with the appropriate court without a preliminary investigation? (4%)

SUGGESTED ANSWER:

Yes. Since the offender was arrested in flagrante delicto without a warrant of arrest, an inquest proceeding should be conducted and thereafter a case may be filed in court even without the requisite preliminary investigation.

Under Section 6, Rule 112, Rules of Criminal Procedure, when a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without a need of such investigation provided an inquest has been conducted in accordance with existing rules.

Jurisdiction; Reinvestigation; Arrest (2008)

No.X. Jose, Alberto and Romeo were charged with murder. Upon filing the information, the RTC judge issued warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motion for reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly?

SUGGESTED ANSWER:

The RTC was not entirely correct in stating that it had no jurisdiction over the persons of the accused. By filing motions and seeking affirmative reliefs from the court, the accused voluntarily submitted themselves to the jurisdiction of the court. However, the RTC correctly denied the motion for reinvestigation. Before an accused ca move for reinvestigation and the recall of his warrant of arrest, he must first surrender his person to the court (Miranda, et al. vs. Tuliao, G.R. No. 158763, 31 March 2006).

Res Judicata in Prison Grey (2010)

No.XVII. What is "res judicata in prison grey"? (2%)

SUGGESTED ANSWER:

"Res judicata in prison grey" is the criminal concept of double jeopardy, as "res judicata" is the doctrine of civil law (Trinidad vs. Office of the Ombudsman, G.R. No. 166038, December 4, 2007).

Described as "res judicata in prison grey," the right against double jeopardy prohibits the prosecution of a person for a crime of which he has been previously acquitted or convicted. The purpose is to set the effects of the first prosecution forever at rest, assuring the accused that he shall not thereafter be subjected to the danger and anxiety of a second charge against him for the same offense (Joel B. Caes vs. Intermediate Appellate Court, November 6, 1989).

Search & Seizure; Plain View (2008)

No.IX. The search warrant authorized the seizure of "undetermined quantity of shabu." During the service of the search warrant, the raiding team also recovered a kilo of dried marijuana leaves wrapped in newsprint. The accused moved to suppress the marijuana leaves as evidence for the violation of Section 11 of the Comprehensive Dangerous Drugs Act of 2002 since they were not covered by the search warrant. The State justified the seizure of the marijuana leaves under the "plain view" doctrine. There was no indication of whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If you are the judge, how would you rule on the motion to suppress?

SUGGESTED ANSWER:

The "plain view" doctrine cannot be invoked because the marijuana leaves were wrapped in newsprint and there was no evidence as to whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If they were discovered after the seizure of the shabu, then the marijuana could not have been seized in palin view (CF. Peo vs. Mua, G.R. No. 96177, 27 January 1997). In any case, the marijuana should be confiscated as a prohibited article.

Search & Seizure; Warrantless Search (2010)

No.VII. As Cicero was walking down a dark alley one midnight, he saw an "owner-type jeepney" approaching him. Sensing that the



occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle – elements from the Western Police District – gave chase and apprehended him.

The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of shabu tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body-search legal? (3%)

SUGGESTED ANSWER:

The arrest and body-search was legal. Cicero appears to be alone 'walking down the dark alley" and at midnight. There appears probable cause for the policemen to check him, especially when he darted into a corner (presumably also dark) and run under such circumstance.

Although the arrest came after the body-search where Cicero was found with shabu and a Swiss knife, the body-search is legal under the "Terry search" rule or the "stop and frisk" rule. And because the mere possession, with animus, of dangerous drug (the shabu) is a violation of the law (R.A. 9165), the suspect is in a continuing state of committing a crime while he is illegally possessing the dangerous drug, thus making the arrest tantamount to an arrest in flagrante: so the arrest is legal and correspondingly, the search and seizure of the shabu and the concealed knife may be regarded as incident to a lawful arrest.

ALTERNATIVE ANSWER:

No, the arrest and the body-search were not legal. In this case, Cicero did not run because the occupants of the vehicle identified themselves as police officers. He darted into the corner and ran upon the belief that the occupants of the vehicle were up to no good.

Cicero's act of running does not show any reasonable ground to believe that a crime has been committed or is about to be committed for the police officers to apprehend him and conduct body search. Hence, the arrest was illegal as it does not fall under any of the circumstances for a valid warrantless arrest provided in Sec. 5 of Rule 113 of the Rules of Criminal Procedure.

Search Warrant; Application; Venue (2012)

No.VI. A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, Laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he



applies for a search warrant in any Laguna court, their plan might leak out.

(a) Where can he file an application for search warrant? (2%)

SUGGESTED ANSWER:

PDEA Director Shabunot may file an application for search warrant in any court within the judicial region where the crime was committed. (Rule 126, Sec.2[b]).

ALTERNATIVE ANSWER:

PDEA Director Shabunot may file an application for search warrant before the Executive Judge and Vice Executive Judges of the Regional Trial Courts of Manila or Quezon Cities. (A.M. No. 99-10-09-SC, January 25, 2000).

(b) What documents should he prepare in his application for search warrant? (2%)

SUGGESTED ANSWER:

He should prepare a petition for issuance of a search warrant and attach therein sworn statements and affidavits.

(c) Describe the procedure that should be taken by the judge on the application. (2%)

SUGGESTED ANSWER:

The judge must, before issuing the warrant, examine personally in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (Rule 126, Sec.5, Rules of Court). if the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by the Rules. (Rule 126, Sec.6, Rules of Court).

Suppose the judge issues the search warrant worded in this way:

PEOPLE OF THE PHILIPPINES
Plaintiff

Criminal Case No. 007
for
Violation of R.A. 9165

-versus-

Ho Pia and Sio Pao,
Accused.

x- -x

TO ANY PEACE OFFICER

Greetings:

It appearing to the satisfaction of the undersigned after examining under oath PDEA Director shabunot that there is probable cause to believe that violations of Section 18 and 16 of R.A. 9165 have been committed and that there are good and sufficient reasons to believe that Ho Pia and Sio Pao have in their possession or control, in a two (2) door apartment with an iron gate located at Jupiter St., Sta. Cruz, Laguna, undetermined amount of "shabu" and drug manufacturing implements and paraphernalia which should be seized and brought to the undersigned,

You are hereby commanded to make an immediate search, at any time in the day or night, of the premises above described and forthwith seize and take possession of the abovementioned personal property, and bring said property to the undersigned to be dealt with as the law directs.

Witness my hand this 1st day of March, 2012.

(signed)
Judge XYZ

(d) Cite/enumerate the defects, if any, of the search warrant. (3%)

SUGGESTED ANSWER:

(1) The search warrant failed to particularly describe the place to be searched and the things to be seized (Rule 126, Sec.4, Rules of Court).

(2) The search warrant commanded the immediate search, at any time in the day or night. The general rule is that a search warrant must be served in the day time (Rule 126, Sec.8, Revised Rules on Criminal Procedure), or that portion of the twenty-four hours in which a man's person and countenance are distinguishable (17 C.J. 1134). By way of exception, a search warrant may be made at night when it is positively asserted in the affidavit that the property is on the person or in the place ordered to be searched (Alvares vs. CFI of Tayabas, 64 Phil. 33). There is no showing that the exception applies.

(e) Suppose the search warrant was served on March 15, 2012 and the search yielded the described contraband and a case was filed against the accused in RTC, Sta. Cruz, Laguna and you are the lawyer of Sio Pao and Ho Pia, what will you do? (3%)

SUGGESTED ANSWER:



If I were the lawyer of Sio Pao and Ho Pia, I would file a Motion to Quash the search warrant for having been served beyond its period of validity. (Rule 126, Sec. 14, Rules of Court). A search warrant shall be valid only for ten (10) days from its date. Thereafter, it shall be void. (Rule 126, Sec.10, Revised Rules of Court).

(f) Suppose an unlicensed armalite was found in plain view by the searchers and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals?

Explain your answer. (3%)

SUGGESTED ANSWER:

No, the court should not order the return of the unlicensed armalite because it is contraband or illegal per se. (PDEA vs. Brodett, G.R. No. 196390, September 28, 2011). The possession of an unlicensed armalite found in plain view is mala prohibita. The same should be kept in custodial legis.

Trial; Remedies (2013)

No.IV. At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(A) In one criminal action for qualified theft where you are the defense attorney, you learned that the woman accused has been in detention for six months, yet she has not been to a courtroom nor seen a judge.

What remedy would you undertake to address the situation and what forum would you use to invoke this relief? (3%)

SUGGESTED ANSWER:

Section 7, Rule 119 provides, if the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime but has no means to post bail, or, is charged with a non-bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

(a) Shall promptly undertake to obtain the presence of the prisoner for trial or cause a notice to be served on the person having custody of the prisoner requiring such person to so advise the prisoner of his right to demand trial.

(b) Upon receipt of that notice, the custodian of the prisoner shall promptly advise the prisoner of the charge and of



his right to demand trial. If at any time thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to be sent promptly to the public attorney.

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Moreover, Section 1 (e), Rule 116 provides, when the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within the three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference of his case shall be held within ten (10) days after the arraignment.

On the other hand, if the accused is not under preventive detention, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. (Section 1 (g), Rule 116).

Since the accused has not been brought for arraignment within the limit required in the aforementioned Rule, the Information may be dismissed upon motion of the accused invoking his right to speedy trial (Section 9, Rule 119(or to a speedy disposition of cases (Section 16, Article III, 1987 Constitution).

ALTERNATIVE ANSWER:

A Petition for Mandamus is also feasible.

In People vs. Lumanlaw, G.R. No. 164953, February 13, 2006, the Supreme Court held that "a writ of mandamus may be issued to control the exercise of discretion when, in the performance of duty, there is undue delay that can be characterized as a grave abuse of discretion resulting in manifest injustice. Due to the unwarranted delays in the conduct of the arraignment of petitioner, he has indeed the right to demand – through a writ of mandamus – expeditious action from all official tasked with the administration of justice. Thus, he may not only demand that his arraignment be held but, ultimately, that the information against him be dismissed on the ground of the violation of his right to speedy trial."

Ergo, a writ of mandamus is available to the accused to compel the dismissal of the case.

ALTERNATIVE ANSWER:

The appropriate remedy of the detained accused is to apply for bail since qualified theft is bailable, and she is



entitled to bail before conviction in the Regional Trial Court (Section 4, Rule 114 of the Rules of Criminal Procedure).

[Note: unless the aggregate value of the property stolen is P500,000 and the above she will not be entitled to bail as a matter of right, because the penalty for the offense is reclusion perpetua pursuant to Memorandum Order No. 117].

(B) In another case, also for qualified theft, the detained young domestic helper has been brought to court five times in the last six months, but the prosecution has yet to commence the presentation of its evidence. You find that the reason for this is the continued absence of the employer-complainant who is working overseas.

What remedy is appropriate and before which forum would you invoke this relief? (3%)

SUGGESTED ANSWER:

I will file a motion to dismiss the information in the court where the case is pending on the ground of denial of the accused right to speedy trial (Section 9, Rule 119; Tan vs. People, G.R. No. 173637, April 21, 2009, Third Division, Chico-Nazario, J.). this remedy can be invoked, at any time, before trial and if granted will result to an acquittal. Since the accused has been brought to Court five times and in each instance it was postponed, it is clear that her right to a Speedy Trial has been violated.

Moreover, I may request the court to issue Subpoena Duces Tecum and Ad Testificandum to the witness, so in case he disobeys same, he may be cited in contempt.

I may also file a motion to order the witness employer-complainant to post bail to secure his appearance in court. (Section 14, Rule 119).

ALTERNATIVE ANSWER:

I will move for the dismissal of the case for failure to prosecute. The grant of the motion will be with prejudice unless the court says otherwise. The Motion will be filed with the Court where the action is pending.

C) Still in another case, this time for illegal possession of dangerous drugs, the prosecution has rested but you saw from the records that the illegal substance allegedly involved has not been identified by any of the prosecution witnesses nor has it been the subject of any stipulation.

Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the



remedial steps you propose to undertake. (3%)

SUGGESTED ANSWER:

No. I will not proceed with the presentation of defense evidence. I will first file a motion for leave to file demurrer to evidence within five (5) days from the time the prosecution has rested its case. If the Motion is granted, I will file a demurrer to evidence within a non-extendible period of ten (10) days from notice on the ground of insufficiency of evidence. In the alternative, I may immediately file a demurrer to evidence without leave of court (Section 23, Rule 119, Rules of Criminal Procedure).

In People vs. De Guzman, G.R. No. 186498, March 26, 2010, the Supreme Court held that in a prosecution for violation of the Dangerous Drugs Act, the existence of the dangerous drugs is a condition sine qua non for conviction. The dangerous drug is the very corpus delicti of the crime.

Similarly, in People vs. Sitco, G.R. No. 178202, May 14, 2010, the High Court held that in prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.

(D) In one other case, an indigent mother seeks assistance for her 14-year old son who has been arrested and detained for malicious mischief.

Would an application for bail be the appropriate remedy or is there another remedy available? Justify your chosen remedy and outline the appropriate steps to take. (3%)

SUGGESTED ANSWER:

Yes. An application for bail is an appropriate remedy to secure provisional liberty of the 14-year old boy. Under the Rules, bail is a matter of right before or even after conviction before the Metropolitan Trial Court which has jurisdiction over the crime of malicious mischief. (Section 4, Rule 114 of the Rules of Criminal Procedure).

ALTERNATIVE ANSWER:

Under R.A. 9344 or otherwise known as the Juvenile Justice and Welfare Act of 2006 as amended by R.A. 10630, a child in conflict with the law has the right to bail and recognizance or to be transferred to a youth detention home/youth rehabilitation center. Thus:



Where a child is detained, the court shall order:

(a) the release of the minor on recognizance to his/her parents and other suitable person;

(b) the release of the child in conflict with the law on bail; or

(c) the transfer of the minor to a youth detention home/youth rehabilitation center. The court shall not order the detention of a child in a jail pending trial or hearing of his case. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto (IN THE MATTER OF THE PETITION OF HABEAS CORPUS OF EUFEMIA E. RODRIGUEZ, filed by EDGARDO E. VELUZ vs. LUISA R. VILLANUEVA and TERESITA R. PABELLO, G.R. No. 169482, January 29, 2008, CORONA, J.).

Since minors fifteen (15) years of age and under are not criminally responsible, the child may not be detained to answer for the alleged offense. The arresting authority has the duty to immediately release the child to the custody of his parents or guardians or in their absence to the child's nearest relative (Section 20, republic Act 9344).

Following the hierarchy of courts, the Petition must be filed in the Regional trial Court having jurisdiction over the place where the child is being detained.

[Note: R.A. 9344 is not covered by the 2013 Bar Examination Syllabus for Remedial law].

Trial; Reverse Trial (2007)

No.V. (b) What is reverse trial and when may it be resorted to? Explain briefly. (5%)

SUGGESTED ANSWER:

A reverse trial is one where the defendant or the accused present evidence ahead of the plaintiff or prosecution and the latter is to present evidence by way of rebuttal to the former's evidence. This kind of trial may take place in a civil case when the defendant's Answer pleads new matters by way of affirmative defense, to defeat or evade liability for plaintiff's claim which is not denied but controverted.

In a criminal case, a reverse trial may take place when the accused made



known to the trial court, on arraignment, that he adduce affirmative defense of a justifying or exempting circumstances and thus impliedly admitting the act imputed to him. The trial court may then require the accused to present evidence first, proving the requisites of the justifying or exempting circumstance he is invoking, and the prosecution to present rebuttal evidence controverting the same.

Trial; Speedy Trial (2007)

No.IX. L was charged with illegal possession of shabu before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postpones nineteen times over a period of two years. Twice during that period, L's counsel filed motions to dismiss, invoking the right of the accused to speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus. Reason briefly.

SUGGESTED ANSWER:

Yes, L can file a petition for mandamus to enforce his constitutional right to a speedy trial which was capriciously denied to him.

There is absolutely no justification for postponing an arraignment of the accused nineteen (19) times and over a period of two (2) years. The numerous, unreasonable postponements of the arraignment demonstrate an abusive exercise of discretion (Lumanlaw v. Peralta, 482 SCRA 396 [2006]). Arraignment of an accused would not take thirty minutes of the precious time of the court, as against the preventive imprisonment and deprivation of liberty of the accused just because he does not have the means to post bail although the crime charged is bailable.

The right to a speedy trial is guaranteed by the Constitution to every citizen accused of a crime, more so when is under preventive imprisonment. L, in the given case, was merely invoking his constitutional right when a motion to dismiss the case was twice filed by his counsel. The RTC is virtually enjoined by the fundamental law to respect such right; hence a duty. Having refused or neglected to discharge the duty enjoined by law whereas there is no appeal nor any plain, speedy, and adequate remedy



in the ordinary course of law, the remedy of mandamus may be availed of.

Trial; Trial in Absentia (2010)

No. XIX. (1) Enumerate the requisites of a "trial in absentia " (2%) and a "promulgation of judgment in absentia" (2%).

SUGGESTED ANSWER:

The requisites of a valid trial in absentia are: (1) accused's arraignment; (2) his due notification of the trial; (3) his unjustifiable failure to appear during trial (Bernardo vs. People, G.R. No. 166980, April 4, 2007).

The requisites for a valid promulgation of judgment are:

(a) A valid notice of promulgation of judgment;

(b) Said notice was duly furnished to the accused personally or thru counsel;

(c) Accused failed to appear on the scheduled date of promulgation of judgment despite due notice;

(d) Such judgment be recorded in the criminal docket;

(e) Copy of said judgment had been duly served upon the accused or his counsel.

(2) Name two instances where the trial court can hold the accused civilly liable even if he is acquitted. (2%)

SUGGESTED ANSWER:

The instances where the civil liability is not extinguished despite the acquittal of the accused where:

(1) The acquittal is based on reasonable doubt;

(2) Where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and

(3) Where the civil liability is not derived from or based on the criminal act of which the accused is acquitted (Remedios Nota Sapiera vs. Court of Appeals, September 14, 1999).

Evidence (Rules 128-134)

Admissibility; Admission of Guilt (2008)

No. XVI. The mutilated cadaver of a woman was discovered near a creek. Due to witnesses attesting that he was the last person seen with the woman when she was still alive, Carlito was arrested within five

hours after the discovery of the cadaver and brought to the police station. The crime laboratory determined that the woman had been raped. While in police custody, Carlito broke down in the presence of an assisting counsel orally confessed to the investigator that he had raped and killed the woman, detailing the acts he had performed up to his dumping of the body near the creek. He was genuinely remorseful. During the trial, the state presented the investigator to testify on the oral confession of Carlito. Is the oral confession admissible in evidence of guilt? (4%)

SUGGESTED ANSWER:

The declaration of the accused expressly acknowledging his guilt, in the presence of assisting counsel, may be given in evidence against him and any person, otherwise competent to testify as a witness, who heard the confession is competent to testify as to the substance o what he heard and understood it. What is crucial here is that the accused was informed of his right to an attorney and that what he says may be used in evidence against him. As the custodial confession was given in the presence of an assisting counsel, Carlito is deemed fully aware of the consequences of his statements (People v. Silvano, GR No. 144886, 29 April 2002).

Admissibility; Death of Adverse Party (2007)

No.II. (a) The surviving parties rule bars Maria from testifying for the claimant as to what the deceased Jose had said to her, in a claim filed by Pedro against the estate of Jose. (3%)

SUGGESTED ANSWER:

False. The said rule bars only parties-plaintiff and their assignors, or persons prosecuting a claim against the estate of a deceased; it does not cover Maria who is a mere witness. Furthermore, the disqualification is in respect of any matter of fact occurring before the death of said deceased (Sec. 23, Rule 130, Rules of Court, Razon v. Intermediate Appellate Court, 207 SCRA 234 [1992]). It is Pedro who filed the claim against the estate of Jose.

Admissibility; DNA Evidence (2010)

No.IX. In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused's. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)



SUGGESTED ANSWER:

As a private prosecutor, I shall try to discredit the results of the DNA test by questioning and possibly impugning the integrity of the DNA profile by showing a flaw/error in obtaining the biological sample obtained; the testing methodology employed; the scientific standard observed; the forensic DNA laboratory which conducted the test; and the qualification, training and experience of the forensic laboratory personnel who conducted the DNA testing.

Admissibility; DNA Evidence (2009)

No.I.[a] The Vallejo standard refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence.

SUGGESTED ANSWER:

TRUE. In People vs. Vallejo, 382 SCRA 192 (2002), it was held that in assessing the probative value of DNA evidence, courts should consider among other things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, whether the proper standards and procedures were followed in conducting the tests and the qualification of the analyst who conducted tests.

Admissibility; Evidence from Invasive and Involuntary Procedures (2010)

No. XIII. Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of shabu which they alleged to have swallowed Lorenzo.

Suppose the PGH agreed to, and did perform the surgery is the package of shabu admissible in evidence? Explain. (3%)

SUGGESTED ANSWER:

No, the package of shabu extracted from the body of Lorenzo is not admissible in evidence because it was obtained through surgery which connotes forcible invasion into the body of Lorenzo without his consent and absent due process. The act of the policemen and the PGH surgeon involved, violate the fundamental rights of Lorenzo, the suspect.

ALTERNATIVE ANSWER:



Yes, it is admissible in evidence because the constitutional right against self-incriminating evidence exists.

In the past, Supreme Court has already declared many invasive and involuntary procedures (i.e examination of women's genitalia, expulsion of morphine from one's mouth, DNA testing) as constitutionally sound.

Admissibility; Offer to Settle; Implied Admission of Guilt (2008)

No.VIII. Bembol was charged with rape. Bembol's father, Ramil, approached Artemon, the victim's father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

(A) During trial, the prosecution presented Artemon to testify on Ramil's offer and thereby establish and implied admission of guilt. Is Ramil's offer to settle admissible in evidence? (3%)

SUGGESTED ANSWER:

Yes, the offer to settle by the father of the accused, is admissible in evidence as an implied admission of guilt. (Peo v. Salvador, GR No. 136870-72, 28 January 2003)

ALTERNATIVE ANSWER:

No, Under Sec. 27, Rule 130 of the Rules of Court, it is the offer of compromise by the accused that may be received in evidence as an implied admission of guilt. The testimony of Artemon would cover the offer of Ramil and not an offer of the accused himself. (Peo v. Viernes, GR Nos. 136733-35, 13 December 2001)

(B) During the pretrial ,Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol'soffer a judicial admission of his guilt. (3%)

SUGGESTED ANSWER:

Yes, Bembol's offer is an admission of guilt (Sec. 33 Rule 130). If it was repeated by the private prosecutor in the presence of judge at the pretrial the extrajudicial confession becomes transposed into a judicial confession. There is no need of assistance of counsel. (Peo v. Buntag, GR No. 123070, 14 April 2004).

Best Evidence Rule; Electronic Evidence (2009)

No.XI. [d] An electronic evidence is the equivalent of an original document under the Best Evidence Rule if it is a printout or readable by sight or other means, shown to reflect the data accurately.



SUGGESTED ANSWER:

TRUE. This statement is embodied in Sec. 1, Rule 4 of A.m. No. 01-7-01-SC, re: Rules on Electronic Evidence.

