A Compilation of the

Questions and Suggested Answers

In the

PHILIPPINE BAR EXAMINATIONS 2007-2013

In

MERCANTILE

LAW

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

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FOREWORD

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The Author.

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MULTIPLE CHOICE QUESTIONS

General Principles

Presumption: Habitually Engaging in Commerce (2009)

No.V. Cecilio is planning to put up a grocery store in the subdivision where he and his family reside. To promote this proposed business venture, he told his wife and three children to send out promotional text messages to all the residents in the subdivision. Cecilio's family members did as instructed, and succeeded in reaching, through text messages, more than 80% of the residents in the subdivision.

Is Cecilio habitually engaged in commerce even if the grocery store has yet to be established? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes. Even if the grocery store has yet to be established, Cecilio already habitually engaged in commerce, when per his instruction the members of his family contacted more than 80% the residents of the subdivision where they reside. According to Article 3 of the Code of Commerce, "legal presumption of habitually engaging in commerce shall exist from the moment the person who intends to engage therein announces through circulars, newspapers, handbills, posters exhibited to the public, or in any other manner whatsoever an establishment which has for its object some commercial operation. " Text messages may qualify to be equivalent to electronic documents.

Banking Law

Banks; Bank Deposits vs. Deposit Substitutes (2010)

No.II. (C) Differentiate "bank deposits" from "deposit substitutes." (2%)

SUGGESTED ANSWER:

Bank deposits are funds obtained by a bank from the public which are relent by such bank to its own borrowers. Deposit substitutes are alternative forms of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the own account of the borrower, for the purpose of relending or purchasing of receivables and other obligations. These instruments may include, but need not be limited to, banker's acceptances, promissory notes, participations, certificates of assignment and similar instruments with recourse, and repurchase agreements (Section 95, Rep. Act No. 7653, "The New Central Bank Act").

(D) Why are banks required to maintain reserves against their deposits and deposit substitutes? State one of three purposes for these reserves. (2%)

SUGGESTED ANSWER:

Any one of the following 4 purposes for requiring banks to maintain reserves against their deposits and deposit substitutes will suffice:

(1) One of the purposes of the requirement to maintain bank reserves is to control the volume of money created by the credit operations of the banking system (Section 94 of the New Central Bank Act);

(2) It is to enable the banks to answer any withdrawal;

(3) To help Government to finance its operation;

(4) To help the Government control money supply.

Banks; Deposit: Safety Deposit Box, Relationship from Banks (2010)

No.II. (A) How do you characterize the legal relationship between a commercial bank and its safety deposit box client? (20%)

SUGGESTED ANWERS:

The Relationship between a commercial bank and its safety deposit box client is that of a bailee and a bailor, the bailment being for hire and mutual benefit (Sia v. Court of Appeals, 222 SCRA 24 (1993); CA Agro-Industrial Development Corp. v. Court of Appeals, 219 SCRA 426(1993)).

ALTERNATIVE ANSWER:

The legal relationship of the bank and its safety deposit box client is that of lessor and lessee.

(B) Is a stipulation in the contract for the use of a safety deposit box relieving the bank of liability in connection with the use thereof valid? (2%).

SUGGESTED ANSWER:

The stipulation relieving the bank of liability in connection with the use of the safety deposit box is void as it is against law and public policy (CA Agro-Industrial Development Corp. v. Court of Appeals, supra).

Banks; Money Laundering: Predicate Crimes (2007)

No.X. Name at least five predicate crimes to money laundering. (5%)

SUGGESTED ANSWER:

Any five of the following are predicate crimes to money laundering:

(1) Kidnapping for ransom under Article 267 of Act No.3815, otherwise known as the Revised Penal Code, as amended;

(2) Sections 3,4,5,7,8 and 9 of Article Two of Republic Act No. 6425, as

amended, otherwise known as the Dangerous Drugs Act of 1972;

(3) Section 3 paragraphs B,C,E,G,H and I of Republic Act No. 3019, as amended; otherwise known as the Anti-graft and Corrupt Practices Act;

(4) Plunder under Republic Act No. 7080, as amended;
(5) Robbery and extortion under Articles 294,295,296,299,300,301 and 302 of the Revised Penal Code, as amended;

(6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;

(7) Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;

(8) Qualified theft under Article 310 of the Revised Penal Code, as amended; (9) Swindling under Article 315 of the Revised Penal Code, as amended.

(9) Swindling under 315 of the Revised Penal code, as amended;

(10) Smuggling under Republic Act Nos. 455 and 1937

(11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000

(12) Hijacking and other violations under Republic Act No 6235;destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorist against non-combatant persons and similar targets;

(13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the securities Regulation Code of 2000

(14) Felonies or offenses of a similar nature those are punishable under the penal laws of other countries. (Sec 3, Anti-Money Laundering Act of 2001).

Banks; Mortgage; Redemption (2007)

No.IX. On December 4, 2003, RED Corporation executed a real estate mortgage in favor of BLUE Bank. RED Corporation defaulted in the payment of its loan. Consequently, on June 4, 2004, BLUE Bank extra judicially foreclosed the property. Being the highest bidder in the auction sale conducted, the Bank was



issued a Certificate of Sale which was registered on August 4, 2004.

Does RED Corporation still have the right to redeem the property as of September 14, 2007? Reason briefly. (5%)

SUGGESTED ANSWER:

No, RED Corporation has lost its right to redeem the property. Juridical persons whose property is sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property until registration of the certificate of sale with the Register of Deeds, which shall in no case be more than three months after foreclosure, whichever is earlier (Section 47, General Banking Law).

Banks; Insolvency; Actions of the Monetary Board (2009)

No.VIII. Maharlikang Pilipino Banking Corporation (MPBC) operates several branches of Maharlikang Pilipino Rural Bank in Eastern Visayas. Almost all the branch managers are close relatives of the members of the Board of Directors of the corporation. Many undeserving relatives of the branch managers were granted loans. In time, the branches could not settle their obligations to depositors and creditors.

Receiving reports of these irregularities, the Supervising and Examining Department (SED) of the Monetary Board prepared a detailed report (SED Report) specifying the facts and the chronology of events relative to the problems that beset MPBC rural bank branches. The report concluded that the bank branches were unable to pay their liabilities as they fell due, and could not possibly continue in business without incurring substantial losses to its depositors and creditors.

(A) May the Monetary Board order the closure of the MPBC rural banks relying only on the SED Report, without need of an examination? Explain. (3%)

SUGGESTED ANSWER:

Yes. Upon receipt of the report of the SED, the Monetary Board is authorized to take any of the actions enumerated under Sec. 30, Republic Act No. 7653, otherwise known as the New Central Bank Act, leading to the receivership and liquidation of a bank or quasi-bank. There is no requirement that an examination be first conducted before a banking institution may be placed under receivership (Rural Bank of Buhi v. Court of Appeals, 162 SCRA 288 (1988)).

(B) If MPBC hires you as lawyer because the Monetary Board has forbidden it from carrying on its business due to its imminent insolvency, what action will you institute to question the Monetary Board's order? Explain. (3%)]



SUGGESTED ANSWER:

The order of the Monetary Board may be questioned on a petition for certiorari on the ground that the action taken was in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. The petition of certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of MPBC of the order directing receivership, liquidation or conservatorship (Sec. 30, par. (2), R.A. No. 7653).

Banks; Insolvency; Claims (2010)

No.XIV. When OCCIDENTAL Bank folded up due to insolvency, Manuel had the following separate deposits in his name: P200,000 in savings deposit; P250,000 in time deposit; P50,000 in current account; P1 million in a trust account and P3 million in money market placement. Under the Philippine Deposit Insurance Corporation Act, how much could Manuel recover? Explain. (2%)

SUGGESTED ANSWER:

Manuel can recover P500, 000.00, because this is the total of his savings deposit, time deposit and current account (Section 4(g) of Republic Act No. 3591, as amended). The trust account and the money market placements are not included in the insured deposits (section 4(f) of Republic Act No. 3591, as amended).

Banks; Receivership (2007)

No.VIII. Due to growing financial difficulties, Z Bank was unable to finish construction of its 21-storey building on a prime lot located in Makati City. Inevitably, the Bangko Sentral ordered the closure of Z Bank and consequently placed it under receivership. In a bid to save the bank's property investment, the President of Z Bank entered into a financing agreement with a group of investors for the completion of the construction of the 21-storey building in exchange for a ten-year lease and the exclusive option to purchase the building. (10%)

(A) Is the act of the President valid? Why or why not?

SUGGESTED ANSWER:

No, the bank president's act is not valid. He had no authority to enter into the financing agreement. Z Bank was ordered closed and placed under receivership. Control over the properties of Z Bank passed to the receiver. The appointment of a receiver operates to suspend the authority of the bank and its officers over the bank's assets and properties,

such authority being reposed in the receiver (Abacus Real Estate Development Center, Inc. v. Manila Banking Corporation, 455 SCRA 97 (2005)).

(B) Will a suit to enforce the exclusive right of the investors to purchase the property prosper? Reason briefly.

SUGGESTED ANSWER:

No, the exclusive options granted to the investors, having been entered into by one without authority to do so, is unenforceable. The bank, therefore, cannot be compelled to sell the property. Under Section 30 of Republic Act No. 7653, New Central Bank Act, the properties of Z Bank should be administered for the benefit of its creditors. The property in question can be disposed of only for the purpose of paying the debts of Z Bank (Sec. 30, Republic Act No. 7653, and New Central Bank Act).

Banks; Receivership; Prohibited Transaction (2009)

No.I. (E) A bank under receivership can still grant new loans and accept new deposits.

SUGGESTED ANSWER:

False. During the receivership, the assets and properties of the corporation are being gathered for conversion into cash in preparation for distribution to creditors. Granting new loans and accepting new deposits would constitute doing business for the bank in the ordinary course of business which is contrary to the purpose and nature of a receivership proceeding.

Banks; Secrecy of Bank Deposit; AMLC (2013)

No.III. From his first term in 2007, Congressman Abner has been endorsing his pork barrel allocations to Twin Rivers in exchange for a commission of 40% of the face value of the allocation. Twin Rivers is a non-governmental organization whose supporting papers, after audit, were found by the Commission on Audit to be fictitious. Other than to prepare and submit falsifies papers to support the encashment of the pork barrel checks, Twin Rivers does not appear to have done anything on the endorsed projects and Congressman Abner likewise does not appear to have bothered to monitor the progress of the project he endorsed. The congressmen converted most of the commissions he generated into US dollars, and deposited these in a foreign currency account with Banco de Plata (BDP).



Based on amply-supported tips given by a congressman from another political party, the Anti-Money Laundering Council sent B DP an order: (1) to confirm Cong. Abner's deposits with the bank and to provide details of these deposits; and (2) to hold all withdrawals and other transactions involving the congressman's bank accounts.

As counsel for BDP, would you advise the bank to comply with the order? (8%)

SUGGESTED ANSWER:

I shall advise Banco de Plata not to comply with the order of the Anti-Money Laundering Council. It cannot inquire into the deposits of Congressman Abner, regardless of currency, without a bank inquiry order from a competent court, because crimes involved are not kidnapping for ransom, violations of the Comprehensive Dangerous Drugs Act, hijacking and other violations of Republic Act No. 6235, destructive arson, murder, and terrorism and conspiracy to commit terrorism (Section 11 of Anti-Money Laundering Act).

The Anti-Money Laundering Council cannot order Banco de Plata to hold all withdrawals and other transactions involving the accounts of Congressman Abner. It is the Court of Appeals which has the power to issue a freeze order over the accounts upon petition of the Anti-Money Laundering Council (Anti-Money Laundering Act; Republic v. Cabrini Green Ross, 489 SCRA 644, 2006).

Banks; Secrecy of Bank Deposits (2009)

No.I. (B) If the Ombudsman is convinced that there is a violation of law after investigating a complaint alleging illicit bank deposits of public officer, the Ombudsman may order the bank concerned to allow in camera inspection of bank records and documents.

SUGGESTED ANSWER:

False. The Bank Secretary Law prohibits the inspection of a bank account unless the permission of the account holder is obtained, or upon lawful order of the court or when the deposit is the subject of litigation. Investigation by the Ombudsman is not considered as a pending litigation to allow the examination of the bank records and documents (Marquez v. Desierto, 359 SCRA 772 (2001)).



Banks; Single Borrower's Limit; Collateral Security (2008)

No.XIX. Industry Bank, which has a net worth of P1 Billion, extended a loan to Celestial Properties Inc. amounting to P270 Million. The loan was secured by a mortgage over a vast commercial lot in the Fort Bonifacio Global City, appraised at P350 Million. After audit, the Banko Sentral ng Pilipinas gave notice that the loan to Celestial Properties exceeded the single borrower's limit of 25% of the bank's net worth under a recent BSP Circular. In light of other previous similar violations of the credit limit requirement, the BSP advised Industry Bank to reduce the amount of the loan to Celestial Properties under pain of severe sanctions. When Industry Bank informed Celestial Properties that it intended to reduce the loan by P50 Million, Celestial Properties countered that the bank should first release a part of the collateral worth P50 Million. Industry Bank rejected the counter-proposal, and referred the matter to you as counsel. How would you advise Industry Bank to proceed, with its best interests in mind? (5%)

SUGGESTED ANSWER:

With a net worth of P1.0 Billion, the maximum loan exposure of the bank to Celestial Properties can reach up to P250.0 Million. The bank should proceed with to reduce the loan of Celestial properties by P20.0 Million, but should not release any part of the collateral by the amount of reduction.

The collateral is a single commercial lot in the Fort, covered by a single title and beings essentially indivisible in character, the mortgage cannot be "partially released." Besides, since a real estate mortgage cannot be "partially released." Besides, since a real estate mortgage is merely a collateral contract, it can be enforced only to the amount of the loan; and the moment the loan exposure is reduced, then automatically, reduction of the collateral coverage of the real estate mortgage follows.

Banks; Types of Banks (2010)

No.I. Briefly describe the ff. types of banks; (2% each)

(A) Universal bank

SUGGESTED ANSWER:

A universal bank is a commercial bank with 2 additional powers, namely: (1) the power of an investment house and (2) the power to invest in non-allied enterprises (Section 23, Rep. Act No. 8791, "The General Banking Law of 2000").

(B) Commercial bank



SUGGESTED ANSWER:

A commercial bank is a bank that can: (1) accept drafts; (2) issue letters of credit; (3) discount and negotiate promissory notes, drafts, bills of exchange, and other evidence of debt; (4) accept or create demand deposits; (5) receive other types of deposits, as well as deposit substitutes; (6) buy and sell foreign exchange, as well as gold or silver bullion; (7) acquire marketable bonds and other debts securities; and (8) extend credit, subject to such rules promulgated by the Monetary Board (Section 29, Rep. Act No. 8791, "The General Banking Law of 2000").

(C) Thrift bank

SUGGESTED ANSWER:

A thrift bank is one established as a savings and mortgage bank, a stock savings and loan association, or a private development bank, for the purpose of: (1) accumulating the savings of depositors and investing them in outlets determined by the Monetary Board as necessary in the furtherance of national economic objectives; (2) providing short-term working capital, medium and long-term financing, to business engaged in agriculture, services, industry and housing; and (3) providing diversified financial and allied services for its chosen market and constituencies specially for small and medium enterprises and individuals (Section 3 (a), Rep. Act No. 7906 "Thrift Banks Act of 1995").

(D) Rural bank

SUGGESTED ANSWER:

A rural bank is one established to provide credit facilities to farmers and merchants or their cooperatives and, in general to the people of the rural communities (Section 3, Rep. Act No. 7353, "The Rural Banks Act of 1992").

(E) Cooperative bank

SUGGESTED ANSWER:

A cooperative bank is organized under the Cooperative Code to provide financial and credit services to cooperatives. It may perform any or all the services offered by a rural bank, including the operation of a Foreign Currency Deposit Unit subject to certain conditions (Section 100, Rep. Act No.6938, "The Cooperative Code of the Philippines").

Truth in Lending Act (2009)

No.XI. (A) A loan agreement which provides that the debtor shall pay interest at the rate determined by the bank's branch manager violates the disclosure requirement of the Truth in Lending Act.

SUGGESTED ANSWER:



True. This contrary to the duty of the creditor to disclose in detail the interests, charges and other figures indicating in detail the cost of the credit granted to the debtor (United Coconut Planters Bank v. Beluso, 530 SCRA 567 (2007)).

Bulk Sales Law

Bulk Sales Law; Covered Transactions (2010)

No.V. Venezia is a famous international fashion chain with outlets in Makati, Ortigas, and Manila. It has complied with the minimum capitalization required under the Retail Trade Nationalization Act and carries on retail business worth more than S3 million for each of its outlets. As its Manila outlet is not doing very well, it decides to sell all of its business there consisting of remaining inventory, furniture and fixtures and other assets to its competitor.

(A) Venezia's Manila outlet constitutes one-third of its total business. Should it comply with the requirements of the Bulk Sales Law? Why or why not? (2%)

SUGGESTED ANSWER:

Venezia need not comply with the requirements of the Bulk Sales Law as its Manila outlet constitutes only one-third of its total business and, therefore, it would not conducted by Venezia. Moreover, the requirements of the Bulk Sales Law reflected in Sections 3,4,5, and 9, by the express language of said provisions, apply only to the first type of bulk sales, i.e., to any sale, transfer, mortgage or assignment of a stock of goods, wares, merchandise, provisions or materials otherwise than in the ordinary course of trade and the regular prosecution of business of the vendor, mortgagor, transferor, or assignor, and not to the second type (as in the sale described in the problem) or the third type (i.e., sale, etc. of all or substantially all of the fixtures and equipment used in and about the business). As the Bulk Sales Law is penal in nature, it should be interpreted strictly against the State (People v. Wong Szu Tung, CA G.R. No. 9776-R, March 26, 1954;50 O.G. 4867; Section 2 of the Bulk Sales Law).

(B) If instead of selling its Manila outlet, Venezia merely mortgages its assets there, would it need to comply with the requirements of the Bulk Sales Law? (2%)

SUGGESTED ANSWERS:

For the same reasons stated in the answer to A above, Venezia need not comply with the requirements of the Bulk Sales Law. The second type of bulk

sales also includes the mortgage of all or substantially all of the business of the mortgagor (Section 2, Bulk Sales Law).

(C) What are the legal consequences of a failure to comply with the requirements of the Bulk Sales law? (2%)

SUGGESTED ANSWER:

Failure to comply with the requirements of the Bulk Sales Law renders the Sale, transfer, mortgage, or assignment fraudulent and void (Section 4, Bulk Sales Law), and makes any person found guilty of violating any provision of the Bulk Sales Law punishable by 5 years, or a fine in an amount not exceeding P5, 000, or both such imprisonment and fine in the discretion of the court (Section 11, Bulk Sales Law).

Bulk Sales Law; Covered Transactions (2009)

No.XIV. XXX Corporation (XXX) and its sister company, YYY Corporation (YYY), are both under judicial receivership. The receiver has the option to sell or substantially all of the properties of YYY to XX, or simply merges the two Corporations. Under either option, the requirements under the Corporation Code have to be complied with.

The receiver seeks your advice on whether the Bulk Sales law will apply to either, or both, options. What will your advice be? Explain (4%)

SUGGESTED ANSWER:

I will advice the receiver that the Bulk Sales law does not apply to both options. Sect. 8 of the Bulk Sales Law expressly provides that it will not apply executors, administrators, receivers, and assignees in insolvency, or public officers, acting under judicial process. In this case, the receiver is acting under judicial process.

Bulk Sales Law; Covered Transactions (2007)

No.XII. Seeking to Streamline its operations and to ball out its losing ventures, the stockholders of X corporation unanimously adopted a proposal to sell substantially all of the machineries and equipment used in and about its manufacturing business and to sink the proceeds of the sale for the expansion of its cargo transport services.(5%)

(A) Would the transaction be covered by the provisions of eh Bulk Sales Law?

SUGGESTED ANSWER:

No. the transaction is not covered by the provisions of the Bulk sales law, Bulk

sales law applies only to retail merchants, traders and dealers. It does not apply to manufacturers. X Corporation is engaged in the manufacturing business (Development bank of the Phil. V. Judge of the Regional Trial Court of manial86 O.G. 1137 (1987)).

ALTERNATIVE ANSWER:

YES, the transaction is covered by the Bulk Sales Law because it involves the sale of substantially all the equipment used in the business of X corporation (Sec. 2 Bulk sales law)

(B) How would X Corporation effect a valid sale?

SUGGESTED ANSWER:

To effect a valid sale. X corporation must prepare an affidavit stating the names of all its creditors, their addresses, the amount of their credits and their maturities. X Corporation should give the affidavit to the buyer who , in turn, should furnish a copy to each creditor and notify the creditors of the proposed bulk sale to enable them to protect their interest.

Bulk Sales Law; Validity (2009)

No.I. (C) Even if the seller and the buyer in a sale in bulk violate the Bulk Sales Law, the sale would still be valid.

SUGGESTED ANSWER:

False. When the Bulk Sales Law is violated, the sale is null and void. When the provisions of the said law have not been complied with, the sale is considered as being "fraudulent and void" and even when coupled with delivery, the title over the goods does not transfer to the buyer. However, the civil liabilities arising from the transaction remain enforceable between the parties thereto.

Corporation Law

BOD; Conflict of Interest; Ratification (2008)

No.XII. Pedro was 70% of the subscribed capital stock of a company which owns an office building. Paolo and Juan own the remaining stock equally between them. Paolo also owns a security agency, a janitorial company and a catering business. In behalf of the office building company, Paolo engaged his companies to render their services to the office building. Are the service contracts valid? Explain. (4%)

SUGGESTED ANSWER:



The contracts of Paolo, who owns 15% of the Outstanding Capital Stock of the office building company is concerned if they were not approved by the Board of Directors and Paolo was not designated to execute them on behalf of said company.

On the other hand, if the contracts were duly approved by the Board of Directors of the office building company with Paolo duly designated as company representative, they would nevertheless be voided at the option of the company. Under Sec. 32 of the Corporation Code. "A contract of the corporation with one or more of its directors or trustees or officers is voidable at the option of such corporation, unless all the following conditions are present," (a) if Paolo as a director in the board meeting in which the contracts were approved was not necessary to constitute a quorum for such meeting; (b) Paolo's vote at such meeting was not necessary for the approval of the contracts; (c) Each of the contract are fair and reasonable under the circumstances.

If condition (a) or (b) is absent, Sec, 32 requires that the contracts must be ratified by the shareholders representing at least two-thirds (2/3) of outstanding capital stock, provided that there was full disclosure of the adverse interest of Paolo to Pedro.

BOD; Qualifications (2012)

No.VI. X is a Filipino immigrant residing in Sacramento, California. Y is a Filipino residing in Quezon City, Philippines. Z is a resident alien residing in Makati City. GGG Corporation is a domestic corporation - 40% owned by foreigners and 60% owned by Filipinos, with T as authorized representative. CCC Corporation is a foreign corporation registered with the Philippine Securities and Exchange Commission. KKK Corporation is a domestic corporation (100%) Filipino owned. S is a Filipino, 16 years of age, arid the daughter of Y.

(A) Who can be incorporators? Who can be subscribers? (2%)

SUGGESTED ANSWER:

X,Y,Z and T could all be incorporators and subscribers. Note, however, that Sec.10 of the Corporation Code requires that there must be at least five but not more than fifteen incorporators (who must all be natural persons) and that a majority of the incorporators must be residents of the Philippines. S, being a minor, could neither be an incorporator nor a subscriber. GGG Corporation, CCC

Corporation, and KKK Corporation, CCC Corporation, and KKK Corporation could not be incorporators as they are not natural persons. However, they could be subscribers.

(B) What are the differences between an incorporator and a subscriber, if there are any? (2%)

SUGGESTED ANSWER:

Some of the differences are as follows: first, all the incorporators are required to sign and acknowledge the Articles of Incorporation while the subscribers, as such, are not subject to the same requirement; second, the incorporators could be either natural or juridical persons; and third, the number of incorporators cannot exceed fifteen while the number of subscribers could be more than fifteen (subject to compliance, in the appropriate cases, with the requirements of the Securities Regulation Code).

(C) Who are qualified to become members of the board of directors of the corporation? (2%)

SUGGESTED ANSWER:

X,Y,Z and T could be directors (subject to the residency requirement mentioned in (a) above and any nationality requirement under the law governing the business of the corporation) but not GGG Corporation, CCC Corporation, and KKK Corporation as they are not natural persons. However, the aforementioned corporations could have their respective representatives nominated and possibly elected as directors by the stockholders. Each director must own at least one share of the capital stock of the corporation (Sec.23, Corporation Code).