Chain of Custody (2012)

No.II.A. (a) Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (5%)

SUGGESTED ANSWER:

In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. (People vs. Sitco, G.R. No. 178202, May 14, 2010, Velasco, Jr. J.). Ergo, the existence of the dangerous drug is a condition sine qua non for conviction. (People vs. De Guzman Y Danzil, G.R. No. 186498, March 26, 2010 Nachura J.). The failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused (People vs. De Guzman Y Danzil). Nonetheless, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs when: (1) such non-compliance is attended by justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before such non-compliance may be said to fall within the scope of then proviso. (People vs. Dela Cruz, G.R. No. 177222, October 29, 2008, 570 SCRA 273).

ALTERNATIVE ANSWER:

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. Thus, non-compliance by the apprehending/buy-bust team with Sec.21 of R.A. 9165 is not fatal as long



as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. (People vs. Mantalaba, G.R. No. 186227, July 20, 2011).

Character Evidence; Bad Reputation (2010)

No.XII. In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the Anti- Graft and Corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground/s. Respond. (3%)

SUGGESTED ANSWER:

The objection is on the ground that the fact sought to be elicited by the prosecution is irrelevant and immaterial to the offense under prosecution and trial. Moreover, the Rules do not allow the prosecution to adduce evidence of bad moral character of the accused pertinent to the offense charged, except on rebuttal and only if it involves a prior conviction by final judgment (Rule 130, Sec. 51, Rules of Court).

Doctrine of Adoptive Admission (2009)

No.I.D. Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it.

SUGGESTED ANSWER:

TRUE. The effect or consequence of the admission will bind also the party who adopted or espoused the same, as applied in Estrada vs. Desierto, 356 SCRA 108 [2001]\. An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person.

Hearsay Evidence; Objection (2012)

No.VII. (a) Counsel A objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection Sustained". Can Counsel 8 ask for a reconsideration of the ruling? Why? (5%)

SUGGESTED ANSWER:

Yes, Counsel B may ask the Judge to specify the ground's relied upon for sustaining the objection and thereafter move its reconsideration thereof. (Rule 132, Sec.38, Rules of Court).



Hearsay Rule (2007)

No.III. (a) What is the hearsay rule? (5%)

SUGGESTED ANSWER:

The hearsay rule is a rule of evidence to the effect that a witness can testify only to those facts which he knows of his own knowledge or derived from his own perceptions, except as otherwise provided in the rules of court (Rule 130, Sec. 36 Rules of Court).

(b) In relation to the hearsay rule, what do the following rules of evidence have in common? (5%)
(1) The rule on statements that are part of the res gestae.
(2) The rule on dying declarations.
(3) The rule on admissions against interest.

SUGGESTED ANSWER:

The rules on the evidence specified in the question asked, have in common the following:

(1) The evidence although hearsay, are allowed by the Rules as exceptions to the hearsay rule;

(2) The facts involved are admissible in evidence for reasons of necessity and trustworthiness; and

(3) The witness is testifying on facts which are not of his own knowledge or derived from his own perception.

Hearsay; Inapplicable (2009)

No.XIII. [b] Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto who shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%)

SUGGESTED ANSWER:

Objection overruled. The disclosure received by Domingo and Carla may be regarded as independently relevant statement which is not covered by the hearsay rule; hence admissible. The statement may be received not as evidence of the truth of what was stated but only as to the tenor thereof and the

occurrence when it was said, independently of whether it was true or false. (People v. Cloud, 333 Phil. 30 [1996]; People v. Malibiran, et al., G.R. No. 178301, April 24, 2009).

ALTERNATIVE ANSWER:

Objection sustained. The disclosure made by Carla has no other probative value except to identify who shot Betty. Its tenor is irrelevant to the incident, and the same was made not to a police investigator of the occurrence but to a nurse whose concern is only to attend to the patient. Hence, the disclosure does not qualify as independently relevant statement and therefore, hearsay. The nurse is competent to testify only on the condition of Betty when rushed to the Hospital but not as to who caused the injury. The prosecution should call on Carla as the best witness to the incident.

Offer of Evidence; Failure to Offer (2007)

No.VII. (b) G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F's evidence. Was the court correct? Explain briefly. (5%)

SUGGESTED ANSWER:

No, the trial court is not correct in ruling in favor of F. Tax Declaration are not by themselves evidence of ownership; hence, they are not sufficient evidence to warrant a judgment that F's father is a co-owner of the property.

Plaintiff's failure to make a formal offer of his evidence may mean a failure to prove the allegations in his complaint. However, it does not necessarily result in a judgment awarding co-ownership to the defendant.

While the court may not consider evidence which is not offered, the failure to make a formal offer of evidence is a technical lapse in procedure that may not be allowed to defeat substantive justice. In the interest of justice, the court can require G to offer his evidence and specify the purpose thereof.

Offer of Evidence; Fruit of a Poisonous Tree (2010)

No. VIII. Dominique was accused of committing a violation of the human Security Act. He was detained



incommunicado, deprived of sleep, and subjected to water torture. He later allegedly confessed his guilt via an affidavit.

After trial, he was acquitted on the ground that his confession was obtained through torture, hence, inadmissible as evidence.

In a subsequent criminal case for torture against those who deprived him of sleep and subjected him to water torture. Dominique was asked to testify and to, among other things, identify his above said affidavit of confession. As he was about to identify the affidavit, the defense counsel objected on the ground that the affidavit is a fruit of a poisonous tree. Can the objection be sustained? Explain. (3%)

SUGGESTED ANSWER:

No, the objection may not be sustained on the ground stated, because the affiant was only to identify the affidavit which is not yet being offered in evidence.

The doctrine of the poisonous tree can only be invoked by Domingo as his defense in the crime of Violation of Human Security Act filed against him but not by the accused torture case filed by him.

In the instant case, the presentation of the affidavit cannot be objected to by the defense counsel on the ground that is a fruit of the poisonous tree because the same is used in Domingo's favor.

Offer of Evidence; Fruit of a Poisonous Tree (2009)

No.VI. Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of "shabu" were confiscated from him. Edmond consented and also signed a receipt for the amount of P3,000, allegedly representing the "purchase price of the shabu." At the trial, the arresting officer testified and identified the documents executed and signed by Edmond. Edmond's lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond.

Edmond's lawyer object to the admissibility of the document for being the fruit of the poisoned tree. Resolve the objection with reasons. (3%)

SUGGESTED ANSWER:

The objection to the admissibility of the documents which the arresting officer asked Edmond to sign without the benefit of counsel, is well-taken. Said documents having been signed by the



accused while under custodial investigation, imply an "admission" without the benefit of counsel, that the shabu came from him and that the P3,000,00 was received by him pursuant to the illegal selling of the drugs. Thus, it was obtained by the arresting officer in clear violation of Sec. 12 (3), Art. III of the 1987 Constitution, particularly the right to be assisted by counsel during custodial investigation.

Moreover, the objection to the admissibility of the evidence was timely made, i.e., when the same is formally offered.

Privilege Communication (2013)

No.IX. For over a year, Nenita had been estranged from her husband Walter because of the latter's suspicion that she was having an affair with Vladimir, a barangay kagawad who lived in nearby Mandaluyong. Nenita lived in the meantime with her sister in Makati. One day, the house of Nenita's sister inexplicably burned almost to the ground. Nenita and her sister were caught inside the house but Nenita survived as she fled in time, while her sister tried to save belongings and was caught inside when the house collapsed.

As she was running away from the burning house, Nenita was surprised to see her husband also running away from the scene. Dr. Carlos, Walter's psychiatrist who lived near the burned house and whom Walter medically consulted after the fire, also saw Walter in the vicinity some minutes before the fire. Coincidentally, Fr. Platino, the parish priest who regularly hears Walter's confession and who heard it after the fire, also encountered him not too far away from the burned house.

Walter was charged with arson and at his trial, the prosecution moved to introduce the testimonies of Nenita, the doctor and the priest-confessor, who all saw Walter at the vicinity of the fire at about the time of the fire.

(A) May the testimony of Nenita be allowed over the objection of Walter? (3%)

SUGGESTED ANSWER:

No. Nenita may not be allowed to testify against Walter. Under the Marital Disqualification Rule, during their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Section 22, Rule 130, Rules on Evidence). The foregoing exceptions cannot apply since



it only extends to a criminal case of one spouse against the other or the latter's direct ascendants or descendants. Clearly, Nenita is not the offended party and her sister is not her direct ascendant or descendant for her to fall within the exception.

ALTERNATIVE ANSWER:

Yes. Nenita may be allowed to testify against Walter. It is well settled that the marital disqualification rule does not apply when the marital and domestic relations between spouses are strained.

In Alvarez vs. Ramirez, G.R. No. 143439, October 14, 2005, the Supreme Court citing People vs. Castaneda, 271 SCRA 504, held that the act of private respondent in setting fire to the house of his sister-in-law Susan Ramirez, Knowing fully well that his wife was there, and in fact with the alleged intent of injuring the latter, is an act totally alien to the harmony and confidences of marital relation which the disqualification primarily seeks to protect. The criminal act complained of had the effect of directly and vitally impairing the conjugal relation. It underscored the fact that the marital and domestic relations between her and the accused-husband have become so strained that there is no more harmony, peace or tranquillity to be preserved. Hence, the identity is non-existent. In such a situation, the security and confidences of private life which the law aims to protect are nothing but ideals which through their absence, merely leave a void in the unhappy home. Thus, there is no reason to apply the Marital Disqualification Rule.

(B) May the testimony of Dr. Carlos, Walter's psychiatrist, be allowed over Walter's objection? (3%)

SUGGESTED ANSWER:

Yes. The testimony of Walter's psychiatrist may be allowed. The privileged communication contemplated under Sec. 24 (c) Rule 130 of the Rules on Evidence involves only persons authorized to practice medicine, surgery or obstetrics. It does not include a Psychiatrist. Moreover, the privileged communication applies only in civil cases and not in a criminal case for arson.

Besides, the subject of the testimony of Dr. Carlos was not in connection with the advice or treatment given by him to Walter, or any information he acquired in attending to Walter in a professional capacity. The testimony of Dr. Carlos is limited only to what he perceived at the vicinity of the fire and at the time of the fire.



(C) May the testimony of Fr. Platino, the priest-confessor, be allowed over Walter's objection? (3%)

SUGGESTED ANSWER:

Yes. The Priest can testify over the objection of Walter. The disqualification requires that the same were made pursuant to a religious duty enjoined in the course of discipline of the sect or denomination to which they belong and must be confidential and penitential in character, e.g., under the seal of confession (Sec. 24 (d) Rule 130, Rules on Evidence).

Here, the testimony of Fr. Platino was not previously subject of a confession of Walter or an advice given by him to Walter in his professional character. The Testimony was merely limited to what Fr. Platino perceived "at the vicinity of the fire and at about the time of the fire." Hence, Fr. Platino may be allowed to testify.

Privilege Communication; Lawyer-Client (2008)

No.XIV. On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008 and the second on August 16, 2008; and that both visits concerned the swindling of Petronilo. During the trial of Edgardo, the RTC issued a subpoena ad testificandum to Edgardo's lawyer for him to testify on the conversations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

SUGGESTED ANSWER:

Yes, the mantle of privileged communication based on lawyer-client relationship protects the communication between a lawyer and his client against any adverse party as in this case. The subpoena requiring the lawyer to testify can be quashed on the ground of privileged communication (See Regala v. Sandiganbayan, GR No. 105938, 20 September 1996). Sec. 24 (b) Rule 130 provides that an attorney cannot, without the consent of his client be examined in any communication made to him by his client to him, or his advice given thereon, including his secretary, stenographer, clerk concerning any fact the knowledge of which has been acquired in such capacity. However, where the subject matter of the communication involves the commission of the crime, in which the lawyer himself



is a participant or conspirator, then the same is not covered by the privilege. Moreover, if the substance of the communication can be established by independent evidence, the lawyer maybe compelled to testify.

Privilege Communication; Lawyer-Client (2008)

No.XX. A tugboat owned by Speedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five (5) crews in the resulting shipwreck. At the maritime board inquiry, the four (4) survivors testified. SPS engaged Atty. Ely to defend it against potential claims and to sue the company owning the other vessel for damages to tug. Ely obtained signed statements from the survivors. He also interviewed other persons, in some instance making memoranda. The heirs of the five (5) victims filed an action for damages against SPS. Plaintiffs' counsel sent written interrogatories to Ely, asking whether statements f witnesses were obtained; if written copies were to be furnished; if oral, the exact provision were to be set forth in detail. Ely refused to comply, arguing that the documents and information asked are privileged communication. Is the contention tenable? Explain (4%)

SUGGESTED ANSWER:

Yes, the lawyer-client privilege covers any communication made by the client to the lawyer, or the lawyer's advice given thereon in the course of, or with a view to professional employment. The documents and information sought were gathered and prepared pursuant to the engagement of Ely as a lawyer for the company (Air Philippines Corporation v. Pennswell, Inc., GR No. 172835, 13 December 2007). Sec. 5, Rule 25 of the Rules of Court provides that interrogatories may relate to any matter that can be required into under Sec. 2, Rule 23 o depositions and discovery refers to privileged confidential communications under Sec. 24, Rule 130.

Privilege Communication; Marital Privilege (2010)

No. I. On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, pa2tayin u ni Mabini. Mtgal n nyang plano i2. Mg ingat u bka ma tsugi k."

(A) A subpoena ad testificandum was served on Gregoria for her to be presented for the

purpose of identifying her cellphone and the tex message. Mabini objected to her presentation on the ground of marital privilege. Resolve.

SUGGESTED ANSWER:

The objection should be sustained on the ground of the marital disqualification rule (Rule 130, Sec. 22), not on the ground of the "marital privilege" communication rule (Rule 130, Sec. 24). The marriage between Mabini and Gregoria is still subsisting and the situation at bar does not come under the exceptions to the disqualification by reason of marriage.

(B) Suppose Mabini's objection in question A was sustained. The prosection thereupon announced that it would be presenting Emilio's wife Graciana to identify Emilio's cellphone bearing Gregoria's text message. Mabini objected again. Rule on the objection. (2%)

SUGGESTED ANSWER:

The objection should be overruled. The testimony of Graciana is not covered by the said marital disqualification rule because she is not the wife of Mabini. Besides, Graciana will identify only the cellphone as that of her husband Emilio, not the messages therein which to her are hearsay.

(C) If Mabini's objection in question B was overruled, can he object to the presentation of the text message on the ground that it is hearsay? (2%)

SUGGESTED ANSWER:

No, Gregoria's text message in Emilio's cellphone is not covered by the hearsay rule because it is regarded in the rules of evidence as independently relevant statement: the text message is not to prove the truth of the fact alleged therein but only as to the circumstances of whether or not premeditation exists.

(C) Suppose that shortly before expired, Emilio was able to send a text message to his wife Graciana reading "Nasaksak ako. D na me makahinga. Si Mabini ang may gawa ni2." Is this message admissible as a dying declaration? Explain. (3%)

SUGGESTED ANSWER:

Yes, the text message is admissible as a dying declaration since the same came fdrom the victim who "shortly" expired and it is in respect of the cause and circumstance of his death. The decisive factor that the message was made and sent under consciousness of an impending death, is evidently attendant from the victim's statement: "D na me makahinga" and the fact that he died shortly after he sent the text message.



However, cellphone messages are regarded as electronic evidence, and i a recent case (Ang vs. Court of Appeals et al., GR NO. 182835, April 20, 2010), the Supreme Court ruled that the Rules on Electronic Evidence applies only to civil actions, quasi-judicial proceedings and administrative proceeding, not to criminal actions.

ALTERNANTIVE ANSWER:

No, the text message is not admissible as a dying declaration because it lacks indication that the victim was under consciousness of an impending death. The statement "D na me makahinga" is still unequivocal in the text message sent that does not imply consciousness of forth-coming death.

Witness; Examination of Witness (2009)

No.1.[b] The One-Day Examination of witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial.

SUGGESTED ANSWER:

TRUE. Par. 5(i) of Supreme Court A.M. No. 03-1-09-SC requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the court's discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons. On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court. However, the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132.

ALTERNATIVE ANSWER:

FALSE. This rule is not absolute: it will still allow the trial judge the discretion whether to extend the direct and/or cross examination for justifiable reasons or not. The exercise of this discretion may still result in wrangling as to the proper exercise of the trial court's discretion, which can delay the proceedings.

Summary Procedure

Prohibited Pleadings (2010)

No. X. Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US



authorities in connection with the Balikatan exercises.

Marinella alleges that as a result of her exposé, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed.

Atty. Daro, counsel for the Chief of Staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro's motion. Explain. (3%)

SUGGESTED ANSWER:

The motion to dismiss must be denied on the ground that it is a prohibited pleading under Section 11 (a) of the Rule on the Writ of Amparo. Moreover, said Rule does not require the petition therefor to allege a complete detail of the actual or threatened violation of the victim's rights. It is sufficient that there be an allegation of real threat against petitioner's life, liberty, and/or security (Gen. A. Razon, Jr. vs. Tagitis, G.R. No. 182498, Dec. 03, 2009).

Miscellaneous

Alternative Dispute Resolution; Court Diversion; Stages (2012)

No.VIII.B. Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

SUGGESTED ANSWER:

The three stages of diversion are Court-Annexed Mediation (CAM), Judicial Dispute Resolution, and Appeals Court Mediation (ACM). During CAM, the judge refers the parties to the Philippine Mediation Center (PMC) for the mediation of their dispute by trained and accredited mediators. If CAM fails, the JDR is undertaken by the JDR judge, acting as a mediator-conciliator-early neutral evaluator. The third case is during appeal, where covered cases are referred to ACM.

A.M. No. 09-6-8-SC; Precautionary Principle (2012)

No.II.B. What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (5%)

SUGGESTED ANSWER:

Precautionary principles states that when human activities may lead to threats of serious and irreversible

damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat. In its essence, the precautionary principle calls for the exercise of caution in the face of risk and uncertainty (Sec. 4 [f], Rule 1, Part 1, and Rule 20, A.M. No. 09-6-8-SC, Rules of Procedure for Environment Cases).

Habeas Data (2010)

No.XX. Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved by her co-employees because she extends cash advances or "vales " to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her.

Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat.

Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company's refusal to disclose the results of its investigation.

Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of habeas data before the Regional Trial Court (RTC) to enjoin Temptation, Inc. from transferring her on the ground that the company's refusal to provide her with a copy of the investigation results compromises her right to life, liberty and privacy.

Resolve the petition. Explain. (5%)

SUGGESTED ANSWER:

Azenith's petition for the issuance of a writ of habeas data must be dismissed as there is no showing that her right to privacy in life, liberty, or security is violated or threatened by an unlawful act or omission. Neither was the company shown to be engaged in the gathering, collecting nor storing of data or information regarding the person, family, home and correspondence of the aggrieved party (Sec. 1, Rule on the Writ of Habeas Data).

Habeas Data (2009)

No.XIX.C. What is the writ of habeas data?

SUGGESTED ANSWER:

A writ of habeas data is a remedy available to any persons whose right to privacy in life, liberty, or security is



violated or threatened with violation by unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

R.A. 3019; Pre-Suspension Hearing (2012)

No.IX.A. X, an undersecretary of DENR, was charged before the Sandiganbayan for malversation of public funds allegedly committed when he was still the Mayor of a town in Rizal. After arraignment, the prosecution moved that X be preventively suspended. X opposed the motion arguing that he was now occupying a position different from that which the Information charged him and therefore, there is no more possibility that he can intimidate witnesses and hamper the prosecution. Decide. Suppose X files a Motion to Quash challenging the validity of the Information and the Sandiganbayan denies the same, will there still be a need to conduct a pre-suspension hearing? Explain. (5%)

SUGGESTED ANSWER:

There is no necessity for the court to conduct pre-suspension hearing. Under Section 13 of RA No. 3019, an incumbent public officer against whom any criminal prosecution under a valid information for graft-related crime such as malversation is pending in court, shall be suspended from office. The word "office", from which the public officer charged shall be preventively suspended, could apply to any office, which he might currently be holding and not necessarily the particular office under which he was charged. The preventive suspension of the following public officers was sustained: (1) a mayor, who was charged with acts committed as a government auditor of the Commission on Audit (Bayot vs. Sandiganbayan, G.R. No. L-61776 to L-61861, March 23, 1984); (2) a public officer, who was already occupying the office of governor and not the position of municipal mayor that he held previously when charged with having violated Anti-Graft Law (Deloso vs. Sandiganbayan, G.R. No. 86899, May 15, 1989); (3) a Vice-Governor, whose suspension is predicated on his acts supposedly committed while still a member of the Sangguniang Bayan (Libanan vs. Sandiganbayan, G.R. No. 112386, June 14, 1994). Thus, the DENR undersecretary can be preventively suspended even though he was a mayor, when he allegedly committed malversation.



Settled is the rule that where the accused files a motion to quash the information or challenges the validity thereof, a show cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information, and thereafter hand down its ruling, issuing the corresponding order of suspension should it uphold the validity of the information (Luciano vs. Mariano, G.R. No. L-32950, July 30, 1971). Since a pre-suspension hearing is basically a due process requirement, when an accused public official is given an adequate opportunity to be heard on his possible defenses against the mandatory suspension under RA No. 3019, then an accused would have no reason to complain that no actual hearing was conducted (Miguel vs. The Honorable Sandiganbayan, G.R. No. 172035, July 4, 2012). In the facts given, the DENR Undersecretary was already given opportunity to question the validity of the Information for malversation by filing a motion to quash, and yet, the Sandiganbayan sustained its validity. There is no necessity for the court to conduct pre-suspension hearing to determine for the second time the validity of the information for purpose of preventively suspending the accused.

ALTERNATIVE ANSWER:

The argument that X should not be suspended as he now holds an office different from that charged in the information is unavailing. Under Section 13(e) of RA 3019, a public officer may be charged before the Sandiganbayan for "causing undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." The Supreme Court has held that Section 13 of RA 3019 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Preventive suspension is mandatory regardless of the respondent's change in position.

R.A. 3019; Remedies (2013)

No.VII. You are the defense counsel of Angela Bituin who has been charged under RA 3019 (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant

of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

(A) What "before-trial" remedy would you invoke in Angela's behalf to address the fact that she had not been investigated at all, and how would you avail of this remedy? (4%)

SUGGESTED ANSWER:

I will file a Motion for the conduct of preliminary investigation or reinvestigation and the quashal or recall of the warrant of arrest in the Court where the case is pending with an additional prayer to suspend the arraignment. Under Section 6 of Rule 112 of the Rules of Court, after the filing of the complaint or information in court without a preliminary investigation, the accused may within five days from the time he learns of its filing ask for preliminary investigation with the same right to adduce evidence in his defense.

Moreover, Section 26, Rule 114 of the Rules on Criminal Procedure provides that an application for or admission to bail shall not bar the accused from challenging the validity of his arrest or legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

ALTERNATIVE ANSWER:

I will file a Motion to Quash on the ground that the Sandiganbayan has no jurisdiction over the person of the accused (Section 3, Rule 117 of the Rules of Criminal Procedure).

The Sandiganbayan has exclusive original jurisdiction over violations of R.A. 3019 (Anti-graft and Corrupt Practices law) where one or more of the accused are officials occupying the enumerated positions in the government whether in a permanent, acting, or interim incapacity, at the time of the commission of the offense (Sec. 4, R.A. 8249).

In Bondoc vs. Sandiganbayan, G.R. No. 71163-65, November 9, 1990, the Supreme Court held that before the Sandiganbayan may lawfully try a private individual under PD 1606, the following requisites must be established: (a) he must be charged with a public officer/employee; and (b) he must be tried jointly. Since the aforementioned



requisites are not present, the Sandiganbayan has no jurisdiction.

(B) What "during-trial" remedy can you use to allow an early evaluation of the prosecution evidence without the need of presenting defense evidence; when and how can you avail of this remedy? (4%)

SUGGESTED ANSWER:

I will file a Motion for Leave to file a Demurrer to Evidence within five (5) days from the time the prosecution has rested its case. If the motion is granted, I will file a demurrer to evidence within a non-extendible period of Ten (10) days from notice. However, if the motion for leave to file demurrer to evidence is denied, I can adduce evidence for the accused during the trial to meet squarely the reasons for its denial (Section 23, Rule 119, Rules of Criminal Procedure). This remedy would allow the early evaluation of the sufficiency of prosecution's evidence without the need of presenting defense evidence. It may be done through the court's initiative or upon motion of the accused and after the prosecution rested its case.

Small Claims (2013)

No.X. As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counseling and the notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this practice and location, he did not have big-time clients but enjoyed heavy patronage assisting walk-in clients.

(A) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases? (3%)

SUGGESTED ANSWER:

Atty. Novata may provide legal assistance to his clients by giving counselling and guidance in the preparation and accomplishment of the necessary documents and Affidavits to initiate or defend a small claims action including the compilation and notarization of the aforementioned documents, if necessary.

(B) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (4%)

SUGGESTED ANSWER:

Atty. Novata may file a petition for Certiorari under Rule 65 of the Rules of



Court before the RTC since a decision in small claims cases is final and unappealable (Sec. 23, A.M. No. 8-8-7 SC, Rules of Procedure for Small Claims Cases). The petition for certiorari should be filed before the RTC conformably to the Principle of judicial Hierarchy.

Writ of Amparo; Habeas Corpus (2009)

No.XIX.B. What is the writ of amparo? How is it distinguished from the writ of habeas corpus?

SUGGESTED ANSWER:

A writ of amparo is a remedy available to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.

Whereas a writ of habeas corpus is a remedy available to any individual who is deprived of liberty or whose rightful custody of any person is withheld, by unlawful confinement or detention.

A writ of amparo may be appealed to the Supreme Court under Rule 45 raising questions of fact or law or both. The appeal shall be made within 5 working days from the date of notice of the adverse judgment.

The period for appeal for habeas corpus shall be 48hours from the notice of the judgment appealed from.

-End-



MULTIPLE CHOICE QUESTIONS (MCQ)

2013 Remedial Law Exam MCQ (October 27, 2013)

2013 Bar Examination Questionnaire for Remedial Law

MULTIPLE CHOICE QUESTIONS

I. In a complaint filed by the plaintiff, what is the effect of the defendant's failure to file an answer within the reglementary period? (1%)

(A) The court is allowed to render judgment motu proprio in favor of the plaintiff.

(B) The court motu proprio may declare the defendant in default, but only after due notice to the defendant.

(C) The court may declare the defendant in default but only upon motion of the plaintiff and with notice to the defendant.

(D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant's failure to answer.

(E) The above choices are all inaccurate.

SUGGESTED ANSWERS:

(D), Under Section 3 of Rule 9, if the defending party fails to answer within the time allowed, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default (Narciso vs. Garcia, G.R. No. 196877, November 21, 2012, Abad J.).

(E), D may not be the correct answer because the Rule provides that if the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Notably, the Rule uses the word "shall and not may."

II. Which of the following is admissible? (1%)

(A) The affidavit of an affiant stating that he witnessed the execution of a deed of sale but the affiant was not presented as a witness in the trial.



(B) The extra judicial admission made by a conspirator against his co-conspirator after the conspiracy has ended.

(C) The testimony of a party's witness regarding email messagesthe witness received from the opposing party.

(D) The testimony of a police officer that he had been told by his informants that there were sachets of shabu in the pocket of the defendant.

(E) None of the above.

SUGGESTED ANSWERS:

(C), (D), or (E)

(C), The E-mail messages are considered electronic data message or electronic document under the Rules on Electronic Evidence and therefore admissible as evidence.

The terms "electronic data message" and "electronic document" are defined in the Rules on Electronic Evidence. Thus:

(g) "Electronic data message" refers to information generated, sent, received or stored by electronic, optical or similar means.

(h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any printout or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message" (Section 1, (g), (h) Rule 2, AM No. 01-7-01-SC, Rules on Electronic Evidence).

In MCC Industrial Sales Corporation vs. Ssangyong Corporation, G.R. No. 170633, the Supreme Court held that R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000, considers an electronic data message or an electronic document as functional equivalent of a written document for evidentiary purposes. The Rules on Electronic Evidence regards an electronic document as admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of



Court and related laws, and is authenticated in the manner prescribed by the said Rules. An electronic document is also the equivalent of an original document under the Best Evidence Rule, if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

(D), If the testimony is being offered for the purpose of establishing that such statements were made, then the testimony is admissible as independent relevant statement.

The Doctrine on independent relevant statement holds that conversations communicated to a witness by a third person may be admitted as proof, regardless of their truth or falsity, that they were actually made (Republic vs. Heirs of Alejaga Sr., G.R. No. 146030, December 3, 2002).

The doctrine of independently relevant statements is an exception to hearsay rule. It refers to the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The hearsay rule does not apply: hence, the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact. The witness who testifies thereto is competent because he heard the same, as this is a matter of fact derived from his own perception, and the purpose is to prove either that the statement was made or the tenor thereof (People vs. Malibiran, G.R. No. 178301, April 24, 2009, Austri-Martinez, J.).

(E), The problem does not clearly provide the purposes for which the evidence under (C) and (D) are being offered.

Moreover, all of the choices above cannot be admitted to prove the truth of the contents thereof for the reason that the evidence is not competent. For letter (A), the affiant is not presented, and hence hearsay. Letter (B), the admission was made after the termination of the conspiracy and extrajudicial, hence there is no application of the Res Inter Alios Acta rule. Letter (C) is also not allowed as under the Electronic Evidence Rule, the output readable by sight is the best evidence to prove the contents thereof. Letter (D) is hearsay since the affiant does not have personal knowledge.

III. Leave of court is required to amend a complaint or information before arraignment if the amendment _____. (1%)



(A) upgrades the nature of the offense from a lower to a higher offense and excludes any of the accused

(B) upgrades the nature of the offense from a lower to a higher offense and adds another accused

(C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused

(D) downgrades the nature of the offense from a higher to a lower offense and adds another accused

(E) All the above choices are inaccurate.

SUGGESTED ANSWER:

(C), Under Section 14 of Rule 110 of the Rules of Criminal Procedure, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with the leave of court.

IV. A Small Claims Court _____. (1%)

(A) has jurisdiction over ejectment actions

(B) has limited jurisdiction over ejectment actions

(C) does not have any jurisdiction over ejectment actions

(D) does not have original, but has concurrent, jurisdiction over ejectment actions

(E) has only residual jurisdiction over ejectment actions

SUGGESTED ANSWER:

(C), Under Section 4 of A.M. No. 8-8-7-SC, Rules of Procedure of Small Claims, Small claims court shall have jurisdiction over all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 of the Revised Rules of Criminal Procedure. It does not include ejectment actions. Moreover, the action allowed under the Rules on Small claims refers only to money under a lease contract. It does not necessarily refer to an ejectment suit.

At any rate, Section 33 of Batas Pambansa Blg 129, as amended by Section 3 of R.A> 7691, as well as Section 1, Rule 70 of the Rules of Court, clearly provides that forcible entry and unlawful detainer cases fall within the exclusive jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts (Estel vs. Recaredo Diego, Sr. And Recaredo Diego, Jr., G.R. No. 174082, January 16, 2012, Peralta, J.).

V. Character evidence is admissible _____. (1%)

(A) in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged

(B) in criminal cases – the prosecution may prove the bad moral character of the accused to prove his criminal predisposition

(C) in criminal cases under certain situations, but not to prove the bad moral character of the offended party

(D) when it is evidence of the good character of a witness even prior to his impeachment as witness

(E) In none of the given situations above.

SUGGESTED ANSWER:

(A), Under Section 51, Rule 130 of the Rules of Court, the accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged. (Section 51 (a) (1) Rule 130, Rules on Evidence).

VI. When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (1%)

(A) After the decision has become final and executory.

(B) At any time after the failure of the defendant to pay the judgment amount.

(C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.

(D) The mortgaged property is never sold at public auction.



(E) The mortgaged property may be sold but not in any of the situations outlined above.

SUGGESTED ANSWER:

(C), Under Section 2 of Rule 68, if upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment oblige within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

VII. The signature of counsel in the pleading constitutes a certification that _____. (1%)

(A) both client and counsel have read the pleading, that to the best of their knowledge, information and belief there are good grounds to support it, and that it is not interposed for delay

(B) the client has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay

(C) the counsel has read the pleading, that to the best of the client's knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay

(D) the counsel has read the pleading, that based on his personal information, there are good grounds to support it, and that it is not interposed for delay

(E) The above choices are not totally accurate.

SUGGESTED ANSWER:

(E), Section 3 of Rule 7 provides that the signature of counsel constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

VIII. Which among the following is a requisite before an accused may be discharged to become a state witness? (1%)



(A) The testimony of the accused sought to be discharged can be substantially corroborated on all points.

(B) The accused does not appear to be guilty.

(C) There is absolute necessity for the testimony of the accused whose discharge is requested.

(D) The accused has not at any time been convicted of any offense.

(E) None of the above.

SUGGESTED ANSWER:

(C), Under Section 17 of Rule 119 of the Rules of Criminal Procedure, when two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is required;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence (People vs. Feliciano Anabe Y Capillan, G.R> No. 179033, September 6, 2010, Carpio-Morales, J.).

IX. Which of the following distinguishes a motion to quash from a demurrer to evidence? (1%)



(A) A motion to quash a complaint or information is fi led before the prosecution rests its case.

(B) A motion to quash may be fi led with or without leave of court, at the discretion of the accused.

(C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.

(D) The grounds for a motion to quash are also grounds for a demurrer to evidence.

(E) The above choices are all wrong.

SUGGESTED ANSWER:

(C), Under Section 4 of Rule 117, if the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Section 5 of Rule 117 also provides that if the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made nor if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge.

X. Which among the following is not subject to mediation for judicial dispute resolution? (1%)

(A) The civil aspect of B.P. Blg. 22 cases.

(B) The civil aspect of theft penalized under Article 308 of the Revised Penal Code.

(C) The civil aspect of robbery.

(D) Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law.

(E) None of the above.

SUGGESTED ANSWER:



(C), Under A.M. No. 04-1-12-SC-Philja, all of the above, except for Robbery is subject to JDR, to wit:

This pilot-test shall apply to the following cases:

(1) All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure, except those which by law may not be compromised;

(2) Cases cognizable by the Lupong Tagapamayapa and those cases that may be referred to it by the judge under Section 408. Chapter VII of the R.A No. 7160, otherwise known as the 1991 Local Government Code:

(3) The civil aspect of BP 22 cases;

(4) The civil aspect of quasi-offenses under Titl 14 of the Revised Penal Code; and

(5) The civil aspect of Estafa, Libel, Theft

Moreover, robbery is considered a grave felony punishable by imprisonment of more than six-years (Article 294, Par. 5, Revised Penal Code).

Under A.M. No. 11-1-6-SC-PHILJA dated January 11, 2001, only the civil aspect of less grave felonies punishable by correctional penalties not exceeding six years imprisonment are required to undergo Court-Annexed Mediation (CAM) and be subject of Judicial Dispute Resolution (JDR) proceedings. Hence, the civil aspect of robbery is not subject to mediation or Judicial Dispute Resolution (JDR).

XI. What is the effect of the pendency of a special civil action under Rule65 of the Rules of Court on the principal case before the lower court? (1%)

(A) It always interrupts the course of the principal case.

(B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.

(C) The lower court judge is given the discretion to continue with the principal case.

(D) The lower court judge will continue with the principal case if he believes that the special civil action was meant to delay proceedings.

(E) Due respect to the higher court demands that the lower court judge temporarily suspend the principal case.



SUGGESTED ANSWER:

(B), Under Section 7 of Rule 65, the court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case (A.M. No. 07-7-12-SC, December 12, 2007; Churchille B. Mari & People of the Phils. Vs. Hon. Rolando A. Gonzales & PO1 Rudyard Paloma, G.R. No. 187728, September 12, 2011, Peralta, J.).

XII. Findings of fact are generally not disturbed by the appellate court except in cases _____. (1%)

(A) where the issue is the credibility of the witness

(B) where the judge who heard the case is not the same judge who penned the decision

(C) where the judge heard several witnesses who gave conflicting testimonies

(D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case

(E) None of the above.

SUGGESTED ANSWER:

(D), In Miranda vs. People, G.R. No. 176298, January 25, 2012, the Supreme Court explained that absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, the Court should give deference to the trial court's appreciation of the facts and of the credibility of witness.

XIII. Contempt charges made before persons, entities, bodies and agencies exercising quasi-judicial functions against the parties charged, shall be filed with the Regional Trial Court of the place where the _____. (1%)

(A) person, entity or agency exercising quasi-judicial function is located

(B) person who committed the contemptuous act resides



(C) act of contempt was committed

(D) party initiating the contempt proceeding resides

(E) charging entity or agency elects to initiate the action

SUGGESTED ANSWER:

(C), Under Section 12 of Rule 71, unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor.

XIV. When may a party fi le a second motion for reconsideration of a final judgment or final order? (1%)

(A) At anytime within 15 days from notice of denial of the first motion for reconsideration.

(B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.

(C) A party is not allowed to fi le a second motion for reconsideration of a final judgment or final order.

(D) A party is allowed as a matter of right to fi le a second motion for reconsideration of a judgment or final order.

(E) None of the above.

SUGGESTED ANSWER:

(B), A second motion for reconsideration is allowed but only when there are extraordinary persuasive reasons and only after an express leave shall have been obtained (Suarez vs. Judge Dilag, A.M. No. RTJ-06-2014, August 16, 2011; League of Cities vs. COMELEC, G.R. No. 176951, June 28, 2011).

XV. In an original action for certiorari, prohibition, mandamus, or quo warranto , when does the Court of Appeals acquire jurisdiction over the person of the respondent? (1%)

(A) Upon the service on the respondent of the petition for certiorari, prohibition, mandamus or quo warranto, and his voluntary



submission to the jurisdiction of the Court of Appeals.

(B) Upon service on the respondent of the summons from the Court of Appeals.

(C) Upon the service on the respondent of the order or resolution of the Court of Appeals indicating its initial action on the petition.

(D) By respondent's voluntary submission to the jurisdiction of the Court of Appeals.

(E) Under any of the above modes.

SUGGESTED ANSWER:

(C) and (D), Under Section 4, Rule 46 of the Revised Rules of Civil Procedure, the court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction. (n)

XVI. Extra-territorial service of summons is proper in the following instances, except _____. (1%)

(A) when the non-resident defendant is to be excluded from any interest on a property located in the Philippines

(B) when the action against the non-resident defendant affects the personal status of the plaintiff and the defendant is temporarily outside the Philippines

(C) when the action is against a non-resident defendant who is formerly a Philippine resident and the action affects the personal status of the plaintiff

(D) when the action against the non-resident defendant relates to property within the Philippines in which the defendant has a claim or lien

(E) All of the above.

SUGGESTED ANSWER:

There is no correct answer. Under Section 15 of Rule 14 of the Rules of Court, extraterritorial service of summons is applicable, when the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or



contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been in the Philippines.

In Spouses Domingo M. Belen vs. Hon. Pablo R. Chavez, G.R. No.175334, march 26, 2008, the Supreme Court held that if the resident defendant is temporarily out of the country, any of the following modes of service may be resorted to: (1) Substituted service set forth in Section 8; (2) personal service outside the country, with leave of court; (3) service by publication, also with leave of court; or (4) any other manner the court may deem sufficient.

Hence, extra-territorial service of summons is applicable to all choices given above.

ALTERNATIVE ANSWER:

(B), Under Section 16, Rule 14 of the Rules of Civil Procedure, when any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be also effected out of Philippines, as under the preceding section (Section 15, Rule 14). Clearly, a non-resident defendant cannot be considered temporarily outside the Philip[pines because Section 14, Rule 14 refers to a resident defendant who is only temporarily outside the Philippines.

XVII. When is attachment improper in criminal cases? (1%)

(A) When the accused is about to abscond from the Philippines.

(B) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a broker, in the course of his employment as such.

(C) When the accused is about to conceal, remove, or dispose of his property.

(D) When the accused resides outside the jurisdiction of the trial court.

SUGGESTED ANSWER:

(D), Under Section 2 of Rule 127, when the civil action is properly instituted in the criminal action as provided in Rule 111, the offended party may have the property of the accused attached as security for the satisfaction of any judgment that may be recovered from the accused in the following cases:



(a) When the accused is about to abscond from the Philippines;

(b) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a public officer, officer of a corporation, attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a wilful violation of duty;

(c) When the accused has concealed, removed, or disposed of his property, or is about to do so; and

(d) When the accused resides outside the Philippines.

XVIII. Maria was accused of libel. While Maria was on the witness stand, the prosecution asked her to write her name and to sign on a piece of paper, apparently to prove that she authored the libelous material. Maria objected as writing and signing her name would violate her right against self-incrimination. Was Maria's objection proper? (1%)

(A) No, she can be cross examined just like any other witness and her sample signature may be taken to verify her alleged authorship of the libelous statements.

(B) No, her right against self-incrimination is waived as soon as she became a witness.

(C) No, this privilege may be invoked only by an ordinary witness and not by the accused when she opts to take the witness stand.

(D) The objection was improper under all of A, B, and C.

(E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.

SUGGESTED ANSWER:

(E), Section 17, Article III of the 1987 Constitution provides that no person shall be compelled to be a witness against himself. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act (People vs. Casinillo, 213 SCRA 777 [1992]).

In Beltran vs. Samson, G.R. No. 32025, September 23, 1929, the Supreme Court held thst for the purposes of the constitutional privilege there similarity between on who is compelled to produce

a document and one who is compelled to furnish a specimen of his handwriting, for in both cases, the witness is required to furnish evidence against himself. In this case, the purpose of the fiscal, who requested the handwriting of the witness, was to compare and determine whether the accused wrote the documents believed to be falsified. Thus, the right against self-incrimination may be invoked by a witness who was compelled to furnish his handwriting for comparison.

In Gonzales vs. Secretary of Labor, the Supreme Court held that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for an incriminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and generally speaking, at that time only, the claim of privilege may properly be imposed' (Bagadiong vs. Gonzales, G.R. No. L-25966, December 28, 1979, De Castro, J.).

ALTERNATIVE ANSWER:

(B), The right against self-incrimination may be waived expressly or impliedly. Thus, when Maria took the witness stand, she is deemed to have waived her right against self-incrimination.

XIX. Danny filed a complaint for damages against Peter. In the course of the trial, Peter introduced evidence on a matter not raised in the pleadings. Danny promptly objected on the ground that the evidence relates to a matter not in issue. How should the court rule on the objection? (1%)

(A) The court must sustain the objection.

(B) The court must overrule the objection.

(C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.

(D) The court, in its discretion, may order that the allegation in the pleadings which do not conform to the evidence presented be stricken out.



(E) The matter is subject to the complete discretion of the court.

SUGGESTED ANSWER:

(C), (B), or (A), Under Section 5 of Rule 10 of the Rules of Civil Procedure, when issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be served thereby. The court may grant a continuance to enable the amendment to be made.

The Court may sustain the objection because the evidence introduced by Danny is immaterial, being a matter which was not raised as an issue in the pleading.

On the other hand, the Court also overrule the objection and allow an amendment of the pleading if doing so would serve the ends of justice.

XX. The Labor Arbiter, ruling on a purely legal question, ordered a worker's reinstatement and this ruling was affirmed on appeal by the NLRC whose decision, under the Labor Code, is final. The company's recourse under the circumstances is to _____. (1%)

(A) file a motion for reconsideration and if denied, file a petition for review with the Court of Appeals on the pure legal question the case presents.

(B) file a motion for reconsideration and if denied, appeal to the Secretary of Labor since a labor policy issue is involved.

(C) file a motion for reconsideration and if denied, file a petition for certiorari with the Court of Appeals on the ground of grave abuse of discretion by the NLRC.

(D) file a motion for reconsideration and if denied, file a petition for review on certiorari with the Supreme Court since a pure question of law is involved.

(E) directly file a petition for certiorari with the Court of Appeals since a motion for reconsideration would serve no purpose when a pure question of law is involved.

SUGGESTED ANSWER:

(C), In Nemia Castro vs. Rosalyn and Jamir Guevarra, G.R. No. 192737, April 25, 2012, the Supreme Court held that a motion for reconsideration is a condition precedent for the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.

In Saint Martin Funeral Homes vs. NLRC, G.R. No. 130866, September 16, 1998, the Supreme Court ruled that the petitions for certiorari under Rule 65 against decisions of final order of the NLRC should be initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts as the appropriate forum for the relief desired.

ALTERNATIVE ANSWER:

(E), In Beatriz Siok Ping Tang vs. Subic bay Distribution, G.R> No. 162575, December 15, 2010, the Supreme Court held that a motion for reconsideration is a condition sine qua non for the filing of am petition for certiorari. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte, or in which the petitioner had o opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.



2012 Remedial Law Exam MCQ (October 28, 2012)

1. In settlement proceedings, appeal may be taken from an:
    a. order appointing a special administrator;
    b. <u>order appointing an administrator;</u>
    c. order of an administrator to recover property of the estate;
    d. order to include or exclude property from the estate.

<u>SUGGESTED ANSWER:</u>

(b) an order appointing a regular administrator is appealable (See Sy Hong Eng vs. Sy Liac Suy, 8 Phil., 594). An order of a CFI appointing an administrator of a deceased person's estate has been held to be a final determination of the rights of the parties thereunder, and is appealable. (Intestate Estate of Luis Morales et. Al. Vs. SIcat, L-5236, May 5, 1953). On the other hadn, an order appointing a special administrator is interlocutory in nature and a mere incident in the judicial proceedings, hence not appealable. (Rule 109, Sec. 1, Rules of Court) (Samson vs. Samson, 102 Phil. 735; Tan vs. Gedorio, Jr. G.R. No. 166520, March 14, 2008).

2. Under the Rules on the Writ of Amparo, interim relief orders may be issued by the Court except:
    a. production order;
    b. witness protection order;
    c. <u>hold departure order;</u>
    d. temporary protection order.