(D) Who are qualified to act as Treasurer of the company? (2%)

SUGGESTED ANSWER:

The Corporation Code does not impose any nationality or residency requirement in respect of the Treasurer. Any such requirement or any other reasonable requirement may be adopted by the corporation and reflected in its by-laws, or required by the law(s) governing the business of the corporation or a law of general application (e.g., the Anti-Dummy Law which applies to all nationalized businesses). Accordingly, anybody with the qualifications required under the by-laws of the corporation or under the law(s) governing the business of the corporation, could be elected Treasurer by the Board of Directors. Note, however, that the Treasurer could not be the President at the same time (Sec. 25, Corporation Code).



(E) Who can be appointed Corporate Secretary? (2%)

SUGGESTED ANSWER:

The Secretary is required to be both a resident and a citizen of the Philippines (Sec. 10, Corporation Code).

[**Note:** *The problem does not state what kind of business the corporation would engaged in. Neither does it state whether X,Y,Z and T are all of legal age and otherwise have the capacity to enter into contracts. Accordingly, the suggested answer set out below assume that the corporation would not be engaging in a nationalized activity and that X,Y,Z and T are all of legal age and otherwise have the capacity to enter into contracts.*]

Corporation; Dissolution (2012)

No.X. AAA Corporation is a bank. The operations of AAA Corporation as a bank was not doing well. So, to avert any bank run, AAA Corporation, with the approval of the Monetary Board, sold all its assets and liabilities to BBB Banking Corporation which includes all deposit accounts. In effect then, BBB Corporation will service all deposits of all depositors of AAA Corporation.

(A) Will the sale of all assets and liabilities of AAA Corporation to BBB Banking Corporation automatically dissolve or terminate the corporate existence of AAA Corporation? Explain your answer. (5%)

SUGGESTED ANSWERS:

No, the sale of all the assets and liabilities of AAA Corporation to BBB Banking Corporation will not result in the automatic dissolution of termination of the existence of the former. A decision to dissolve AAA Corporation or to terminate its corporate existence would require a separate approval by a majority of the Board of Directors of AAA Corporation and its stockholders holding at least two thirds of the total outstanding capital stock, as well as the separate approval by the Monetary Board.

(B) What are the legal requirements in order that a corporation may be dissolved? (5%)

SUGGESTED ANSWERS:

A corporation may be dissolved voluntarily under Section 118 (where no creditors are affected) or under Section 119 (where creditors are affected), or by shortening of the corporate term under Section 120, or involuntarily by the SEC under Section 122, all of the Corporation Code. Dissolution under Section 118,119 and 120 require the same corporate approvals stated in (a) above.

Note that the SEC also has the authority under Section 6 of PD 902-A to revoke the certificate of registration of a corporation upon any of the grounds provided by law, including the aforementioned Section 6-A

Corporation; Formation; Enactment of a Law (2008)

No.XI. (A) Since February 8, 1935, the legislature has not passed even a single law creating a private corporation. What provision of the Constitution precludes the passage of such a law? (3%)

SUGGESTED ANSWER:

Under Sec. 16, Art. XII of the 1987 Constitution, Congress cannot, except by general law, provide for the formation, organization, or regulation of private corporations. It is only government owned or controlled corporations that may be created or established through special charters. Consequently, it has been held that a private corporation created pursuant to a special law is a nullity, and such special law is void for being in violation of the Constitution (NDC v. Phil. Veterans Bank, G.R. Nos. 84132-33, 10 December 1990).

(B) May the composition of the board of directors of the National Power Corporation (NPC) be validly reduced to three (3)? Explain your answer fully. (2%)

SUGGESTED ANSWER:

The NPC Board may be reduced to only three (3) members, but this would have to be affected by legislative amendment of its charter. The National Power Corporation (NPC is a chartered government corporation, not governed by the general provisions of the Corporation Code which requires that Boards of Directors of private corporations shall not have less than 5 members. The provisions of the Corporation Code are applicable to government corporations only in a suppletory manner.

Corporation; Sole Proprietorship (2010)

No.IX. Your client Dianne approaches you for legal advice on putting up a medium-sized restaurant business that will specialize in a novel type of cuisine. As Dianne feels that the business is a little risky, she wonders whether she should use a corporation as the business vehicle, or just run it as a single proprietorship. She already has an existing corporation that is producing meat products profitably and is



also considering the alternative of simply setting up the restaurant as a branch office of the existing corporation.

(A) Briefly explain to your client what you see as the legal advantages and disadvantages of using a separate corporation, a single proprietorship, or a branch of an existing corporation for the proposed restaurant business. (3%)

SUGGESTED ANSWER:

If Dianne will set up a separate corporation, her liability for its obligations and losses will be limited to the amount of her subscription in the absence of showing that there is a ground to disregard its separate juridical personality. If she were to operate a single proprietorship, her liability for its debts and losses will be unlimited.

The formation and the operation of a corporation require a great deal of paper work and record-keeping. This is not the situation in the case of a single proprietorship.

If Dianne will form a separate corporation, it can raise more funds for the business than if she were to set up a single proprietorship.

If she were to set up the restaurant as a branch office an existing corporation, the corporation will have more funds as capital than if she were to form a separate corporation. However, all the assets of the existing corporation will be liable for the debts and losses of the restaurant business.

(B) If you advise your client to use a corporation, what officer positions must the corporation at least have?(2%)

SUGGESTED ANSWER:

The corporation must have at least five directors (Section 14 of the Corporation Code). It Must also have a president, a treasure, and secretary (Section 25 of the Corporation Code).

(C) What particular qualifications, if any, are these officers legally required to possess under the Corporation Code? (2%)

SUGGESTED ANSWER:

Every director must own at least one share of the capital stock of the corporation, which must be recorded in his name on the books of the corporation, and a majority of the directors must be residents of the Philippines (Section 25 of the Corporation Code).

The president must also be a director. The secretary must be a resident and citizen of the Philippines (Section 25 of the Corporation Code).

Derivative Suit; Expiration of Term (2013)

No.VIII. In the November 2010 stockholders meeting of Greenville Corporation, eight (8) directors were elected to the board. The directors assumed their posts in January 2011. Since no stockholders meeting was held in November 2011, the eight directors served in a holdover capacity and thus continued discharging their powers.

In June 2012, two (2) of Greenville Corporation's directors - Director A and Director B – resigned from the board. Relying on Section 29 of the Corporation Code, the remaining six (6) directors elected two (2) new directors to fill in the vacancy caused by the resignation of Directors A and B.

Stockholder X questioned the election of the new directors, initially, through a letter-complaint addressed to the board, and later (when his letter-complaint went unheeded), through a derivative suit filed with the court. He claimed that he vacancy in the board should be filled up by the vote of the stockholders of Greenville Corporation. Greenville Corporation's directors defended the legality of their action, claiming as well that Stockholder X's derivative suit was improper.

Rule on the issues raised. (8%)

SUGGESTED ANSWER:

The remaining directors cannot elect new directors to fill in the two vacancies. The board of directors may fill up vacancy only if the ground is not due to expiration of term, removal or increase in the number of board seats. In this case, the term of the two directors expired after one year. They hold-over period is not part of their term. The vacancies should be filled up by election by the stockholders (Valle Verde Country Club, Inc. v. Africa, 598 SCRA 202, 2009).

The derivative suit was improper. In a derivative suit, the corporation, not the individual stockholder, must be the aggrieved party and that the stockholder is suing on behalf of the corporation. What stockholder X is asserting is his individual right as a stockholder to elect the two directors. The case partakes more of an election contest under the rules on intra-corporate controversy (Legaspi Towers 300, Inc. v. Muer, 673 SCRA 453, 2012).

Derivative Suit; Jurisdiction (2009)

No.II. Atlantis Realty Corporation (ARC), a local firm engaged in real estate development, plans to sell one of its prime



assets—a three-hectare land valued at about P100-million. For this purpose, the board of directors of ARC unanimously passed a resolution approving the sale of the property for P75-million to Shangrila Real Estate Ventures (SREV) a rival realty firm. The resolution also called for a special stockholders meeting at which the proposed sale would be up for ratification.

Atty. Edric, a stockholder who owns only one (1) share in ARC, wants to stop the sale. He then commences a derivative suit for and in behalf of the corporation, to enjoin the board of directors and the stockholders from approving the sale.

(A) Can Atty. Edric, who owns only one share in the company, initiate a derivative suit? Why or why not? (2%)

SUGGESTED ANSWER

Yes, Atty. Edric can initiate a derivative suit, otherwise known as the minority stockholders' suit. It is allowed by law to enable the minority stockholder/s to protect the interest of the corporation against illegal or disadvantageous act/s of its officers or directors, the people who are supposed to protect the corporation (Pascual v. Del Zaz Orozco, 19 Phil. 82 (1991)).

(B) If such a suit is commenced, would it constitute an intra-corporate dispute? If so, why and where would such a suit be filed? If not, why not? (2%)

SUGGESTED ANSWER:

Yes, such suit would constitute an entra-corporate dispute as it is a suit initiated by a stockholder against other stockholders who are officers and directors of the same corporation (P.D. No. 902-A, Sec. 5(b)). Such suit should be filed in the Regional Trial Court designated by the Supreme Court as a corporate or commercial court.

(C) Will the suit prosper? Why or why not? (3%)

SUGGESTED ANSWER:

No. The suit will not prosper. There is no requisite demand on the officers and directors concerned. There is, therefore, no exhaustion of administrative remedies.

Dividends; Declaration of Dividends (2009)

No.I. (D) Dividends on shares of stocks can only be declared out of unrestricted retained earnings of the corporation.

SUGGESTED ANSWER:

True. Dividends on shares of stock of a corporation, whether cash dividend or stock dividend, can be validly declared only out of unrestricted retained

earnings (Sec. 43, Corporation Code). It cannot be declared out of the capital. Otherwise, such declaration of dividend will violate the trust fund doctrine.

Dividends; Declaration of Dividends (2009)

No.XVI. On September 15, 2007, XYZ Corporation issued to Paterno eight hundred preferred shares with the ff. terms:

"*The Preferred Shares shall have the ff. rights, preferences, qualifications, and limitations, to wit:*

(1) The right to receive a quarterly dividend of One per Centum cumulative and participating;

*(2) These shares may be redeemed, by drawing of lots, at any time after two years from date of issue, at the option of the C*orporation; xxx

Today, Paterno sues XYZ Corporation for specific performance, for the payment of dividends on, and to compel the redemption of , the preferred shares, under the terms and conditions provided in the stock certificates. Will the suit prosper? Explain. (3%)

SUGGESTED ANSWER:

No. the suit will not prosper. Paterno cannot compel XYZ Corporation to pay dividends, which have to be declared by the Board of Directors and the latter cannot do so, unless there are sufficient unrestricted retained earnings. Otherwise, the corporation will be forced to use its capital to make said payments in violation of the trust fund doctrine. Likewise, redemption of shares cannot be compelled. While the certificate allws such redemption, the option and discretion to do so are clearly vested in the corporation (Republic Planters Bank v. Agana, 269 SCRA 1 [1997]).

Dividends; Declaration of Dividends (2008)

No.XIV. Ace Cruz subscribed to 100,000 shares of stock of JP Development Corporation, which ahs a par value of P1 per share. He paid P25,000 and promised to pay the balance before December 31, 2008. JP Development Corporation declared a cash dividend on October 15, 2008, payable on December 1, 2008

(A) For how many shares is Ace Cruz entitled to be paid cash dividends? Expalin. (2%)

SUGGESTED ANSWER:

Ace Cruz is entitled to be paid each cash dividends to the entire 100,1000 shares subscribed, and not only to the paid-up portion thereof. The legal character of being a "stockholder," and therefore the entitlement to all the rights of a stockholder, are determined from the time of "subscription" and not from payment of the subscription.

Under Sec. 43 of the Corporation Code, "a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stock-holders on the basis of outstanding stock held by them" on not on the basis on what stocks have been paid.

ALTERNATIVE ANSWER:

Under Sec. 71, only when a stockholder has been declared delinquent do his rights as stockholder become suspended. It means therefore that a stockholder who has not paid the full subscription, provided he is not declared delinquent has complete exercise of all of his rights, including the right to receive dividends. But any cash dividends due on delinquent stock shall first be applied to the unpaid balance of the subscription (Sec. 43, Corporation Code).

(B) On December 1, 2008, can Ace Cruz compel JP Development Corporation to issue to him the stock certificate corresponding to the P25,000 paid by him? (2%)

SUGGESTED ANSWER:

No, Ace Cruz cannot compel JP Development Corporation to issue him the stock certificate for the P 25,000.00. No Certificate of Stock can be issued to a subscriber until the full amount of his subscription together with interest and expense, if any is due, has been paid. A Subscription is one, entire and indivisible whole contract which cannot be divided into portions. The stockholder is not entitled to a Certificate of Stock until he has remitted the full amount of his subscription (Sec. 64, Corporation Code; SEC Opinion [January 6, 1989]).

Liabilities; BOD; Corporate Acts (2012)

No.IX. A, B, C, D, E are all duly elected members of the Board of Directors of XYZ Corporation. F, the general manager, entered into a supply contract with an American firm. The contract was duly approved by the Board of Directors. However, with the knowledge and consent of F, no deliveries were made to the American firm. As a result of the non-



delivery of the promised supplies, the American firm incurred damages. The American firm would like to file a suit for damages. Can the American firm sue:

(A) The members of the Board of Directors individually, because they approved the transaction? (2%)

SUGGESTED ANSWERS:

No. In approving the transaction, the directors were not acting their personal capacities but rather in behalf of XYZ Corporation exercising the powers of the corporation and conduction its business (Sec. 23, Corporation Code). The problem contains no facts that would indicate that the directors acted otherwise.

(B) The corporation? (2%)

SUGGESTED ANSWERS:

Yes. The Board approved the supply contract and the General Manager entered into the contract, both of them acting on behalf of the XYZ Corporation.

(C) F, the general manager, personally, because the non-delivery was with his knowledge and consent? (2%)

SUGGESTED ANSWERS:

Yes, F could be sued in his personal capacity because he knowingly consented to the non-delivery of the promised supplies contrary to the contract that was duly approved by the Board of Directors. The problem does indicate any circumstance that would excuse or favorably explain the action of F.

(D) Explain the rules on liabilities of a corporation for the act of its corporate officers and the liabilities of the corporate officers and Board of Directors of a corporation acting in behalf of the corporation. (4%)

SUGGESTED ANSWERS:

A corporation would be liable for the acts of its Board of Directors and officers if the said acts were performed by them in accordance with powers granted to them under the Corporation Code, the articles of incorporation and by-laws of the corporation, the laws and regulations governing the business of, or otherwise applicable to, the corporation, and, in the case of officers, the resolutions approved by the Board of Directors.

As the directors have a personality separate from that of the corporation, they would be personally liable only if they acted wilfully and knowingly vote for or assent to a patently unlawful act of the corporation, or when they are guilty of gross negligence or bad faith in



directing the affairs of the corporation, or when they acquire any personal or pecuniary interest in conflict with their duty as directors, which acts result in damages to the corporation, its stockholders or other persons, when they agree to hold themselves personally and solidarily liable with the corporation, or when they are made, by a specific provision of law, to personally answer for the corporate action. (Sec. 31, Corporation Code).

Piercing the Corporate Veil (2008)

No.X. Nelson owned and controlled Sonnel Construction Company. Acting for the company, Nelson contracted the construction of a building. Without first installing a protective net atop the sidewalks adjoining the construction site, the company proceeded with the construction work. One day a heavy piece of lumber fell from the building. It smashed a taxicab which at that time had gone offroad and onto the sidewalk in order to avoid traffic. The taxicab passenger died as a result.

(A) Assume that the company had no more account and property in its name. As counsel for the heirs of the victim, whom will you sue for damages, and what theory will you adopt? (3%)

SUGGESTED ANSWER:

I would sue Nelson, as the person who owned and controlled Sonnel Contruction Company, under the doctrine of "piercing the veil of corporate fiction." Although a corporation has a juridical personality separate and distinct from that of its stockholders, when the corporation is used merely as an alter ego or controlled for the benefit of a stockholder, or when it is necessary to render justice, then the courts have the right to pierce the veil of corporate fiction to hold the controlling stockholder-officer personally liable for the corporate tort or wrong committed.

The contractor should also be held liable, since being an independent contractor it is liable for the fault or negligence of its people.

(B) If you were the counsel for Sonnel Construction, how would you defend your client? What would be your theory? (2%)

SUGGESTED ANSWER:

I would use the theory that the company cannot be held liable for damages because there was no fraud or negligence by its officers in undertaking the project for the construction of the building or the selection of a construction company. Since a contractor is not an agent of

Sonnel Construction, the latter cannot be held liable for the contractor's negligence. I would also argue that piercing the veil of corporate fiction is a remedy of last resort and cannot be availed of without clear evidence showing fraud or disrespect of the separate juridical personality of the corporation. Mere control of equity has not been considered as sufficient basis for piercing the veil.

(C) Could the heirs hold the taxicab owner and driver liable? Explain. (2%)

SUGGESTED ANSWER:

Yes, the taxicab company can be liable for damages because it failed to comply with its obligation as a common carrier to use extraordinary diligence in transporting the passenger, and because at the time of death of the passenger, the cab driver was violating a traffic regulation. Under Art. 2185 of Civil Code, it is presumed that a person driving a motor vehicle has been negligent if at time of mishap he was violating a traffic regulation, such as when he was driving on the wrong side of the road (Mallari, Sr. v. CA, G.R. No. 128607, 31 January 2000).

Stock and Transfer Book (2009)

No.XVIII. (C) What is a stock and transfer book? (1%)

SUGGESTED ANSWER:

A Stock and transfer book is a book which records all stocks in the name of the stockholders alphabetically arranged; the installments paid or unpaid on all stocks for which subscription has been made and the date of payment of any installment, a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe (Section 74, Corporation Code).

Stockholders; Appraisal Right (2007)

No.VII. In a stockholders meeting, S dissented from the corporate act converting preferred voting shares to non-voting shares. Thereafter, S submitted his certificates of stock for notation that his shares are dissenting. The next day, S transferred his shares are dissenting. The next day, S transferred his shares to T to whom new certificates were issued. Now, T demands from the corporation the payment of the value of his shares. (10%)

(A) What is the meaning of a stockholder's appraisal right?

SUGGESTED ANSWER:

Appraisal right is the right of stockholder, who dissents from a fundamental or extraordinary corporate action, to demand payment of the fair value of his shares. It is the right of a stockholder to withdraw from the corporation and demand payment of the fair value of his shares after dissenting form certain corporate acts involving fundamental changes in the corporate structure (Section 81, Corporation Code).

(B) Can T exercise the right of appraisal? Reason briefly?

SUGGESTED ANSWER:

No, T cannot exercise the right of appraisal in this case. When S transferred his shares to T and T was issued new stock certificates, the appraisal right of S ceased, and T acquired all the rights of a regular stockholder. The transfer of shares from S to T constitutes an abandonment of the appraisal right of S. All the T acquired from the issuance of new stock certificated was the rights of a regular stockholders (Section 86, Corporation Code).

Stockholders; Contractual Relationship; Quorum (2009)

No.XVIII. Triple a Corporation (Triple A) was incorporated in 1960, with 500 founders' shares and 78 common shares as its initial capital stock subscription. However, Triple A registered its stock and transfer book only in 1978, and recorded merely 33 common shares as the corporation's issued and outstanding shares.

(A) In 1982, Juancho, the sole heir of one of the original incorporators filed a petition with the Securities and Exchange Commission (SEC) for the registration of his property rights over 120 founder's shares and 12 common shares. The petition was supported by a copy of the Articles of Incorporation indicating the incorporator's initial capital stock subscription. Will the petition be granted? Why or why not? (3%)

SUGGESTED ANSWER:

Yes. The articles of Incorporation define the charter of the corporation and the contractual relationship between the State and the Corporation, the State and the stockholders, and between the corporation and the stockholders. Its contents are thus binding upon both the corporation and the stockholders, conferring on Juancho a clear right to have his stockholding recorded (Lanuza

v. Court of Appeals, 454 SCRA 54 (2005)).

(B) On May 6, 1992, a special stockholders' meeting was held. At this meeting, what would have constituted a quorum? Explain. (3%)

SUGGESTED ANSWER:

A quorum consists of the majority of the totality of the shares which gave been subscribed and issued. Thus the quorum for such meeting would be 289 shares or a majority of the 576 shares issued and outstanding as indicated in the article of incorporation. This includes the 33 common shares reflected in the stock and transfer book, there being no mention or showing of any transaction effected from the time of Triple A's incorporation in 1960up to the said meeting (Section 52 in Relation to Section 137 of corporation Code; Lanuza v. court of Appeals, 454 SCRA 54 (2005)).

Stockholders; Preferred Shares (2013)

No.X. Bell Philippines, Inc. (BelPhil) is a public utility company, duly incorporated and registered with the Securities and Exchange Commission. Its authorized capital stock consists of voting common shares and non-voting preferred shares, with equal par values of P100.00/share. Currently, the issued and outstanding capital stock of BelPhil consists only of common shares shared between Bayani Cruz, a Filipino with 60% of the issued common shares, and Bernard Fleet, a Canadian, with 40%.

To secure additional working fund, BelPhil issued preferred shares to Bernard Fleet equivalent to the currently outstanding common shares. A suit was filed questioning the corporate action on the ground that the foreign equity holdings in the company would now exceed the 40% foreign equity limit allowed under the Constitution the for public utilities.

Rule on the legality of Bernard Fleet's current holdings. (8%)

SUGGESTED ANSWER:

The holding of Bernard Fleet equivalent to the outstanding common shares is illegal. His holdings of preferred shares should not exceed 40%. Since the constitutional requirement of 60% Filipino ownership of the capital of public utilities applies not only to voting control but also to beneficial ownership of the corporation, it should also apply to the preferred shares. Preferred shares are also entitled to vote in certain corporated matters. (Gamboa v. Teves, 682 SCRA 397, 2012) The state shall develop a self-reliant and independent

national economy effectively controlled by Filipinos. (Articles II, Sec. 19, 1987 Constitution) The effective control here should be mirrored across the board on all kinds of shares.

Trust Fund Doctrine (2007)

No.VI. Discuss the trust fund doctrine. (5%)

SUGGESTED ANSWER:

The trust fund doctrine means that the capital stock, properties and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. Stated simply, the trust fund doctrine states that all funds received by the corporation in payment of the shares of stock shall be held in trust for the corporate creditors and other stockholders of the corporation. Under such doctrine, no fund shall be used to buy back the issued shares of stock except only in instances specifically allowed by the Corporation Code (Boman Environmental Development Corporation v. Court of Appeals, 167 SCRA 540 [1988]).

Ultra Vires Acts (2009)

When is there an *ultra vires* act on the part of (a) the corporation; (b) the board of directors; and (c) the corporate officers? (3%)

(A) the corporation;

SUGGESTED ANSWER:

Under Section 45 of the Corporation Code, no corporation shall possess or exercise any corporate power except those conferred by the Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred. When a corporation does an act or engages in an activity which is outside of its express, implied or incidental powers set out in its articles of incorporation, the act is deemed to be *ultra vires.*

(B) the board of directors;

SUGGESTED ANSWER:

When the Board engages in an activity or enters into a contract without the ratificatory vote of the stockholders in those instances where the Corporation Code so Requires such ratificatory vote, such as when the corporation is made to invest in another corporation or engage in a business which is not in pursuit of its primary purpose, the board resolution not ratified by stockholders owning or representing at least two-thirds of the outstanding capital stock would make the transaction void, as being *ultra vires.*



(C) the corporate officers

SUGGESTED ANSWER:

When a corporate officer enters into a contract on behalf of the corporation without having been so expressly or impliedly authorized by the Board of Directors, even when the act or contract falls within the corporation's express, implied or incidental power, then the unauthorized act of the corporate officer is deemed to be *ultra vires.*

Credit Transaction

Chattel Mortgage; Foreclosure (2009)

No.III. Armando, a resident of Manila, borrowed P3-million from Bernardo, offering as security his 500 shares of stock worth P1.5-million in Xerxes Corporation, and his 2007BMW sedan, valued at P2-million. The mortgage on the shares of stock was registered in the Office of the Register of Deeds of Makati City where Xerxes Corporation has its principal office. The mortgage on the car was registered in the Office of the Register of Deeds of Manila. Armando executed a single Affidavit of Good Faith, covering both mortgages.

Armando defaulted on the payment of his obligation; thus, Bernardo foreclosed on the two chattel mortgages. Armando filed suit to nullify the foreclosure and the mortgages, raising the following issues:

(A) The execution of only one Affidavit of Good Faith for both mortgages invalidated the two mortgages; (2%) and

SUGGESTED ANSWER:

The execution of only one Affidavit of Good Faith for both mortgages is not a ground to nullify the said mortgages and the foreclosure thereof. Said mortgages are valid as between immediate parties (Lilius v. Manila Railroad Company, 62 Phil. 56 (1935)), although they cannot bind third parties (Philippine Refining v. Jarque, 61 Phil. 229 (1935)).