<u>SUGGESTED ANSWER:</u>

(c), Under the Rules on the Writ of Amparo, upon filing of the petition or at any time before final judgment, the court, justice or judge may grant any of the following interim relief orders; (a) Temporary Protection Order; (b) Inspection Order; (c) Production Order; and (c) Witness Protection Order. It does not include Hold Departure Order. (Sec. 12 (a) (b) (c) (d), A.M. No.07-9-12-SC)

3. A narrative testimony is usually objected to but the court may allow such testimony if:
    a. <u>it would expedite trial and give the court a clearer understanding of the matters related;</u>
    b. the witness is of advanced age;
    c. the testimony relates to family genealogy;
    d. the witness volunteers information not sought by the examiner.

SUGGESTED ANSWER:

(a), There is no legal principle which prevents a witness from giving his testimony in a narrative form if he is requested to do so by counsel. A witness may be allowed to testify by narration if it would be the best way of getting at what he knew or could state concerning the matter at issue. It would expedite the trial and would perhaps furnish the court a clearer understanding of matters related as they occurred. (People vs. Calixto, G.R. No. 92355, January 24, 1991).

ALTERNATIVE ANSWER:

(b), The Rules allow persons of tender age to testify in a narrative form because they cannot cope with the technicalities of examination of witnesses. The same rule should be applied to witnesses of advance age.

4. In default of parents, the court may appoint a guardian for a minor giving first preference to:
    a. an older brother or sister who is over 18 years old.
    b. the actual custodian over 21 years old.
    c. a paternal grandparent
    d. an uncle or aunt over 21 years old.

SUGGESTED ANSWER:

(c), In default of parents or a court-appointed guardian, the court may appoint a guardian of the person or property, or both of a minor, observing as far as practicable, the following order of preference: (a) the surviving grandparent. In case several grandparents survive, the court shall select any of them taking into account all relevant considerations; (b) the oldest brother or sister of the minor over twenty-one years of age, unless unfit or disqualified; (c) the actual custodian of the minor over twenty-one years of age, unless unfit or disqualified; and (d) any other person, who in the sound discretion of the court, would serve the best interests of the minor. (SEC. 6, A.M. No. 03-02-05-SC 2003-05-01, Rule on Guardianship of Minors).

5. In real actions, the docket and filing fees are based on:
    a. fair market value of the property.
    b. assessed value of the property.
    c. BIR zonal value of the property.



d. fair market value of the property and amount of damages claimed.

SUGGESTED ANSWER:

(c), Under Section 7, Rule 141 of the Rules of Court, in cases involving property, the fair market value of the real property in litigation stated in the current tax declaration or current zonal valuation of the bureau of internal revenue, whichever is higher, or if there is none, the stated value of the property in litigation or the value of the personal property in litigation as alleged by the claimant shall be basis of the docket and filing fees. (As amended by A.M. 04-2-04-SC, August 16, 2004).

ALTERNATIVE ANSWER:

(b), In Siapno vs. Manalo, G.R. No. 132260, August 30, 2005, the Court disregarded the title/denomination of the plaintiff Manalo's amended petition as one for Mandamus with Revocation of Title and Damages; and adjudged the same to be a real action, the filing fees for which should have been computed based on the assessed value of the subject property or, if there was none, the estimated value thereof.

6. X filed a motion for Bill of Particulars, after being served with summons and a copy of the complaint However, X's motion did not contain a notice of hearing. The court may therefore:
   a. require the clerk of court to calendar the motion.
   b. motu proprio dismiss the motion for not complying with Rule 15.
   c. allow the parties the opportunity to be heard.
   d. return the motion to X's counsel for amendment.

SUGGESTED ANSWER:

(b), A motion for bill of particulars which does not contain a notice of hearing is considered pro forma. As such, the motion is a useless piece of paper without force and effect which must not be taken cognizance by the Court. (Preysler, Jr. Vs. Manila Southcoast Development Corporation, G.R. No. 171872, June 28, 2010).

ALTERNATIVE ANSWER:

(c), Under Section 2, Rule 12 of the Rules of Court, upon filing of a Motion for Bill of particulars, the Clerk of Court must immediately bring it to the attention of the court which may either deny or grant it outright, or allow the parties the opportunity to be heard.



7. A wants to file a Petition for Writ of Habeas Data against the AFP in connection with threats to his life allegedly made by AFP intelligence officers. A needs copies of AFP highly classified intelligence reports collected by Sgt. Santos who is from AFP. A can file his petition with:
    a. RTC where AFP is located;
    b. RTC where Sgt. Santos resides;
    c. Supreme Court;
    d. <u>Court of Appeals.</u>

<u>SUGGESTED ANSWER:</u>

(d), In accordance with the principle of judicial hierarchy of the courts, A should file with the Court of Appeals.

<u>ALTERNATIVE ANSWER:</u>

(b), The petition may be filed with the Regional Trial Court where the petitioner or respondent resides, or that which has jurisdiction over the place where the data or information is gathered, collected or stored, at the option of the petitioner.

(c), The petition may also be filed with the Supreme Court or the Court of Appeals or the Sandiganbayan when the action concerns public data files of government offices. (Sec.3, A.M. No. 08-1-16-SC, The Rule on the Writ of Habeas Data, January 22, 2008).

8. W was arrested in the act of committing a crime on October 1, 2011. After an inquest hearing, an information was filed against W and his lawyer learned of the same on October 5, 2011. W wants to file a motion for preliminary investigation and therefore he has only up to _____ to file the same.
    a. October 20, 2011;
    b. <u>October 10, 2011;</u>
    c. November 15, 2011;
    d. October 16, 2011.

<u>SUGGESTED ANSWER:</u>

(b), When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, he may ask a preliminary investigation with the same right to adduce evidence in his defense within five (5) days from the time he learns of the filing of the complaint or information in court. (Rule 112, Sec. 7, Rules of Court).

9. Preliminary Prohibitive Injunction will not lie:
    a. to enjoin repeated trespass on land.
    b. in petitions for certiorari and mandamus.



c. <u>to restrain implementation of national government infrastructure project.</u>

d. to restrain voting of disputed shares of stock.

<u>SUGGESTED ANSWER:</u>

(c), No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, and natural resource development projects and public utilities operated by the Government (Section 1, P.D. 1818).

10. A defendant who fails to file a timely Answer or responsive pleading will not be declared in default in:
    a. probate proceedings where the estate is valued at ₱ 1 00,000;
    b. <u>forcible entry cases;</u>
    c. <u>collection case not exceeding ₱ 100,000;</u>
    d. violation of rental law.

<u>SUGGESTED ANSWERS:</u>

(b), Under the Rules on Summary Procedure, if the defendant fails to file an Answer to the complaint within a period of Ten (10) days from receipt thereof, the court may motu propio, or on motion of the plaintiff, render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein. (Sec.6, Revised Rules of Summary Procedure). There is no declaration of default under the Rules on Summary Procedure.

(c), A collection case not exceeding P100,000.00 is governed by the Law on Small Claims which does not vest the Court the power and authority to declare a defendant in default.

11. The validity of a search warrant is days:
    a. 15;
    b. 30;
    c. 60;
    d. 120.

<u>SUGGESTED ANSWER:</u>

NO CORRECT ANSWER. The Committee recommends that the examinee be given a full credit for any answer to the question.

Validity of a Search Warrant.- A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void. (Rule 126, Sec. 10, Rules of Court).

12. An accused may move for the suspension of his arraignment if:

a. a motion for reconsideration is pending before the investigating prosecutor.
b. accused is bonded and his bondsman failed to notify him of his scheduled arraignment.
c. <u>a prejudicial question exists.</u>
d. there is no available public attorney.

<u>SUGGESTED ANSWER:</u>

(c), Under Section 11, Rule 16 of the Rules of Criminal Procedure, upon motion of the proper party, the arraignment shall be suspended in the following cases: (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose; (b) There exists a prejudicial question; and (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; provided that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (Rule 116, Sec. 11, Rules of Court).

13. P failed to appear at the promulgation of judgment without justifiable cause. The judgment convicted P for slight physical injuries. Judgment may therefore be promulgated in the following manner:
    a. By the reading of the judgment in the presence of only the judge.
    b. By the clerk of court in the presence of P's counsel.
    c. By the clerk of court in the presence of a representative of P.
    d. <u>By entering the judgment into the criminal docket of the court.</u>

<u>SUGGESTED ANSWER:</u>

(d), If P fails to appear at the promulgation of judgment without justifiable cause, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel. (Rule 120, Sec. 6, Rules of Court).

14. Being declared in default does not constitute a waiver of all rights.

However, the following right is considered waived:

a. be cited and called to testify as a witness
b. <u>file a motion for new trial</u>
c. participate in deposition taking of witnesses of adverse party
d. file a petition for certiorari

<u>SUGGESTED ANSWER:</u>

(b), A party declared in default cannot take part in the trial but is nonetheless entitled to notices of subsequent proceedings. Thus, a party declared in default is deemed to have waived his right to file a motion for new trial since he had no right to an old trial on the first place.

<u>ALTERNATIVE ANSWER:</u>

NO CORRECT ANSWER. The Committee may recommend that the examinee be given full credit for any answer because the question is very tricky.

A party declared in default is not deemed to have waived any of the above-mentioned rights.

A party declared in default loses his standing in Court. He cannot take part in the trial but he is entitled to notices of subsequent proceedings. (Section 3(a), Rule 9, Rules of Court). When a defendant is declared in default, he does not waive any of the above-mentioned rights.

A defendant may still be cited and called to testify as a witness since he will participate in the trial, not as a party but merely as a witness. In fact, it is not a right but rather an obligation of a defendant cited and called to testify as a witness to so appear in court. He may also participate in the deposition taking of witnesses of the adverse party because the same is at the instance of the said adverse party and may not yet be considered as part of the trial. The defendant cannot also be said to have waived his right to file a motion for new trial since this is a remedy available before finality of a judgment declaring a party in default (BD Long Span Builders vs. R.S. Ampeloquio Realty Development, Inc., G.R. No.169919, September 11, 2009). Moreover, a petition for certiorari under Rule 65 is not considered waived because it is still an available remedy, if the declaration of default was tainted with grave abuse of discretion.

In Martinez vs. Republic, G.R. No. 160895, October 30, 2006, 506 SCRA 134, the Supreme Court has clearly discussed the remedies of a party

declared in default in light of the 1964 and 1997 Rules of Court and a number of jurisprudence applying and interpreting said rules. Citing Lina vs. Court of Appeals, No. L-63397, April 9, 1985, 135 SCRA 637, the High Court enumerated the following remedies, to wit: (a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake, or excusable neglect, and that he has meritorious defenses; (Sec.3, Rule 18, Rules of Court); (b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executor, he may file a motion for new trial under Section 1(a) of Rule 37, Rules of Court; (c) If the defendant discovered the default after the judgment has become final and executor, he may file a petition for relief under Section 2 of Rule 38, Rules of Court; and (d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Rule 41, Sec.2, Rules of Court) (Rebecca T. Arquero vs. Court of Appeals, G.R. No. 168053, Sept. 21, 2011, Peralta, J.).

15. At arraignment, X pleads not guilty to a Robbery charge. At the pretrial, he changes his mind and agrees to a plea bargaining, with the conformity of the prosecution and offended party, which downgraded the offense to theft. The Court should therefore:
    a. render judgment based on the change of plea.
    b. <u>allow the withdrawal of the earlier plea and arraign X for theft and render judgment.</u>
    c. <u>receive evidence on the civil liability and render judgment.</u>
    d. require the prosecution to amend the information.

<u>SUGGESTED ANSWERS:</u>

(b) and (c), The Court should allow the withdrawal of the earlier plea and arraign X for theft and render judgment without need of an amendment of complaint or information. (Rule 116, Sec. 2, Rules of Court). Be that as it may, the Court has to receive evidence on the civil liability which is impliedly instituted with the criminal action before it renders a judgment against X. (Rule 111, Sec.1, Rules of Court).

16. A criminal case should be instituted and tried in the place where the



offense or any of the essential elements took place, except in:

a. Estafa cases;
b. Complex crimes;
c. <u>Cases cognizable by the Sandiganbayan;</u>
d. Court martial cases.

<u>SUGGESTED ANSWER:</u>

(c), Territorial jurisdiction is immaterial in cases falling under the Sandiganbayan's jurisdiction. All public officials who committed an offense which is cognizable by the Sandiganbayan shall be tried before it regardless of the place of commission of the offense. In addition, the court martial is not a criminal court.

17. X was charged for murder and was issued a warrant of arrest. X remains at large but wants to post bail. X's option is to:
    a. file a motion to recall warrant of arrest;
    b. <u>surrender and file a bail petition;</u>
    c. file a motion for reinvestigation;
    d. file a petition for review with the OOJ.

<u>SUGGESTED ANSWER:</u>

(b), Bail is the security given for the release of a person in the custody of the law (Rule 114, Sec. 1, Rules of Court). The Rules use of word, "custody" to signify that bail is only available for someone who is under the custody of the law. Hence, X should first surrender before he could be allowed to post bail.

18. The Energy Regulatory Commission (ERC) promulgates a decision increasing electricity rates by 3%. KMU appeals the decision by way of petition for review. The appeal will therefore:
    a. stay the execution of ERC decision.
    b. shall not stay the ERC decision unless the Court of Appeals directs otherwise.
    c. stay the execution of the ERC decision conditioned on KMU posting a bond.
    d. shall not stay the ERC decision.

<u>SUGGESTED ANSWER:</u>

(b), KMU's appeal of the decision of the Energy Regulations Commission shall not stay the decision increasing the electricity rates by 3%, unless the Court of Appeals shall direct otherwise upon such terms as it may deem just. (Rule 43, Sec. 12, Rules of Court).

19. RTC decides an appeal from the MTC involving a simple collection case. The decision consists of only one page because it adopted by direct reference the findings of fact and conclusions of law set forth in the MTC decision. Which statement is most accurate?
    a. The RTC decision is valid because it was issued by a court of competent jurisdiction.
    b. The RTC decision is valid because it expedited the resolution of the appeal.
    c. <u>The RTC decision is valid because it is a memorandum decision recognized by law.</u>
    d. The RTC decision is valid because it is practical and convenient to the judge and the parties.

<u>SUGGESTED ANSWER:</u>

(c), A Memorandum decision can be welcomed as an acceptable method of dealing expeditiously with the case load of the courts of justice. The phrase Memorandum Decision appears to have been introduced in this jurisdiction not by that law but by Section 24 of the Interim Rules and Guidelines of BP Blg. 129, reading as follows:

Section 24. Memorandum decisions – The judgment or final resolution of a court in appealed cases may adopt by reference the findings of fact and conclusions of law contained in the decision or final order appealed from. (Francisco vs. Perm Skul, G.R. No. 81006, May 12, 1989.)

20. The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall:
    a. not interrupt any prescriptive period.
    b. interrupt the prescriptive period for 90 days.
    c. interrupt the prescriptive period for 60 days.
    d. <u>interrupt the prescriptive period not exceeding 60 days.</u>

<u>SUGGESTED ANSWER:</u>

(d), The filing of a complaint with the Punong Barangay involving cases covered by the Katarungang Pambarangay Rules shall interrupt the prescriptive periods for offenses and cause of action under existing laws for a period not exceeding Sixty (60) days from the filing of the complaint with the Punong barangay. (Sec.410, Local Government Code).



21. In a declaratory relief action, the court may refuse to exercise its power to declare rights and construe instruments in what instance/s?
    a. **When a decision would not terminate the controversy which gave rise to the action.**
    b. In an action to consolidate ownership under Art. 1607 of the Civil Code.
    c. To establish legitimate filiation and determine hereditary rights.
    d. (a) and (c) above

SUGGESTED ANSWER:

(a), The court, may motu propio or upon motion, refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances (Rule 63, Sec.5, Rules of Court).

22. In election cases involving an act or omission of an MTC or RTC, a certiorari petition shall be filed with:
    a. The Court of Appeals
    b. The Supreme Court
    c. **The COMELEC**
    d. The Court of Appeals or the COMELEC both having concurrent jurisdiction

SUGGESTED ANSWER:

(c), Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC (Amendments to Rules 41, 45, 58, and 65 of the Rules of Court) provides that in election cases involving an act or omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Galang vs. Hon. Geronimo, G.R. No. 192793, February 22, 2011).

23. A charge for indirect contempt committed against an RTC judge may be commenced through:
    a. A written charge requiring respondent to show cause filed with the Court of Appeals.
    b. **An order of the RTC Judge requiring respondent to show cause in the same RTC.**
    c. Verified petition filed with another branch of the RTC.
    d. Verified petition filed with a court of higher or equal rank with the RTC.

SUGGESTED ANSWER:

(b), The proceedings for indirect contempt may be initiated motu propio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. It may also be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned (Rule 71, Sec.4, Rules of Court).

24. The statute of "non-claims" requires that:
    a. claims against the estate be published by the creditors.
    b. <u>money claims be filed with the clerk of court within the time prescribed by the rules.</u>
    c. claims of an executor or administrator against the estate be filed with the special administrator.
    d. within two (2) years after settlement and distribution of the estate, an heir unduly deprived of participation in the estate may compel the re-settlement of the estate.

<u>SUGGESTED ANSWER:</u>

(b), After the Court has granted letters testamentary or administration, it shall immediately issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of court. (Rule 86, Sec.1, Rules of Court). The Notice shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. (Rule 86, Sec.2, Rules of Court).

25. A judicial compromise has the effect of _____ and is immediately executory and is not appealable.
    a. Estoppel;
    b. Conclusiveness of judgment;
    c. <u>Res Judicata;</u>
    d. Stare decisis.

<u>SUGGESTED ANSWER:</u>

(c), A compromise agreement that has been made and duly approved by the court attains the effect and authority of res judicata, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of agreement is decreed." (Ranola vs. Ranola, G.R. No. 185095, July 31, 2009).



26. When a party or counsel willfully or deliberately commits forum shopping, the initiatory pleading may:
    a. be cured by amendment of the complaint.
    b. upon motion, be dismissed with prejudice.
    c. <u>be summarily dismissed with prejudice as it may constitute direct contempt.</u>
    d. be stricken from the record.

<u>SUGGESTED ANSWER:</u>

(c), If the acts of the party or his counsel clearly constitute wilful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions (Rule 7, Sec.5, Rules of Court).

27. Equity of Redemption is the right of the mortgagor to redeem the mortgaged property after default in the performance of the conditions of the mortgage, before the sale or the confirmation of sale in a(n):
    a. extrajudicial foreclosure of mortgage.
    b. <u>judicial foreclosure of mortgage.</u>
    c. execution sale.
    d. foreclosure by a bank.

<u>SUGGESTED ANSWER:</u>

(b), Equity of redemption exists in case of judicial foreclosure of a mortgage. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, in accordance with Rule 68, or even after the foreclosure sale but prior to its confirmation. (Spouses Rosales vs. Spouses Alfonso, G.R. No. 137792, August 12, 2003).

28. X and Y, both residents of Bgy. II, Sampaloc, Manila entered into a ₱ 100,000 loan agreement. Because Y defaulted, X sued Y for collection and the complainant prayed for issuance of preliminary attachment. Y moved to dismiss the complaint because there was no Barangay conciliation. The court should therefore:
    a. dismiss X's complaint for prematurity.
    b. dismiss X's complaint for lack of cause of action.
    c. <u>deny Y's motion because it is exempt from Barangay conciliation.</u>



d. deny Y's motion because of the amount of the loan.

SUGGESTED ANSWER:

(c), As a general rule, no complaint, petition, action or proceeding involving any matter within the authority of the Lupon shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the Settlement has been repudiated. However, the parties may go directly to court in actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendent lite. (Sec.6, P.D. 1508, Katarungang Pambarangay Law). Since X's complaint against Y involves collection of sum of money with prayer for issuance of preliminary attachment, there is no need for prior barangay conciliation, and therefore the Court should deny Y's Motion to Dismiss.

29. X was shot by Y in the course of a robbery. On the brink of death, X told W, a barangay tanod, that it was Y who shot and held him up. In the trial for robbery with homicide, X's declaration can be admitted only as a dying declaration:
    a. to prove robbery.
    b. <u>to prove homicide.</u>
    c. to prove robbery and homicide.
    d. to prove the "corpus delicti".

SUGGESTED ANSWER:

(b), a dying declaration is admissible as evidence if the following circumstances are present: (a) it concerns the cause and the surrounding circumstances of the declarant's death; (b) it is made when death appears to be imminent and the declarant is under a consciousness of impending death; (c) the declarant would have been competent to testify had he or she survived; and (d) the dying declaration is offered in a case in which the subject of inquiry involves the declarant's death. (People vs. Jay Mandy Maglian, G.R. No. 189834, March 30, 2011, Velasco, Jr., J.). Clearly, the dying declaration can only be offered in a case in which the subject of inquiry involves the declarant's death, and necessarily the same can only be admitted to prove the cause and the surrounding circumstances of such death. Be that as it may, the dying declaration may be offered as part of the res gestae in the crime of robbery.



ALTERNATIVE ANSWER:

(c), The former rule was that dying declaration was inadmissible only in criminal prosecutions for homicide, murder or parricide wherein the declarant victim (People vs. Lara, 54 Phil. 96). As amended, the Rule now provides for such admissibility in any case as long as the requisites concur. (Regalado, Remedial Law Compendium, Vol.II, 2008 Edition, Page 781).

30. Which of the following is not a Special Proceeding?
    a. Absentees;
    b. Escheat;
    c. Change of First Name;
    d. Constitution of Family Home;

SUGGESTED ANSWERS:

(c), Under R.A. 9048, as amended by R.A. 10172, the correction of First Name can now be done administratively before the Local Civil Registrar where the record sought to be corrected is kept or the nearest Philippine Consulate. Hence, it is no longer considered a special proceeding since the provisions of Rules 103 and 108 do not apply anymore in the change of First name of a person.

(d), the rules on Constitution of the Family Home have already been repealed by Articles 152-162 of the Family Code. Under Article 153 of the Family Code, a family home is deemed constituted on a house and lot from the time it is occupied as a family residence. Consequently, there is no need to constitute a family home either judicially or extrajudicially. Hence, it is no longer considered a special proceeding.

ALTERNATIVE ANSWER:

All the above-mentioned actions are considered Special Proceedings because they are remedies which seek to establish a status, right or a particular fact. (Rule 1, Sec. 2(c), Rules of Court).

31. Atty. X fails to serve personally a copy of his motion to Atty. Y because the office and residence of Atty. Y and the latter's client changed and no forwarding addresses were given. Atty. X's remedy is to:
    a. Serve by registered mail;
    b. Serve by publication;
    c. Deliver copy of the motion to the clerk of court with proof of failure to serve;
    d. Certify in the motion that personal service and through mail was impossible.

SUGGESTED ANSWER:



(c), Since the office and place of residence of the Atty. X and the latter's clinet changed and no forwarding address were given, Atty. X can deliver a copy of the motion by way of substituted service, to the clerk of court with proof of failure to serve the motion, both by way of personal service or service by mail. (Rule 13, Sec. 8, Rules of Court).

32. When caught, X readily admitted to the Forestry Ranger that he cut the trees. Such a statement may be admitted and is not necessarily hearsay because:
    a. it is a judicial admission of guilt.
    b. it shows the statement was true.
    c. it will form part of the circumstantial evidence to convict.
    d. <u>it proves that such a statement was made.</u>

<u>SUGGESTED ANSWER:</u>

(d), The statement of X may be admitted under the concept of independently relevant statement, or statements which are on the very facts in issue or those which are circumstantial evidence thereof. It is offered in evidence only to prove the tenor thereof, or the fact that such a statement was made, and not to prove the truth of the facts asserted therein. Hence, the hearsay rule does not apply. (People vs. Gaddi, 170 SCRA 649).