(B) The mortgage on the shares of stocks should have been registered in the office of the Register of Deeds of Manila where he resides, as well as in the stock and transfer book of Xerxes Corporation. (3%)

Rule on the foregoing issues with reasons.

SUGGESTED ANSWER:

The mortgage on the shares of stock should be registered in the chattel mortgage registry in the Register of Deeds of Makati City where the corporation has its principal office and also in the Register of Deeds of Manila where the mortgagor resides (Chua Guan v. Samahang Magsasaka, Inc., 62 Phil. 472 (1935)). Registration of chattel



mortgage in the stock and transfer book is not required to make the chattel mortgage valid. Registration of dealings in the stock and transfer book under Section 63 of the Corporation Code applies only to sale or disposition of shares, and has no application to mortgages and other forms of encumbrances (Monserrat v. Ceron, 58 Phil. 469 (1933)).

(C) Assume that Bernardo extrajudicially foreclosed on the mortgages, and both the car and the shares of stocks were sold at public auction. If the proceeds from such public sale should be 1-million short of Armando's total obligation, can Bernardo recover the deficiency? Why or why not? (2%)

SUGGESTED ANSWER:

Yes. Bernardo can recover the deficiency. Chattels are given as mere security, and not as payment or pledge (CuH ada v. Drilon, 432 SCRA 618 (2004)).

Chattel Mortgage; Foreclosure (2008)

No.XVII. On January 1, 2008, Al obtained a loan of P10,000 from Bob to be paid on January 30, 2008, secured by a chattel mortgage on a Toyota motor car. On February 1, 2008, Al obtained another loan of P10,000 from Bob to be paid on February 15, 2008. He secured this by executing a chattel mortgage on a Honda motorcycle. On the due date of the first loan Al failed to pay. Bob foreclosed the chattel mortgage but the car was bidded for P6,000 only. Al also failed to pay the second loan due on February 15, 2008. Bob filed an action for collection of sum of money. Al filed a motion to dismiss claiming that Bob should first foreclose the mortgage on The Honda motorcycle before he can file the action for sum of money. Decide with reasons. (4%)

SUGGESTED ANSWER:

Bob has the legal right to file a collection suit for a sum of money in lieu of foreclosing on the chattel mortgage. It has been ruled that a c chattel mortgage is a security arrangement to support a primary contract (Serra v. Rodriguez, G.R. no. L-25546, 22 April 1974). Since the chattel mortgage is only a collateral contract prerogative to choose which of the remedies available to pursue. However, the filing of the collection suit constitutes a waiver of the chattel mortgage (Land Settlement and Dev. Corp. v. Carlos, 22 SCRA 202, 1968). And even if the collection suit included the recovery of the P6,000 deficiency on the first loan, the same is valid because unlike in a pledge the lender has the legal right to recover the deficiency

incurred on the foreclosure of a chattel mortgage (PAMECA Wood Treatment v. CA, G.R. No. 106435, 14 July 1999).

Mortgage; Extrajudicial Foreclosure; Blanket Mortgage & Damage Clause (2012)

No.VIII. X obtained a Php10Million loan from BBB Banking Corporation. The loan is secured by Real Estate Mortgage on his vacation house in Tagaytay City. The original Deed of Real Estate Mortgage for the Php10Million was duly registered. The Deed of Real Estate Mortgage also provides that "The mortgagor also agrees that this mortgage will secure the payment of additional loans or credit accommodations that may be granted by the mortgagee ... " Subsequently, because he needed more funds, he obtained another Php5Million loan. On due dates of both loans, X failed to pay the Php5Million but fully paid the Php10Million. BBB Banking Corporation instituted extrajudicial foreclosure proceedings.

(A) Will the extrajudicial foreclosure prosper considering that the additional Php5Million was not covered by the registration? (5%)

SUGGESTED ANSWERS:

Yes. X executed a real estate mortgage containing a "blanket mortgage clause." Mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered. (Prudential Bank v. Alviar, G.R. No. 150197, 28 July 2005)

(B) What is the meaning of a "dragnet clause" in a Deed of Real Estate Mortgage? Under what circumstances will the "dragnet clause" be applicable? (5%)

SUGGESTED ANSWERS:

Generally, a dragnet clause is a clause in a deed of real estate mortgage stating that the mortgage secures all the loans and advances that the mortgagor may at any time owe to the mortgagee. The word "dragnet" is a reference to a net drawn through a river or across ground to trap fish or game. It is also known in American jurisprudence as a "blanket mortgage clause" or an "anaconda clause." A mortgage with a dragnet clause enables the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of

executing a new security on each new transaction. It operates as a convenience and accommodation to the borrower as it makes available additional funds to him without his having to execute additional security documents, thereby saving time, travel, cost of extra legal services, recording fees, etc. (Prudential Bank v. Alviar, id.)

The "dragnet clause" may not apply to other loans extended by the mortgagee to the mortgagor for which other securities were given. In the case of Prudential Bank v. Alviar, the Supreme Court adopted the "reliance on the security test" to the effect that "when the mortgagor takes another loan [from the mortgage] for which another security was given, it could not be inferred that such loan was made in reliance solely on the original security with the "dragnet clause," but, rather, on the new security given." This means that the existence of the new security must be respected and the foreclosure of the old security should only be for the other loans not separately collateralized and for any amount not covered by the new security for the new loan.

Mortgage; Foreclosure (2012)

No.VII. X obtained a loan for Php50Million from SSS Bank. The collateral is his vacation house in Baguio City under a real estate mortgage. X needed more funds for his business so he again borrowed another Php10Million, this time from BBB Bank, another bank, using the same collateral. The loan secured from SSS Bank fell due and X defaulted.

(A) If SSS Bank forecloses the real estate mortgage, what rights, if any, are left with 888 Bank as mo1igagee also? (2%)

SUGGESTED ANSWER:

BBB Bank, as junior mortgagee, would have a right to redeem the foreclosed property, together with X, his successors in interest, any judicial or judgement creditor of X, or any other person or entity having a lien on the vacation house subsequent to the real estate mortgage in favour of SSS Bank (i.e., other junior mortgagees, if any)(Sec. 6, Act 3135)

(B) If the value of the Baguio property is less than the amount of loan, what would be the recourse of SSS Bank? BBB Bank? (2%)

SUGGESTED ANSWER:

In case of a deficiency, SSS bank could file suit to claim for the deficiency. BBB Bank could file an ordinary action to collect its loan from X. if it does so, it would be deemed to have waived its mortgage lien. If the judgement in the action to collect is favorable to BBB Bank, and it becomes final and executory , BBB Bank could enforce the said judgement by execution. It could even levy execution execution on the same mortgaged property, but it would not have priority over the latter. (Caltex Philippines v. IAC, et al., G.R. No. 74730, August 25,1989)

(C) If the value of the property is more that the amount of the loan, who will benefit from the excess value of the property? (2%)

SUGGESTED ANSWER:

If the value of the property is more that the amount of the loan, the excess could benefit and be claimed by BBB Bank, any judicial or judgement creditor of X, any other junior mortgagee, and X.

(D) If X defaulted with its loan in favor of BBB Bank but fully paid his loan with SSS Bank, can BBB Bank foreclose the real mortgage executed in its favor? (2%)

SUGGESTED ANSWER:

If X defaulted in respect of his loan from BBB Bank but fully paid his loan from SSS Bank, BBB Bank could now foreclose the mortgaged property as it would be the only remaining mortgagee of the same.

(E) Does X have any legal remedy after the foreclosure in the event that later on he has the money to pay for the loan? (1%)

SUGGESTED ANSWER:

Yes, X could redeem the property within one (1) year from the date of registration of the sheriff's certificate of foreclosure sale.

(F) If SSS Bank and BBB Bank abandon their rights under the real estate mortgage, is there any legal recourse available to them? (1%)

SUGGESTED ANSWER:

SSS Bank and BBB Bank could each file an ordinary action to collect its loan from X.

Mortgage; Foreclosure (2010)

No.III. Ozamis Paper Corporation secured loans from ABC Universal Bank in the aggregate principal amount of P100 million, evidenced by several promissory notes, and



secured by a continuing guaranty of its principal stockholder Menandro Marquez; a pledge of Marquez's shares in the corporation valued at P45 million; and a real estate mortgage over certain parcels of land owned by Marquez.

The corporation defaulted and the bank extra-judicially foreclosed on the real estate mortgage. The bank which was the sole bidder for P75 million, won the award.

(A) Can the bank sue Marquez for the Deficiency of P25 million? Explain. (2%)

SUGGESTED ANSWER:

Yes, the bank can sue Marquez for the deficiency of P25million. In extrajudicial foreclosure of a real estate mortgage, if the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to sue for the deficiency (Suico Rattan and Buri Interiors, Inc. v. Court of Appeals, 490 SCRA 560 (2006)).

(B) If the bank opts to file an action for collection against the corporation, can it afterwards institute a real action to foreclose the mortgage? Explain (2%)

SUGGESTED ANSWER:

No, the bank can no longer file an action to foreclose the real estate mortgage. When it filed a collection case, it was deemed to have abandoned the real estate mortgage (Bank of America, NT and SA v. American Realty Corporation, 321 SCRA 659(1999)).

(C) Can the bank foreclose on the pledged shares of Marquez and recover the deficiency from the corporation? Explain. (2%)

SUGGESTED ANSWER:

If the bank forecloses the pledge, it cannot recover the deficiency because the foreclosure extinguishes the principal obligation, whether or not the proceeds from the foreclosure are equal to the amount of the principal obligation (Art. 2115, Civil Code).

Insolvency & Corporate Recovery

Insolvency; Preferred Claims (2007)

No.XIII. (A) What are the preferred claims that shall be satisfied first from the assets of an insolvent corporation? (10%)

SUGGESTED ANSWER:

Under the Insolvency law necessary funeral expenses of the debtor is the most preferred claim. However, this is an insolvent corporation, thus, claims shall be paid in the ff. order:

(1) Debts due for personal services rendered the insolvent by employees,

laborers, or domestic servants immediately preceding the commencement of proceeding in insolvency;

(2) Compensation due the laborers or their dependents under the provisions of act numbered thirty-four hundred and twenty-eight, known as the workmen's Compensation Act, as amended by Act Numbered Thirty-eight hundred and twelve, and under the provisions of Act Numbered Eighteen hundred and seventy-four, known as the Employees' Liability Act, and of other laws providing for payment of indemnity for damages in cases of labor accidents;

(3) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;

(4) Debts, taxes, and assessments due the Insular Government;

(5) Debts, taxes, and assessments due to any province or provinces of the Philippine Islands;

(6) Debts, taxes, and assessments due to any municipality or municipalities of the Philippine Islands (Section 50, Insolvency Law).

(B) How shall the remaining non-preferred creditors share in the estate of the insolvent corporation above?

SUGGESTED ANSWER:

The remaining non-preferred creditors, whose debts are duly proved and allowed, shall be entitled to share pro-rata in the assets, without priority or preference whatsoever (Section 49, Insolvency Law; Article 2251, Civil Code).

Rehabilitation; Proceeding; Rehabilitation & Insolvency (2012)

No.XVIII. (A) Can be distressed corporation file a petition for corporation rehabilitation after the dismissal of its earlier petition for insolvency? Why? (2%)

SUGGESTED ANSWER:

Yes, when a distressed corporation's petition for insolvency has been dismissed, it can only mean that it still possesses more than enough assets to cover all its liabilities, and consequently, it can still be "rehabilitated" (PAL v. Zamora, G.R. No. 166996, 06 February 2007, and Sec. 5[d], Securities Regulation Act).



Under Sec. 6(d) of P.D. 902-A, a petition for corporate rehabilitation is allowed only "in cases where the corporationpossesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation** has no sufficient assets to cover liabilities, but is under the management of a rehabilitation receiver or management committee created pursuant to this Decree."**

Under Sec. 1, Rule 4, Interim Rule of Procedure for Corporate Rehabilitation. A petitioner corporate debtor must be one who is "Any debtor who foresees the impossibility of meeting its debts when they respectively fall due," which means that it is not insolvent, but merely illiquid, which under Section 2 provides the minimum that the debtor is "rehabilitable" thus: "the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees and stock holders.

(B) Can the corporation file a petition for rehabilitation first, and after it is dismissed file a petition foR insolvency? Why? (2%)

SUGGESTED ANSWER:

Although in Ching v. LBP, G.R. No. 73123, 02 September 1991, it was held that when a petitioning corporate debtor has been denied rehabilitation, the SEC may declare a corporation insolvent as an incident and in continuation of its already acquired jurisdiction over petitioner, such a procedure does not seem warranted under the Interim Rules of Procedure for Corporate Rehabilitation.

Sec. 27, Rule 4 of the Interim Rules state that, "the court shall upon motion, motu porprio or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings, without proceeding to insolvency/dissolution." In other words, a different petition for insolvency proceedings fall with the general jurisdiction of RTC, whereas petition for corporate rehabilitation fall within the original and exclusive jurisdiction of RTC special Commercial Courts.

(C) Explain the key phrase "equality is equity" in corporate rehabilitation proceedings. (2%)

SUGGESTED ANSWER:

The principle of "equality in equity" means that when a corporation is placed under the control of a court-appointed rehabilitation receiver, then "all the



creditors should stand on equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership" (Sobrejuanite v. ASB Dev. Corp., G.R. No. 165675, 30 September 2005: Ruby Industrial v. Lim, G.R. Nos. 124185-87, 20 January 1998).

Rehabilitation; Stay Order (2012)

No.I. ABC Company filed a Petition for Rehabilitation with the Court. An Order was issued by the Court, (1) staying enforcement of all claims, whether money or otherwise against ABC Company, its guarantors and sureties not solidarily liable with the company; and (2) prohibiting ABC Company from making payments of its liabilities, outstanding as of the date of the filing of the Petition. XYC Company is a holder of an irrevocable Standby Letter of Credit which was previously procured by ABC Company in favor of XYC Company to secure performance of certain obligations. In the light of the Order issued by the Court.

(A) Can XYC Company still be able to draw on their irrevocable Standby Letter of Credit when due? Explain your answer. (5%)

SUGGESTED ANSWER:

Yes, As an exception to a Stay or Suspension Order included in a Commencement Order issued pursuant to Section 16(q) of the FRIA, Section 18(c) if the said law provides that a Stay or Suspension Order shall not apply "to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit x xx." Similarly, assuming that it has not been superseded by the FRIA, Section 7(b) of the Supreme Court Rules of Procedure on Corporate Rehabilitation (2008) provides that a stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations. This was the basis of the decision in the case of Metropolitan Waterworks and Sewerage System v. Hon. Reynaldo B. Daway, et al. (G.R. No. 160732, June 21,2004).

Insurance Law

Beneficiary; Death of Insured Due to Beneficiary (2008)

No.VI. On January 1, 2000, Antonio Rivera secured a life insurance from SOS Insurance Corp. for P1 Million with Gemma Rivera, his adopted daughter, as the beneficiary. Antonio Rivera died on March 4, 2005 and in the police investigation, it was ascertained that Gemma Rivera participated as an accessory in the killing of Antonio Rivera. Can SOS Insurance Corp. avoid liability by setting up as a defense the participation of Gemma Rivera in the killing of Antonio Rivera? Discuss with reasons.(4%)

SUGGESTED ANSWER:

Under Sec. 12 of the Insurance Code. The interest of a beneficiary shall be forfeited when the beneficiary is the principal, accomplice, or accessory in willfully bringing about the death of the insured. In which event, the nearest relative of the insured shall receive the proceeds of said insurance, if not otherwise disqualified. Thus, the insurance company must still pay out the proceed of the life insurance policy to the nearest qualified relative of the insured.

Concealment; Material Concealment (2013)

No.II. Benny applied for life insurance for Php 1.5 Million. The insurance company approved his application and issued an insurance policy effective Nov, 6, 2008. Benny named his children as his beneficiaries. On April 6, 2010, Benny died of hepatoma, a liver ailment.

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

Was the insurance company correct? (8%)

SUGGESTED ANSWER

The insurance company correctly rescinded the policy because of concealment (Section 27 of Insurance Code). Benny did not disclose that he was suffering from diabetes, hypertension, and hepatoma. The concealment is material, because these are serious ailments (Florendo v. Philam Plans, Inc., 666 SCRA 618, 2012). Benny died less than two years from the date of the issuance of the policy (Section 48 of Insurance Code).

Insurable Interest; Building Destroyed by Fire (2010)

No.X. To secure a loan of P10 million, Mario mortgaged his building to Armando. In accordance with the loan arrangements, Mario had the building insured with First Insurance Company for P10 million, designating Armando as the beneficiary.
Armando also took an insurance of the building upon his own interest with Second Insurance Company for P5 million.
The building was totally destroyed by fire, a peril insured against under both insurance policies. It was subsequent determined that the fire had been intentionally started by Mario and that in violation of the loan agreement, he had been storing inflammable materials in the building.

(A) How much, if any, can Armando recover from either or both insurance companies? (2%)

SUGGESTED ANSWER:

Armando can receive P5 million from Second Insurance Company. As mortgagee, he had an insurable interest in the building (Panlileo v. Cosio, 97 Phil. 919 (1955)). Armando cannot collect anything from First Insurance Company. First Insurance Company is not liable for the loss of the building. First, it was due to a willful act of Mario, who committed arson (Section 87 of the Insurance Code; East Furnitures, Inc. v. Globe & Rutgers Fire Insurance Company, 57 Phil. 576 (1932)). Second, fire insurance policies contain a warranty that the insured will not store hazardous materials within the insured premises. Mario breached this warranty when he stored inflammable materials in the building. (Young v. Midland Textile Insurance Company, 30 Phil. 617 (1915)).These two factors exonerate First Insurance Company from liability to Armando as mortgagee even though it was Mario who committed them (Section 8 of the Insurance Code).

(B) What happens to the P10 million debt of Mario to Armando? Explain. (3%)

SUGGESTED ANSWER:

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

Insurance; Double Insurance, Validity (2012)

No.V X borrowed from CCC Bank. She mortgaged her house and lot in favor of the bank. X insured her house. The bank also got the house insured.

(A) Is this double insurance? Explain your answer. (3%)

SUGGESTED ANSWER:

No, there is no double insurance. Double insurance exists where the same person is insured by several insurers separately with respect to the same subject and interest. (Sec. 93, Insurance Code)

(B) Is this legally valid? Explain your answer. (3%)

SUGGESTED ANSWER:

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

(C) In case of damage, can X and CCC Bank separately claim for the insurance proceeds? (4%)

SUGGESTED ANSWER:

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

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

Insurance; Perfection of Insurance Contracts (2009)

No.IV. Antarctica Life Assurance Corporation (ALAC) publicly offered a specially designed insurance policy covering persons between the ages of 50 to 75 who may be afflicted with serious and debilitating illnesses. Quirico applied for insurance coverage, stating that he was already 80 years old. Nonetheless, ALAC approved his application.



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

(A) Can ALAC validly deny the claim on the ground that the insurance coverage, as publicly offered, was available only to persons 50 to 75 years of age? Why or why not? (2%)

SUGGESTED ANSWER:

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

(B) Did ALAC's issuance of a cover note result in the perfection of an insurance contract between Quirico and ALAC? Explain. (3%)

SUGGESTED ANSWER:

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

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

Insurance; Property Insurance; Assignments (2009)

No.XIII. Ciriaco leased a commercial apartment from Supreme Building Corporation (SBC). One of the provisions of the one-year lease contract states:

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

Notwithstanding the stipulation in the contract, without the consent of SBC, Ciriaco insured the merchandise inside the leased premises against loss by fire in the

amount of P500, 000 with First United Insurance Corporation (FUIC).

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

Who is legally entitled to receive the insurance proceeds? Explain. (4%)

SUGGESTED ANSWER:

Ciriaco is entitled to receive the proceeds of the insurance policy. The stipulation that the policy is deemed assigned and transferred to SBC is void, because SBC has no insurable interest in the merchandise of Ciriaco (Cha v. Court of Appeals, 277 SCRA 690 (1997))

Insurance; Property Insurance; Late Payment of Premiums (2010)

No.XI. Enrique obtained from Seguro Insurance Company a comprehensive motor vehicle insurance to cover his top of the line Aston martin. The policy was issued on March 31, 2010 and, on even date, Enrique paid the premium with a personal check postdated April 6, 2010.

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

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

Enrique thereupon claimed indemnity from the insurer. Is the insurer liable under the insurance coverage? Why or why not? (3%)

SUGGESTED ANSWER:

The insurer is not liable under the insurance policy. Under Article 1249 of the Civil Code, the delivery of a check produces the effect of payment only when it is encashed. The loss occurred on April 5, 2010. When the check was deposited, it was returned on April 10, 2010, for insufficiency of funds. The check was honored only after Enrique deposited additional funds with the bank. Hence, it did not produce the effect of payment (Vitug, Commercial Laws and Jurisprudence, Vol. I, p.250).

ALTERNATIVE ANSWER:

Yes. The insurer is liable. The insurance policy was issued. In effect, there was a grant of credit for the payment of the premium. The insurer can deduct the



amount of the check from the proceeds of the insurance.

Insurance; Property Insurance; Payment of Premiums by Check (2007)

No.IV. Alfredo took out a policy to insure this commercial building fire. The broker for the insurance company agreed to give a 15-day credit within which pay the insurance premium. Upon delivery of the policy on May 15, 2006, Alfredo issued a postdated check payable on May 30, 2006. On May 28, 2006, a fire broke out and destroyed the building owned by Alfredo. (10%)

(A) May Alfredo recover on the insurance policy?

SUGGESTED ANSWER:

Yes, Alfredo may recover on the policy. It is valid to stipulate that the insured will be granted credit term for payment of premium. Payment by means of a check which was accepted by the insurer, bearing a date prior to the loss, would be sufficient. The subsequent effects of encashment retroact to the date of the check (UCPB General Insurance Co., Inc. v. Masagana Telamart, Inc., 356 SCRA 307 [2001]).

(B) Would your answer in (a) be the same if it was found that the proximate cause of the fire was an explosion and that fire was but the immediate cause of loss and there is no excepted peril under the policy?

SUGGESTED ANSWER:

Yes, recovery under the insurance contract is allowed if the cause of the loss was either the proximate or the immediate cause as long as an excepted peril, if any was not the proximate cause of the loss (Section 86, Insurance Code of the Philippines).

(C) If the fire was found to have been caused by Alfredo's own negligence, can he still recover on the policy?

Reason briefly in (a), (b) and (c).

SUGGESTED ANSWER:

Yes, mere negligence on the part of the insured will not prevent recovery under the insurance policy. The law merely prevents recovery when the cause of loss is the willful act of the insured, alone or in connivance with others (Section 87, Insurance Code of The Philippines).



Insurance; Property Insurance; Payment of Premiums even after Loss (2013)

No.VII. Stable Insurance Co. (SIC) and St. Peter Manufacturing Co. (SPMC) have had a long-standing insurance relationship with each other; SPMC secures the comprehensive fire insurance on its plant and facilities from SIC. The standing business practice between them has been to allow SPMC a credit period of 90 days from the renewal of the policy with which to pay the premium.

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

SIC responded by issuing its own manager's check for the amount of the premiums SPMC had paid, and denied SPMC's claim on the ground that under the "cash and carry" principle governing fire insurance, no coverage existed at the time the fire occurred because the insurance premium had not been paid.
Is SPMC entitled to recover for the loss form SIC? (8%)

SUGGESTED ANSWER:

St. Peter Manufacturing Company is entitled to recover for the loss from stable Insurance Company. Stable Insurance Company granted a credit term to pay the premiums. This is not against the law, because the standing business practice of allowing St. Peter Manufacturing Company to pay the premiums after 60 or 90 days, was relied upon in good faith by SPMC. Stable Insurance Company is in estoppels (UCPB General Insurance Company, Inc. v. Masagana Telemart, Inc. 356 SCRA 307, 2001).

Insurer: Effects: Several Insurers (2008)

No.VII. Terrazas de Patio Verde, a condominium building, has a value of P50 Million. The owner insured the building against fire with three (3) insurance companies for the following amounts:

Northern Insurance Corp. – P20 Million

Southern Insurance Corp. – P30 Million

Eastern Insurance Corp. – P50 Million

(A) Is the owner's taking of insurance for the building with three (3) insurers valid? Discuss. (3%)

SUGGESTED ANSWER:

Taking out insurance covering the same property, same insurable interest and same risk with three insurance

companies is "double insurance," recognized under Sec. 93 of the Insurance Code. However, in American Home Assurance Co. v, Chua, G.R. No. 130421, 28 June 1999, the court referred to the common inclusion of the "other insurance clause" in fire insurance policies, requiring disclosure of co-insurance of the same property with other insurers.

(B) The Building was totally razed by fire. If the owner decides to claim from Eastern Insurance Corp. only P50 Million, will the claim prosper? Explain. (2%)

SUGGESTED ANSWER:

Insured can recover from Eastern Insurance Corp. up to the extent of his loss. However, Eastern may refuse to pay if the policy contains an "other insurance clause" stipulating that non-disclosure of double insurance will avoid the policy (Geagonia v. Country Bankers Insurance, G.R. No. 114427, 06 February 1995.) As there is no indication of a contractual prohibition on double or other insurance, all insurance contracts over the building are deemed valid and enforceable.

The law prohibits double or over-recovery, not double insurance. Since Eastern insured the property up 50% of the total coverage, it is liable for only 50% of the total actual loss. Eastern insurance Corp. is liable to the extent of its coverage but may recover one-half of the total indemnity from the co-insurers in the proportion of 60% (Southern Insurance) – 40% (Northern Insurance).

Intellectual Property

Agreements: Technology Transfer Agreements; Requisites & Prohibitions (2010)

No.VI. (A) What contractual stipulations are required in all technology transfer agreements? (2%)

SUGGESTED ANSWER:

The following stipulations are required in all technology transfer agreements:

(1) The laws of the Philippines shall govern its interpretation and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;

(2) Continued access to improvements in techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;

(3) In case it shall provide for arbitration, the Procedure of Arbitration

of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law or the Rules of Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country;

(4) The Philippine taxes on all payments relating to the technology transfer agreement shall be borne by the licensor (Sec. 88, Intellectual Property Code).

(B) Enumerate three stipulations that are prohibited in technology transfer agreements. (3%)

SUGGESTED ANSWER:

The following stipulations are prohibited in technology transfer agreements:

(1) Those that contain restrictions regarding the volume and structure of production;

(2) Those that prohibit the use of competitive technologies in a non-exclusive agreement; and

(3) Those that establish a full or partial purchase option in favor of the licensor (Subsections 87.3, 87.4 and 87.5 of the Intellectual Property Code).

Article of Commerce; As Trademark, Patent & Copyright (2010)

No.VI. (C) Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example. (2%)

SUGGESTED ANSWER:

A stamped or marked container of goods can be registered as trademark (subsections 113.1 of the Intellectual Property Code). An original ornamental design or model for articles of manufacturer can be copyrighted (Subsection 172.1 of the Intellectual Property Code). An ornamental design cannot be patented, because aesthetic creations cannot be patented (Section 22 of the Intellectual Property Code). However, it can be registered as an industrial design (Subsections 113.1 and 172.1 of the Intellectual Code). Thus, a container of goods which has an original ornamental design can be registered as trademark, can be copyrighted, and can be registered as an industrial design.

ALTERNATIVE ANSWER:

It is entirely possible for an article of commerce to bear a registered trademark, be protected by a patent and have most, or some part of it copyrighted. A book is a good example. The name of the publisher or the



colophon used in the book may be registered trademarks, the ink used in producing the book may be covered by a patent, and the text and design of the book may be covered by copyrighted.

Copyright (2013)

No.IV. Ruby is a fine arts student in a university. He stays in a boarding house with Bernie as his roommate. During his free time, Rudy would paint and leave his finished works lying around the boarding house. One day, Rudy saw one of his works – an abstract painting entitled Manila Traffic Jam – on display at the university cafeteria. The cafeteria operator said he purchased the painting from Bernie who represented himself as its painter and owner

Rudy and the cafeteria operator immediately confronted Bernie. While admitting that he did not do the painting,. Bernie claimed ownership of its copyright since he had already registered it in his name with the National Library as provided in the Intellectual Property Code.

Who owns the copyright to the painting? Explain (8%).

SUGGESTED ANSWER.

Rudy owns the copyright to the painting because he was the one who actually created it. (Section 178.1 of the Intellectual Property Code) His rights existed from the moment of its creation (Section 172 of the Intellectual Property Code; Unilever Philippines (PRC) v. Court of Appeals, 498 SCRA 334, 2006). The registration of the painting by Bernie with the National Library did not confer copyright upon him. The registration is merely for the purpose of completing the records of the National Library. (Section 191 of the Intellectual Property Code).

Copyright; Commissioned Artist (2008)

No.XVI. In 1999, Mocha warn, an American musician, had a bit rap single called Warm Warm Honey which he himself composed and performed. The single was produced by a California record company, Galactic Records. Many notice that some passages from Warm Warm Honey sounded eerily similar to parts of Under Hassle, a 1978 hit song by the British rock and Majesty. A copyright infringement suit was filed in the United States against Mocha Warm by Majesty. It was later settled out of court, with Majesty receiving attribution as co-author of Warm Warm Honey as well as a share in the royalties.

By 2002, Moeha Warm was nearing bankruptcy and he sold his economic rights



over Warm Warm Honey to Galactic Records for $10,000.

In 2008, Planet Films, a Filipino movie producing company, commissioned DJ Chef Jean, a Filipino musician, to produce an original re-mix of Warm Warm Honey for use in one of its latest films, Astig!. DJ Chef Jean remixed Warm Warm Honey with a salsa beat, and interspersed as well a recital of poetic stanza by John Blake, 1 17th century Scottish poet. DJ Chef Jean died shortly after submitting the remixed Warm Warm Honey to Planet Films.

Prior to the release of Astig!. Mocha Warm learns of the remixed Warm Warm Honey and demands that he be publicly identified as the author of the remixed song is all the CD covers and publicity releases of Planet Films.

(A) Who are the parties or entities entitled to be credited as author of the remixed Warm Warm Honey? Reason out your answers. (3%)

SUGGESTED ANSWER:

The parties entitled to be credited as authors of the remixed Warm Warm Honey are Mocha Warm, Majesty, DJ Chef Jean and John Blake, for the segments that was the product of their respective intellectual efforts.

In the case of Mocha Warm and Majesty, who are the attributed co-authors, and in spite of the sale of the economic right to Galactic Records, they retain their moral rights to the copyrighted rap, which include the right to demand attribution to them of the authorship (Sec. 193, IPC).

Which respect to DJ Chef Jean, in spite of his death, and although he was commissioned by Planet Films for the remix, the rule is that the person who so commissioned work shall have ownership of the work, but copyright thereto shall remain with creator, unless there is a written stipulation to the contrary.

Even if no copyright exist in favor of poet John Blake, intellectual integrity requires that the authors of creative work should properly be credited.

(B) Who are the particular parties or entities who exercise copyright over the remixed Warm Warm Honey? Explain. (3%)

SUGGESTED ANSWER:

The parties who exercise copyright or economic rights over the remixed Warm Warm Honey would be Galactic Records and Planet Films. In the case of Galactic Records, it bought the economic rights of Mocha Warm. In the case of Planet

Films, it commissioned the remixed work.

Copyright; Commissioned Work (2008)

No.XV. Eloise, an accomplished writer, was hired by Petong to write a bimonthly newspaper column for Diario de Manila, a newly-established newspaper of which Petong was the editor-in-chief. Eloise was to be paid P1,000 for each column that was published. In the course of two months, Eloise submitted three columns which, after some slight editing, were printed in the newspaper. However, Diario de Manila proved unprofitable and closed only after two months. Due to the minimal amounts involved, Eloise chose not to pursue any claim for payment from the newspaper, which was owned by New Media Enterprises.

Three years later, Eloise was planning to publish an anthology of her works, and wanted to include the three columns that appeared in the Diario de Manila in her anthology She asks for you legal advice:

(A) Does Eloise have to secure authorization from New Media Enterprises to be able to publish her Diario de Manila columns in her own anthology? Explain fully. (4%)

SUGGESTED ANSWER:

Eloise may publish the columns without securing authorization from New Media Enterprises. Under Sec. 172 of the Intellectual Property Code, original intellectual creations in the literary and artistic domain are protected from the moment of their creation and shall include those in periodicals and newspapers. Under Sec. 178, copyright ownership shall belong to the author. In case of commissioned work, the person who so commissioned work shall have ownership of work, but copyright shall remain with creator, unless there is a written stipulation to the contrary.

(B) Assume that New Media Enterprises plans to publish Eloise's columns in its own anthology entitled, "The Best of Diario de Manila" Eloise wants to prevent the publication of her columns in that anthology since she was never paid by the newspaper. Name one irrefutable legal argument Eloise could cite to enjoin New Media Enterprises from including her columns in its anthology. (2%)

SUGGESTED ANSWER:

Under the IPC, the copyright or economic rights to the columns she authored pertains only to Eloise. She can invoke the right to either "authorize or prevent" reproduction of the work, including the public distribution of the original and each copy of the work "by

sale or other forms of transfer of ownership," Since this would be the effect of including her column in the anthology.

Copyright; Infringement (2007)

No.III. Diana and Piolo are famous personalities in showbusiness who kept their love affair secret. They use a special instant messaging service which allows them to see one another's typing on their own screen as each letter key is pressed. When Greg, the controller of the service facility, found out their identities, he kept a copy of all the messages Diana and Piolo sent each other and published them. Is Greg liable for copyright infringement? Reason briefly. (5%)

SUGGESTED ANSWER:

Yes, Greg is liable for copyright infringement. Letter are among the works which are protected from the moment of their creation (Section 172, intellectual Property Code; Columbia Pictures, Inc. v Court of Appeals, 261 SCRA 144 [1996]). The publication of the letters without the consent of their writers constitutes infringement of copyright.

ALTERNATIVE ANSWER

No, Greg is not liable for copyright infringement. There is no copyright protecting electronic documents. What are involved here are text messages, not letter in their ordinary sense. Hence, the protection under the copyright law does not extend to text messages (Section 172, Intellectual Property Code).

The messages that Diana and Piolo exchanged through the use of messaging service do not constitute literary and artistic works under Section 172 of the Intellectual Property Code. They are not letter under Section 172(d).

For copyright to subsist in a "message", it must qualify as a "work" (Section 172 Intellectual Property Code). Whether the messages are entitled or not to copyright protection would have to be resolved in the light of the provision of the Intellectual Property Code.

Note: Since the law on this matter is not clear, it is suggested that either of the above of the above suggested answers should be given full credit.

Denicola Test (2009)

No.I. (A) The *Denicola Test* in intellectual property law states that if design elements of an article reflect a merger of aesthetic and functional considerations, the artistic

aspects of the work cannot be conceptually separable from the utilitarian aspects; thus, the article cannot be copyrighted.

SUGGESTED ANSWER:

True. Applying the Denicola Test in Brandir International, Inc. v.Cascade Pacific Lumber Co. (834 F. 2d 1142, 1988 Copr.L.Dec. P26), the United States Court of Appeals for the Second Circuit held that if there is any aesthetic element which can be separated from the utilitarian elements, then the aesthetic element may be copyrighted.

(Note: It is suggested that the candidate be given full credit for whatever answer or lack of it. Further, it is suggested that terms or any matter originating from foreign laws or jurisprudence should not be asked.)

Infringement; Claims (2010)

No.XV. While vacationing in Boracay, Valentino surreptitiously took photographs of his girlfriend Monaliza in her skimpy bikini. Two weeks later, her photographs appeared in the Internet and in a national celebrity magazine.

Monaliza found out that Valentino had sold the photographs to the magazine, adding insult to injury, uploaded them to his personal blog on the Internet.

(A) Monaliza filed a complaint against Valentino damages based on, among other grounds, violation of her intellectual property rights. Does she have any cause of action? Explain. (2%)

SUGGESTED ANSWER:

Monaliza cannot sue Valentino for violation of her intellectual property rights, because she was not the one who took the pictures (Subsection 178.1 of the Intellectual Property Code). She may sue Valentino instead for violation of her right to privacy. He surreptitiously took photographs of her and then sold the photographs to a magazine and uploaded them to his personal blog in the Internet (Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I, 1987 ed., p. 169).

(B) Valentino's friend Francesco stole the photographs and duplicated them and sold them to a magazine publication. Valentino sued Francisco for infringement and damages. Does Valentino have any cause of action? Explain. (2%)

SUGGESTED ANSWER:

Valentino cannot sue Francesco for infringement, because he has already sold the photographs to a magazine (Angeles vs. Premier Productions, Inc., 6 CAR (2s) 159).

ALTERNATIVE ANSWER:



Yes, as the author of the photographs, Valentino has exclusive economic rights thereto, which include the rights to reproduce, to distribute, to perform, to display, and to prepare derivative works based upon the copyrighted work. He sold only the photographs to the magazine; however, he still retained some economic rights thereto. Thus, he has a cause of action against infringement against Francesco.

(C) Does Monaliza have any cause of action against Francesco? Explain. (2%)

SUGGESTED ANSWER:

Monaliza can also sue Francesco for violation of her right to privacy.

Infringement; Trademark, Copyright (2009)

No.XV. After disposing of his last opponent in only two rounds in Las Vegas, the renowned Filipino boxer Sonny Bachao arrived at the Ninoy Aquino International Airport met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo shirt embroidered with the 2-inch Lacoste Crocodile logo appearedon the front page of every Philippine newspaper.

Lacoste International, the French firm that manufactures lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase "Sonny Bachao just loves Lacoste."

When Sonny sees the Lacoste advertisements, he hires you as lawyer and asks you to sue Lacoste International before a Philippine court:

(A) For trademark Infringement in the Philippines because Lacoste International used his image without his permission: (2%)

SUGGESTED ANSWER:

Sonny Bachao cannot sue for infringement of trademark. The photographs showing him wearing a Lacoste shirt were not registered as a trademark (Pearl & Dean (Phil.), Inc. v. Shoemart, Inc., 409 SCRA 231 (2003)).

(B) For copyright infringement because of the unauthorized use of the published photographs; (2%)and

SUGGESTED ANSWER:

Sonny Bachao cannot sue for infringement of copyright for the unauthorized use of the photographs

showing him wearing a Lacoste shirt. The copyright to the photographs belong to the newspapers which published them inasmuch as the photographs were the result of the performance of the regular duties of the photographers (Subsection 173.3 (b), Intellectual Property Code (IPC)).Moreover, the newspaper publishers authorized the reproduction of the photographs (Section 177, Intellectual Property Code).

(C) For injunction in order to stop Lacoste International from featuring him in their commercials. (2%)

Will these actions prosper? Explain.

SUGGESTED ANSWER:

The complaint for injunction to stop Lacoste International from featuring him in its advertisements will prosper. This is a violation of subsection 123, 4(c) of the IPC and Art.169 in relation to Art.170 of the IPC.

(D) Can Lacoste International validly invoke the defense that it is not a Philippine company and, therefore, Philippine courts have no jurisdiction? Explain. (2%)

SUGGESTED ANSWER:

No. Philippine courts have jurisdiction over it, if it is doing business in the Philippines. Moreover, under Section 133 of the Corporation Code, while a foreign corporation doing business in the Philippines without license to do business, cannot sue or intervene in any action, it may be sued or proceeded against before our courts or administrative tribunal (De Joya v. Marquez, 481 SCRA 376 (2006)).

Patent: Non-Patentable; Method of Diagnosis & Treatment (2010)

No.XIX. Dr. Nobel discovered a new method of treating Alzheimer's involving a special method of diagnosing the disease, treating it with a new medicine that has been discovered after long experimentation and field testing, and novel mental isometric exercises. He comes to you for advice on how he can have his discoveries protected. Can he legally protect his new method of diagnosis, the new medicine, and the new method of treatment? If no, why? If yes, how? (4%)

SUGGESTED ANSWER:

Dr. Nobel can be protected by a patent for the new medicine as it falls within the scope of Sec. 21 of the Intellectual Property Code (Rep. Act No. 8293, as amended). But no protection can be legally extended to him for the method of diagnosis and method of treatment which are expressly non-patentable (Sec. 22, Intellectual Property Code).



Trademark; Unfair Competition (2010)

No.XVIII. For years, Y has been engaged in the parallel importation of famous brands, including shoes carrying the foreign brand MAGIC. Exclusive distributor X demands that Y cease importation because of his appointment as exclusive distributor of MAGIC shoes in the Philippines.

Y counters that the trademark MAGIC is not registered with the Intellectual Property Office as a trademark and therefore no one has the right to prevent its parallel importation.

(A) Who is correct? Why? (2%)

SUGGESTED ANSWER:

X is correct. His rights under his exclusive distributorship agreement are property rights entitled to protection. The importation and sale by Y of MAGIC shoes constitute unfair competition (Yu v. Court of Appeals, 217 SCRA 328 (1993)). Registration of the trademark is not necessary in case of an action for unfair competition (Del Monte Corporation v. Court of Appeals, 181 SCRA 410 (1990)).

ALTERNATIVE ANSWER:

Y is correct. The rights in a trademark are acquired through registration made validly in accordance with the Intellectual Property Code (Section 122 of the Intellectual Property Code).

(B) Suppose the shoes are covered by a Philippine patent issued to the owner, what would your answer be? Explain. (2%)

SUGGESTED ANSWER:

A patent for a product confers upon its owner the exclusive right of importing the product (Subsection 71.1 of the Intellectual Property Code). The importation of a patented product without the authorization of the owner of the patent constitutes infringement of the patent (Subsection 76.1 of the Intellectual Property Code). X can prevent the parallel importation of such shoes by Y without its authorization.

Letters of Credit

Independence Principle (2010)

No.XVII. The Supreme Court has held that fraud is an exception to the "independence principle" governing letters of credit. Explain this principle and give an example of how fraud can be an exception. (3%)

SUGGESTED ANSWER:

The "independence principle" posits that the obligations of the parties to a letter of credit are independent of the obligations of the parties to the



underlying transaction. Thus, the beneficiary of the letter of credit, which is able to comply with the documentary requirements under the letter of credit, must be paid by the issuing or confirming bank, notwithstanding the existence of a dispute between the parties to the underlying transaction, say a contract of sale of goods where the buyer is not satisfied with the quality of the goods delivered by the seller. The Supreme Court in Transfield Philippines, Inc. v. Luzon Hydro Corporation, 443 SCRA 307 (2004) for the first time declared that fraud is an exception to the independence principle. For instance, if the beneficiary fraudulently presents to the issuing or confirming bank documents that contain material facts that, to his knowledge, are untrue, then payment under the letter of credit may be prevented through a court injunction.

Letter of Credit (2012)

No.I. ABC Company filed a Petition for Rehabilitation with the Court. An Order was issued by the Court, (1) staying enforcement of all claims, whether money or otherwise against ABC Company, its guarantors and sureties not solidarily liable with the company; and (2) prohibiting ABC Company from making payments of its liabilities, outstanding as of the date of the filing of the Petition. XYC Company is a holder of an irrevocable Standby Letter of Credit which was previously procured by ABC Company in favor of XYC Company to secure performance of certain obligations. In the light of the Order issued by the Court.

(b) Explain the nature of Letters of Credit as a financial devise. (5%)

SUGGESTED ANSWER:

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer. Once the credit is



established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and present it together with the required documents to the issuing bank. The issuing bank redeems draft and pays cast to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement, the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank. (Bank of America NT & SA v. CA, et al., G.R. No. 105395, December 10,1993) However, letters of credit are also used in non-sale settings where they serve to reduce the risk of non-performance. Generally, letters of credit in non-sale settings have come to be known as standby letters of credit. (Transfield Philippines, Inc. v. Luzon Hydro Corporation, et al., G.R. No. 146717, November 22,2004)

Letter of Credit; Liabilities of a Confirming and Notifying Bank (2008)

No.I. X Corporation entered into a contract with PT Construction Corp. for the latter to construct and build a sugar mill with six (6) months. They agreed that in case of delay, PT Construction Corp. will pay X Corporation P100,000 for every day of delay. To ensure payment of the agreed amount of damages, PT Construction Corp. secured from Atlantic Bank a confirmed and irrevocable letter of credit which was accepted by X Corporation in due time. One week before the expiration of the six (6) month period, PT Construction Corp. requested for an extension of time to deliver claiming that the delay was due to the fault of X Corporation. A controversy as to the cause of the delay which involved the workmanship of the building ensued. The controversy remained unresolved. Despite the controversy, X Corporation presented a claim against Atlantic Bank by executing a draft against the letter of credit.

(A) Can Atlantic Bank refuse payment due to the unresolved controversy? Explain. (3%)

SUGGESTED ANSWER:

No, Atlantic Bank cannot refuse payment to the unresolved controversy between the two companies. The Bank is solidarily liable to pay based on the terms and conditions of the Letter of Credit. In FEATI Bank v. Court of

Appeals, G.R. No.94209, 30 April 1991, the Court held that an irrevocable letter of credit is independent of the contract between the buyer-applicant and the seller-beneficiary.

(B) Can X Corporation claim directly from PT Construction Corp.? Explain. (3%)

SUGGESTED ANSWER:

Yes, X Corporation can claim directly from PT Construction Corp. The irrevocable letter of credit was merely a security arrangement that did not replace the main contract between the two companies. In FEATI Bank c. CA, G.R. No. 94209, 30 April 1991, opening a letter of credit does not involve a specific appropriation of money in favor of the beneficiary. It only signifies that the beneficiary may draw funds up to the designated amount. It does not mean that a particular sum of money has been specifically reserved of held in trust.

Maritime Commerce

Averages: Types (2010)

No.XVI. (B) What are the types of averages in marine commerce (3%)

SUGGESTED ANSWER:

The types of average are particular and general (Article 808 of the Code of Commerce). Particular averages include all expenses and damages caused to the vessel or to the cargo which did not inure to the common benefit and profit of all the persons interested in the vessel and the cargo (Article 809 of the Code of Commerce). General averages include all damages and expenses which are deliberately caused to save the vessel, its cargo, or both at the same time, from a real and known risk (Article 811 of the Code of Commerce).

Barratry (2010)

No.XIII. (B) What is "barratry" in marine insurance? (2%)

SUGGESTED ANSWER:

Barratry is any willfull misconduct in the part of the master or crew in pursuance of some unlawful or fraudulent purpose without the consent of the owner and to the prejudice of the interest of the owner (Roque v. Intermediate Appellate Court, supra).



Carriage of Goods; Deviation; Liability (2009)

No.VII. Global Transport Services, Inc. (GTSI) operates a fleet of cargo vessels plying interisland routes. One of its vessels, MV Dona Juana, left the port of Manila for Cebu laden with,among other goods, 10,000 television sets consigned to Romualdo, a TV retailer in Cebu.

When the vessel was about ten nautical miles away from Manila, the ship captain heard on the radio that a typhoon which, as announced by PAG-ASA, was on its way out of the country, had suddenly veered back into Philippine territory, the captain realized that MV Dona Juana would traverse the storm's path, but decided to proceed with the voyage. True enough, the vessel sailed into the storm. The captain ordered the jettison of the 10, 000 television sets, along with some other cargo, in order to lighten the vessel and make it easier to steer the vessel out of the path of the typhoon. Eventually, the vessel, with its crew intact, arrived safely in Cebu.

(A) Will you characterize the jettison of Romualdo's TV sets as an average? If so, what kind of an average, and why? If not, why not? (3%)

SUGGESTED ANSWER:

The jettison of Romualdo's TV sets resulted in a general average loss, which entitles him to compensation or indemnification from the shipowner and the owners of the cargoes saved by the jettison.

ALTERNATIVE ANSWER:

The jettison resulted to a particular average loss because the damage was due to the fault of the captain.

(B) Against whom does Romualdo have a cause of action for indemnity of his lost TV sets? Explain. (3%)

SUGGESTED ANSWER;

Romualdo has a cause of action for his lost TV sets against the shipowner and the owners of the cargoes saved by the jettison. The jettison of the TV sets resulted in a general average loss, entitling Romualdo to indemnity for the lost TV sets.

Carriage of Goods; Implied Warranty; Liability (2010)

No.XIII. Paulo, the owner of an ocean-going vessel, offered to transport the logs of Constantino from Manila to Nagoya. Constantino accepted the offer, not knowing that the vessel was manned by an irresponsible crew with deep-seated resentments against Paolo, their employer.

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

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

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

(A) Is the insurance company liable? Why or why not? (3%)

SUGGESTED ANSWER:

The insurance company is not liable, because there is an implied warranty in every marine insurance that the ship is seaworthy whoever is insuring the cargo, whether it be the ship-owner or not. There was a breach of warranty, because the logs were improperly loaded and the crew was irresponsible. It is the obligation of the owner of the cargo to look for a reliable common carrier which keeps its vessel in seaworthy condition (Roque v. Intermediate Appellate Court, 139 SCRA 596 [1985]).