33. A complaint may be dismissed by the plaintiff by filing a notice of dismissal:
    a. At anytime after service of the answer.
    b. <u>At anytime before a motion of summary judgment is filed.</u>
    c. At the pre-trial.
    d. Before the complaint is amended.

<u>SUGGESTED ANSWER:</u>

(b), A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. (Rule 17, Sec.1, Rules of Court).

34. In a criminal case for violation of a city ordinance, the court may issue a warrant of arrest:
    a. for failure of the accused to submit his counter-affidavit.
    b. after finding probable cause against the accused.
    c. for failure of the accused to post bail.



d. <u>for non-appearance in court whenever required.</u>

<u>SUGGESTED ANSWER:</u>

(d), The criminal case for violation of a city ordinance is governed by the Revised Rules on Summary Procedure. Under the said Rule, the court shall not order the arrest of the accused except for failure to appear whenever required. (Section 16, 1991 Revised Rules on Summary Procedure). Accordingly, the court may issue warrant of arrest for non-appearance of the accused whenever required in a criminal case for infraction of a city ordinance.

35. Under the Katarungan Pambarangay rules, the execution of an amicable settlement or arbitration award is started by filing a motion for execution with the Punong Barangay, who may issue a notice of execution in the name of the Lupon Tagapamayapa. Execution itself, however, will be done by:
    a. a court-appointed sheriff.
    b. any Barangay Kagawad.
    c. <u>Punong Barangay.</u>
    d. any member of the Pangkat ng Tagapagsundo.

<u>SUGGESTED ANSWER:</u>

(c), The Punong Barangay shall issue a notice of execution in the name of the Lupong Taga-pamayapa and that if the execution be for the payment of money, the party obliged is allowed a period of five (5) days to make a voluntary payment, failing which, the Punong Barangay shall take possession of sufficient personal property located in the barangay. (Sections 5 and 6, Article VII, Implementing Rules and Regulations of the Katarungang Pambarangay Rule).

36. If the judgment debtor dies after entry of judgment, execution of a money judgment may be done by:
    a. <u>presenting the judgment as a claim for payment against the estate in a special proceeding.</u>
    b. filing a claim for the money judgment with the special administrator of the estate of the debtor.
    c. filing a claim for the money judgment with the debtor's successor in interest.
    d. move for substitution of the heirs of the debtor and secure a writ of execution.

<u>SUGGESTED ANSWER:</u>

(a), If death occurs after judgment has already been entered, the final judgment shall be enforced as money claim against



the estate of the deceased defendant without the necessity of proving the same. (Paredes vs. Moya, 61 SCRA 526, 1970).

37. The Director of the BFAR launches an intensified campaign against illegal fishpen operators situated in Laguna de Bay. The illegal fishpen operators file a Section 3 (e), R.A. 3019 (causing undue injury or benefit) case against the BFAR Director before the Sandiganbayan. The Director's best remedy before Sandiganbayan is:
    a. file a Motion to Quash based on lack of jurisdiction over the person.
    b. file a Motion to Quash for non-exhaustion of administrative remedies.
    c. <u>file a Motion to Dismiss because the complaint is a SLAPP suit.</u>
    d. move for suspension of proceedings because of a pre-judicial question.

<u>SUGGESTED ANSWER:</u>

(c), The Director of the BFAR may file an answer interposing as a defense that the case is a Strategic Lawsuit Against Public Participation (SLAPP) and attach supporting documents, affidavits, papers and other evidence; and, by way of counterclaim, pray for damages, attorney's fees and costs of suit. The Director who is seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law are legitimate action for the protection, preservation and rehabilitation of the government. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP and is a valid claim. (Rule 6, Sec. 2, A.M. No. 09-6-8-SC, Rules of Procedure for Environmental Cases).

38. A complaint may be refiled if dismissed on which of the following grounds?
    a. unenforceable under the Statute of Frauds;
    b. Res Judicata;
    c. <u>Litis Pendencia;</u>
    d. <u>Lack of jurisdiction.</u>

<u>SUGGESTED ANSWERS:</u>

(c) and (d), An order granting a motion to dismiss shall bar the refilling of the same action or claim based on the following grounds, namely: res judicata, prescription, claim or demand is paid, waived, abandoned or otherwise extinguished, and the claim on which the action is founded is unenforceable under the statute of frauds. (Rule 16,



Sec.5, (f), (h), and (i), Rules of Court). The Rules do not include litis pendentia and lack of jurisdiction.

39. The following are accurate statements on joinder of causes of action, except:
    a. joinder of actions avoids multiplicity of suits.
    b. <u>joinder of actions may include special civil actions.</u>
    c. joinder of causes of action is permissive.
    d. the test of jurisdiction in case of money claims in a joinder of causes of act1on, is the "totality rule".

<u>SUGGESTED ANSWER:</u>

(b), The rule on joinder of actions under Section 5, Rule 2 of the 1997 Rules of Civil Procedure, as amended, requires that the joinder shall ot include special civil actions governed by special rules. (Roman Catholic Archbishop of San Fernando Pampanga vs. Fernando Soriano Jr., et al., G.R. No. 153829, August 17, 2011, VIllarama, Jr., J.).

40. W, a legal researcher in the RTC of Makati, served summons on an amended complaint on Z at the latter's house on a Sunday. The service is invalid because:
    a. it was served on a Sunday.
    b. <u>the legal researcher is not a "proper court officer".</u>
    c. (a) and (b) above
    d. <u>there is no need to serve summons on an amended complaint.</u>

<u>SUGGESTED ANSWERS:</u>

(b), The Rules do not allow a legal researcher to serve summons on amended complaint. He is not the proper court officer who is duly authorized to serve the summons to the defendants. The question is about validity and not superfluity.

(d), Where the defendants have already appeared before the trial court by virtue of a summons on the original complaint, the amended complaint may be served upon them without need of another summons, even if new causes of action are alleged. (Vlason Enterprises Corporation vs. Court of Appeals, G.R. Nos. 121662-64, July 6, 1999).

41. After a plea of not guilty is entered, the accused shall have _____ days to prepare for trial.
    a. <u>15;</u>
    b. 10;
    c. 30;
    d. None of the above.

SUGGESTED ANSWER:

(a), After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within (30) days from receipt of the pre-trial order. (Rule 119, Sec. 1, Rules of Court).

42. The following motions require a notice of hearing served on the opposite party, except:
    a. **Motion to Set Case for Pre-trial;**
    b. Motion to take deposition;
    c. Motion to correct TSN;
    d. Motion to postpone hearing.

SUGGESTED ANSWER:

(a), After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move ex parte that the case be set for pre-trial. (Rule 18, Sec.1, Rules of Court).

43. Which of the following statements is incorrect?
    a. A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished.
    b. In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence.
    c. A demurrer to evidence may be filed without leave of court in a criminal case.
    d. **None of the above.**

SUGGESTED ANSWER:

(d), A Motion to Quash which is granted is a bar to the prosecution for the same offense if the criminal action or liability has been extinguished. (Rule 117, Sec.6 in relation to Section3). In the Court of Appeals, the accused may file a motion for new trial based only on newly discovered evidence. (Rule 53, Sec. 1, Rules of Court). A demurrer to evidence may be filed without leave of court in criminal case. (Rule 119, Sec. 23, Rules of Court).

44. Which of the following is true?
    a. Summons expires after 5 days from issue.
    b. Writ of Execution expires after 10 days from issue.
    c. Search Warrant expires after 20 days from issue.
    d. Subpoena expires after 30 days from issue.

SUGGESTED ANSWER:

NO CORRECT ANSWER. The Committee recommends that the examinee be given

full credit for any answer to the question.

ALTERNATIVE ANSWER:

(c), According to the Committee, this it the most logical answer because search warrant expires 10 days after its issuance.

45. A person may be charged with direct contempt of court when:
    a. A person re-enters a property he was previously ejected from.
    b. A person refuses to attend a hearing after being summoned thereto.
    c. He attempts to rescue a property in custodia legis.
    d. She writes and submits a pleading containing derogatory, offensive or malicious statements.

SUGGESTED ANSWER:

(d), A person guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by such court. (Rule 71, Sec. 1, Rules of Court). In Surigao Mineral Reservation Board vs. Cloribel, 31 SCRA 1, the Supreme Court held that disrespectful, abusive and abrasive language, offensive personalities, unfounded accusations or intemperate words tending to obstruct, embarrass or influence the court in administering justice or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose and on the contrary constitutes direct contempt or contempt in facie curiae.

46. Under the Rules of Electronic Evidence, "ephemeral electronic conversation" refers to the following, except:
    a. text messages;
    b. telephone conversations;
    c. faxed document;
    d. online chatroom sessions;

SUGGESTED ANSWER:

(c), An "ephemeral electronic communication" refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communications, the evidence of which is not recorded or retained (Sec.1(k), Rule 2). A facsimile transmission is not considered as an electronic evidence



under the Electronic Commerce Act. In MCC Industrial Sales Corporation vs. Ssangyong Corporation, the Supreme Court concluded that the terms "electronic data message" and "electronic document,: as defined under the Electronic Commerce Act of 2000, do not include facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence. (Torres vs. PAGCOR, G.R. No. 193531, December 14, 2011).

47. A private electronic document's authenticity may be received in evidence when it is proved by:
    a. evidence that it was electronically notarized.
    b. <u>evidence that it was digitally signed by the person who purportedly signed the same.</u>
    c. evidence that it contains electronic data messages.
    d. evidence that a method or process was utilized to verify the same.

<u>SUGGESTED ANSWER:</u>

(b), Before any private electronic document is offered as authentic is received in evidence, its authenticity must be proved by evidence that it had been digitally signed by the person purported to have signed the same. (Rule 5, Sec. 2(a), Rules on Evidence).

48. Atty. A drafts a pleading for his client 8 wherein B admits certain facts prejudicial to his case. The pleading was never filed but was signed by Atty. A. Opposing counsel got hold of the pleading and presents the same in court. Which statement is the most accurate?
    a. <u>The prejudicial statements are not admissible because the unfiled document is not considered a pleading.</u>
    b. The prejudicial statements are not admissible because the client did not sign the pleading.
    c. The prejudicial statements are not admissible because these were not made by the client in open court.
    d. The prejudicial statements are not admissible because these were made outside the proceedings.

<u>SUGGESTED ANSWER:</u>

(a), Pleadings are defined as written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment. (Rule 6,

Sec.1, Rules of Court). Filing is the act of presenting the pleading or other paper to the clerk of court. (Rule 13, Sec.2, Rules of Court). Since Atty. A and his client B did not file the pleading, and it was merely the opposing counsel which presented the same in court, it should not be considered to have been filed at all, and shall not prejudice Atty. A and his client B. After all, no person may be prejudiced by the acts of unauthorized strangers.

ALTERNATIVE ANSWER:

(d), The Committee considers this as an alternative answer for a more liberal view.

49. Under the Rules on Examination of a child witness, a child witness is one:
    a. who is 18 years of age or below at the time of testifying.
    b. who is below 18 years of age at the time of the incident/crime to be testified on.
    c. who is below 18 years of age at the time of the giving of testimony.
    d. who is 18 years of age in child abuse cases.

SUGGESTED ANSWER:

(c), A "child witness" is any person who at the time of giving testimony is below the age of eighteen (18) years. (Sec.4, Rules on Examination of a Child Witness).

50. In which of the following is Interpleader improper?
    a. in an action where defendants' respective claims are separate and distinct from each other.
    b. in an action by a bank where the purchaser of a cashier's check claims it was lost and another person has presented it for payment.
    c. in an action by a lessee who does not know where to pay rentals due to conflicting claims on the property.
    d. in an action by a sheriff against claimants who have conflicting claims to a property seized by the sheriff in foreclosure of a chattel mortgage.

SUGGESTED ANSWER:

(a), Under the Rules, whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed

by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. (Rule 62, Sec.1, Rules of Court). Undoubtedly, if the defendants' respective claims are separate and distinct from each other, an action for interpleader is not proper.

51. The Parole Evidence Rule applies to:
    a. subsequent agreements placed on issue.
    b. <u>written agreements or contractual documents.</u>
    c. judgment on a compromise agreement.
    d. will and testaments.

<u>SUGGESTED ANSWER:</u>

(b), The parol evidence rule, embodied in Section 9, Rule 130 of the Rules of Court holds that when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement. (Leighton Contractors Phils. Inc., vs. CNP industries, Inc., G.R. No. 160972, March 9, 2010). Evidently, parol evidence only applies to written agreements or contractual documents.

<u>ALTERNATIVE ANSWER:</u>

(d), Parol Evidence Rule applies because the term "Agreement" includes wills. (Rule 130, Sec. 9(e), Rules of Court).

52. PDEA agents conducted a search on a house abandoned by its owners in Quezon City. The search, in order to be valid, must be made in the presence of:
    a. any relative of the owner of the house.
    b. the Director of the PDEA and a member of the media.
    c. the Barangay Chairman and a Barangay Tanod.
    d. <u>any elected Quezon City official.</u>

<u>SUGGESTED ANSWER:</u>

(d), Under the "chain of custody" principle, the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel, a representative from media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. (Sec. 21(1), RA 9165).



53. A judge of an MTC can hear and decide petitions for habeas corpus or applications for bail where:
    a. the Supreme Court authorizes the MTC.
    b. the judge is the Executive Judge of the MTC.
    c. the judge of the RTC where the case is raffled has retired, was dismissed or had died.
    d. <u>in the absence of all the RTC Judges in the province or city.</u>

<u>SUGGESTED ANSWER:</u>

(d), In the absence of all the Regional Trial Judges in a province or city, any Metropolitan Trial Judge, Municipal Trial Judge, Municipal Circuit Trial Judge may hear and decide petitions for a writ of habeas corpus or applications for bail in criminal cases in the province or city where the absent Regional Trial Judges sit. (Section 35, Batas Pambansa Blg. 129).

54. Proof of service of summons shall be through the following, except :
    a. written return of the sheriff;
    b. affidavit of the person serving summons;
    c. affidavit of the printer of the publication;
    d. <u>written admission of the party served.</u>

<u>SUGGESTED ANSWER:</u>

(d), Proof of service of summons shall be made in writing by the server and shall be sworn to when made by a person other than a sheriff or his deputy. (Rule 14, Sec. 18, Rules of Court). If the service has been made by publication, it may be proved by the affidavit of the printer to which a copy of the publication shall be attached, and directed to the defendant by registered mail to his last known address. (Rule 14, Sec. 19, Rules of Court).

55. As a mode of discovery, the best way to obtain an admission from any party regarding the genuineness of any material and relevant document is through a:
    a. motion for production of documents.
    b. written interrogatories.
    c. <u>request for admission under Rule 26.</u>
    d. request for subpoena duces tecum.

<u>SUGGESTED ANSWER:</u>

(c), At any time after issues have been joined, a party may file and serve upon any other party a written request for the

admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. (Rule 26, Sec.1, Rules of Court). A request for admission is not intended to merely reproduce or reiterate the allegations of the evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. Unless it serves that purpose, it is pointless, useless, and a mere redundancy. (Limos vs. Spouses Odones, G.R. No. 186979, August 11, 2010).

56. A judgment "non pro tunc" is one which:
    a. dismisses a case without prejudice to it being re-filed.
    b. clarifies an ambiguous judgment or a judgment which is difficult to comply with.
    c. <u>one intended to enter into the record the acts which already have been done, but which do not appear in the records.</u>
    d. is a memorandum decision.

<u>SUGGESTED ANSWER:</u>

(c), A nunc pro tunc entry in practice is an entry made now of something which was actually previously done, to have effect as the court, but to supply an omission in the record of action really had, but omitted through inadvertence or mistake. (Wilmerding vs. Corbin Banking Co., 28 South., 640, 641; 126 Ala., 268). (Perkins vs. Haywood, 31 N. E., 670, 672 cited in Aliviado vs. Proctor and Gamble, G.R. No. 160506, June 6, 2011).

57. The Sandiganbayan can entertain a quo warranto petition only in:
    a. cases involving public officers with salary grade 27 or higher.
    b. <u>only in aid of its appellate jurisdiction.</u>
    c. as a provisional remedy.
    d. cases involving "ill gotten wealth".

<u>SUGGESTED ANSWER:</u>

(b), The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, that the

jurisdiction over these petitions shall not be exclusive of the Supreme Court. (Sec. 4, R.A. 8249, Act amending P.D. 1606).

58. The judgment in a criminal case may be promulgated by the following, except by:
    a. **a Sandiganbayan justice in cases involving anti-graft laws.**
    b. a Clerk of Court of the court which rendered judgment.
    c. an Executive Judge of a City Court if the accused is detained in another city.
    d. any judge of the court in which it was rendered.

SUGGESTED ANSWER:

(a), The Sandiganbayan is a special court of the same level as the Court of Appeals (CA), and possessing all the inherent powers of a court of justice, with functions of a trial court. It is a collegial court. x x x The members of the graft court act on the basis of consensus or majority rule. The three Justices of a division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding cases. (Edgar Payumo et al. Vs. Hon. Sandiganbayan et al., G.R. No. 151911, July 25, 2011, Mendoza, J.). Thus, a Sandiganbayan Justice alone may not promulgate judgment in a criminal case involving anti-graft laws.

On the other hand, a judgment in the regular court is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court. if the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. (Rule 120, Sec. 6, Rules of Court).

59. Leave of court is always necessary in:
    a. a demurrer to evidence in a civil case.
    b. a demurrer to evidence in a criminal case.
    c. motion to amend a complaint.
    d. third party complaint.

SUGGESTED ANSWER:

(d), A third party complaint is a claim that a defending party may, with leave of court, file against a person not a party to

the action, called the third party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. (Rule 6, Sec. 11, Rules of Court). in a third party complaint, leave of court is always necessary.

60. Correctly complete the sentence: A lone witness ---
    a. is credible only if corroborated.
    b. is never credible.
    c. <u>may be believed even if not corroborated.</u>
    d. is always credible.

<u>SUGGESTED ANSWER:</u>

(c), The testimony of a lone prosecution witness, as long as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt. (People vs. Layson, G.R. No. 105689, February 23, 1994). Thus, a lone witness may be believed even if not corroborated.

61. A judgment of conviction in a criminal case becomes final when:
    a. accused orally waived his right to appeal.
    b. accused was tried in absentia and failed to appear at the promulgation.
    c. <u>accused files an application for probation.</u>
    d. reclusion perpetua is imposed and the accused fails to appeal.

<u>SUGGESTED ANSWER:</u>

(c), A judgment of conviction in a criminal case becomes final when the accused after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation (Rule 120, Sec. 7, Rules of Court).

62. After a hearing on a Motion to Dismiss, the court may either dismiss the case or deny the same or:
    a. defer resolution because the ground relied upon 1s not indubitable.
    b. <u>order amendment of the pleading</u>
    c. conduct a preliminary hearing
    d. None of the above.

<u>SUGGESTED ANSWER:</u>

(b), After the hearing of a motion to dismiss, the court may dismiss the action or claim, deny the motion, or

order the amendment of the pleading. The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. (Rule 16, Sec.3, Rules of Court).

63. Under Rule 52, a Second Motion for Reconsideration is a prohibited pleading. However,· where may such Motion be allowed?
    a. the Sandiganbayan;
    b. the Office of the President;
    c. <u>the Supreme Court;</u>
    d. None of the above.

<u>SUGGESTED ANSWER:</u>

(c), Under Rule 52, a second Motion for Reconsideration is a prohibited pleading. However, the Supreme Court en banc may entertain the same in the higher interest of justice upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the highest interest of justice" when the assailed decision is not only legally erroneous but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration. (Sec.3, Rule 15, Internal Rules of the Supreme Court). In the Division, a vote of three Members shall be required to elevate to a second motion for reconsideration to the Court En Banc. (Aliviado vs. Proctor and Gamble Phils., Inc., et al, G.R. No. 160506, June 6, 2011, Del Castillo, J.).

64. The mortgage contract between X, who resides in Manila, and Y, who resides in Naga, covering land in Quezon provides that any suit arising from the agreement may be filed "nowhere else but in a Makati court". Y must thus sue only in:
    a. <u>Makati;</u>
    b. Makati and/or Naga;
    c. Quezon and/or Makati;
    d. Naga.

<u>SUGGESTED ANSWER:</u>

(a), The rules on venue of actions are merely procedural in character and can be a subject of stipulation. Where the parties have validly agreed in writing before the filing of the action on the exclusive venue of the action, the suit cannot be filed anywhere other than the stipulated venue. (Rule 4, Sec. 4, Rules of Court). Since the stipulation between X and Y in the mortgage contract is mandatory and restrictive in character, the venue of the action is only in Makati City.

<u>ALTERNATIVE ANSWER:</u>



None of the above. The venue of the action should only be Quezon City, the place where the real property is located.

The rules on venue do not apply to actions involving a mortgage. In Ochoa vs. Chinabank, G.R. No. 192877, March 23, 2011, the Supreme Court held that the exclusive venue of Makati City, as stipulated by the parties and sanctioned by Section 4, Rule 4 of the Rules of Court, cannot be made to apply to the Petition for Extrajudicial Foreclosure filed by respondent bank because the provisions of Rule 4 pertain to venue of actions, which an extrajudicial foreclosure is not. There is no reason to depart from the doctrinal pronouncement of the Supreme Court.

65. Immediately after the witness had been sworn in to testify, without any formal offer of his testimony, Atty. A started asking questions on direct examination to the witness. The court may still consider his testimony if:
    a. the formal offer is done after the direct testimony.
    b. <u>the opposing counsel did not object.</u>
    c. the witness is an expert witness.
    d. the opposing counsel offered to stipulate on the testimony given.

<u>SUGGESTED ANSWER:</u>

(b), While it is true that Atty. A failed to offer the questioned testimony when he called the witness on the stand, the opposing counsel waived this procedural error by failing to object at the appropriate time i.e., when the ground for objection became reasonably apparent the moment the witness was called to testify without any prior offer having been made by the proponent. (Catuira vs. Court of Appeals, G.R. No. 105813, September 12, 1994).

66. A private document may be considered as evidence when it is sequentially:
    a. marked, identified, authenticated.
    b. identified, marked and offered in evidence.
    c. <u>marked, identified, authenticated and offered in evidence.</u>
    d. marked, authenticated and offered in evidence.

<u>SUGGESTED ANSWER:</u>

(c), Before any private document is offered as authentic is received in

evidence, its due execution and authenticity must be proved. (Rule 132, Sec. 20). The private document must be marked during the pre-marking of exhibits. It must be identified and authenticated by a witness, and thereafter offered, as the court shall not consider any evidence which has not been formally offered. (Rule 132, Sec. 34). In addition, the private document must also be admitted by the court in order to be considered as evidence.

67. The Court of Appeals cannot issue a temporary restraining order in the following cases·, except:
    a. **bidding and awarding of a project of the national government.**
    b. against any freeze order issued by the AMLC under the antimoney laundering law.
    c. against infrastructure projects like the SLEX extension.
    d. against the DAR in the implementation of the CARL Law.