Carriage of Goods; Indemnity; Jettisoned Goods (2010)

No.XVI. An importer of Christmas toys loaded 100 boxes of Santa Claus talking dolls aboard a ship in Korea bound for Manila. With the intention of smuggling one-half of his cargo, he took a bill of lading for only 50 boxes. On the voyage to Manila, 50 boxes were jettisoned to save the more precious cargo.

(A) Is the importer entitled to receive any indemnity for average? Explain. (2%)

SUGGESTED ANSWER:

The importer is not entitled to receive any indemnity for average. In order that the goods jettisoned may be included in the general average and the owner be entitled to indemnity, it is necessary that their existence on board be proven by means of the bill of lading (Article 816 of the Code of Commerce).



COGSA; Prescription of Claims/Action (2010)

No.XII. AA entered into a contract with BB for the latter to transport ladies wear from Manila to France with transshipment via Taiwan. Somehow the goods were not loaded in Taiwan on time, hence, these arrived in France "off-season." AA was only paid for one half the value by the buyer.

AA claimed damages from BB. BB invoked prescription as a defense under the Carriage of Goods by Sea Act Considering the "loss of value" of the ladies wear as claimed by AA, is BB's defense tenable? Explain. (3%)

SUGGESTED ANSWER:

The defense of BB is not tenable. The one-year prescriptive period in the Carriage of Goods Sea Act applies only in case the goods were not delivered or were delivered in a damaged or deteriorated condition. It does not apply to damages as a result of delay in the delivery of the goods. The prescription of the action is governed by Article 1144 of the Civil Code, which provides for a prescriptive period of ten years in case of actions based on a written contract (Mitsui O.S.K. Lines Ltd. v. Court of Appeals, 287 SCRA 366 (1998)).

Liability; Loss; Fortuitous Event (2008)

No.IX. On October 30, 2007, M/V Pacific, a Philippine registered vessel owned by Cebu Shipping Company (CSC), sank on her voyage from Hong Kong to Manila. Empire Assurance Company (Emprie) is the insurer of the lost cargoes loaded on board the vessel which were consigned to Debenhams Company. After it indemnified Debenhams, Empire as subrogee filed an action for damages against CSC.

(A) Assume that the vessel was seaworthy. Before departing, the vessel was advised by theJapanese Meteorological Center that it was safe to travel to its destination. But while at sea, the vessel received a report of a typhoon moving within its general path. To avoid the typhoon, the vessel changed its course. However, it was still at the fringe of the typhoon when it was repeatedly hit by huge waves, were saved three (3) who perished. Is CSC liable to empire? What principle of maritime law is applicable? Explain. (3%)

SUGGESTED ANSWER:

The common carrier incurs no liability for the loss of the cargo during a fortuitous event, because the following circumstances were present: (1) the typhoon was the cause of the cargo loss; (2) the carrier did not contribute to the loss; and (3) the carrier exercised extraordinary diligence in order to

minimize the attendant damage before, during and after the typhoon (See Fortune Express v. CA, Caorong. G.R. No. 119756, 18 March 1999; Yobido v. CA, G.R. No. 113003, 17 October 1997; Gathalian v. Delim, G.R. No. L-56487, 21 October 1991).

Under Art. 587 of Code of Commerce, in case of maritime transactions, the liability of the owner of the vessel is limited to the vessel itself. Since the vessel of CSC was seaworthy at the time it sank, the CSC is not liable to Empire under the maritime principle that the obligations of the owner of a vessel are hypothecary in nature.

(B) Assume the vessel was not seaworthy as in fact its hull had leaked, causing flooding in the vessel. Will you answer be the same? Explain. (2%)

SUGGESTED ANSWER:

When the vessel is not seaworthy, it is an exception to the hypothecary principle in maritime commerce. To limit its liability to the amount of the insurance proceeds, the carrier has the burden of proving that the unseaworthiness of its vessel was not due to its fault or negligence. The failure to discharge such a heavy burden precludes application of the limited liability rule and the carrier is liable to the full extent of the claims of the cargo owners (Aboitiz Shipping v. New India Assurance Company, G.R. No. 156978, 02 May 2006).

(C) Assume the facts in question (b). Can the heirs of the three (3) crew members who perished recover from CSC? Explain fully. (3%)

SUGGESTED ANSWER:

Yes, because the crew members died while performing their assigned duties, aggravated by the failure of the ship owner to ensure that the vessel is seaworthy. Workmen's compensation has been classified by jurisprudence as an exception to the hypothecary nature of maritime commerce, Abueg v. San Diego, 77 Phil. 730 (1948), especially in this case where the vessel was not seaworthy at the time it sank.

Negotiable Instruments Law

Checks: Forged Checks; Liability of Drawee Bank (2008)

No.V. Pancho drew a check to Bong and Gerard jointly, Bong indorsed the check and also forged Gerard's indorsement . The payor bank paid the check and charged Pancho's account for the amount of the



check. Gerard received nothing from the payment.

(A) Pancho asked the payor bank to recredit his account. Should the bank comply? Explain fully. (3%)

SUGGESTED ANSWER:

Yes, Sec. 41 of the NIL provides that all payees or indorsees who are not partners must indorse jointly, unless the one indorsing has authority to endorse for the others. Since the signature of Gerard was forged, then the endorsement by Bong was wholly inoperative. The Bank is under strict liability to pay to the order of payee. Payment under a forged endorsement is not to the drawer's order, and consequently, the drawee bank must bear the loss as against the drawer (Associated Bank v. CA, G.R. Nos. 107382 and 107612, 31 January 1996).

(B) Based on the facts, was Pancho as drawer discharged on the instrument? Why? (2%)

SUGGESTED ANSWER:

No. The payee Gerard can recover as he still retains his claim on the debt of Pancho.

Checks; Liability; Drawer and Drawee Bank (2010)

No.VIII. Marlon deposited with LYRIC Bank a money market placement of P1 million for tern of 31 days. On Maturity date, one claiming to be Marlon called up the LYRIC Bank account officer and instructed him to give the manager's check representing the proceeds of the money market placement to Marlon's girlfriend Ingrid.

The check, which bore the forged signature of Marlon, was deposited in Ingrid's account with YAMAHA Bank. YAMAHA Bank stamped a guaranty on the check reading: "All prior endorsements and/or lack of endorsement guaranteed."

Upon presentment of the check, LYRIC Bank funds the check. Days later, Marlon goes to LYRIC Bank to collect his money market placement and discovers the foregoing transactions.

Marlon thereupon sues LYRIC Bank which in turn files a third-party complaint against YAMAHA Bank. Discuss the respective rights and liabilities of the banks. (5%)

SUGGESTED ANSWER:

Since the money market placement of Marlon is in the nature of a loan to Lyric Bank, and since he did not authorize the release of the money market placement to Ingrid, the obligation of Lyric Bank to



him has not been paid. Lyric Bank still has the obligation to pay him.

Since Yamaha Bank indorsed the check bearing the forged indorsement of Marlon and guaranteed all indorsements, including the forged indorsement, when it presented the check to Lyric Bank, it should be held liable to it.

However, since the issuance of the check was attended with the negligence of Lyric Bank, it should share the loss with Yamaha Bank on a fifty percent basis (Allied Banking Corporation v. Lim Sio Wan, 549 SCRA 504 (2008)).

Checks; Notice of Dishonor (2009)

No.XII. Gaudencio, a store owner, obtained a P1-million loan from Bathala Financing Corporation (BFC). As security, Gaudencio executed a "Deed of Assignment of Receivables." Assigning fifteen checks received from various customers who bought merchandise from his store. The checks were duly indorsed by Gaudencio's customers.

The Deed of Assignment contains the ff. stipulation:

"*If, for any reason, the receivables or any part thereof cannot be paid by the obligors, the ASSIGNOR unconditionally and irrevocably agrees to pay the same, assuming the liability to pay by way of penalty, three percent of the total amount unpaid, for the period of delay until the same is fully paid.*"

When the checks became due, BFC deposited them for collection, but the drawee banks dishonored all the checks for one of the ff. reasons: "account closed," "payment stopped," "account under garnishment, "or "insufficiency of funds." BFC wrote Gaudencio notifying him of the dishonored checks, and demanding payment of the loan. Because Gaudencio did not pay, BFC filed a collection suit.

In his defense, Gaudencio contended that (a) BFC did not give timely notice of dishonor (of the checks); and (b) considering that the checks were duly indorsed, BfC should proceed against the drawers and the indorsers of the checks.

Are Gaudencio's defenses tenable? Explain. (5%)

SUGGESTED ANSWER:

No. Gaudencio's defenses are untenable. The cause of action of BFC was really on the contract of loan, with the checks merely serving as collateral to secure the payment of the loan. By virtue of the Deed of Assignment which he signed,

Gaudencio undertook to pay for the receivables if for any reason they cannot be paid by the obligors (Velasquez v. Solidbank Corporation, 550 SCRA 119 (2008)).

Forgery; Liabilities; Drawee Bank (2009)

No.XI. (E) "A bank is bound to know its depositor's signature" is an inflexible rule in determining the liability of a bank in forgery cases.

SUGGESTED ANSWER:

False. In cases of forgery, the forger may not necessarily be a depositor of the bank, especially in the case of a drawee bank. Yet in many cases of forgery, it is the drawee that is held liable for the loss.

Negotiability (2013)

No.I. Antonio issued the following instrument:

August 10, 2013
Makati City

P1OO,OOO,OO

Sixty days after date, I promise to pay Bobby or his designated representative the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00) from my BPI Acct. No. 1234 if, by this due date, the sun still sets in the west to usher in the evening and rises in the east the following morning to welcome the day.

(Sgd.) Antonio Reyes

Explain each requirement of negotiability present or absent in the instrument. (8%)

SUGGESTED ANSWER:

The instrument contains a promise to pay and was signed by the maker, Antonio Reyes (Section 1(a) of Negotiable Instruments Law).

The promise to pay is unconditional insofar as the reference to the setting of the sun in the west in the evening and its rising in the east in the morning are concerned. These are certain to happen (Section 4(c) of Negotiable Instruments Law). The promise to pay is conditional, because the money will be taken from a particular fund, BPI Account No. 1234 (Section 3 of Negotiable Instruments Law).

The Instrument contains a promise to pay a sum certain in money, P100,000.00 (Section (b) of Negotiable Instruments Law).

The money is payable at a determinable future time, sixty days after August 10, 2013 (Section 4(a) of Negotiable Instruments Law).

The instrument is not payable to order or to bearer (Section 1(d) of Negotiable Instruments Law).

Negotiability (2012)

No.IV. Indicate and explain whether the promissory note is negotiable or non-negotiable.

(A) I promise to pay A or bearer Php100,000.00 from my inheritance which I will get after the death of my father. (2%)

SUGGESTED ANSWER:

Not negotiable. There is no unconditional promise to pay a sum certain in money (Sec. 1 [b], NIL) as the promise is to pay the amount out of a particular fund, i.e., the inheritance from the father of the promisor(Sec. 3, NIL).

(B) I promise to pay A or bearer Php100,000 plus the interest rate of ninety (90) – day treasury bills. (2%)

SUGGESTED ANSWER:

Not negotiable. There is no unconditional promise to pay a sum certain in money. The promise to pay "the interest rate of ninety (90)-day treasury bills" is vague because, first, there are no 90-day treasury bills (although there are 91-day, 182-day, and 364-days bills); second the promise does not specify whether the so-called "interest rate" is that established at the primary market (where new T-bills are sold for the first time by the Bureau of Treasury) or at the secondary market (where T-bills can be bought and sold after they have been issued in the primary market).; and third, T-bills are conventionally quoted in terms of their discount rate, rather than their interest rate. They do not pay any interest directly; instead, they are sold at a discount of their face value and this "earn" by selling at face value upon maturity. (See, among other, www.treasury.gov.ph/govsec/aboutsec.html)

(C) I promise to pay A or bearer the sum of Php100,000 if A passes the 2012 bar exams. (2%)

SUGGESTED ANSWER:

Not negotiable. The promise to pay is subject to a condition, i.e., that A will pass the 2012 bar exams (Sec.1[b],NIL).

(D) I promise to pay A or bearer the sum of Php100.000 on or before December 30, 2012. (2%)

SUGGESTED ANSWER:



Negotiable. It conforms fully with the requirements of negotiability under Section 1, NIL.

(E) I promise to pay A or bearer the sum of Php100,000. (2%)

SUGGESTED ANSWER:

Negotiable. It conforms fully with the requirements of negotiability under Section 1,NIL. It is payable on demand because the note does not express a time for its payment(Sec.7[b], NIL).

Negotiable Instruments; Illicit/Illegal Consideration (2007)

No.I. R issued a check for P1m which he used to pay S for killing his political enemy. (10%)

(A) Can be the check be considered a negotiable instrument?

SUGGESTED ANSWER:

Yes, the check can be considered a negotiable instrument even if it was issued to pay S to kill his political enemy. The validity of the consideration is not one of the requisites of a negotiable instruments (Section 1, Negotiable Instruments Law.) it merely constitute a defect of title (Section 55, Negotiable Instruments Law).

(B) Does S have a cause of action against R in case of dishonor by the drawee bank?

SUGGESTED ANSWER:

No, s does not have a cause of action against R in case of dishonor of the check by the drawee bank. S is not a holder in due course, thus, R can raise the defense that the check was issued for an illegal consideration (Section 58, Negotiable Instruments Law).

(C) It S negotiated the check to T, who accepted it in good faith and for value, may R be held secondarily liable by T?

Reason Briefly in (a), (b) and (c).

SUGGESTED ANSWER:

Yes, R may be held secondarily liable by T who took the check in good faith and for value. T is a holder in due course. R cannot raise the defense of illegality of the considerarion, because T took the check fre from the defect of title of S (Section 57, Negotiable Instrumets Law).



Negotiable Instruments; Illicit/Illegal Consideration; Lawful Dishonor (2009)

No.VI. Lorenzo drew a bill of exchange in the amount of P100, 000.00 payable to Barbara or order, with his wife, Diana, as drawee. At the time the bill was drawn. Diana was unaware that Barbara is Lorenzo's paramour.

Barbara then negotiated the bill to her sister, Elena, who paid for it for value, and who did not know who Lorenzo was. On due date, Elena presented the bill to Diana for payment, but the latter promptly dishonored the instrument because, by then, Diana had already learned of her husband's dalliance.

(A) Was the bill lawfully dishonored by Diana? Explain. (3%)

SUGGESTED ANSWER:

No, the bill was not lawfully dishonored by Diana. Elena, to whom the instrument was negotiated, was a holder in due course inasmuch as she paid value therefore in good faith.

(B) Does the illicit cause or consideration adversely affect the negotiability of the bill? Explain. (3%)

SUGGESTED ANSWER:

No. the illicit cause or consideration does not adversely affect the negotiability of the bill, especially in the hands of a holder in due course. Under Sec. 1 of the Negotiable Instruments law, the bill of exchange is a negotiable instrument. Every negotiable instrument is deemed prima facie to have been issued for valuable consideration, and every person whose signature appears thereon is deemed to have become a party thereto for value (Sec. 24, Negotiable Instruments Law).

Negotiable Instruments: Incomplete, Delivered; Doctrine: Comparative Negligence (2008)

No.IV. AB Corporation drew a check for payment to XY Bank. The check was given to an officer of AB Corporation who was instructed deliver it to XY Bank. Instead , the officer intending to defraud the Corporation, filled up the check by making himself as the payee and delivered it to XY Bank for deposit to his personal account. XY Bank debited AB Corporation's account. AB Corporation came to know of the officer's fraudulent act after he absconded. AB Corporation asked XY Bank to recredit its amount. XY Bank refused.



(A) If you were the judge, what issues would you consider relevant to resolve the case? Explain. (3%)

SUGGESTED ANSWER:

The filling up by the officer of his name as payee does not constitute forgery, and contemplates a mechanically incomplete but delivered instrument. Under Sec. 14 of the NIL, in order to enforce an incomplete but delivered instrument against a prior party, it must be filled-up strictly in accordance with the authority given. The doctrine of comparative negligence provides that AB Corp. is deemed negligent for having issued the check with a blank payee section that facilitated the fraud; it should be AB Corp. that must bear the loss, and not XY Bank.

(B) How would you decide the case? Explain. (2%)

SUGGESTED ANSWER:

I would fin AB Corp. liable for its negligence in delivering an incomplete instrument to XY Bank (Sec. 14, NIL).

Negotiable Instruments: Subject to a Term (2009)

No.XI. (D) A document, dated July 15, 2009 that reads: "Pay to X or order the sum of 5,000.00 five days after his pet dog, Sparky, dies. Signed Y." is a negotiable instrument.

SUGGESTED ANSWER:

True. The document is subject to a term and not a condition. The dying of the dog is a day which is certain to come. Therefore, the order to pay is unconditional, in compliance with Section 1 of the Negotiable Instruments Law (NIL).

(Note: This answers presumes that there is a drawee)

Parties; Holder in Due Course (2012)

No.III. X borrowed money from Y in the amount of Php1Million and as payment, issued a check. Y then indorsed the check to his sister Z for no consideration. When Z deposited the check to her account, the check was dishonored for insufficiency of funds.

(A) Is Z a holder in due course? Explain your answer. (5%)

SUGGESTED ANSWER:

Z is not a holder in due course. She did not give any valuable consideration for the check. To be a holder in due course, the holder must have taken the check in

good faith and for value (Sec. 52[c], Negotiable Instruments Law).

(B) Who is liable on the check. The drawer or the indorser? Explain your answer. (5%)

SUGGESTED ANSWER:

X, the drawer, will be liable. As the drawer, X engaged that on due presentment the check would be paid according to its tenor and that if it is dishonored and he is given notice of dishonor, he will pay the amount to the holder (Sec. 61, NIL). No notice of dishonor need be given to X if he is aware that he has insufficient funds in his account. Under Section 114(d) of the Negotiable Instruments Law, notice of dishonor is not required to be given to the drawer where he has no right to expect that the drawee will honor the instrument. Z cannot hold Y, the endorser, liable as the latter can raise the defense that there was no valuable consideration for the endorsement of the check(Sec. 58, NIL).

Parties; Instances a Subsequent Party is Liable (2008)

No.III. (A) As a rule under the Negotiable Instruments Law, a subsequent party may hold a prior party liable but not vice versa. Give two (2) instances where a prior party may hold a subsequent party liable. (2%)

SUGGESTED ANSWER:

In the following cases, a prior party may hold a subsequent party liable: (1) where an instrument is negotiated back to a prior party, and he reissues and further negotiates the same, he is entitled to en force payment against a subsequent party who qualifies as an intervening party to whom the prior party is not personally liable; and (2) in the case of an accommodation party arrangement, where the accommodation party may recover from the party accommodated, even when the latter is a subsequent party (Sec. 29, NIL).

(B) How does the "shelter principle" embodied in the Negotiable Instruments Law operate to give the rights of a holder-in-dine course to a holder who does not have the status of a holder-in-due course? Briefly explain. (2%)

SUGGESTED ANSWER:

The "shelter principle" provides that a holder who is not himself a holder in due course but is not a party to any fraud or illegality affecting the instrument, and who derives his title from a holder in due course, acquires the rights of a holder in due course (Sec. 58, NIL).



Securities Regulation

Howey Test (2009)

No.XI. (C) The Howey Test states that there is an investment contract when a person invests money in a common enterprise and is led to expect profits primarily from the efforts of others.

SUGGESTED ANSWER:

The Howey Test requires a transaction, contract, or scheme whereby a person makes an investment of money in a common enterprise with the expectation of profits to be derived solely, not primarily from the efforts of others (Power Homes Unlimited Corp. v. SEC, 546 SCRA 567 (2008)).

Insider Trading (2013)

No.V. You are a member of the legal staff of a law firm doing corporate and securities work for Coco Products Inc., a company with unique products derived from coconuts and whose shares are traded in the Philippine Stock Exchange. A partner in the law firm, Atty. Buenexito, to whom you report, is the Corporate Secretary of Coco Products. You have long been investing in Coco Products stocks even before you become a lawyer.

While working with Atty. Buenexito on another file, he accidentally gave you the Coco Products file containing the company's planned corporate financial rehabilitation. While you knew you had the wrong file, your curiosity prevailed and you browsed through the file before returning it. Thus, you learned that a petition for financial rehabilitation is imminent, as the company could no longer meet its obligations as they fell due.

Soon After, you mother is rushed to the hospital for an emergency operation, and you have to raise money for her hospital bills. An immediate option for you is to sell your Coco Products shares. The sale would be very timely because the price of the company's stocks are still high.

Would you sell the shares to raise the needed funds for your mother's hospitalization? Take into account legal (5%) and ethical (3%) considerations. (8%)

SUGGESTED ANSWER

The sale of the shares does not constitute insider trading. Although Atty. Buenexito, as corporate secretary of Coco Products, Inc., was an insider, it did not obtain the information regarding the planned corporate rehabilitation by a communication from him. He just accidentally gave the wrong file (Section 3.8 of Securities Regulation Code).

It would be unethical to sell the shares. Rule 1.01 of the Code of Professional Responsibility provide, "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

A lawyer should not only refrain from performing unlawful acts. He should also desist from engaging in unfair deceitful conduct to conceal from the buyer of the shares the planned corporate rehabilitation.

Insider Trading (2008)

No.XIII. Grand Gas Corporation, a publicly listed company, discovered after extensive drilling a rich deposit of natural gas along the coast of Antique. For five (5%) months, the company did not disclose the discovery so that it could quietly and cheaply acquire neighboring land and secure mining rights to the land. Between the discovery and its disclosure of the information to the Securities and Exchange Commission, all the directors and key officers of the company bought shares in the company at very low prices. After the disclosure, the price of the shares went up. The directors and officers sold their shares at huge profits,

(A) What provision of the Securities Regulation Code (SRC) did they violate, if any ? Explain. (4%)

SUGGESTED ANSWER:

The directors and key officers of the company violated the prohibition against insider trading under Sec. 27 of the Securities Regulation Code, which declares it unlawful for an "insider" (which includes directors and officers of a publicly listed company) to sell or buy its securities, if they know of a fact of special significance with respect to the company or the security, that is not generally available to the public, before such material information made public through disclosure proceedings. The directors and key officers are liable to disgorge the profits earned and to pay damages.

(B) Assuming that the employees of the establishment handling the printing work of Grand Gas Corporation saw the exploration reports which were mistakenly sent to their establishment together with other materials to be printed. They too bought shares in the company at low prices and later sold them at huge profits. Will they be liable for violation of the SRC? Why? (3%)

SUGGESTED ANSWER:

The employees are liable for violation of the prohibition against insider trading. They fall within the definition of

"insider". Subsection 3.8 of the Securities Regulation Code defines an insider as "a person whose relationship or former relationship to Issuer gives or gave him access to a fact of special significance about Issuer or the security that is not generally available."

Investment Contract; Procedure (2010)

No.IV. Andante Really, a marketing company that promotes and facilitates sales of real property through leverage marketing, solicits investors who are required to be a Business Center Owner (BCO) by paying an enrollment fee of S250. The BCO is then entitled to recruit two other investors who pay S250 each. The BCO receives S90 from the S250 paid by each of his recruits and is credited a certain amount for payments made by investors through the initial efforts of his Business Center. Once the accumulated amount reaches S5, 000, the same is used as down payment for the real property chosen by the BCO.

(A) Does this multi-level marketing scheme constitute an "investment contract" under the Securities Regulation Code? Define an "investment contract." (2%)

SUGGESTED ANSWER:

Yes. The multi-level marketing constitutes an "investment contract" under the Securities Regulation Code. An "investment contract" is a contract, transaction or scheme (1) involving an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from the efforts of others (Power Homes Unlimited Corporation v. Securities and Exchange Commission, 546 SCRA 567 (2008)).

(B) What procedure must be followed under the Securities Regulation Code to authorize the sale or offer for sale or distribution of an investment contract? (2%)

SUGGESTED ANSWER:

Before the investment contract is sold or offered for sale or distribution to the public in the Philippines, it should be registered with the Securities and Exchange Commission in accordance with Section 8 of the Securities Regulation Code (Power Homes Unlimited Corporation v. Securities and Exchange Commission, 546 SCRA 567 (2008)).

(C) What are the legal consequences of failure to follow this procedure? (2%)

SUGGESTED ANSWER:

The failure to follow the procedure has criminal consequences (i.e., upon conviction, a fine 50,000 to 5 million pesos and / or imprisonment of 7 to 21 years). It carries also civil liabilities in

that the purchaser can recover from the seller (i) the consideration paid with interest thereon, less the amount of any income received on the purchased securities, upon the tender of such securities, or (ii) damages if the purchaser no longer owns such securities (Sections 57 and 73, Securities Regulation Code). Furthermore, the Securities and Exchange Commission (SEC) may issue a cease and desist order (Subsection 64.1, Securities Regulation Code).