SUGGESTED ANSWER:

(a), There is no law which prohibits the Court of Appeals from issuing a temporary restraining order on the bidding and awarding of a project of the national government. On the contrary, there are laws which expressly prohibit the Court of Appeals from issuing a temporary restraining order against any of the following: (i) freeze order issued by the AMLC under the anti-money laundering law, except the Supreme Court. (R.A. 10167, Sec.10); (ii) infrastructure projects like the SLEX extension because only the Supreme Court can issue the same. (Sec.10, R.A. No. 10167 and R.A. No. 8975); and (iii) DAR in the implementation of the CARL Law. (Sec.55, R.A. No. 6657).

68. Choose the most accurate phrase to complete the statement: Mandamus will lie ---
    a. to compel a judge to consolidate trial of two cases pending before different branches of the court.
    b. **to compel a judge to reduce his decision in writing.**
    c. to direct a probate court to appoint a particular person as regular administrator.
    d. to compel a judge to grant or deny an application for preliminary injunction.

SUGGESTED ANSWER:

(b), The 1987 Constitution no less commands that "No decision shall be

rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." (Art. VIII, Sec. 14, 1987 Constitution). Relative thereto, the Rules of Court also require a judgment or final order to be in writing, personally and directly prepared by the judge stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court. (Rule 36, Sec.1, Rules of Court). (Lenido Lumanog and Augusto Santos vs. People, G.R. No. 182555, September 7, 2010, Villarama, Jr., J.). Evidently, mandamus will lie to compel a judge to perform his ministerial duty to reduce his decision in writing.

69. A judgment by default can be issued despite an Answer being filed in:
    a. annulment of marriage.
    b. legal separation.
    c. <u>cases where a party willfully fails to appear before the officer who is to take his deposition.</u>
    d. declaration of nullity of marriage.

<u>SUGGESTED ANSWER:</u>

(c), If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 25 after proper service of such interrogatories, the court on motion and notice, may strike out all or any part of any pleading of the party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against the party, and in its discretion, order him to pay reasonable expenses incurred by the other, including attorney's fees. (Rule 29, Sec.5, Rules of Court). hence, even if an Answer was filed by a defendant, a judgment by default can still be issued where a party wilfully fails to appear before the officer who is to take his deposition.

In Arellano vs. Court of First Instance of Sorsogon, Branch I, 65 SCRA 46, the Supreme Court sustained the order of dismissal for failure of respondent to serve any answer to petitioner Arellano's Interrogatories. The dismissal was based on Section 5 of Rule 29 which provides that if a party fails to serve answers to interrogatories submitted under Rule 25, after proper service of such interrogatories, the Court on motion and notice may dismiss the action or render judgment by default even without prior order to serve answer.

70. Which of the following statements is not accurate?



a. <u>A plea of guilty later withdrawn is admissible in evidence against the accused who made the plea.</u>

b. An unaccepted offer of a plea of guilty to a lesser offense is inadmissible in evidence against the accused.

c. An offer to pay or payment of medical expenses arising from injury is not evidence or proof of civil/criminal liability for the Injury.

d. <u>In civil cases, an offer of compromise by the accused is admissible as an implied admission of guilt.</u>

<u>SUGGESTED ANSWERS:</u>

(a), A plea of guilty later withdrawn is not admissible in evidence against the accused who made the plea (Rule 130, Sec. 27, Rules of Court).

(d), In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. (Rule 130, Sec.27, Rules of Court).

71. Under the Rules on Evidence, the following is a conclusive presumption and therefore cannot be contradicted by evidence.

a. A person intends the ordinary consequences of his voluntary act.

b. Official duty has been regularly performed.

c. <u>A tenant cannot deny his landlord's title during the tenancy period.</u>

d. A writing is truly dated.

<u>SUGGESTED ANSWER:</u>

(c), The tenant is not permitted to deny the title of his landlord at the time of the commencement of the Relation of landlord and tenant between them (Rule 131, Sec.2, Rules of Court).

72. Cesar, age 16, a habitual offender, was caught in possession of .001 grams of marijuana. He was charged for violation of Sec. 16 of R.A. 9165, The Comprehensive Dangerous Drugs Law. The court which has jurisdiction is:

a. the MTC;

b. the RTC;

c. Special Drugs Court;

d. <u>Family Court.</u>

<u>SUGGESTED ANSWER:</u>

(d), The State is mandated to safeguard the well-being of its citizenry, particularly children from harmful effects of dangerous drugs on their



physical and mental well-being and to defend them against acts or omissions detrimental to their development and preservation. Pursuant to this policy and the mandate Republic Act No. 8369, also known as The Family Courts Act of 1997, the Family Courts are vested with exclusive jurisdiction to hear and decide cases against minors charged with drug-related offenses (A.M. NO. 07-8-2-SC-2, SEC.2). The objective is to ensure that rights of children charged with violation of any of the offenses under The Comprehensive Dangerous Drugs Act of 2002 are well protected, and that their interests and those of their family and the community are adequately balanced. (A.M. NO. 07-8-2-SC-2, SEC.2).

73. A court can motu proprio dismiss a case on the following grounds, except :
    a. failure to prosecute;
    b. <u>lack of jurisdiction over the parties;</u>
    c. litis pendentia;
    d. prescription.

<u>SUGGESTED ANSWER:</u>

(b), A court cannot motu propio dismiss a case on the ground of lack of jurisdiction over the parties because the objection on the said ground can be waived by the failure of the defendant to raise the same in his motion to dismiss or in his answer as affirmative defense. (Rule 9, Sec.1, Rules of Court).

74. A person entitled to the estate of a deceased person escheated in favor of the State has:
    a. <u>5 years from date of judgment to file a claim.</u>
    b. 2 years from date of judgment to file a claim.
    c. 5 years from date of registration of the judgment to file a claim.
    d. 2 years from date of registration of the judgment to file a claim.

<u>SUGGESTED ANSWER:</u>

(a), A person entitled to the estate of a deceased person escheated in favour of the State has a period of five (5) years from the date of such judgment within which to file a claim thereto with the court. A claim not made within said time shall be forever barred. If the claim is meritorious, such person shall have possession of and title to the same, or if sold, the municipality or city shall be accountable to, him for the proceeds, after deducting reasonable charges for the care of the estate. (Rule 91, Sec. 4, Rules of Court).

75. The MTC, acting as an Environmental Court, has original

and exclusive jurisdiction over the following, except:

a. criminal offenses punishable under the Chain Saw Act (R.A. 9175)

b. violation of the NIPAS Law (R.A. 7586)

c. violation of the Mining Laws

d. violation of Anti-Pollution Laws

SUGGESTED ANSWER:

(a), The Metropolitan Trial Court (MTC) exercises exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine. (BP 129, Sec. 32). Relative thereto, R.A. 9175 or otherwise known as the Chain Saw Act of 2002, penalizes any person who found to be in possession of a chain saw and uses the same to cut trees and timber in forest land or elsewhere except as authorized by the Department with imprisonment of six (6) years and one (1) day to eight (8) years or a fine of not less than Thirty thousand pesos (P30,000.00) but not more than fifty thousand pesos (P50,000.00) or both at the discretion of the court. Clearly, the court which has jurisdiction over violations of the Chain Saw Act is the Regional Trial Court, and not the MTC, acting as an Environmental Court.

76. A special administrator may be appointed by a court when:

a. the executor cannot post a bond.

b. the executor fails to render an account.

c. regular administrator has a claim against estate he represents.

d. a Motion for Reconsideration is filed with respect to a decision disallowing probate of a will.

SUGGESTED ANSWER:

(c), If the executor or administrator has a claim against estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator (Rule 86, Sec. 8, Rules of Court).

77. A defendant declared in default may, after judgment but before finality, file a:

a. Petition for Relief from Judgment;

b. Petition for Certiorari;

c. Motion for Reconsideration;

d. Motion to Set Aside Order of Default.

SUGGESTED ANSWER:

(c), A defendant declared in default may after judgment but before finality file a Motion for Reconsideration in order to give the Court an opportunity to rectify its mistakes and set aside the previous judgment by default before it attains finality.

ALTERNATIVE ANSWER:

A defendant declared in default may, after judgment but before finality, file a Motion for New Trial. It is well-settled that a defendant who has been declared in default has the following remedies, to wit: (1) he may, at any time after discovery of the default but before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has a meritorious defense; (2) if judgment has already been rendered when he discovered the default, but before the same has become final and executor, he may file a motion for new trial under Section 1(a) of Rule 37; (3) if he discovered the default after the judgment has become final and executor, he may file a petition for relief under Section 2 of Rule 38; and (4) he may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (B.D. long Span Builders vs. R.S. Ampeloquio Realty Development, Inc., G.R. No. 169919, September 11, 2009).

78. With leave of court, a party may amend his pleading if:
    a. there is yet no responsive pleading served.
    b. the amendment is unsubstantial.
    c. the amendment involves clerical errors of defect in the designation of a party.
    d. <u>the amendment is to conform to the evidence.</u>

SUGGESTED ANSWER:

(d), When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. (Rule 10, Sec. 5, Rules of Court).



79. When a Motion to Quash search warrant is denied, the best remedy is:
    a. appeal the denial order.
    b. <u>file a motion to suppress evidence.</u>
    c. file an injunction suit.
    d. file a certiorari petition.

<u>SUGGESTED ANSWER:</u>

(b), When a motion to quash search warrant is denied, the best remedy is to file a motion to suppress evidence since they are alternative and not cumulative remedies. (Regalado, Remedial law Compendium, 2004 Edition, Tenth Edition, page 662).

<u>ALTERNATIVE ANSWER:</u>

(d), In Santos vs. Pryce gases Inc. G.R. No. 165122, November 23, 2007, the Supreme Court held that the special civil action for certiorari is the proper recourse in assailing the quashal of the search warrant. The Trial court's unwarranted reversal of its earlier finding of probable cause constituted grave abuse of discretion. Hence, the Supreme Court had allowed direct recourse to it or even to the Court of Appeals via a special civil action for certiorari from a trial court's quashal of search warrant.

80. A court may take judicial notice of:
    a. the Twitter account of President Aquino.
    b. <u>a Committee Report issued by the Congressional Committee on Labor Relations.</u>
    c. the effects of taking aspirin everyday.
    d. the arbitral award issued by International Court of Arbitration.

<u>SUGGESTED ANSWER:</u>

(b), A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive, and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. (Rule 129, Sec. 1, Rules of Court).

81. The case of R, who is under detention, was raffled to the RTC on March 1. His arraignment should be set not later than:
    a. March 4;
    b. March 16;



c. March 30;

d. <u>March 11.</u>

<u>SUGGESTED ANSWER:</u>

(d), The arraignment of R should be set not later than March 11. Under Section 1, Rule 116 of the Rules of Court, the accused shall be arraigned within ten (10) days from the date of the raffle.

82. After the DOJ Secretary granted accused's Petition for Review, the prosecution filed a motion to withdraw the Information before the trial court. The judge therein denied the same. The trial prosecutor manifested before the judge that he can no longer prosecute the case because he is only an alter ego of the DOJ Secretary who ordered him to withdraw the Information. The case should therefore be prosecuted by:
    a. a DOJ state prosecutor.
    b. private prosecutor, if any.
    c. trial prosecutor of the pairing court.
    d. <u>the same trial prosecutor who manifested his inability to prosecute the case.</u>

<u>SUGGESTED ANSWER:</u>

(d), All criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of a public prosecutor. (Rule 110, Sec. 5, Rules of Court). The trial prosecutor assumes full discretion and control over a case. Accordingly, the same trial prosecutor who manifested his inability should prosecute the case.

83. A decision or resolution of a division of the Supreme Court when concurred in by members who actually took part in the deliberation on the issues in a case and voted thereon, is a decision or resolution of the Supreme Court.
    a. <u>three (3);</u>
    b. five(S);
    c. eight (8);
    d. ten (10).

<u>SUGGESTED ANSWER:</u>

(a), Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc

or in division may be modified or reversed except by the court sitting en banc. (Article VIII, Sec. 4, 1987 Constitution).

84. A and B adopted their nephew. They filed an action for revocation of the adoption on May 1, 1998 on the ground that their nephew neglected them. Based on the Rules of Domestic Adoption, the judge must:
    a. **advise A and B to just disinherit the nephew.**
    b. **disallow the revocation.**
    c. refer the petition to the DSWD.
    d. grant the petition after hearing.

SUGGESTED ANSWERS:

(a) and (b), Adoption being in the best interest of the child, shall not be subject to rescission by the adopter(s). However, the adopter(s) may disinherit the adoptee for causes provided in Article 919 of the Civil Code. (Sec.19, R.A. 8552 Rules of Domestic Adoption).

85. Sandiganbayan exercises concurrent jurisdiction with the Supreme Court and the Court of Appeals over:
    a. Petitions for Writ of Certiorari and Prohibition;
    b. Petitions for Writ of Habeas Corpus;
    c. Petitions for Quo Warranto;
    d. Petitions for Writ of Amparo and Habeas Corpus.

SUGGESTED ANSWER:

(d), The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunction, and other ancillary writs and processes in aid of its appellate jurisdiction: Provided, that the jurisdiction over these petitions shall not be exclusive of the Supreme Court. (Sec.2, R.A. 7975-An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, amending for that purpose Presidential Decree No. 1606, as amended).

86. C, a convict, was able to get favorable results of a post-conviction DNA testing showing that C could not have committed the crime. To gain freedom, C may:
    a. **file a petition for Writ of Habeas Corpus before the court of origin.**
    b. apply for full pardon.
    c. file a Motion to annul judgment of conviction on the ground of fraud.



d. file a Motion for new trial under Rule 121.

SUGGESTED ANSWER:

(a), The convict or the prosecution may file a petition for a writ of habeas corpus in the court of origin if the results of the post-conviction DNA testing are favourable to the convict. In case the court, after due hearing, finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause. A similar petition may be filed either in the Court of Appeals or the Supreme Court, or with any member of said courts, which may conduct a hearing thereon or remand the petition to the court of origin and issue the appropriate orders. (Sec.10, Rule on DNA Evidence).

87. X filed a complaint with the RTC through ABC, a private letter forwarding agency. The date of filing of the complaint shall be:
    a. the date stamped by ABC on the envelope containing the complaint.
    b. <u>the date of receipt by the Clerk of Court.</u>
    c. the date indicated by the receiving clerk of ABC.
    d. the date when the case is officially raffled.

SUGGESTED ANSWER:

(b), Under the Riles, the manner of filing of pleadings, appearances, motions, notices, judgments and all other papers shall only be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or bny sending them by registered mail. (Rule 13, Sec.3). Nonetheless, if the complaint was filed with the court through a private letter-forwarding agency, the established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing in court, but rather the date of actual receipt by the court, is deemed to be the date of filing of the pleading. (Benguet Electric Cooperative, Inc. vs. National Labor Relations Commission, G.R. No. 89070, May 18, 1992). Hence, the date of the actual receipt by the court is considered as the date of filing of the complaint.

88. An objection to any interrogatories may be presented within_ days after service thereof:
    a. 15;
    b. <u>10;</u>
    c. 5;
    d. 20.



SUGGESTED ANSWER:

(b), Objections to any interrogatories may be presented to the court within ten (10) days after service thereof, with notice as in case of motion. Upon filing of the aforementioned objections, the answer to such written interrogatories shall be deferred until the objections are resolved, which shall be at as early a time as is practicable. (Rule 25, Sec.3, Rules of Court).

89. The deposition of a witness, whether or not a party, may be used for any purpose if the Court finds the following circumstances are attendant, EXCEPT:
    a. when the witness is dead.
    b. when the witness is incarcerated.
    c. <u>when the witness is outside the Philippines and absence is procured by the party offering deposition.</u>
    d. when the witness is 89 years old and bed-ridden.

SUGGESTED ANSWER:

(c), The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; (2) that the witness resides at a distance more than one hundred (100) kilometres from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of the witnesses orally in open court, to allow the deposition to be used. (Rule 23, Sec. 4 (c), Rules of Court).

90. One of the exemptions to the general rule that evidence not formally offered shall not be considered is:
    a. <u>in judgment on the pleadings.</u>
    b. evidence in land registration proceedings.
    c. evidence lost/destroyed due to force majeure after being marked, identified and described in the record.
    d. documentary evidence proving a foreign judgment.

SUGGESTED ANSWER:



(a), Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. (Rule 34, Sec. 1, Rules of Court). Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence aliunde. (Philippine National Bank vs. Merelo B. Aznar, et. al, G.R. No. 171805, May 30, 2011, Leonardo-De Castro, J.). The court therefore may be allowed to render judgment based merely on the pleadings without need of trial and formal offer of evidence.

ALTERNATIVE ANSWER:

(b), The Rules of Court shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in suppletory character and whenever practicable and convenient (Rule 1, Sec. 4, Rules of Court). (Government Insurance System (GSIS) vs. Dinnah Villaviza et. al., G.R. No. 180291, July 27, 2010, Mendoza, J.). In one case, the Supreme Court sustained the Court of Appeals when it denied an application for naturalization in the basis of documents not formally offered in evidence during the trial. The High Court noted that the procedure in Sec.34 of Rule 132 providing that the Court shall consider no evidence which has not been formally offered, does not apply to naturalization proceeding conformably to Section 4, Rule 1 of the Rules of Court. (Ong Chia vs. Republic, 328 SCRA 9 (2001). Applying the same principle, we should not also apply the said rule on evidence in land registration proceedings. After all, in one case, the Supreme Court already made it clear that the liberal construction principle does not apply in land registration cases because it is not governed by the Rules of Court. (Bienvenido Castillo vs. Republic of the Philippines, G.R. No., 182980, June 22, 2011, Carpio, J.).

91. In Petition for Certiorari, the Court of Appeals issues a Writ of Preliminary Injunction against the RTC restraining the latter from trying a crucial case. The Court of Appeals should therefore:
    a. decide the main case within 60 days.
    b. decide the certiorari petition within 6 months.
    c. decide the main case or the petition within 60 days.
    d. <u>decide the main case or the petition within 6</u>



months from issue of the preliminary injunction.

SUGGESTED ANSWER:

(d), The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ. (Rule 58, Sec. 5, as amended by A>M. No. 07-7-12-SC).

92. Witness A was examined on direct examination by the prosecutor. The defense counsel however employed dilatory tactics and was able to secure numerous postponements of A's cross examination. A suffered a stroke and became incapacitated. His uncompleted testimony may therefore be:
    a. **ordered stricken from the record.**
    b. allowed to remain in the record.
    c. held in abeyance until he recovers.
    d. not be given any probative weight.

SUGGESTED ANSWER:

(a), The uncompleted testimony of A should be ordered stricken from the record because A has not been cross-examined by the defense. Consequently, it stands to reason that the striking out of the A's testimony altogether wiped out the required authentication for the prosecution's exhibits. They become inadmissible unless the court, in its discretion, reopens the trial upon a valid ground and permits the rectification of the mistakes. (Spouse Dela Cruz vs. Papa, G.R. No. 185899, December 8, 2010).

ALTERNATIVE ANSWER:

(b), The uncompleted testimony of A should be allowed to remain on the record since it was due to the fault of the defense that they were not able to exercise their right to cross-examine the witness. The defense should be penalized for employing dilatory tactics which resulted in the witness' eventual incapacity to testify.

93. If the Supreme Court en bane is equally divided in opinion covering an original action, the case shall be:
    a. re-raffled to a division.
    b. **original action shall be dismissed.**
    c. The judgment appealed from shall be official.
    d. again deliberated upon.

SUGGESTED ANSWER:

(b) Where the Court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (Rule 56, Sec. 7, Rules of Court).

94. An example of a special judgment is one which orders:
    a. the defendant to deliver and reconvey personal property to the plaintiff.
    b. defendant to execute a Deed of Sale in favor of plaintiff.
    c. defendant to paint a mural for the plaintiff.
    d. Defendant to vacate the leased premises.

SUGGESTED ANSWER:

(c), A special judgment is one which requires the performance of any act other than the payment of money, or the sale or delivery of a real or personal property. A disobedience to such judgment is an indirect contempt, and the judgment is executed by contempt proceeding. (Sura vs. Martin, 26, SCRA 286; Barrete vs. Amila, 230 SCRA 219; Magallanes vs. Sarita, 18 SCRA 575; Moslem vs. Soriano, 124 SCRA 190; People vs. Pascual, 12326-CR, February 14, 1974). A judgment ordering the defendant to paint a mural for the plaintiff is considered a special judgment.

95. At the promulgation of judgment, P, who is bonded, failed to appear without justifiable cause. In order for P not to lose his remedies under the Rules, he must:
    a. within 15 days from receipt of a copy of the decision, file a Motion for Reconsideration.
    b. within 15 days from the promulgation, surrender to the court and file a motion for leave to avail of remedies.
    c. notify his bondsman within 15 days so that his bail will not be confiscated.
    d. file a petition for certiorari.

SUGGESTED ANSWER:

(b), If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall

order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen 915) days from notice. (Rule 120, Sec. 6, Rules of Court) (Pascua vs. Court of Appeals, 348 SCRA 197; People vs. De Grano, G.R. No. 167710, June 5, 2009, Peralta, J.).

96. X, the designated executor of a will, files a petition for probate of the same. X and his counsel failed to appear without justifiable cause at the hearing on the presentation of evidence and the court therefore dismissed, motu proprio, his petition for failure to prosecute. The effect of the dismissal is:
    a. not an adjudication upon the merits.
    b. the will can no longer be probated.
    c. <u>it is a dismissal with prejudice.</u>
    d. a bar to a subsequent action on the same cause.

<u>SUGGESTED ANSWER:</u>

(c), The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, unless otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice. (See Rule 17, Sec. 3, Rules of Court; Gomez vs. Alcantara, G.R. No. 179556, February 13, 2009).

97. The Rule on Small Claims is applicable to:
    a. claims for unpaid rentals of ₱ 100,000 or less, with prayer for ejectment.
    b. enforcement of a barangay amicable settlement involving a money claim of ₱ 50,000 after one (1) year from date of settlement.
    c. <u>action for damages arising from a quasi-delict amounting to ₱ 100,000.</u>
    d. action to collect on a promissory note amounting to ₱ 105,000 where plaintiff

expressly insists in recovering only ₱ 1 00,000.

SUGGESTED ANSWER:

(c), The Rule on Small Claims shall be applied in all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court, pursuant to Rule 111 of the Revised Rules of Criminal Procedure. These claims or demands may be for damages arising from fault or negligence. (Sec. 4, A.M. No. 08-8-7-SC, The Rule of Procedure for Small Claims Cases).

98. When directed by the judge, a clerk of court can receive evidence addressed by the parties in:
    a. case where the judge is on leave.
    b. small claims proceedings.
    c. cases where the parties agree in writing.
    d. land registration proceedings.

SUGGESTED ANSWER:

(c), The Rules provide that the judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. However, in default or exparte hearings, and in any case where the parties agree in writing, the court may delegate the reception of evidence to its clerk of court who is a member of the bar. (Rule 30, Sec. 9, Rules of Court).

99. A certificate against Forum-Shopping is not required in:
    a. petitions for probate of will.
    b. application for search warrant.
    c. complaint-in-intervention.
    d. petition for Writ of Kalikasan.

SUGGESTED ANSWER:

(b), A certification against forum shopping is not required in an application for search warrant. The Rules of Court, require only initiatory pleading to be accompanied with a certificate of non-forum shopping omitting any mention of "applications" as in Supreme Court No. 04-94. Hence, the absence of such certification will not result in the dismissal of the application for search warrant. (Savage vs. Judge A.B. Taypin, G.R. No. 134217, May 11, 2000).

100. An accused's custodial rights, e.g., right to counsel and right to remain silent, is available:

a. <u>at preliminary investigation.</u>

b. at police line-up for identification purposes.

c. at ultra-violet examination to determine presence of ultra violet powder on accused's hands.

d. at one-on-one confrontation with eyewitness.

<u>SUGGESTED ANSWER:</u>

(a), Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (Article III, Sec. 12 (1), 1987 Constitution). These guaranteed rights are available in all kinds of investigation including a preliminary investigation. In a preliminary investigation, a public prosecutor determines whether a crime has been committed and whether there is probable cause that the accused is guilty thereof. (Rules of Court, Rule 112, Section 1). (Metropolitan Bank and Trust Company vs. Rogelio Reynaldo, et.al., G.R. No. 164538, August 9, 2010, Del Castillo, J.). The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right: it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process." (Sales vs. Sandiganbayan, G.R. No. 143802, November 16, 2001). Applying the foregoing constitutional and procedural precepts, there is no doubt that the custodial rights are available during the preliminary investigation.

<u>ALTERNATIVE ANSWER:</u>

There are some authorities however, who believe that the custodial rights do not apply during the preliminary investigation is a summary proceeding and merely inquisitorial in nature. Hence, the accused cannot yet invoke the full exercise of his rights including the right to counsel. Moreover, a preliminary investigation is not part of a trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to



establish his innocence (Albana vs. Belo, G.R. No. 158734, October 2, 2009, Leonardo-De Castro, J.). In a preliminary investigation, a full and exhaustive presentation of the parties' evidence is not even required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. (George Miller vs. Secretary Hernando B. Perez, G.R. No. 165412, May 30, 2011, Villarama, Jr.). Ergo, the custodial rights of the accused are not available during the preliminary investigation.

(c), At ultra-violet examination to determine presence of ultra violet powder on accused's hands.

The custodial rights of an accused are already available at the time an ultra-violet examination to determine presence of ultra-violet powder on his hands is being conducted.

There is a custodial investigation when a person is taken under the custody of the law or otherwise deprived of his freedom of action in any significant way. "Custodial investigation is in the stage "where the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who carry out a process of interrogation that leads itself to elicit incriminating statements." (People vs. Sunga, G.R. No. 126029, March 27, 2003). Otherwise stated, a custodial investigation begins when the investigation starts to focus on a particular suspect. Among the rights guaranteed to a suspect is that he must continuously have a counsel assisting him from the very start of that interrogation (Poeple vs. Morial, et. al., G.R. No. 129295, April 15, 2001). Clearly, when an accused is compelled to undergo ultra-violet examination to determine the presence of the ultra-violet powder on his hands, it is no longer a mere general inquiry but rather a custodial investigation which focuses on him as a suspect in the commission of the crime. Therefore, for all intents and purposes, he is entitled to exercise his Constitutional safeguard and guaranteed rights to counsel and to remain silent.



2011 Remedial Law Exam MCQ (November 27, 2011)

(1) Anna filed a petition for appointment as regular administratrix of her fathers' estate. Her sister Sophia moved to dismiss the petition on the ground that the parties, as members of the same family, have not exerted earnest effort toward a compromise prior to the filing of the petition. Should the petition be dismissed?

(A) Yes, since such earnest effort is jurisdictional in all estate cases.

(B) No, since such earnest effort is not required in special proceedings.

(C) Yes, since such earnest effort is required prior to the filing of the case.

(D) No, since such earnest effort toward a compromise is not required in summary proceedings.

(2) A pending criminal case, dismissed provisionally, shall be deemed permanently dismissed if not revived after 2 years with respect to offenses punishable by imprisonment

(A) of more than 12 years.

(B) not exceeding 6 years or a fine not exceeding P1,000.00.

(C) of more than 6 years or a fine in excess of P1,000.00.

(D) of more than 6 years.

(3) Angie was convicted of false testimony and served sentence. Five years later, she was convicted of homicide. On appeal, she applied for bail. May the Court of Appeals deny her application for bail on ground of habitual delinquency?

(A) Yes, the felonies are both punishable under the Revised Penal Code.

(B) Yes, her twin convictions indicated her criminal inclinations.

(C) No, the felonies fall under different titles in the Revised Penal Code.

(D) No, the charges are both bailable.

(4) Which of the following is NOT CONSISTENT with the rules governing expropriation proceedings?

(A) The court shall declare the defendant who fails to answer the complaint in default and render judgment against him.

(B) The court shall refer the case to the Board of Commissioners to determine the amount of just compensation.

(C) The plaintiff shall make the required deposit and forthwith take immediate possession of the property sought to be expropriated.

(D) The plaintiff may appropriate the property for public use after judgment and payment of the compensation fixed in it, despite defendant's appeal.

(5) Which of the following is a correct statement of the rule on amendment of the information in a criminal proceeding?

(A) An amendment that downgrades the offense requires leave of court even before the accused pleads.

(B) Substantial amendments are allowed with leave of court before the accused pleads.

(C) Only formal amendments are permissible before the accused pleads.

(D) After the plea, a formal amendment may be made without leave of court.

(6) Gary who lived in Taguig borrowed P1 million from Rey who lived in Makati under a contract of loan that fixed Makati as the venue of any action arising from the contract. Gary had already paid the loan but Rey kept on sending him letters of demand for some balance. Where is the venue of the action for harassment that Gary wants to file against Rey?

(A) In Makati since the intent of the party is to make it the venue of any action between them whether based on the contract or not.

(B) In Taguig or Makati at the option of Gary since it is a personal injury action.

(C) In Taguig since Rey received the letters of demand there.

(D) In Makati since it is the venue fixed in their contract.

(7) Which of the following is NOT within the power of a judicial receiver to perform?

(A) Bring an action in his name.

(B) Compromise a claim.

(C) Divide the residual money in his hands among the persons legally entitled to the same.



(D) <u>Invest the funds in his hands without court approval.</u>

(8) Which of the following precepts forms part of the rules governing small claims?

(A) <u>Permissive counterclaim is not allowed.</u>

(B) The court shall render its decision within 3 days after hearing.

(C) Joinder of separate claims is not allowed.

(D) Motion to declare defendant in default is allowed.

(9) The Metropolitan Trial Court convicted Virgilio and Dina of concubinage. Pending appeal, they applied for bail, claiming they are entitled to it as a matter of right. Is their claim correct?

(A) No, bail is not a matter of right after conviction.

(B) Yes, bail is a matter of right in all cases not involving moral turpitude.

(C) No, bail is dependent on the risk of flight.

(D) <u>Yes, bail is a matter of right in the Metropolitan Trial Court before and after conviction.</u>

(10) As a rule, the judge shall receive the evidence personally. In which of the following circumstances may the court delegate the reception of evidence to the clerk of court?

(A) When a question of fact arises upon a motion.

(B) When the trial of an issue of fact requires the examination of a long account.

(C) <u>In default or ex-parte hearings.</u>

(D) Upon motion of a party on reasonable grounds.

(11) Which of the following is in accord with the applicable rules on receivership?

(A) The court may appoint the plaintiff as receiver of the property in litigation over the defendant's objection.

(B) <u>A receiver may be appointed after judgment if the judgment obligor refuses to apply his property to satisfy the judgment.</u>

(C) The trial court cannot appoint a receiver when the case is on appeal.

(D) The filing of bond on appointment of a receiver is mainly optional.



(12) Bearing in mind the distinction between private and public document, which of the following is admissible in evidence without further proof of due execution or genuineness?

(A) Baptismal certificates.

(B) Official record of the Philippine Embassy in Singapore certified by the Vice- Consul with official seal.

(C) Documents acknowledged before a Notary Public in Hong Kong.

(D) Unblemished receipt dated December 20, 1985 signed by the promisee, showing payment of a loan, found among the well-kept file of the promissor.

(13) Ramon witnessed the commission of a crime but he refuses to testify for fear of his life despite a subpoena being served on him. Can the court punish him for contempt?

(A) No, since no person can be compelled to be a witness against another.

(B) Yes, since public interest in justice requires his testimony.

(C) No, since Ramon has a valid reason for not testifying.

(D) Yes, since litigants need help in presenting their cases.

(14) The right to intervene is not absolute. In general, it CANNOT be allowed where

(A) the intervenor has a common interest with any of the parties.

(B) it would enlarge the issues and expand the scope of the remedies.

(C) the intervenor fails to put up a bond for the protection of the other parties.

(D) the intervenor has a stake in the property subject of the suit.

(15) Which of the following grounds for dismissal invoked by the court will NOT PRECLUDE the plaintiff from refiling his action?

(A) Res judicata.

(B) Lack of jurisdiction over the subject matter.

(C) Unenforceability under the Statutes of Fraud.

(D) Prescription.

(16) When may a co-owner NOT demand the partition of the thing owned in common?

(A) When the creditor of one of the co-owners has attached the property.

(B) When the property is essentially indivisible.

(C) When related co-owners agreed to keep the property within the family.

(D) When a co-owner uses the property as his residence.

(17) The city prosecutor of Manila filed, upon Soledad's complaint, a criminal action for estafa against her sister, Wella, before the RTC of Manila for selling to Victor a land that she previously sold to Soledad. At the same time Soledad filed a civil action to annul the second sale before the RTC of Quezon City. May the Manila RTC motu proprio suspend the criminal action on ground of prejudicial question?

(A) Yes, if it may be clearly inferred that complainant will not object to the suspension of the criminal case.

(B) No, the accused must file a motion to suspend the action based on prejudicial question.

(C) Yes, if it finds from the record that such prejudicial question exists.

(D) Yes, if it is convinced that due process and fair trial will be better served if the criminal case is suspended.

(18) Which of the following conforms to the applicable rule on replevin?

(A) The applicant must file a bond executed to the adverse party in an amount equal to the value of the property as determined by the court.

(B) The property has been wrongfully detained by the adverse party.

(C) The applicant has a contingent claim over the property object of the writ.

(D) The plaintiff may apply for the writ at any time before judgment.

(19) Gerry sued XYZ Bus Co. and Rico, its bus driver, for injuries Gerry suffered when their bus ran off the road and hit him. Of the two defendants, only XYZ Bus Co. filed an answer, alleging that its bus ran off the road because one of its wheels got caught in an open manhole, causing the bus to swerve without the driver's fault. Someone had stolen the manhole cover and the road gave no warning of the danger it posed. On Gerry's motion and over the objection of XYZ Bus Co., the court declared Rico, the



bus driver, in default and rendered judgment ordering him to pay P50,000 in damages to Gerry. Did the court act correctly?

(A) No, since the court should have tried the case against both defendants upon the bus company's answer.

(B) No, the court should have dropped Rico as defendant since the moneyed defendant is the bus company.

(C) Yes, the court can, under the rules, render judgment against the defendant declared in default.

(D) Yes, since, in failing to answer, Rico may be deemed to have admitted the allegations in the complaint.

(20) Which of the following has NO PLACE in an application for a replevin order? A statement

(A) that the property is wrongfully detained by the adverse party.

(B) that the property has not been distrained for a tax assessment or placed under custodia legis.

(C) of the assessed value of the property.

(D) that the applicant owns or has a right to the possession of the property.

(21) 008-997-0001 In which of the following instances is the quantum of evidence ERRONEOUSLY applied?

(A) in Writ of Amparo cases, substantial evidence.

(B) to satisfy the burden of proof in civil cases, preponderance of evidence.

(C) to overcome a disputable presumption, clear and convincing evidence.

(D) to rebut the presumptive validity of a notarial document, substantial evidence.

(22) The accused jumps bail and fails to appear on promulgation of judgment where he is found guilty. What is the consequence of his absence?

(A) Counsel may appeal the judgment in the absence of the accused.

(B) The judgment shall be promulgated in his absence and he loses his right of appeal.



(C) The promulgation of the judgment shall be suspended until he is brought to the jurisdiction of the court.

(D) The judgment shall be void.

(23) What should the court sheriff do if a third party serves on him an affidavit of claim covering the property he had levied?

(A) Ask the judgment obligee to file a court-approved indemnity bond in favor of the third-party claimant or the sheriff will release the levied property.

(B) Ask the judgment obligee to file a court-approved bond for the sheriff's protection in case he proceeds with the execution.

(C) Immediately lift the levy and release the levied property.

(D) Ask the third-party claimant to support his claim with an indemnity bond in favor of the judgment obligee and release the levied property if such bond is filed.

(24) Which of the following is NOT REGARDED as a sufficient proof of personal service of pleadings?

(A) Official return of the server.

(B) Registered mail receipt.

(C) Written admission of the party served.

(D) Affidavit of the server with a statement of the date, place and manner of service.

(25) A sued B for ejectment. Pending trial, B died, survived by his son, C. No substitution of party defendant was made. Upon finality of the judgment against B, may the same be enforced against C?

(A) Yes, because the case survived B's death and the effect of final judgment in an ejectment case binds his successors in-interest.

(B) No, because C was denied due process.

(C) Yes, because the negligence of B's counsel in failing to ask for substitution, should not prejudice A.

(D) No, because the action did not survive B's death.

(26) What is the proper remedy to secure relief from the final resolutions of the Commission On Audit?

(A) Petition for review on certiorari with the Supreme Court.



(B) Special civil action of certiorari with the Court of Appeals.

(C) Special civil action of certiorari with the Supreme Court.

(D) Appeal to the Court of Appeals.

(27) Which of the following is a duty enjoined on the guardian and covered by his bond?

(A) Provide for the proper care, custody, and education of the ward.

(B) Ensure the wise and profitable investment of the ward's financial resources.

(C) Collect compensation for his services to the ward.

(D) Raise the ward to become a responsible member of society.

(28) Berto was charged with and convicted of violating a city ordinance against littering in public places punishable by imprisonment of one month or a fine of P1,000.00. But the city mayor pardoned him. A year later, he was charged with violating a city ordinance against jaywalking which carried the same penalty. Need Berto post bail for such offense?

(A) Yes, his previous conviction requires posting of bail for the present charge.

(B) Yes, since he may be deemed to have violated the terms of his pardon.

(C) No, because he is presumed innocent until proven otherwise.

(D) No, one charged with the violation of a city ordinance is not required to post bail, notwithstanding a previous pardon.

(29) Which of the following claims survive the death of the defendant and need not be presented as a claim against the estate?

(A) Contingent money claims arising from contract.

(B) Unenforced money judgment against the decedent, with death occurring before levy on execution of the property.

(C) Claims for damages arising from quasi-delict.

(D) Claims for funeral expenses.

(30) In a case, the prosecutor asked the medical expert the question, "Assuming that the assailant was behind the deceased



before he attacked him, would you say that treachery attended the killing?" Is this hypothetical question permissible?

(A) <u>No, since it asks for his legal opinion.</u>

(B) Yes, but conditionally, subject to subsequent proof that the assailant was indeed behind the deceased at that time.

(C) Yes, since hypothetical questions may be asked of an expert witness.

(D) No, since the medical expert has no personal knowledge of the fact.

(31) The city prosecutor charged Ben with serious physical injuries for stabbing Terence. He was tried and convicted as charged. A few days later, Terence died due to severe infection of his stab wounds. Can the prosecution file another information against Ben for homicide?

(A) Yes, since Terence's death shows irregularity in the filing of the earlier charge against him.

(B) No, double jeopardy is present since Ben had already been convicted of the first offense.

(C) No, there is double jeopardy since serious physical injuries is necessarily included in the charge of homicide.

(D) <u>Yes, since supervening event altered the kind of crime the accused committed.</u>

(32) Arvin was caught in flagrante delicto selling drugs for P200,000.00. The police officers confiscated the drugs and the money and brought them to the police station where they prepared the inventory duly signed by police officer Oscar Moreno. They were, however, unable to take pictures of the items. Will this deficiency destroy the chain of custody rule in the drug case?

(A) <u>No, a breach of the chain of custody rule in drug cases, if satisfactorily explained, will not negate conviction.</u>

(B) No, a breach of the chain of custody rule may be offset by presentation in court of the drugs.

(C) Yes, chain of custody in drug cases must be strictly observed at all times to preserve the integrity of the confiscated items.

(D) Yes, compliance with the chain of custody rule in drug cases is the only way to prove the accused's guilt beyond reasonable doubt.



(33) A sued B in the RTC of Quezon City, joining two causes of action: for partition of real property and breach of contract with damages. Both parties reside in Quezon City but the real property is in Manila. May the case be dismissed for improper venue?

(A) Yes, since causes of action pertaining to different venues may not be joined in one action.

(B) No, since causes of action pertaining to different venues may be joined in the RTC if one of the causes of action falls within its jurisdiction.

(C) Yes, because special civil action may not be joined with an ordinary civil action.

(D) No, since plaintiff may unqualifiedly join in one complaint as many causes of action as he has against opposing party.

(34) What is the doctrine of judicial stability or non interference?

(A) Once jurisdiction has attached to a court, it can not be deprived of it by subsequent happenings or events.

(B) Courts will not hear and decide cases involving issues that come within the jurisdiction of administrative tribunals.

(C) No court has the authority to interfere by injunction with the judgment of another court of coordinate jurisdiction.

(D) A higher court will not entertain direct resort to it unless the redress sought cannot be obtained from the appropriate court.

(35) Which of the following admissions made by a party in the course of judicial proceedings is a judicial admission?

(A) Admissions made in a pleading signed by the party and his counsel intended to be filed.

(B) An admission made in a pleading in another case between the same parties.

(C) Admission made by counsel in open court.

(D) Admissions made in a complaint superseded by an amended complaint.

(36) What defenses may be raised in a suit to enforce a foreign judgment?

(A) That the judgment is contrary to Philippine procedural rules.

(B) None, the judgment being entitled to full faith and credit as a matter of general comity among nations.

(C) That the foreign court erred in the appreciation of the evidence.

(D) That extrinsic fraud afflicted the judgment.

(37) Cindy charged her husband, George, with bigamy for a prior subsisting marriage with Teresa. Cindy presented Ric and Pat, neighbors of George and Teresa in Cebu City, to prove, first, that George and Teresa cohabited there and, second, that they established a reputation as husband and wife. Can Cindy prove the bigamy by such evidence?

(A) Yes, the circumstantial evidence is enough to support a conviction for bigamy.

(B) No, at least one direct evidence and two circumstantial evidence are required to support a conviction for bigamy.

(C) No, the circumstantial evidence is not enough to support a conviction for bigamy.

(D) No, the circumstantial evidence cannot overcome the lack of direct evidence in any criminal case.

(38) To prove payment of a debt, Bong testified that he heard Ambo say, as the latter was handing over money to Tessie, that it was in payment of debt. Is Bong's testimony admissible in evidence?

(A) Yes, since what Ambo said and did is an independently relevant statement.

(B) No, since what Ambo said and did was not in response to a startling occurrence.

(C) No, since Bong's testimony of what Ambo said and did is hearsay.

(D) Yes, since Ambo's statement and action, subject of Bong's testimony, constitutes a verbal act.

(39) Considering the qualifications required of a would-be witness, who among the following is INCOMPETENT to testify?

(A) A person under the influence of drugs when the event he is asked to testify on took place.

(B) A person convicted of perjury who will testify as an attesting witness to a will.



(C) A deaf and dumb.

(D) A mental retardate.

(40) Arthur, a resident foreigner sold his car to Bren. After being paid but before delivering the car, Arthur replaced its original sound system with an inferior one. Bren discovered the change, rejected the car, and demanded the return of his money. Arthur did not comply. Meantime, his company reassigned Arthur to Singapore. Bren filed a civil action against Arthur for contractual fraud and damages. Upon his application, the court issued a writ of preliminary attachment on the grounds that (a) Arthur is a foreigner; (b) he departed from the Philippines; and (c) he was guilty of fraud in contracting with Bren. Is the writ of preliminary attachment proper?

(A) No, Arthur is a foreigner living abroad; he is outside the court's jurisdiction.

(B) Yes, Arthur committed fraud in changing the sound system and its components before delivering the car bought from him.

(C) Yes the timing of his departure is presumptive evidence of intent to defraud.

(D) No, since it was not shown that Arthur left the country with intent to defraud Bren.

(41) What is the movant's remedy if the trial court incorrectly denies his motion to dismiss and related motion for reconsideration?

(A) Answer the complaint.

(B) File an administrative action for gross ignorance of the law against the trial judge.

(C) File a special civil action of certiorari on ground of grave abuse of discretion.

(D) Appeal the orders of denial.

(42) During trial, plaintiff offered evidence that appeared irrelevant at that time but he said he was eventually going to relate to the issue in the case by some future evidence. The defendant objected. Should the trial court reject the evidence in question on ground of irrelevance?

(A) No, it should reserve its ruling until the relevance is shown.

(B) Yes, since the plaintiff could anyway subsequently present the evidence anew.



(C) Yes, since irrelevant evidence is not admissible.

(D) <u>No, it should admit it conditionally until its relevance is shown.</u>

(43) Ben testified that Jaime, charged with robbery, has committed bag-snatching three times on the same street in the last six months. Can the court admit this testimony as evidence against Jaime?

(A) No, since there is no showing that Ben witnessed the past three robberies.

(B) Yes, as evidence of his past propensity for committing robbery.

(C) Yes, as evidence of a pattern of criminal behavior proving his guilt of the present offense.

(D) <u>No, since evidence of guilt of a past crime is not evidence of guilt of a present crime.</u>

(44) What is the right correlation between a criminal action and a petition for Writ of Amparo both arising from the same set of facts?

(A) When the criminal action is filed after the Amparo petition, the latter shall be dismissed.

(B) The proceeding in an Amparo petition is criminal in nature.

(C) No separate criminal action may be instituted after an Amparo petition is filed.

(D) <u>When the criminal action is filed after the Amparo petition, the latter shall be consolidated with the first.</u>

(45) Alex filed a petition for writ of amparo against Melba relative to his daughter Toni's involuntary disappearance. Alex said that Melba was Toni's employer, who, days before Toni disappeared, threatened to get rid of her at all costs. On the other hand, Melba countered that she had nothing to do with Toni's disappearance and that she took steps to ascertain Toni's whereabouts. What is the quantum of evidence required to establish the parties' respective claims?

(A) For Alex, probable cause; for Melba, substantial evidence.

(B) For Alex, preponderance of evidence; for Melba, substantial evidence.

(C) For Alex, proof beyond reasonable doubt; for Melba, ordinary diligence.

(D) <u>For both, substantial evidence.</u>



(46) In which of the following situations is the declaration of a deceased person against his interest NOT ADMISSIBLE against him or his successors and against third persons?

(A) Declaration of a joint debtor while the debt subsisted.

(B) Declaration of a joint owner in the course of ownership.

(C) Declaration of a former co-partner after the partnership has been dissolved.

(D) Declaration of an agent within the scope of his authority.