Margin Trading Rule (2009)

No.XX. Under the Securities Regulation Code, what is the margin Trading Rule? (2%)

SUGGESTED ANSWER:

Under the Margin Trading Rule, no registered broker or dealer, or member of an exchange shall extend credit on any security an amount greater than whichever is higher of:

(a) 65 percent of the current market price of the security, or

(b) 100 percent of the lowest market price of the security during the preceding 36 calendar months, but not more than 75 percent of the current market price (Section 48, Securities Regulation Code).

The purpose of the Margin Trading Rule is to prevent excessive use of credit for the purchase of securities. It is a counter to a broker's desire to generate more sales by encouraging clients to but securities on credit (Carolina Industries, Inc. vs. CMS STock Brokerage, Inc. 97 SCRA 734 [1980]).

Securities; Exempt Securities (2009)

No.X. What are the so-called exempt securities under the Securities Regulation Code? (2%)

SUGGESTED ANSWER:

Under Section 9 of the Securities Regulation Code, the so-called exempt securities are:

(A) Those issued or guaranteed by the government of the Philippines or any of its political subdivisions or agencies;

(B) Those issued or guaranteed by the government of any foreign country with which the Philippines has diplomatic relation, or any other state on the basis of reciprocity, although the SEC may

require compliance with the form and content of disclosures;

(C) Those issued by the receiver or by the trustee in a bankruptcy duly approved by the proper adjudicatory board;

(D) Those involving the sale or transfer which is bylaw, under the regulation of the OIC, HLURB, BIR; and

(E) Those issued by banks, except its own shares.

(Note: It is suggested that any two of the above exempt securities should be considered as enough answer to the question.)

Securities; Selling of Securities (2009)

No.XVII. Philippine Palaces Realty (PPR) had been representing itself as a registered broker of securities, duly authorized by the Securities and Exchange Commission (SEC). On October6, 1996, PPR sold to spouses Leon and Carina one timeshare of Palacio del Boracay for US S7, 500.00. However, its Registration Statement became effective only on Feb.11, 1998 after the SEC issued a resolution declaring that PPR was authorized to sell securities, including timeshares.

On March 30, 1998, Leon and Carina wrote PPR rescinding their purchase agreement and demanding the refund of the amount they paid because the Palacio Del Boracay timeshare was sold to them by PPR without the requisite license or authority from the SEC. PPR contended that the grant of the SEC authority had the effect of ratifying the purchase agreement (with Leon and Carina) of Oct.6, 1996.

Is the contention of PPR correct? Explain (3%)

SUGGESTED ANSWER:

The contention of PPR is not correct. It is settled that no securities shall be sold or offered for sale or distribution in the Philippines without a registration duly filed and approved by the Commission. Corporate registration is one of the requirements under Sec. 8of batas pambansa Blg. 178 (timeshare Realty Corporation v. Lao, 544 SCRA 254 (2008)).

ALTERNATIVE ANSWER:

No. Such contention is not correct. Sale or offer to sell securities which are not exempt securities or which do not arise out of exempt transactions, and, therefore, requiring registration, is unlawful as such act is violative of the

Securities Regulation Cod. Subsequent grant of authority by the SEC does not retroact to past sales or offers to sell.

Tender Offer (2010)

No.VII. Union Mines, Inc. has total assets of P60 Million with 210 stockholders holding at least 100 shared each.

The company has two principal stockholders, ABC which owns 60% of the shares of stock, and XYZ; which owns 17%.

ABC in turns is owned to the extent of 21.13% by Acme, Inc.; 29.69% by Golden Boy Inc.; 9% by XYZ; and the rest by individual stockholders.

None of the parties is a publicly-listed company.

XYZ now proposes to buy Acme's and Golden Boy's shares in ABC, which would give it, direct control of ABC and indirect control of Union Mines.

Is the proposal acquisition by XYZ subject to the mandatory tender offer rule? Why or why not? What is tender offer and when is it mandatory? (5%)

SUGGESTED ANSWER

Yes, the proposed acquisition is subject to mandatory tender offer rule. A tender offer is publicly announced intention by a person (acting alone or in concert with other persons) to acquire shares of a public company. A tender offer is meant to protect minority stockholders against any scheme that dilutes the share value of their investments. It gives them the chance to exit the company under the same terms offered to the majority stockholders.

Under the Securities Regulations Code and its implementing rules, a mandatory tender offer is required (i) when at least 35% of the outstanding shares of a public company is to be acquired in one transaction or a series of transaction during 12-month period, or (ii) even if any acquisition is less than 35% threshold but the result thereof is the ownership of more than 51% of the total outstanding shares of a public company. The mandatory offer rule also applies to share acquisition meeting the threshold, which is done at the level of the holding or Parent Corporation controlling a public company (Cemco Holding, Inc. v. National Life Insurance Company of the Philippines, Inc. 529 SCRA 355 [2007]).

In this case, Union Mines is clearly a public company, since it has total assets of P60 million pesos with 210 stockholders holding at least 100 shares each. A public company is defined as a corporation listed on the stock exchange, or a corporation with assets exceeding 50 million pesos and with 200 or more stockholders at least 200 of them holding not less than 100 shares of such corporation.



XYZ's acquisition of shares of Acme, Inc. and Golden Boy, Inc., taken separately, does not reach 35% threshold. If taken collectively, the two acquisitions total only 50%. However, when the acquisitions are added to XYZ's existing shares in Union Mines, they meet the more- than -51% thresholds for mandatory tender offer.

Transportation Law

Carriage; Breach of Contract

No.VIII. City Railways, Inc. (CRI) provides train service, for a fee, to commuters from Manila to Calamba, Laguna. Commuter are required to purchase tickets and then proceed to designated loading and unloading facilities to board the train. Ricardo Santos purchased a ticket for Calamba and entered the station. While waiting, he had an altercation with the security guard of CRI leading to a fistfight. Ricardo Santos fell on the railway just as a train was entering the station. Ricardo Santos was run over by the train. He died.

In the action for damages filed by the heirs of Ricardo Santos, CRI interposed lack of cause of action, contending that the mishap occurred before Ricardo Santos boarded the train and that it was not guilty of negligence. Decide. (5%)

SUGGESTED ANSWER:

CRI is liable for death of Ricardo Santos because it failed to exercise extraordinary diligence (LRTA v. Navidad G.R. No. 145804, 06 February 2003). The contract of carriage began when the passenger purchased his ticket and proceeded to the designated loading facilities to board the train (Dangwa Transp. Co., Inc. v. Court of Appeals, G.R. No. 95582, 07 October 1991), CRI is also liable for all persons in its employ (Caltex Philippines, Inc. v. Sulpicio Lines, Inc., G.R. No. 131166, 30 September 1999).

Carriage; Breach of Contract; Cause of Action; Defenses (2009)

No.XIX. One of the passenger buses owned by Continental Transit Corporation (CTC), plying its usual route figured in a collision with another bus owned by Universal Transport, Inc. (UTI). Among those injured inside the CTC bus were: Romeo, a stow away: Samuel, a pickpocket then in the act of robbing his seatmate when the collision occurred; Teresita, the bus driver's mistress who usually accompanied the driver on his

trips for free; and Uriel, holder of a free riding pass he won in a raffle held by CTC.

(A) Will a suit for breach of contract of carriage filed by Romeo, Samuel, Teresita, and Uriel against CTC prosper? Explain. (3%)

SUGGESTED ANSWER:

Romeo cannot sue for breach of contract of carriage. A stowaway like Romeo, Who secures passage by fraud, is not a passenger (Vda. De nueca v. Manial Railroad Company, 13 C.A. R. 49(1968)).

Samuel and Teresita cannot sue for breach of contract of carriage. The Elements in the definition of a passenger are: an undertaking of a person to travel in the conveyance provided by the carrier and an acceptance by the carrier of the person as a passenger. (14 Am Jur 2d, Carriers, So. 714,p. 164). Samuel did not board the bus to be transported but to commit robbery. Teresita did not board the bus to be transported but to accompany the driver while he was performing his work.

Uriel can sue for breach of contract. He was a passenger although he was being transported gratuitously, because he won a free riding pass in a raffle held by CTC (Article 1753, New Civil Code).

(B) Do Romeo, Samuel, Teresita, and Uriel have a cause of action for damages against UTI? Explain. (3%)

SUGGESTED ANSWER:

Romeo, Samuel, Teresita and Uriel may sue UtI on the basis of quasi-delict since they have no pre-existing contractual relationship with UTI. They may allege that the collision was due to the negligence of driver of UTI and UTI was negligent in the selection and supervision of its driver (Articles 2176 and 2180, New Civil Code).

(C) What, if any, are the valid defenses that CTC and UTI can raise in the respective actions against them? Explain. (3%)

SUGGESTED ANSWER:

With respect to Romeo, Samuel and Teresita, since there was no pre-existing contractual relationship between them and CTC, CTC can raise the defense that it exercised the due diligence of a good father of a family in the selection and supervision of its driver (Article 2180, New Civil Code).

It can raise the same defense against Uriel if there is a stipulation that exempts it from liability for simple negligence, but not for willful acts or gross negligence (Article 1758, New Civil Code).

CTC can also raise against all the plaintiffs the defense that the collision was due exclusively to the negligence of the driver of UTI, and this constitutes a fortuitous event, because there was no concurrent negligence on the part of its own driver (Ampang v.Guinoo Transportation Company, G.R. No. L-5044, April 30, 1953).

CTC can also raise against Samuel the defense that he was engaged in a seriously illegal act at the time of the collision, which can render him liable for damages on the basis of quasi-delict (Dobbs, the Law of Torts, pp.524-525).

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

Carriage; Breach of Contract; Presumption of Negligence (2013)

No.IX. Fil-Asia Flight 916 was on a scheduled passenger flight from Manila when it crashed as it landed at the Cagayan de Oro airport; the pilot miscalculated the plane's approach and undershot the runway. Of the 150 people on board, ten (10) passengers died at the crash scene.

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

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

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

(A) Explain the causes of action legally possible under the given facts against the airline and the Pilots; whom will you



specifically implead in these causes of action? (5%)

SUGGESTED ANSWER:

A complaint for breach of contract of carriage can be filed against Fil-Asia for failure to exercise extraordinary diligence in transporting the passengers safety from their point of embarkation to their destination (Article 1755, Civil Code).

A complaint based on a quasi-delict can be filed against the pilots because of their fault and negligence (Article 2176, Civil Code). Fil-Asia Air can be included for negligence in the selection and supervision of the pilots (Article 2180, Civil Code).

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

(B) How will you handle the cases of the passenger run over the ambulance and the airline employee allowed to hitch a free ride to Cagayan de Oro? (3%)

SUGGESTED ANSWER:

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

Since the airline employee was being transported gratuitously, Fil-Asia Air was not required to exercise extraordinary diligence for his safety and only ordinary care. (Lara v. Valencia, 104 Phil. 65, 1958).

Maritime Protest (2007)

No.XI. Two vessels figured in a collision along the Straits of Guimaras resulting in considerable loss of cargo. The damaged vessels were safely conducted to the Port of Iloilo Passenger A failed to file a maritime protest. B, a non-passenger but a shipper who suffered damage to his cargo, likewise did not file a maritime protest at all. (10%)

(A) What is a maritime protest?

SUGGESTED ANSWER:

A maritime protest is a sworn statement made with 24 hours after a collision in which the circumstances thereof are declared or made known before a competent authority at the point of



accident or the first port of arrival if in the Philippines or the Philippine consul in a foreign country (Article 835, Code of Commerce; Goro v. William Lines, Inc., 3 CAR 1(1963)).

(B) Can A and B successfully maintain an action to recover losses and damages arising from the collision? Reason briefly

SUGGESTED ANSWER:

B, the shipper, can successfully maintain an action to recover losses and damages arising from the collision notwithstanding his failure to file a maritime protest since the filing thereof is required only on the part of A, who being a passenger of the vessel at the time of the collision, was expected to know the circumstances of the collision. A's failure to file a maritime protest will therefore prevent him from successfully maintaining an action to recover his losses and damages (Art. 836, Code of Commerce)

ALTERNATIVE ANSWER:

A can maintain an action to recover damages if he was not in a condition to make known his wishes. B can maintain an action to recover damages since he was not on board the vessel (Article 836, Code of Commerce).

Trust Receipts Law

Trust Receipt (2007)

No.V. C contracted D to renovate his commercial building. D ordered construction materials from E and received delivery thereof. The following day, C went to F Bank to apply for loan to pay for the construction materials. As security for the loan, C was made to execute a trust receipt. One year later, after C failed to pay the balance of the loan, F Bank charged him with violation of the Trust Receipts Law. (5%)

(A) What is a Trust Receipt?

SUGGESTED ANSWER:

A Trust Receipt is a written or printed document signed by the entrustee in favor of the entruster containing terms and conditions substantially complying with the provision of the Trust Receipts Law, whereby the bank as entruster releases the goods to the possession of the entrustee but retains ownership thereof while the entrustee may sell the goods and apply the proceeds for the full payment of his liability to the bank (Section 3(j), Trust Receipts Law).

(B) Will the case against C prosper? Reason briefly.

SUGGESTED ANSWER:

No, the case against C will not prosper, Since C received the Construction material from E Before the trust receipt transaction was a simple loan, with the trust receipt merely as a collateral or security for the loan. This is inconsistent with a trust receipt transaction where the title to the goods remains with the bank and the goods are released to the entrustee before the loan is granted (Consolidated Bank and Trust Corporation v. Court of Appeals, 356 SCRA 671 [2001].

Trust Receipt; Security for a Loan (2008)

No.II. Tom Cruz obtained a loan of P1 Million from XYZ Bank to finance his purchase of 5,000 bags of fertilizer. He executed a trust receipt in favor of XYZ Bank over the 5,000 bags of fertilizer. Tom Cruz withdrew the 5,000 bags from the warehouse to be transported to Lucena City where his store was located. On the way, armed robbers took from Tom Cruz the 5,000 bags of fertilizer. Tom Cruz now claims that his obligation to pay the loan to XYZ Bank is extinguished because the loss was not due to his fault. Is Tom Cruz correct? Explain. (4%)

SUGGESTED ANSWER:

No, Tom Cruz's obligation to pay the loan covered by the trust receipts to XYZ Bank remains, A "Trust receipt" is merely a collateral agreement which serves as security for a loan, with the Bank appearing as the owner of the goods. The Bank cannot dispose of the goods in any manner it chooses, because it is not the true owner thereof (Rosario Textile Miss v. Home Bankers, G.R. No. 137232, 29 June 2005, citing Sia v. People, G.R. No. 30896, 28 April 1983, Abad v. CA, G.R. No. 42735, 22 January 1990, and PNB v. Pineda, G.R. No. 46658, 13 May 1991). The loss of the goods covered by the trust receipts cannot extinguish the principal obligation of the borrower to pay the bank (Landl & Company [Phil.] v. Metropolitan Bank, G.R. 159622, 30 July 2004).

Trust Receipts Law; Liability for Estafa (2013)

No.VI. Delano Cruz is in default in the payment of his existing loan from BDP Bank. To extend and restructure this loan, Delano agreed to execute a trust receipt in the bank's favor covering the iron pellets Delano agreed to execute a trust receipt in the bank's favor covering the iron pellets Delano imported from China one year

earlier. Delano subsequently succeeded in selling the iron pellets to a smelting plant, but the proceeds went to the payment of the separation benefits of his employees who were laid off as he reduced his operations.

When the extend loan period expired without any significant payment from Delano (not even to the extent of the proceeds of the sale of the iron pellets), BDP Bank consulted you on how to proceed against Delano. The bank is contemplating the filing of estafa pursuant to the provisions of Pres. Decree No. 115 (Trust Receipts Law) to force Delano to tum in at least the proceeds of the sale of the iron pellets.

Would you, as bank counsel and as an officer of the court, advise the bank to proceed with its contemplated action? (8%)

SUGGESTED ANSWER:

I will not advise BDP Bank to file a criminal case for estafa against Delano. Delano received the iron pellets he imported one year before the trust receipt was executed. As held by the Supreme Court, where the execution of a trust of a trust receipt agreement was made after the goods covered by it had been purchased by and delivered to the entrustee and the latter as a consequence acquired ownership to the goods, the transaction does not involve a trust receipt but a simple loan even though the parties denominated the transaction as one of trust receipt (Colinares vs. Court of Appels, 339 SCRA 609, 2000; Consolidated Bank and Trust Corporation v. CA, SCRA 671, 2001).

Trust Receipts Law; Violation Committed by a Corporation (2012)

No.II. CCC Car, Inc. obtained a loan from BBB Bank, which fund was used to import ten (10) units of Mercedes Benz S class vehicles. Upon arrival of the vehicles and before release of said vehicles to CCC Car, Inc., X and Y, the President and Treasurer, respectively, of CCC Car, Inc. signed the Trust Receipt to cover the value of the ten (10) units of Mercedes Benz S class vehicles after which, the vehicles were all delivered to the Car display room of CCC Car, Inc. Sale of the vehicles were slow, and it took a month to dispose of the ten (10) units. CCC Car, Inc. wanted to be in business and to save on various documentations required by the bank, decided that instead of turning over the proceeds of the sales, CCC Car, Inc. used the proceeds to buy another ten (10) units of BMW 3 series.

(A) Is the action of CCC Car, Inc. legally justified? Explain your answer. (5%)

SUGGESTED ANSWER:

No. It is the obligation of CCC Car, Inc., as entrustee, to receive the proceeds of the sale of the Mercedes Benz S class vehicles intrust for BBB Bank, as entruster, and turn over the same to BBB Bank to the extent of the amount owing to the latter or as appears in the trust receipt (Sec. 9(2), Trust Receipt Law).

(B) Will the corporate officers of CCC Car, Inc. be held liable under the circumstances? Explain your answer. (5%)

SUGGESTED ANSWER:

Yes, particularly the President and the Treasurer of CCC Car, Inc. who both signed the trust receipts in the problem. Section 13 of the Trust Receipt Law(PD 115) provides that if the violation or offense is committed by a corporation, partnership, association, or other juridical entity, the penalty provided for in the law shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

[**Note:***The problem does not state that BBB bank issued a letter of credit upon application of CCC Car, Inc, to enable the latter to pay for its importation. In the suggested answers above, we assume this to be the case because the trust receipt, being an accessory contract, cannot validly exist without a principal contract, i.e., the application for the letter of credit.*]

Warehouse Receipts Law

Warehouse Receipt: Surrendering of Possession; Lien (2009)

No.XI. (B) Under the Warehouse loses his lien upon the goods when he surrenders possession thereof.

SUGGESTED ANSWER:

True. A lien is dependent on possession. When a warehouseman surrenders possession, he thereby loses his lien on the goods over which hi no longer has possession (Sec.29 (a), Warehouse Receipts Law).

Negotiable Instrument; Delivery of Goods (2007)

No.II. Alex deposited goods for which Billy, a warehousemen, issued a negotiable warehouse receipt wherein the good were deliverable to Alex or order. Alex negotiated the receipt TC Caloy. Thereafter, Dario a

creditor, secured judgment against Alex and served notice of levy over the goods on the warehouseman.

(A) To whom should the warehousemen deliver the goods upon demand?(5%)

SUGGESTED ANSWER:

The warehouseman should deliver the goods upon demand to Caloy who is a holder of the receipt in good faith and for value. The goods cannot be levied upon by the creditor of Alex after it was negotiated to Caloy (Section 25, Negotiable Instruments Law).

(B) Would your answer be the same if the warehouseman issued a non-negotiable warehouse receipt? Reason briefly. (5%)

SUGGESTED ANSWER:

No, my answer would not be the same if the warehousemen issued a non-negotiable warehouse receipt. In such case. The warehouseman should deliver the goods to Datio, if the notice of levy was served on the warehouseman prior to the notification of the warehouseman by Alex or Caloy of the transfer of the non-negotiable receipt. In such case, the title of Caloy would be defeated by the notice of levy by Dario (Section 42, Warehouse Receipts Law).



MULTIPLE CHOICE QUESTIONS (MCQ)

2013 Mercantile Law Exam MCQ (October 20, 2013)

I. Claude, the registered stock holder of 1,000 shares in ABC Corp., pledged the shares to Conrad by endorsement in blank of the covering stock certificates and, execution of a Deed of Assignment of Shares of Stock, intended as collateral for a loan of P 1.0 Million that was also supported by a separate promissory note.

I.(A) Under these facts, is there a valid pledge of the shares of stock to Conrad? (1%)

(A) No, because shares of stock are intangible personal properties whose possession cannot be delivered and, hence, cannot be the subject of a pledge.
(B) No, because the pledge of shares of stock requires double registration with the Register of the principal place of business of the corporation and of the residence of the pledgor.
(C) Yes, because endorsement and delivery of the certificates of stock is equivalent to the transfer of possession of the covered shares to the pledgee.
(D) Yes, because the execution of the Deed of Assignment of Shares of Stock is equivalent to a lawful pledge of the shares of stock.

SUGGESTED ANSWER:

(D) Yes, because the execution of the Deed of Assignment of Shares of Stock is equivalent to a lawful pledge of the shares of stock (Lopez v. Court of Appeals, 114 SCRA 617).

I.(2) After Claude defaulted on the loan, Conrad sought to have the shares registered in his name In the books of the corporation. **If you are the Corporate Secretary of ABC Corporation, would you register the shares in the name of Conrad without any written instruction from Claude? (1%)**

(A) Yes, since the endorsement and delivery of the certificates of stock executed by Claude constitute the legal authority to cancel the shares in his name and to place them in Conrad's name.
(B) Yes, since the execution of the Deed of Assignment by Claude would constitute the legal authority to cancel the shares in his name and place them in Conrad's name.
(C) No, because corporate officers can only take direct instructions from the registered owners on the proper disposition of shares registered in their names.
(D) No, because the corporation has a primary lien on the shares covering the unpaid subscription.

SUGGESTED ANSWER:

None of the answer is correct. The pledge must be foreclosed. (Article 2112, Civil Code) Conrad cannot just appropriate the shares of stock (Article 2088, Civil Code).

NOTE: (D) could have been the correct answer if the facts stated that there are unpaid subscriptions because under Section 63 of the Corporation Code, the corporation may refuse the transfer if it holds unpaid claim on the subscribed shares (See China Banking Corp. v. CA and Valle Verde Country Club, G.R. No. 117604, March 26, 1997).

II. A foreign delegation of businessmen and investment bankers called on your law firm to discuss the possibilities of investing in various projects in the Philippines, and wanted your thoughts on certain issues regarding foreign investment in the Philippines.

II.(1) The delegation has been told about the Foreign Investment Act of 1991, as amended (FIA '91), and they asked what exactly is the law's essential thrust regarding foreign investment in Philippine business and industries.

You replied that **FIA '91 essentially reflects_____. (1%)**

(A) The "Filipino First Policy"
(B) The "Foreign Investment Positive Lists" concept
(C) The "Foreign Investment Negative Lists" concept
(D) The "Control Test" concept
(E) All of the above.

SUGGESTED ANSWER:

(C) The "Foreign Investment Negative Lists" concept
(Section 7 of Foreign Investments Act)

II.(2) The delegation asked: aside from Filipino citizens, what entities would fall under the definition of "Philippine National" under FIA '91?

You replied that **the definition of "Philippine national" under FIA '91 covers_____.(1%)**

(A) domestic partnerships wholly composed of Filipino citizens
(B) domestic corporations 60% of whose capital stock, outstanding and entitled to vote, are owned and held by Filipino citizens
(C) foreign corporations considered as doing business in the Philippines under the Corporation Code, 100% of whose capital stock, outstanding and entitled to vote, are wholly-owned by Filipino citizens

(C) All of the above, because the law considers the juridical personality, whether domestic or foreign, as a mere medium; the test of nationally is on the individual who control the medium
(D) None of the above, because the term Philippine national can only cover individuals and not juridical entities.

SUGGESTED ANSWER:
(D) All of the above, because the law considers the juridical personality, whether domestic or foreign, as a mere medium: the test of nationality is on the individuals who control the medium
(Section 3(a) of Foreign Investments Act)

II.(3) The delegation heard that foreigners can invest up to 100% of the equity in "export oriented enterprises" and you were asked exactly what the term covers.

You replies that an "export oriented enterprise **"under FIA '91 is an enterprise that_____.(1%)**

(A) only engages in the export of goods and services, and does not sell goods or services to the domestic market
(B) exports consistently at least 40% of its goods or services, and sells at least 60% of the rest to the domestic market
(C) exports consistently at least 60% of the goods or services produced, and sell at least 40% of the rest to the domestic market.
(D) Exports consistently at least 60% of its goods or services produced, and can sell goods or services to the domestic market
(E) None of the above.