(47) Defendant Dante said in his answer: "1. Plaintiff Perla claims that defendant Dante owes her P4,000 on the mobile phone that she sold him; 2. But Perla owes Dante P6,000 for the dent on his car that she borrowed." How should the court treat the second statement?

(A) A cross claim

(B) A compulsory counterclaim

(C) A third party complaint

(D) A permissive counterclaim

(48) How will the court sheriff enforce the demolition of improvements?

(A) He will give a 5-day notice to the judgment obligor and, if the latter does not comply, the sheriff will have the improvements forcibly demolished.

(B) He will report to the court the judgment obligor's refusal to comply and have the latter cited in contempt of court.

(C) He will demolish the improvements on special order of the court, obtained at the judgment obligee's motion.

(D) He will inform the court of the judgment obligor's noncompliance and proceed to demolish the improvements.

(49) When may the bail of the accused be cancelled at the instance of the bondsman?

(A) When the accused jumps bail.

(B) When the bondsman surrenders the accused to the court.

(C) When the accused fails to pay his annual premium on the bail bond.

(D) When the accused changes his address without notice to the bondsman.

(50) Which of the following MISSTATES a requisite for the issuance of a search warrant?

(A) The warrant specifically describes the place to be searched and the things to be seized.

(B) Presence of probable cause.

(C) The warrant issues in connection with one specific offense.

(D) <u>Judge determines probable cause upon the affidavits of the complainant and his witnesses.</u>

(51) Ranger Motors filed a replevin suit against Bart to recover possession of a car that he mortgaged to it. Bart disputed the claim. Meantime, the court allowed, with no opposition from the parties, Midway Repair Shop to intervene with its claim against Bart for unpaid repair bills. On subsequent motion of Ranger Motors and Bart, the court dismissed the complaint as well as Midway Repair Shop's intervention. Did the court act correctly?

(A) No, since the dismissal of the intervention bars the right of Bart to file a separate action.

(B) Yes, intervention is merely collateral to the principal action and not an independent proceeding.

(C) Yes, the right of the intervenor is merely in aid of the right of the original party, which in this case had ceased to exist.

(D) <u>No, since having been allowed to intervene, the intervenor became a party to the action, entitled to have the issue it raised tried and decided.</u>

(52) The accused was convicted for estafa thru falsification of public document filed by one of two offended parties. Can the other offended party charge him again with the same crime?

(A) Yes, since the wrong done the second offended party is a separate crime.

(B) <u>No, since the offense refers to the same series of act, prompted by one criminal intent.</u>

(C) Yes, since the second offended party is entitled to the vindication of the wrong done him as well.

(D) No, since the second offended party is in estoppel, not having joined the first criminal action.

(53) Henry testified that a month after the robbery Asiong, one of the accused, told him that Carlos was one of those who



committed the crime with him. Is Henry's testimony regarding what Asiong told him admissible in evidence against Carlos?

(A) No, since it is hearsay.

(B) No, since Asiong did not make the statement during the conspiracy.

(C) Yes, since it constitutes admission against a co-conspirator.

(D) Yes, since it part of the res gestae.

(54) Dorothy filed a petition for writ of habeas corpus against her husband, Roy, to get from him custody of their 5 year old son, Jeff. The court granted the petition and required Roy to turn over Jeff to his mother. Roy sought reconsideration but the court denied it. He filed a notice of appeal five days from receipt of the order denying his motion for reconsideration. Did he file a timely notice of appeal?

(A) No, since he filed it more than 2 days after receipt of the decision granting the petition.

(B) No, since he filed it more than 2 days after receipt of the order denying his motion for reconsideration.

(C) Yes, since he filed it within 15 days from receipt of the denial of his motion for reconsideration.

(D) Yes, since he filed it within 7 days from receipt of the denial of his motion for reconsideration.

(55) Angel Kubeta filed a petition to change his first name "Angel." After the required publication but before any opposition could be received, he filed a notice of dismissal. The court confirmed the dismissal without prejudice. Five days later, he filed another petition, this time to change his surname "Kubeta." Again, Angel filed a notice of dismissal after the publication. This time, however, the court issued an order, confirming the dismissal of the case with prejudice. Is the dismissal with prejudice correct?

(A) Yes, since such dismissal with prejudice is mandatory.

(B) No, since the rule on dismissal of action upon the plaintiff's notice does not apply to special proceedings.

(C) No, since change of name does not involve public interest and the rules should be liberally construed.

(D) Yes, since the rule on dismissal of action upon the



plaintiff's notice applies and the two cases involve a change in name.

(56) A complaint without the required "verification"

(A) shall be treated as unsigned.

(B) lacks a jurisdictional requirement.

(C) is a sham pleading.

(D) is considered not filed and should be expunged.

(57) The decisions of the Commission on Elections or the Commission on Audit may be challenged by

(A) petition for review on certiorari filed with the Supreme Court under Rule 45.

(B) petition for review on certiorari filed with the Court of Appeals under Rule 42.

(C) appeal to the Supreme Court under Rule 54.

(D) special civil action of certiorari under Rule 65 filed with the Supreme Court.

(58) Which of the following states a correct guideline in hearing applications for bail in capital offenses?

(A) The hearing for bail in capital offenses is summary; the court does not sit to try the merits of the case.

(B) The prosecution's conformity to the accused's motion for bail is proof that its evidence of his guilt is not strong.

(C) The accused, as applicant for bail, carries the burden of showing that the prosecution's evidence of his guilt is not strong.

(D) The prosecution must have full opportunity to prove the guilt of the accused.

(59) Apart from the case for the settlement of her parents' estate, Betty filed an action against her sister, Sigma, for reconveyance of title to a piece of land. Betty claimed that Sigma forged the signatures of their late parents to make it appear that they sold the land to her when they did not, thus prejudicing Betty's legitime. Sigma moved to dismiss the action on the ground that the dispute should be resolved in the estate proceedings. Is Sigma correct?

(A) Yes, questions of collation should be resolved in the estate proceedings, not in a separate civil case.

(B) No, since questions of ownership of property cannot be resolved in the estate proceedings.

(C) Yes, in the sense that Betty needs to wait until the estate case has been terminated.

(D) No, the filing of the separate action is proper; but the estate proceeding must be suspended meantime.

(60) What is the consequence of the unjustified absence of the defendant at the pre-trial?

(A) The trial court shall declare him as in default.

(B) The trial court shall immediately render judgment against him.

(C) The trial court shall allow the plaintiff to present evidence ex-parte.

(D) The trial court shall expunge his answer from the record.

(61) What is the remedy of the accused if the trial court erroneously denies his motion for preliminary investigation of the charge against him?

(A) Wait for judgment and, on appeal from it, assign such denial as error.

(B) None since such order is final and executory.

(C) Ask for reconsideration; if denied, file petition for certiorari and prohibition.

(D) Appeal the order denying the motion for preliminary investigation.

(62) Which of the following renders a complaint for unlawful detainer deficient?

(A) The defendant claims that he owns the subject property.

(B) The plaintiff has tolerated defendant's possession for 2 years before demanding that he vacate it.

(C) The plaintiff's demand is for the lessee to pay back rentals or vacate.

(D) The lessor institutes the action against a lessee who has not paid the stipulated rents.

(63) In a judicial foreclosure proceeding, under which of the following instances is



the court NOT ALLOWED to render deficiency judgment for the plaintiff?

(A) If the mortgagee is a banking institution.

(B) if upon the mortgagor's death during the proceeding, the mortgagee submits his claim in the estate proceeding.

(C) <u>If the mortgagor is a third party who is not solidarily liable with the debtor.</u>

(D) If the mortgagor is a non-resident person and cannot be found in the Philippines.

(64) In which of the following cases is the plaintiff the real party in interest?

(A) A creditor of one of the co-owners of a parcel of land, suing for partition

(B) An agent acting in his own name suing for the benefit of a disclosed principal

(C) <u>Assignee of the lessor in an action for unlawful detainer</u>

(D) An administrator suing for damages arising from the death of the decedent

(65) The defendant in an action for sum of money filed a motion to dismiss the complaint on the ground of improper venue. After hearing, the court denied the motion. In his answer, the defendant claimed prescription of action as affirmative defense, citing the date alleged in the complaint when the cause of action accrued. May the court, after hearing, dismiss the action on ground of prescription?

(A) <u>Yes, because prescription is an exception to the rule on Omnibus Motion.</u>

(B) No, because affirmative defenses are barred by the earlier motion to dismiss.

(C) Yes, because the defense of prescription of action can be raised at anytime before the finality of judgment.

(D) No, because of the rule on Omnibus Motion.

(66) What is the effect of the failure of the accused to file a motion to quash an information that charges two offenses?

(A) He may be convicted only of the more serious offense.



(B) He may in general be convicted of both offenses.

(C) The trial shall be void.

(D) He may be convicted only of the lesser offense.

(67) Which of the following is a correct application of the rules involved in consolidation of cases?

(A) Consolidation of cases pending in different divisions of an appellate court is not allowed.

(B) The court in which several cases are pending involving common questions of law and facts may hear initially the principal case and suspend the hearing in the other cases.

(C) Consolidation of cases pending in different branches or different courts is not permissible.

(D) The consolidation of cases is done only for trial purposes and not for appeal.

(68) Summons was served on "MCM Theater," a business entity with no juridical personality, through its office manager at its place of business. Did the court acquire jurisdiction over MCM Theater's owners?

(A) Yes, an unregistered entity like MCM Theater may be served with summons through its office manager.

(B) No, because MCM has no juridical personality and cannot be sued.

(C) No, since the real parties in interest, the owners of MCM Theater, have not been served with summons.

(D) Yes since MCM, as business entity, is a de facto partnership with juridical personality.

(69) Fraud as a ground for new trial must be extrinsic as distinguished from intrinsic. Which of the following constitutes extrinsic fraud?

(A) Collusive suppression by plaintiff's counsel of a material evidence vital to his cause of action.

(B) Use of perjured testimony at the trial.

(C) The defendant's fraudulent representation that caused damage to the plaintiff.

(D) Use of falsified documents during the trial.



(70) Upon review, the Secretary of Justice ordered the public prosecutor to file a motion to withdraw the information for estafa against Sagun for lack of probable cause. The public prosecutor complied. Is the trial court bound to grant the withdrawal?

(A) Yes, since the prosecution of an action is a prerogative of the public prosecutor.

(B) No, since the complainant has already acquired a vested right in the information.

(C) No, since the court has the power after the case is filed to itself determine probable cause.

(D) Yes, since the decision of the Secretary of Justice in criminal matters is binding on courts.

(71) Unexplained or unjustified non-joinder in the Complaint of a necessary party despite court order results in

(A) the dismissal of the Complaint.

(B) suspension of proceedings.

(C) contempt of court.

(D) waiver of plaintiff's right against the unpleaded necessary party.

(72) Which of the following CANNOT be disputably presumed under the rules of evidence?

(A) That the thing once proved to exist continues as long as is usual with things of that nature.

(B) That the law has been obeyed.

(C) That a writing is truly dated.

(D) That a young person, absent for 5 years, it being unknown whether he still lives, is considered dead for purposes of succession.

(73) Which of the following is NOT REQUIRED in a petition for mandamus?

(A) The act to be performed is not discretionary.

(B) There is no other adequate remedy in the ordinary course of law.

(C) The respondent neglects to perform a clear duty under a contract.

(D) The petitioner has a clear legal right to the act demanded.

(74) When is the defendant entitled to the return of the property taken under a writ of replevin?

(A) <u>When the plaintiff's bond is found insufficient or defective and is not replaced.</u>

(B) When the defendant posts a redelivery bond equal to the value of the property seized.

(C) When the plaintiff takes the property and disposes of it without the sheriff's approval.

(D) When a third party claims the property taken yet the applicant does not file a bond in favor of the sheriff.

(75) Character evidence is admissible

(A) <u>in criminal cases, the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged.</u>

(B) in criminal cases, the prosecution may prove the bad moral character of the accused to prove his criminal predisposition.

(C) in criminal cases, the bad moral character of the offended party may not be proved.

(D) when it is evidence of the good character of a witness even prior to impeachment.

(76) X's action for sum of money against Y amounting to P80,000.00 accrued before the effectivity of the rule providing for shortened procedure in adjudicating claims that do not exceed P100,000.00. X filed his action after the rule took effect. Will the new rule apply to his case?

(A) No since what applies is the rule in force at the time the cause of action accrued.

(B) No, since new procedural rules cover only cases where the issues have already been joined.

(C) Yes, since procedural rules have retroactive effect.

(D) <u>Yes, since procedural rules generally apply prospectively to pending cases.</u>

(77) A motion for reconsideration of a decision is pro forma when

(A) <u>it does not specify the defects in the judgment.</u>

(B) it is a second motion for reconsideration with an alternative prayer for new trial.



(C) it reiterates the issues already passed upon but invites a second look at the evidence and the arguments.

(D) its arguments in support of the alleged errors are grossly erroneous.

(78) Which of the following correctly states the rule on foreclosure of mortgages?

(A) The rule on foreclosure of real estate mortgage is suppletorily applicable to extrajudicial foreclosures.

(B) <u>In judicial foreclosure, an order of confirmation is necessary to vest all rights in the purchaser.</u>

(C) There is equity of redemption in extra-judicial foreclosure.

(D) A right of redemption by the judgment obligor exists in judicial foreclosure.

(79) The information charges PNP Chief Luis Santos, (Salary Grade 28), with "taking advantage of his public position as PNP Head by feloniously shooting JOSE ONA, inflicting on the latter mortal wounds which caused his death." Based solely on this allegation, which court has jurisdiction over the case?

(A) Sandiganbayan only

(B) Sandiganbayan or Regional Trial Court

(C) Sandiganbayan or Court Martial

(D) <u>Regional Trial Court only</u>

(80) Distinguish between conclusiveness of judgment and bar by prior judgment.

(A) Conclusiveness of judgment bars another action based on the same cause; bar by prior judgment precludes another action based on the same issue.

(B) Conclusiveness of judgment bars only the defendant from questioning it; bar by prior judgment bars both plaintiff and defendant.

(C) <u>Conclusiveness of judgment bars all matters directly adjudged; bar by prior judgment precludes all matters that might have been adjudged.</u>

(D) Conclusiveness of judgment precludes the filing of an action to annul such judgment; bar by prior judgment allows the filing of such an action.

(81) Which of the following matters is NOT A PROPER SUBJECT of judicial notice?



(A) Persons have killed even without motive.

(B) Municipal ordinances in the municipalities where the MCTC sits.

(C) Teleconferencing is now a way of conducting business transactions.

(D) British law on succession personally known to the presiding judge.

(82) The RTC of Malolos, Branch 1, issued a writ of execution against Rene for P20 million. The sheriff levied on a school building that appeared to be owned by Rene. Marie, however, filed a third party claim with the sheriff, despite which, the latter scheduled the execution sale. Marie then filed a separate action before the RTC of Malolos, Branch 2, which issued a writ of preliminary injunction enjoining the sheriff from taking possession and proceeding with the sale of the levied property. Did Branch 2 correctly act in issuing the injunction?

(A) Yes, since the rules allow the filing of the independent suit to check the sheriff's wrongful act in levying on a third party's property.

(B) Yes, since Branch 2, like Branch 1, is part of the RTC of Malolos.

(C) No, because the proper remedy is to seek relief from the same court which rendered the judgment.

(D) No, since it constitutes interference with the judgment of a co-equal court with concurrent jurisdiction.

(83) What is the effect and ramification of an order allowing new trial?

(A) The court's decision shall be held in suspension until the defendant could show at the reopening of trial that it has to be abandoned.

(B) The court shall maintain the part of its judgment that is unaffected and void the rest.

(C) The evidence taken upon the former trial, if material and competent, shall remain in use.

(D) The court shall vacate the judgment as well as the entire proceedings had in the case.

(84) Which of the following is sufficient to disallow a will on the ground of mistake?

(A) An error in the description of the land devised in the will.



(B) The inclusion for distribution among the heirs of properties not belonging to the testator.

(C) <u>The testator intended a donation intervivos but unwittingly executed a will.</u>

(D) An error in the name of the person nominated as executor.

(85) As a rule, the estate shall not be distributed prior to the payment of all charges to the estate. What will justify advance distribution as an exception?

(A) <u>The estate has sufficient residual assets and the distributees file sufficient bond.</u>

(B) The specific property sought to be distributed might suffer in value.

(C) An agreement among the heirs regarding such distribution.

(D) The conformity of the majority of the creditors to such distribution.

(86) A party aggrieved by an interlocutory order of the Civil Service Commission (CSC) filed a petition for certiorari and prohibition with the Court of Appeals. May the Court of Appeals take cognizance of the petition?

(A) Yes, provided it raises both questions of facts and law.

(B) No, since the CSC Chairman and Commissioners have the rank of Justices of the Court of Appeals.

(C) No, since the CSC is a Constitutional Commission.

(D) <u>Yes, since the Court of Appeals has jurisdiction over the petition concurrent with the Supreme Court.</u>

(87) Which of the following is appealable?

(A) An order of default against the defendant.

(B) The denial of a motion to dismiss based on improper venue.

(C) <u>The dismissal of an action with prejudice.</u>

(D) The disallowance of an appeal.

(88) Which of the following is NOT REQUIRED of a declaration against interest as an exception to the hearsay rule?

(A) The declarant had no motive to falsify and believed such declaration to be true.

(B) The declarant is dead or unable to testify.

(C) The declaration relates to a fact against the interest of the declarant.

(D) <u>At the time he made said declaration he was unaware that the same was contrary to his aforesaid interest.</u>

(89) To prove the identity of the assailant in a crime of homicide, a police officer testified that, Andy, who did not testify in court, pointed a finger at the accused in a police lineup. Is the police officer's testimony regarding Andy's identification of the accused admissible evidence?

(A) Yes, since it is based on his personal knowledge of Andy's identification of the accused.

(B) Yes, since it constitutes an independently relevant statement.

(C) No, since the police had the accused identified without warning him of his rights.

(D) <u>No, since the testimony is hearsay.</u>

(90) In which of the following cases is the testimony in a case involving a deceased barred by the Survivorship Disqualification Rule or Dead Man Statute?

(A) <u>Testimony against the heirs of the deceased defendant who are substituted for the latter.</u>

(B) The testimony of a mere witness who is neither a party to the case nor is in privity with the latter.

(C) The testimony of an oppositor in a land registration case filed by the decedent's heirs.

(D) The testimony is offered to prove a claim less than what is established under a written document signed by the decedent.

(91) The prosecution moved for the discharge of Romy as state witness in a robbery case it filed against Zoilo, Amado, and him. Romy testified, consistent with the sworn statement that he gave the prosecution. After hearing Romy, the court denied the motion for his discharge. How will denial affect Romy?

(A) His testimony shall remain on record.

(B) <u>Romy will be prosecuted along with Zoilo and Amado.</u>

(C) His liability, if any, will be mitigated.

(D) The court can convict him based on his testimony.

(92) In proceedings for the settlement of the estate of deceased persons, the court in which the action is pending may properly

(A) pass upon question of ownership of a real property in the name of the deceased but claimed by a stranger.

(B) pass upon with the consent of all the heirs the issue of ownership of estate asset, contested by an heir if no third person is affected.

(C) rule on a claim by one of the heirs that an estate asset was held in trust for him by the deceased.

(D) rescind a contract of lease entered into by the deceased before death on the ground of contractual breach by the lessee.

(93) Which of the following stipulations in a contract will supersede the venue for actions that the rules of civil procedure fix?

(A) In case of litigation arising from this contract of sale, the preferred venue shall be in the proper courts of Makati.

(B) Should the real owner succeed in recovering his stolen car from buyer X, the latter shall have recourse under this contract to seller Y exclusively before the proper Cebu City court.

(C) Venue in case of dispute between the parties to this contract shall solely be in the proper courts of Quezon City.

(D) Any dispute arising from this contract of sale may be filed in Makati or Quezon City.

(94) Allan was riding a passenger jeepney driven by Ben that collided with a car driven by Cesar, causing Allan injury. Not knowing who was at fault, what is the best that Allan can do?

(A) File a tort action against Cesar.

(B) Await a judicial finding regarding who was at fault.

(C) Sue Ben for breach of contract of carriage.

(D) Sue both Ben and Cesar as alternative defendants.

(95) A surety company, which provided the bail bond for the release of the accused, filed a motion to withdraw as surety on the ground of the accused's non-payment of the renewal premium. Can the trial court grant the withdrawal?



(A) <u>No, since the surety's undertaking is not annual but lasts up to judgment.</u>

(B) Yes, since surety companies would fold up otherwise.

(C) No, since the surety company technically takes the place of the accused with respect to court attendance.

(D) Yes, since the accused has breached its agreement with the surety company.

(96) To prove that Susan stabbed her husband Elmer, Rico testified that he heard Leon running down the street, shouting excitedly, "Sinasaksak daw ni Susan ang asawa niya! (I heard that Susan is stabbing her husband!)" Is Leon's statement as narrated by Rico admissible?

(A) No, since the startling event had passed.

(B) Yes, as part of the res gestae.

(C) <u>No, since the excited statement is itself hearsay.</u>

(D) Yes, as an independently relevant statement.

(97) Which of the following NOT TRUE regarding the doctrine of judicial hierarchy?

(A) <u>It derives from a specific and mandatory provision of substantive law.</u>

(B) The Supreme Court may disregard the doctrine in cases of national interest and matters of serious implications.

(C) A higher court will not entertain direct recourse to it if redress can be obtained in the appropriate courts.

(D) The reason for it is the need for higher courts to devote more time to matters within their exclusive jurisdiction.

(98) Plaintiff Manny said in his complaint: "3. On March 1, 2001 defendant Letty borrowed P1 million from plaintiff Manny and made a promise to pay the loan within six months." In her answer, Letty alleged: "Defendant Letty specifically denies the allegations in paragraph 3 of the complaint that she borrowed P1 million from plaintiff Manny on March 1, 2001 and made a promise to pay the loan within six months." Is Letty's denial sufficient?

(A) Yes, since it constitutes specific denial of the loan.

(B) Yes, since it constitutes positive denial of the existence of the loan.



(C) No, since it fails to set forth the matters defendant relied upon in support of her denial.

(D) No, since she fails to set out in par. 2 of her answer her special and affirmative defenses.

(99) When may an information be filed in court without the preliminary investigation required in the particular case being first conducted?

(A) Following an inquest, in cases of those lawfully arrested without a warrant.

(B) When the accused, while under custodial investigation, informs the arresting officers that he is waiving his right to preliminary investigation.

(C) When the accused fails to challenge the validity of the warrantless arrest at his arraignment.

(D) When the arresting officers take the suspect before the judge who issues a detention order against him.

(100) In a civil action involving three separate causes of action, the court rendered summary judgment on the first two causes of action and tried the third. After the period to appeal from the summary judgment expired, the court issued a writ of execution to enforce the same. Is the writ of execution proper?

(A) No, being partial, the summary judgment is interlocutory and any appeal from it still has to reckon with the final judgment.

(B) Yes since, assuming the judgment was not appealable, the defendant should have questioned it by special civil action of certiorari.

(C) No, since the rules do not allow a partial summary judgment.

(D) No, since special reason is required for execution pending rendition of a final decision in the case.



References:

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