SUGGESTED ANSWER:
(E) None of the above.
(Section 3(e) of Foreign Investments Act)

II.(4) As a last question and by way of a concrete example, a delegation member finally inquired – **which of the following corporations or businesses in the Philippines may it invest and up to what extent? (1%)**

(A) A lifestyle magazine publication corporation, up to 40% equity
(B) An advertising corporation, up to 100% equity
(C) A commercial bank, up to 60% equity
(D) A jeepney manufacturing corporation, up to 100% equity
(E) A real estate development corporation, up to 60% equity

SUGGESTED ANSWER:
(D) A Jeepney manufacturing corporation, up to 100% equity
(Section 7 of Foreign Investment Act)

III. Dennis subscribed to 10,000 shares of XYZ Corporation with a par value of P100 per share. However, he paid only 25% of the

subscription or P250,000.00 No call has been made on the unpaid subscription.

How many shares in Dennis entitled to vote at the annual meeting of the stockholders of XYZ? (1%)

(A) 10,000 shares
(B) 2,500 shares
(C) 100 shares
(D) 0 shares
(E) None of the above.

SUGGESTED ANSWER:
(A) 10,000 Shares
(Section 24 and 71 of Corporation Code)

IV. ABC Corp, issued redeemable shares, Under the terms of the issuance, the shares shall be redeemed at the end of 10 years from date of issuance, at par value plus a premium of 10%

Choose the correct statement relating to these redeemable shares. (1%)

(A) ABC Corp. would need unrestricted retained earnings to be able to redeem the shares.
(B) Corporations are not allowed to issue redeemable shares; thus, the issuance by ABC Corp. is ultra vires.
(C) Holders of redeemable shares enjoy a preference over creditors.
(D) ABC Corp. may redeem the shares at the end of 10 years without need for unrestricted earnings provided that, after the redemption, there are sufficient assets to cover its debts.
(E) All of the above are incorrect.

SUGGESTED ANSWER:
(D) ABC Corp. may redeem the shares at the end of 10 years without need for unrestricted earnings provided that, after the redemption, there are sufficient assets to cover its debts.
(Section 8 of Corporation Code; Republic Planters Bank v. Agana, 269 SCRA 1, 1997)

V. Arnold, representing himself as an agent of Brian for the sale of Brian's car, approached Dennis who appeared interested in buying the car. At Arnold's prodding, Dennis issued a crossed check would only be shown to Brian as evidence of Dennis' good faith and interest in buying the car. Instead, Arnold used the check to pay for the medical expenses of his wife in Brian's clinic after Brian, a doctor, treated her.

Is Brian a holder in due course (HIDC)? (1%)

(A) Yes, Brian is a HIDC because he was the payee of the check and he received it for services rendered.

(B) Yes, Brian is a HIDC because he did not need to go behind the check that was payable to him.
(C) No, Brian is not a HIDC because Dennis issued the check only as evidence of good faith and interest in buying the car.
(D) No, Brian is not a HIDC because Brian should have been placed on notice: the check was crossed in his favor and Arnold was not the drawer.
(E) No, Brian is not a HIDC because the requisite consideration to Dennis was not present.

SUGGESTED ANSWER:

(D) No, Brian is not a HIDC because Brian should have been placed on notice: the check was crossed in his favor and Arnold was not the drawer.
(Vicente R. de Ocampo & Company v. Gatchalian, 3 SCRA 566, 1961)

VI. Gawsengsit Corp. is a corporation incorporated in Singapore. It invested in Bumblebee Corp., a Philippine corporation, by acquiring 30% of its shares. As a result, Gawsengsit Corp. nominated 30% of the directors of Bumblebee Corp., all of whom are Singaporeans and officers of Gawsengsit Corp.

Choose the correct statement relating to Gawsengsit Corp. (1%)

(A) Gawsengsit Corp. is doing business in the Philippines and requires a license from the Securities and Exchange Commission (SEC).
(B) Gawsengsit Corp. is not doing business in the Philippines by its mere investment in a Philippine corporation and does not need a license from the SEC
(C) Gawsengsit Corp. has to appoint a resident agent in the Philippines.
(D) Gawsengsit Corp. cannot elect directors in Bumblebee Corp.
(E) All the above choices are incorrect.

SUGGESTED ANSWER:

(B) Gawsengsit Corp. is not doing business in the Philippines by its mere investment in a Philippines corporation and does not need a license from the SEC.
(Section 3(d) of Foreign Investment Act)

VII. The BIR assessed ABC Corp. for deficiency income tax for taxable year 2010 in the amount of P26,731,208.00, inclusive of surcharge and penalties.
The BIR Can _. (1%)

(A) Run after the directors and officers of ABC Corp. to collect the deficiency tax and their liability will be solidary.
(B) Run after the stockholders of ABC Corp. and their liability will be joint
(C) Run after the stockholders of ABC Corp. and their liability will be solidary

(D) Run after the unpaid subscriptions still due to ABC Corp., if any
(E) None of the above choices is correct.

SUGGESTED ANSWER:
(D) Run after the unpaid subscriptions still due to ABC Corp., if any
(Halley v. Printwell, 648 SCRA 116, 2011).

VIII. Anton imported perfumes from Taiwan and these were released to him by the bank under a trust receipt. While the perfumes were in Anton's warehouse, thieves broke in and stole all of them.

Who will shoulder the lossof the stolen perfumes? (1%)

(A) The loss of the perfumes will be borne by the bank in whose behalf the perfumes were held in trust.
(B) Anton will bear the loss.
(C) The exporter can hold both the bank and Anton liable for the loss.
(D) The exporter form whom Anton bought the perfumes will bear the loss.
(E) No one bears the loss for an unforeseen event.

SUGGESTED ANSWER:
(B) Anton will bear the loss.
(Section 10 of the Trust Receipts Law)
(Rosario Textile Mills Corporation v. Home Bankers Savings and Trust Company, 462 SCRA 88, 2005)

IX. A Bank may acquire real property _____**.** (1%)
(A) By purchase at a public sale of properties levied to satisfy tax delinquencies
(B) By purchase from a real estate corporation in the ordinary course of the bank's business
(C) Through dacion en pago in satisfaction of a debt in favor of the bank
(D) In exchange for the purchase of shares of stocks of the bank
(E) All of the above.
(F) None of the above.

SUGGESTED ANSWER:
(B) By purchase from a real estate corporation in the ordinary course of the bank's business; or
(C) Through dacion en pago in satisfaction of a debt in favor of the bank; or
(D) in exchange for the purchase of shares of stocks of the bank.
(Section 36 (7) and 62 (2) of the Corporation Code)
(Section 52 of the General Banking Law)

X. Under the Anti-Money Laundering Act, a depositor's bank account may be frozen. (1%)

(A) By the bank when the account is the subject of a suspicious or covered transaction report
(B) By the Anti-Money Laundering Council (AMLC) when the account belongs to a person already convicted of money laundering
(C) By the Regional Trial Court, upon ex parte motion by the AMLC, in a criminal prosecution for money laundering pending before it.
(D) By the Court of Appeals motu proprio in an appeal from a judgment of conviction of a criminal charge for money laundering.
(E) In none of the above.

SUGGESTED ANSWER:

(E) In none of the above.
(Section 10 of the Anti-Money Laundering Act)

XI. Unknown to the other four proponents, Enrico (who had been given the task of attending to the Articles of Incorporation of the proposed corporation, Auto Mo, Ayos Ko) misappropriated the filing fees and never filed the Articles of Incorporation with the Securities and Exchange Commission (SEC). Instead, he prepared and presented to the proposed incorporators a falsified SEC certificate approving the Articles. Relying on the falsifies SEC certificate, the latter began assuming and discharging corporate powers. Auto Mo, Ayos Ko is a _____. **(1%)**

(A) De jure corporation
(B) De facto corporation
(C) Corporation by estoppels
(D) General partnership
(E) None of the above.

SUGGESTED ANSWER:

NOTE: The last sentence of the given problem is unclear as to whether the term "latter" refers to Enrico or to the incorporators. As such, it is necessary to qualify the answer depending on the meaning given to the term "latter"
(C) Corporation by estoppels

If the term "latter" refers to the incorporators, the correct answer is C (Section 20 and 21 of the Corporation Code).

(E) None of the above.
If the term "latter" refers to Enrico, the correct answer is E (Sections 20 and 21 of the Corporation Code).

XII. Preferred shares cannot vote on the proposal_____**. (1%)**

(A) To include other corporate officers in the corporation's by-laws
(B) To issue corporate bonds
(C) To shorten the corporate term

(D) All of the above
(E) None of the above.

SUGGESTED ANSWER:
(E) None of the above.

Under letter (A), to include other corporate officers in the corporation's by-laws. This will require the amendment of the by-laws, and as such, preferred shares shall be allowed to vote.
Under letter (B), to issue corporate bonds – Such corporate bonds are construed as bonded indebtedness, then preferred shares shall be allowed to vote.
Under letter (C), to shorten the corporate term, - Under Section 6 of the Corporation Code, preferred shares shall be allowed to vote.

XIII. In 2010, the Philippine National Police declared Kaddafy Benjelani "Public Enemy No. 1" because of his terrorist activities in the country that have resulted in the death of thousands of Filipino. A ransom of P15 million was placed on Kaddafy Benjelani's head.

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

Is the policy valid and binding? (1%)

(A) Yes, the policy is valid and binding because Aurelia has an insurable interest on the life of Kaddafy Benjelani.
(B) No, the policy is not valid and binding because Kaddafy Benjelani has been officially declared a public enemy.
(C) Yes, the policy is valid and binding because it has been in force for more than two years.
(D) No, the policy is not valid and binding since the spouses' estrangement removed Aurelia's insurable interest in Benjelani's life.
(E) None of the above.

SUGGESTED ANSWER"
(A) Yes the policy is valid and binding because Aurelia has an insurable interest on the life of Kaddafy Benjelani.

The policy is valid. Aurelia had insurable interest in the life of Kaddafy Benjelani, because he is her husband even if they are estranged (Section 10 (a) of the Insurance Code). Kaddafy Benjelani is not a public enemy, because he is not a national of an enemy country (Filipinas Compañia de Sejunos v. Christern, Huefeld & Company, Inc., 89 Phil. 54, 1951).

XIV. Muebles Classico, Inc. (MC), a Manila-based furniture shop, purchased hardwood lumber from Surigao Timber, Inc. (STI), a Mindanao-based logging company. MC was pay STI the amount of P5.0 million for 50 tons of lumber. To pay STI, MC opened a letter of credit with Baco de Plata (BDP). BDP duly informed STI of the opening of a letter of credit in its favor.

In The meantime, MC- which had been undergoing financial reverses = filed a petition for corporate rehabilitation. The rehabilitation court issued a Stay Order to stay the enforcement of all claims against MC.

After shipping the lumber, STI went to BDP, presented the shipping documents, and demanded payment of the letter of credit opened in its favor. MC, on the other hand, informed the bank of the Stay Order and instructed it to deny payment to STI because of the Stay Order.

BDP comes to you for advice. Your best advice is to __. (1%)

(A) Grant STI's claim, Under the "Independence Principle," the bank deals only with the documents and not the underlying circumstances; hence, the presentation of the letter of credit is sufficient.

(B) Deny STI's claim. The Stay Order covers all claims against the debtor and binds all its creditors. The letter of credit is a claim against the debtor that is covered by the Stay Order.

(C) Grant STI's claim. The letter of credit is not a claim against the debtor under rehabilitation, but against the bank which has assumed a solidary obligation.

(D) Deny STI's claim. If the bank disregards the Stay Order, it may be subject to contempt by the rehabilitation court. STI should file its claim with the rehabilitation court.

(E) File an action for interpleader to resolve the parties' competing claims

SUGGESTED ANSWER:

(C) Grant SIT's claim. The letter of credit is not a claim against the debtor under rehabilitation. But against the bank which has assumed a solidary obligation. (Metropolitan Waterworks and Sewerage System v. Daway, 432 SCRA 559, 2004)

XV. Akiro of Tokyo, Japan sent various goods to his friend Juan in Cebu City, Philippines , through one of the vessels of Worthsell Shippers, Inc., an American corporation. En route to Cebu City, the vessel had two stops, first in Hong Kong, and second, in Manila.

XV.(1) While traveling from Tokyo to Hong Kong, the goods were damaged.

What law will govern? (1%)

(A) Japanese law
(B) Hong Kong law
(C) Chinese law
(D) Philippine law
(E) American law

SUGGESTED ANSWER:

(A) Philippine law
(Article 1753, Civil Code)
(Eastern Shipping Lines, Inc. v. Intermediate Appellate Court, G.R. No. L-69044, May 29, 1987).

XV.(2) Assuming Philippine law to be applicable and Juan fails to file a claim with the carrier, **may he still commence an action to recover damages with the court? (1%)**

(A) No, the failure to file a claim with the carrier is a condition precedent for recovery.
(B) Yes, provided he files the complaint with 10 years from delivery.
(C) Yes, provided he files the complaint with 10 years from discovery of the damage.
(D) Yes, provided he files the complaint within 1 year from delivery.
(E) Yes, provided he files the complaint with 1 year from discovery of the damage.

SUGGESTED ANSWER:

(D) Yes, provided he files the complaint within 1 year from delivery.
(Section 3 (6) of Carriage of Goods by Sea Act; Belgian Overseas Chartering &Shipping N.V. v. Philippine First Insurance Company, Inc., 383 SCRA 23, 2002)

2012 Mercantile Law Exam MCQ (October 21, 2012)

1. Letters of Credit are financial devices in commercial transactions which will ensure that the seller of the goods is sure to be paid when he parts with the goods and the buyer of the goods gets control of the goods upon payment. Which statement is most accurate?
    a. **The use of the Letter of Credit serves to reduce the risk of nonpayment of the purchase price in a sale transaction.**
    b. The Letters of Credit can only be used exclusively in a sales transaction.
    c. The Letters of Credit are issued for the benefit of the seller only.
    d. (a), (b) and (c) are all correct.

SUGGESTED ANSWER:

a. The use of the Letter of Credit serves to reduce the risk of nonpayment of the purchase price in a sale transaction.

2. Letter of Credit which is used in non-sale transaction, where it serves to reduce the risk of non-performance is called -
    a. irrevocable letter of credit;
    b. standby letter of credit;
    c. confirmed letter of credit;
    d. None of the above.

SUGGESTED ANSWER:

b. standby letter of credit;

3. At the instance of CCC Corporation, AAA Bank issued an irrevocable Letter of Credit in favor of BBB Corporation. The terms of the irrevocable Letter of Credit state that the beneficiary must presfmt certain documents including a copy of the Bill of Lading of the importation for the bank to release the funds. BBB Corporation could not find the original copy of the Bill of Lading so it instead presented to the bank a xerox copy of the Bill of Lading. Would you advise the bank to allow the drawdown on theLetter of Credit?
    a. **No, because the rule of strict compliance in commercial transactions involving letters of credit, requiring documents set as conditions for the release of the fund ,has to be**

strictly corn plied with or else funds will not be released.

b. Yes, because an irrevocable letter of credit means that the issuing bank undertakes to release the fund anytime when claimed by the beneficiary, regardless of the kind of document presented.

c. Yes, because the issuing bank can always justify to CCC Corporation that xerox copies are considered as faithful reproduction of the original copies.

d. Yes, because the issuing bank really has no discretion to determine whether the documents presented by the beneficiary are sufficient or not.

SUGGESTED ANSWER:

a. No, because the rule of strict compliance in commercial transactions involving letters of credit, requiring documents set as conditions for the release of the FUND ,has to be strictly corn plied with or else funds will not be released.

4. AAA Carmakers opened an irrevocable Letter of Credit with BBB Banking Corporation with CCC Cars Corporation as beneficiary. The, irrevocable Letter of Credit was opened to pay for the importation of ten (1 0) units of Mercedes Benz S class. Upon arrival of the cars, AAA Carmakers found out that the cars were all not in running condition and some parts were missing. As a consequence, AAA Carmakers instructed BBB Banking Corporation not to allow drawdown on the Letter of Credit. Is this legally possible?

a. No, because under the "Independence Principle", conditions for the drawdown on the Letters of Credit are based only on documents, like shipping documents, and not with the condition of the goods subject of the importation.

b. Yes, because the acceptance by the importer of the goods subject of importation is material for the drawdown of the Letter of Credit.

c. Yes, because under the "Independence Principle", the seller or the beneficiary is always assured of prompt payment if there is no breach

in the contract between the seller and the buyer.

d. No, because what was opened was an irrevocable letter of credit and not a confirmed letter of credit.

SUGGESTED ANSWER:

a. No, because under the "Independence Principle", conditions for the drawdown on the Letters of Credit are based only on documents, like shipping documents, and not with the condition of the goods subject of the importation.

5. For a fee, X deposited 1,000 sacks of corn in the warehouse owned by Y. Y is in the business of warehousing. Y issued a warehouse receipt as proof of the possession of the 1,000 sacks of corn. The warehouse receipt states as follows: "Deliver to X or bearer 1,000 sacks of corn." X wanted to use the warehouse receipt as payment of his debt in favor of Z. How can the ownership of the goods covered by the warehouse receipt be transferred?

   a. **Negotiate the warehouse receipt by just delivering the warehouse receipt to Z.**
   b. Assign the warehouse receipt to Z to transfer ownership of the goods.
   c. Negotiate the warehouse receipt by specifically indorsing it to Z.
   d. The warehouse receipt in this case is non-negotiable.

SUGGESTED ANSWER:

a. No, because under the "Independence Principle", conditions for the drawdown on the Letters of Credit are based only on documents, like shipping documents, and not with the condition of the goods subject of the importation.

6. The warehouseman, by issuing the warehouse receipt, acknowledges that the goods are in his possession, but he can refuse to deliver the goods to the holder of the warehouse receipt covering the goods if -

   a. the warehouse receipt covering the goods is not presented.
   b. the lien of the warehouseman is not satisfied.

c. the said holder presents a materially altered warehouse receipt.
d. <u>All of the above.</u>

<u>SUGGESTED ANSWER:</u>

d. All of the above.

7. The legal remedy of the warehouseman in case of conflicting claims is to ---
   a. <u>file an action for interpleader.</u>
   b. give the goods to the first one who first presented the warehouse receipt.
   c. use his discretion as to who he believes has the prior right.
   d. keep the goods and appropriate them to himself.

<u>SUGGESTED ANSWER:</u>

a. file an action for interpleader.

8. BBB Banking Corporation issued a Letter of Credit in the amount of P5Million, for the purchase of five (5) tons of corn by X. Upon arrival of the goods, the goods were delivered to the warehouse of X. Thereafter he was asked to sign a Trust Receipt covering the goods. When the goods were sold, X did not deliver the proceeds to BBB Banking Corporation, arguing that he will need the fund for the subsequent importation. Is there sufficient basis to sue for criminal action?
   a. <u>Yes, because X's failure to turn over the proceeds to the bank is a violation of the Trust Receipt Law.</u>
   b. No, because the trust receipt was signed only after the delivery of the goods. When the trust receipt was signed, the ownership of the goods was already with X.
   c. Yes, because violation of Trust Receipt Law is mala prohibita, intention is irrelevant.
   d. No, because X has a valid reason not to deliver the proceeds to BBB Banking Corporation.

<u>SUGGESTED ANSWER:</u>

a. Yes, because X's failure to turn over the proceeds to the <u>BANK</u> is a violation of the Trust Receipt Law.

c. Yes, because violation of Trust Receipt Law is mala prohibita, intention is irrelevant.

Recommendation in respect of MCQ #8:

It is recommended that examinees be given full credit for whatever answer they gave as there are two possible correct answers of equal value: (a) and (c).

9. X secured a loan from BBB Bank to pay for the importation of some dried fruits. Upon arrival of the goods consisting of dried fruits imported by X but before delivery to him, a trust receipt was executed by X to cover the transfer of the dried fruits to his possession. The dried fruits were so saleable but instead of turning over the proceeds of the sale, X used the funds to pay for the medical expenses of his mother who was sick of cancer of the bone. Which statement is most accurate?
    a. X cannot be held criminally liable because although he did not pay the bank he used the proceeds for a good reason.
    b. Fraud or deceit is a necessary element to hold X criminally liable for non - payment under the Trust Receipts Law.
    c. <u>X can be held criminally liable under the Trust Receipts Law regardless of the purpose or intention for the use of the proceeds.</u>
    d. X cannot be held criminally liable because the underlying obligation is one of simple loan.

<u>SUGGESTED ANSWER:</u>

c. X can be held criminally liable under the Trust Receipts Law regardless of the purpose or intention for the use of the proceeds.

10. X is the President of AAA Products Corporation. X signs all the Trust Receipts documents for certain importations of the company. In the event of failure to deliver the proceeds of the sale of the goods to the bank, which statement is most accurate?
    a. The criminal liability will not attach to X as President because of separate juridical personality.
    b. <u>For violation of Trust Receipts Law, the law</u>



specifically provides for the imposition of penalty upon directors I officers of the corporation.

c. The officer will not be held criminally accountable because he is just signing the trust receipt for and in behalf of the corporation.
d. The officer of the corporation will be held liable provided it is clear that the officer concerned participated in the decision not to pay.

SUGGESTED ANSWER:

b. For violation of Trust Receipts Law, the law specifically provides for the imposition of penalty upon directors I officers of the corporation.

11. Who is the Entrustee in a Trust Receipt arrangement?

a. the owner of the goods;
b. the one who holds the goods and receives the proceeds from the sale of the goods;
c. the person to whom goods are delivered for sale and who bears the risk of the loss;
d. the party who acquires security interest in the goods.

SUGGESTED ANSWER:

b. the person to whom goods are delivered for sale and who bears the risk of the loss;

12. Which phrase best completes the statement - In accordance with the Trust Receipt Law, purchasers of the goods from the Entrustee will:

a. get the goods only as a collateral;
b. not get good title to the goods;
c. only get security interest over the goods;
d. get good title to the goods.

SUGGESTED ANSWER:

d. get good title to the goods.

13. X acted as an accommodation party in signing as a maker of a promissory note. Which phrase best

completes the sentence - This means that X is liable on the instrument to any holder for value:

a. for as long as the holder does not know that X is only an accommodation party.
b. <u>even though the holder knew all along that X is only an accommodation party.</u>
c. for as long as X did not receive any consideration for acting as accommodation party.
d. provided X received consideration for acting as accommodation party.

<u>SUGGESTED ANSWER:</u>

b. even though the holder knew all along that X is only an accommodation party.

14. X issued a promissory note which states, "I promise to pay Y or order Php100,000.00 or one (1) unit Volvo Sedan." Which statement is most accurate?
a. The promissory note is negotiable because the forms of payment are clearly stated.
b. <u>The promissory note is non-negotiable because the option as to which form of payment is with the maker.</u>
c. The promissory note is an invalid instrument because there is more than one form of payment.
d. The promissory note can be negotiated by way of delivery.

<u>SUGGESTED ANSWER:</u>

b. The promissory note is non-negotiable because the option as to which form of payment is with the maker.

15. X issued a promissory note which states "I promise to pay Y or bearer the amount of HK$50,000 on or before December 30, 2013." Is the promissory note negotiable?
a. No, the promissory note becomes invalid because the amount is in foreign currency.
b. <u>Yes, the promissory note is negotiable even though the amount is stated in foreign currency.</u>
c. No, the promissory note is not negotiable because the amount is in foreign currency.

d. Yes, the promissory note is negotiable because the Hong Kong dollar is a known foreign currency in the Philippines.

SUGGESTED ANSWER:

b. Yes. The promissory note is negotiable even though the amount is stated in foreign currency.

16. X delivered a check issued by him and payable to the order of CASH to Y in payment for certain obligations incurred by X in favor of Y. Y then delivered the check to Z in payment for certain obligations. Which statement is most accurate?
    a. **Z can encash the check even though Y did not indorse the check.**
    b. Z cannot encash the check for lacking in proper endorsement.
    c. Y is the only one liable because he was the one who delivered the check to Z.
    d. The negotiation is not valid because the check is an instrument payable to order.

SUGGESTED ANSWER:

a. Z can encash the check even though Y did not indorse the check.

17. A stale check is a check -
    a. **that cannot anymore be paid although the underlying obligation still exists.**
    b. that cannot anymore be paid and the underlying obligation under the check is also extinguished.
    c. that can still be negotiated or indorsed so that whoever is the holder can
    d. which has not been presented for payment within a period of thirty (30) days.

SUGGESTED ANSWER:

a. that cannot anymore be paid although the underlying obligation still exists.

18. In payment for his debt in favor of X, Y gave X a Manager's Check in the amount of Php100,000 dated May 30, 2012. Which phrase best completes the statement - A Manager's Check:
    a. is a check issued by a manager of a bank for his own account.
    b. **is a check issued by a manager of a bank in the**

name of the bank against the bank itself for the account of the bank.

c. is like any ordinary check that needs to be presented for payment also.

d. is better than a cashier's check in terms of use and effect.

SUGGESTED ANSWER:

b. Is a check issued by a manager of a bank in the name of the bank against the bank itself for the account of the bank.

19. Which phrase best completes the statement -- A check which is payable to bearer is a bearer instrument and:

a. negotiation can be made by delivery only;

b. negotiation must be by written indorsement;

c. negotiation must be by specific indorsement;

d. negotiation must be by indorsement and delivery.

SUGGESTED ANSWER:

a. negotiation can be made by delivery only.

20. As payment for a debt, X issued a promissory note in favor of Y but the promissory note on its face was marked non-negotiable. Then Y instead of indorsing the promissory note, assigned the same in favor of Z to whom he owed some debt also. Which statement is most accurate?

a. Z cannot claim payment from X on the basis of the promissory note because it is marked non-negotiable.

b. Z can claim payment from X even though it is marked non-negotiable.

c. Z can claim payment from Y because under the Negotiable Instrument Law, negotiation and assignment is one and the same.

d. Z can claim payment from Y only because he was the endorser of the promissory note.

SUGGESTED ANSWER:

b. Z can claim payment from X even though it is marked non-negotiable.



21. Negotiable instruments are used as substitutes for money, which means -
    a. that they can be considered legal tender.
    b. <u>that when negotiated, they can be used to pay indebtedness.</u>
    c. that at all times the delivery of the instrument is equivalent to delivery of the cash.
    d. that at all times negotiation of the instruments requires proper indorsement.

<u>SUGGESTED ANSWER:</u>

b. That when negotiated, they can be used to pay indebtedness.

22. The signature of X was forged as drawer of a check. The check was deposited in the account of Y and when deposited was accepted by AAA Bank, the drawee bank. Subsequently, AAA Bank found out that the signature of X was actually forged. Which statement is most accurate?
    a. The drawee bank can recover from Y, because the check was deposited in his account.
    b. The drawee bank can recover from X, because he is the drawer even though his signature was forged.
    c. <u>The drawee bank is estopped from denying the genuineness of the signature of the X, the drawer of the check.</u>
    d. The drawee bank can recover from Y because as endorser he warrants the genuineness of the signature.

<u>SUGGESTED ANSWER:</u>

c. The drawee bank is estopped from denying the genuineness of the signature of the X, the drawer of the check.

23. A issued a check in the amount of Php20,000 payable to B. B endorsed the check but only to the extent of Php1 0,000. Which statement is most accurate?
    a. <u>The partial indorsement is not a valid indorsement, although will result in the assignment of that part.</u>
    b. The partial indorsement will invalidate the whole instrument.
    c. The endorsee will be considered as a holder in due course.

d. The partial indorsement is valid indorsement up to the extent of the Php10,000.

SUGGESTED ANSWER:

a. The partial indorsement is not a valid indorsement, although will result in the assignment of the part.

24. A promissory note which does not have the words "or order" or "or bearer" will render the promissory note non-negotiable, and therefore -
    a. it will render the maker not liable;
    b. the note can still be assigned and the maker made liable;
    c. the holder can become holder in due course;
    d. the promissory note can just be delivered and the maker will still be liable.

SUGGESTED ANSWER:

d. the note can still be assigned and the marker made liable

25. A check is -
    a. a bill of exchange;
    b. the same as a promissory note;
    c. is drawn by a maker;
    d. a non-negotiable instrument.

SUGGESTED ANSWER:

a. a bill of exhchange

26. A check was issued to Tiger Woods. But what was written as payee is the word "Tiger Woods". To validly endorse the check -
    a. Tiger Woods must sign his real name.
    b. Tiger Woods must sign both his real name and assumed name.
    c. Tiger Woods can sign his assumed name.
    d. the check has become non-negotiable.

SUGGESTED ANSWER:

a. Tiger Woods can sign his assumed name.

27. Y, as President of and in behalf of AAA Corporation, as a way to accommodate X, one of its stockholders, endorsed the check issued by X. Which statement is most acurate?
    a. It is an ultra vires act.
    b. It is a valid indorsement.
    c. The corporation will be held liable to any holder in due course.

d. It is an invalid indorsement.

SUGGESTED ANSWER:

a. it is an ultra vires act.
b. it is a valid indorsement.

Recommendation in respect of MCQ #27:

It is recommended that examinees be given full credit for whatever answer they gave as there are two possible correct answers of equal value: (a) which is supported by the case of Jose v. CA, et al., G.R. No. 80599, September 15,1989, and (b) which is supported by Section 22 of the Negotiable Instrument Law.

28. In a negotiable instrument, when the sum is expressed both in numbers and in words and there is discrepancy between the words and the numbers -
    a. the sum expressed in words will prevail over the one expressed in numbers.
    b. the sum expressed in numbers will prevail over the one expressed in words.
    c. the instrument becomes void because of the discrepancy.
    d. this will render the instrument invalid.

SUGGESTED ANSWER:

a. the sum expressed in words will prevail over the one expressed in numbers.

29. A promissory note which is undated is presumed to be -
    a. dated as of the date of issue;
    b. dated as of the date of the first indorsement;
    c. promissory note is invalid because there is no date;
    d. dated on due date.

SUGGESTED ANSWER:

a. dated as of the date of issue

30. An insurance contract is an aleatory contract, which means that -
    a. the insurer will pay the insured equivalent to the amount of the premium paid.
    b. the obligation of the insurer is to pay depending upon the happening of an uncertain future event.
    c. the insured pays a fixed premium for the duration of the policy period and the amount of the premiums paid to the insurer is not necessarily the same amount as what the insured will get upon the happening of an uncertain future event.

d. the obligation of the insurer is to pay depending upon the happening of an event that is certain to happen.

SUGGESTED ANSWER:

b. the obligation of the insurer is to pay depending upon the happening of an uncertain future event.

31. An Insurance Contract is a contract of adhesion, which means that in resolving ambiguities in the provision of the insurance contract, -
    a. the general rule is that, the insurance contract is to be interpreted strictly in accordance with what is written in the contract.
    b. are to be construed liberally in favor of the insured and strictly against the insurer who drafted the insurance policy.
    c. are to be construed strictly against the insured and liberally in favor of the insurer.
    d. if there is an ambiguity in the insurance contract, this will invalidate the contract.

SUGGESTED ANSWER:

b. are to be constructed liberally in favour of the insured and strictly against the insurer who drafted the insurance policy,

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

SUGGESTED ANSWER:

a. X as sole beneficiary under the life insurance policy on the life of Y will be entitled to the proceeds of the life insurance.

33. X, in January 30, 2009, or two (2) years before reaching the age of 65, insured his life for Php20Million. For reason unknown to his family, he took his own life two (2) days after his 65th birthday. The policy contains no excepted risk. Which statement is most accurate?
    a. **The insurer will be liable.**
    b. The insurer will not be liable.
    c. The state of sanity of the insured is relevant in cases of suicide in order to hold the insurer liable.
    d. The state of sanity of the insured is irrelevant in cases of suicide in order to hold the insurer liable.

SUGGESTED ANSWER:

a. the insurer will be liable.

34. X, a minor, contracted an insurance on his own life. Which statement is most accurate?
    a. The life insurance policy is void ab initio.
    b. The life insurance is valid provided it is with the consent of the beneficiary.
    c. **The life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child.**
    d. The life insurance is valid provided the disposition of the proceeds will be subject to the approval of the legal guardian of the minor.

SUGGESTED ANSWER:

c. the life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child.

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

insurance· policy two (2) years after death.

SUGGESTED ANSWER:

b. the two (2) years after date of issuance or reinstatement of the life insurance policy the insurer cannot anymore prove that the policy is void abignitio or rescindable by reason of fraudulent concealment or misrepresentation of the insured.

36. For both the Life Insurance and Property Insurance, the insurable interest is required to be -
    a. existing at the time of perfection of the contract and at the time of loss.
    b. existing at the time of perfection and at the time of loss for property insurance but only at the time of perfection for life insurance.
    c. existing at the time of perfection for property insurance but for life insurance both at the time of perfection and at the time of loss.
    d. existing at the time of perfection only.

SUGGESTED ANSWER:

b. existing at the time of perfection and at the time of loss for property

37. A house and lot is covered by a real estate mortgage (REM) in favor of ZZZ Bank. The bank required that the house be insured. The owner of the policy failed to endorse nor assign the policy to the bank. However, the Deed of Real Estate Mortgage has· an express provision which says that the insurance policy is also endorsed with the signing of the REM. Will this be sufficient?
    a. No, insurance policy must be expressly endorsed to the bank so that the bank will have a right in the proceeds of such insurance in the event of loss.
    b. The express provision contained in the Deed of Real Estate Mortgage to the effect that the policy is also endorsed is sufficient.
    c. Endorsement of Insurance Policy in any form is not legally allowed.
    d. Endorsement of the Insurance Policy must be in a formal document to be valid.

SUGGESTED ANSWER:



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

38. X is a passenger of a jeepney for hire being driven by Y. The jeepney collided with another passenger jeepney being driven by Z who was driving recklessly. As a result of the collision, X suffered injuries. Both passenger jeepneys are covered by Comprehensive Motor Vehicular Insurance Coverage. If X wants to claim under the "no fault indemnity clause", his claim will lie -
    a. against the insurer of the jeepney being driven by Z who was the one at fault.
    b. <u>the claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger.</u>
    c. X has a choice against whom he wants to make his claim.
    d. None of the above.

<u>SUGGESTED ANSWER:</u>

b. the claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger.

39. X insured the building she owns with two (2) insurance companies for the same amount. In case of damage, -
    a. X can not claim from any of the two (2) insurers because with the double insurance, the insurance coverage becomes automatically void.
    b. the two (2) insurers will be solidarily liable to the extent of the loss.
    c. the two (2) insurers will be proportionately liable.
    d. <u>X can choose who he wants to claim against.</u>

<u>SUGGESTED ANSWER:</u>

d. X can choose who he wants to claim against.

40. When X insured his building, X indicated in the application that it is a residential building, but actually the building was being used as a warehouse for some hazardous materials. What is the effect on the insurance policy, i f any?
    a. The insurance policy can be cancelled because of the change in the use.
    b. The insurance policy will automatically be changed.
    c. The insurance policy need not be changed.

d. The insurance policy is fixed regardless of the change in the use.

Recommendation in respect of MCQ #40:

It is recommended that examinees be given full credit for whatever answer they gave as the question is unclear. What is clear is that there was misrepresentation on the part of X when he indication in his application that the building is residential when it was actually being used as a warehouse. The problem does not indicate that the change in the use of the house was carried out by X and that it was done without the permission of the insurer.

41. X owned a house and lot. X insured the house. The house got burned. Then he sold the partially burnt house and the lot to Y. Which statement is most accurate?
    a. X is not anymore entitled to the proceeds of the insurance policy because he already sold the partially burnt house and lot.
    b. X is still entitled to the proceeds of the insurance policy because what is material is that at the time of the loss, X is the owner of the house and lot.
    c. No one is entitled to the proceeds because ownership over the house and lot was already transferred.
    d. Y will be the one entitled to the proceeds because he now owns the partially burnt house and lot.

SUGGESTED ANSWER:

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

42. X, while driving his Toyota Altis, tried to cross the railway tract of Philippine (xxx line 2 unread text xxx) approached BlumentrittAvenida Ext., applied its horn as a warning to all the vehicles that might be crossing the railway tract, but there was really nobody manning the crossing. X was listening to his Ipod touch, hence, he did not hear the sound of the horn of the train and so his car was hit by the train. As a result of the accident, X suffered some injuries and his car was totally destroyed as a result of the impact. Is PNR liable?
    a. PNR is not liable because X should have known that he was crossing a place designated as crossing for



train, and therefore should have been more careful.

b. PNR is liable because Railroad companies owe to the public a duty of exercising a reasonable degree of care to avoid injury to person and property at railroad crossings which means a flagman or a watchman should have been posted to warn the public at all times.

c. PNR is not liable because it blew its horn when it was about to cross the railway along BlumentrittAvenida Ext.

d. PNR is not liable because X was negligent, for listening to his lpod touch while driving.

SUGGESTED ANSWER:

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

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

a. The bus company is not liable for as long as the bus company can show that when they hired X, they did the right selection process.

b. The bus company cannot be held liable because what X did is not part of his responsrbility.

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

d. The bus company is not liable because there is no way that the bus company can anticipate the act of X.

SUGGESTED ANSWER:

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

44. X is a trader of school supplies in Calapan, Oriental Mindoro. To bring the school supplies to Calapan, it has to be transported by a vessel.

Because there were so many passengers, the two (2) boxes of school supplies were loaded but the shipping company was not able to issue the Bill of Lading. So, on board, the Ship Captain issued instead a "shipping receipt" to X indicating the two (2) boxes of school supplies being part of the cargo of the vessel. Which phrase therefore, is the most accurate?

a. the owner of the vessel is not liable because no bill of lading was issued to X hence, no contract of carriage was perfected.
b. <u>it is possible to have a contract of carriage of cargo even without a bill of lading, and the "shipping receipt" would be sufficient.</u>
c. the only acceptable document of title is a Bill of Lading.
d. None of the above.

<u>SUGGESTED ANSWER:</u>

b. it is possible to have a contract of carriage of cargo even wiht

45. X took Philippine Airlines Flight PR 102 to Los Angeles, USA. She had two (2) luggage checked-in and was issued two (2) baggage checks. When X reached Los Angeles one (1) of the two (2) checked in luggage could not be found. Which statement is most accurate?

a. <u>PAL is liable for the loss of the checked- in luggage under the provisions of the Warsaw Convention on Air Transport.</u>
b. PAL is liable for the loss only if the baggage check expressly states that the airline shall be liable in case of loss.
c. PAL cannot be held liable because that is the risk that a passenger takes when she checks- in her baggage.
d. PAL can only be held liable if it can be proven that PAL was negligent.

<u>SUGGESTED ANSWER:</u>

a. PAL is liable for the loss of the checked-in-luggage under the provisions of the Warsaw Convention on Air Transport.

46. X owns a passenger jeepney covered by Certificate of Public Convenience. He allowed Y to use its Certificate of Convenience for a consideration. Y therefore was operating the passenger jeepney under the same Certificate of Public Convenience

(Kabit System) under the name of X. The passenger jeepney met an accident. Who will be liable?

a. Y, the one actually operating the jeepney, will be liable to the injured party.
b. <u>X will be the one liable to the injured party despite the fact that it is Y who is actually operating the jeepney, because while the Kabit System is tolerated, the public should not be inconvenienced by the arrangement.</u>
c. X will not be held liable if he can prove that he is not the owner anymore.
d. Public Policy dictates that the real owner, even not the registered one, will be held liable.

<u>SUGGESTED ANSWER:</u>

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

47. X owns a fleet of taxicabs. He operates it through what is known as boundary system. Y drives one of such taxicabs and pays X a fixed amount of Php1 ,000 daily under the boundary system. This means that anything above Php1 ,000 would be the earnings of Y. Y, driving recklessly, hit an old lady crossing the street. Which statement is most accurate?

a. X as the owner is exempt from liability because he was not the one driving.
b. X as the owner is exempt from liability because precisely the arrangement is one under the "boundary system".
c. <u>X will not be exempt from liability because he remains to be the registered owner and the boundary system will not allow the circumvention of the law to avoid liability.</u>
d. Y is the only one liable because he drove recklessly.

<u>SUGGESTED ANSWER:</u>

c. X will not be exempt from liability because he remains to be the registered owner and the boundary system will not allow the circumvention of the law to avoid liability.

48. The Articles of Incorporation of AAA Corporation was approved by the Securities and Exchange

Commission (SEC). After the receipt of the Certificate of Approval from the SEC, AAA Corporation decided to immediately start the operation of its business despite the fact that it has no approved By-Laws. What is the legal status of the AAA Corporation?

a. <u>A de jure corporation;</u>

b. A de facto corporation;

c. A corporation by estoppel;

d. An unregistered corporation.

<u>SUGGESTED ANSWER:</u>

a. A de jure corporation

49. X, the President of ZZZ Corporation, was authorized by the Board of Directors of ZZZ Corporation to obtain a loan from YYY Bank and to sign documents in behalf of the corporation. X personally negotiated for the loan and got tile loan at very low interest rates. Upon maturity of the loan, ZZZ Corporation was unable to pay. Which statement is most accurate?

a. Because X was personally acting in behalf of the Corporation, he can be held personally liable.

b. <u>X, as President, cannot be personally held liable for the obligation of the corporation even though he signed all the loan documents, because the loan was authorized by the Board.</u>

c. YYY Bank can choose as to who it wants to hold liable for the loan.

d. If ZZZ Corporation cannot pay, X can be held subsidiarity liable.

<u>SUGGESTED ANSWER:</u>

b. X, as President, cannot be personally held liable for the obligation of the corporation even though he signed all the loan documents, because the loan was authorized by the Board.

50. X owns 99% of the capital stock of SSS Corporation. X also owns 99% of TTT Corporation. SSS Corporation obtained a loan from VW Bank. On due date, SSS Corporation defaulted. TTT Corporation is financiallyhealthy. Which statement is most accurate?

a. X being a controlling owner of SSS Corporation can automatically be held personally liable for the loan of SSS Corporation.

b. TTT Corporation, owned 99% by X, can automatically be held liable.

c. <u>SSS Corporation and TTT Corporation, although both are owned by X, are two (2) distinct corporations with separate juridical personalities hence, the TTT Corporation cannot automatically be held liable for the loan of SSS Corporation.</u>

d. The principle of piercing the veil of corporate fiction can be applied in this case.

<u>SUGGESTED ANSWER:</u>

c. SSS Corporation and TTT corporation, although both are owned by X, are two (2) distinct corporation with the separate juridical personalities hence, the TTT Corporation cannot automatically be held liable for the loan of SSS corporation.

51. A corporation generally can issue both par value stock and no par value stock. These are all fixed in the Articles of Incorporation of the corporation. Which of the following corporations may not be allowed to issue no par value shares?
    a. Insurance companies;
    b. <u>Banks;</u>
    c. Trust companies;
    d. All of the above.

<u>SUGGESTED ANSWER:</u>

b. Banks

52. Father X, an American priest who came from New York, registered the Diocese of Bacolod of the Roman Catholic Church which was incorporated as a corporation sole. There were years when the head of the Diocese was a Filipino, but there were more years when the heads were foreigners. Today, the head is an American again. Y donated a piece of land located in Bacolod City for use as a school. Which statement is most accurate?
    a. The Register of Deeds of Bacolod City can refuse to register and transfer the title because the present head of the corporation sole is not a Filipino.
    b. The nationality of a corporation sole depends upon the nationality of the head at any given time.
    c. <u>A corporation sole, regardless of the nationality of the head, can acquire real property either by sale or donation.</u>
    d. A corporation sole is not legally allowed to own real property.

SUGGESTED ANSWER:

c. A corporation sole, regardless of the nationality of the head, can acquire real property either by sale or donation.

53. The number of the Board of Trustees of a non-stock, non-profit educational institution should be ---
    a. five (5) only
    b. any number for as long as it is not less than five (5) and no more than eleven (11)
    c. **any number in multiples of five (5), for as long as it is not less than five (5) and no more than fifteen (15)**.
    d. not less than five (5) nor more than ten (1 0) in multiples of five (5).

SUGGESTED ANSWER:

c. Any number in multiples of five (5), for as long as it is not less than five (5) and no more than fifteen (15)

54. X subscribed 10,000 shares in the capital stocks of AAA Corporation. He paid 50% of the 10,000 shares. X asked the Corporate Secretary to issue him the corresponding stock certificate representing the 50% of what he already paid. The Corporate Secretary of the corporation refused. Was the Corporate Secretary correct?
    a. **The Corporate Secretary is correct because the Corporation Code provides that no certificate of stock shall be issued to a subscriber until the shares as subscribed have been fully paid.**
    b. The Corporate Secretary cannot refuse because a Stock Certificate can be issued corresponding to the percentage of shares which were paid.
    c. The Corporate Secretary cannot refuse because a Certificate of Stock can be issued provided it is indicated in the Certificate the actual percentage of what has been paid.
    d. The Corporate Secretary cannot refuse because it is his legal duty to issue a stock certificate corresponding to the number of shares actually subscribed regardless of the actual payment.

SUGGESTED ANSWER:

a. The Corporate Secretary is correct because the Corporation Code provides that no certificate of stock shall be issued to a subscriber until the shares as subscribed have been fully paid.

55. XXX Corporation and YYY Corporation have agreed to be merged into one corporation. To facilitate the merger, both corporations agreed that the merger be made effective on May 31,2012. The Securities and Exchange Commission (SEC) approved the Articles of Merger on June 30, 2012. Which statement is most accurate?
    a. The effective date of the merger is May 31, 2012, the date stipulated by the parties as the effective date.
    b. <u>The effective date of the merger is always the date of the approval of the Articles of Merger by the SEC.</u>
    c. The effective date of the merger would be the date approved by the Board of Directors and the stockholders.
    d. The stockholders and the Board of Directors can set the effective date of the merger anytime after the approval of the SEC.

<u>SUGGESTED ANSWER:</u>

b. The effective date of the merger is always the date of the approval of the Articles of Merger by the SEC.

56. AAA Corporation is a wholly owned subsidiary of BBB Corporation. To support the business of AAA Corporation, BBB Corporation agreed to give its corporate guarantee to the loan of AAA Corporation. What is required so that the corporate guarantee will be valid?
    a. <u>It only requires the approval of the Board of Directors of BBB Corporation.</u>
    b. The Articles of Incorporation must provide such power and be approved by the Board of Directors.
    c. Providing corporate guarantee to another corporation is a necessary exercise of power of a corporation.
    d. It would require both the approval of the Board of Directors and the stockholders on record.

SUGGESTED ANSWER:

a. It only requires the approval of the Board of Directors of BBB Corporation.

57. The capital stock of ABC Corporation is divided into common shares and preferred shares. Preferred shares are preferred as to dividends and common shares are those shares which have the regular and ordinary attributes of a share of a corporation. Which statement is most accurate?
    a. This kind of classification may not be allowed or else it will violate the Doctrine of Equality of shares.
    b. Classifications of shares may be allowed for as long as it is clearly stated as such in the Articles of Incorporation of the Corporation.
    c. Classifications of shares is mainly for business purpose to attract investors.
    d. Classifications of shares may be allowed with the approval of the stockholders and the Board of Directors.

SUGGESTED ANSWER:

b. Classification of shares may be allowed for as long as it is clearly stated as such in the Articles of Incorporation of the Corporation.

58. ABC Corporation declared stock dividends to its stockholders. The stock dividends were approved by the Board of Directors of ABC Corporation. In the subsequent year however, the Board again approved the redemption of all stock dividends and to pay the shareholdings in cash. Which statement is most accurate?
    a. The redemption of the stock dividends can be validly approved by the Board without any conditions.
    b. The redemption of stock dividends may only be allowed if there are sufficient earnings and should not be violative of the trust fund doctrine.
    c. The redemption of the shares may be taken from the existing property and other assets of the corporation.
    d. None of the above.

Recommendation in respect of MCQ #58:

It is recommended that examinees be given full credit for whatever answer they give as the question is vague. It does not state that

stockholders representing at least two-thirds of the outstanding capital stock approved the declaration of stock dividends.

59. X sold all his shares in AAA Hotel Corporation to Y. X owns 99% of AAA Hotel Corporation. As the new owner, Y wanted a reorganization of the hotel which is to include primarily the separation of all existing employees and the hiring of new employees. Which statement is most accurate?
    a. With the change in ownership, in effect there is a new juridical entity and therefore all employees are considered separated.
    b. Despite the change in shareholder, there is actually no change in the juridical entity and therefore existing employees can not automatically be considered separated.
    c. Y, as the new shareholder, has the right to retain only those employees who in his judgment are qualified.
    d. For as long as the existing employees are given their separation pay, they can be terminated.

SUGGESTED ANSWER:

b. Despite the change in shareholder, there is actually no change in the juridical entity and therefore existing employees cannot automatically be considered separated.

60. South China Airlines is a foreign airline company. South China Airlines tickets are sold in the Philippines though Philippine Airlines as their general agent. South China Airlines is not registered to do business as such with the Philippine Securities and Exchange Commission. Which statement is most accurate?
    a. Although unlicensed to do business in the Philippines, South China Airlines can sue before the Philippine Courts and can also be sued.
    b. South China Airlines can sue but cannot be sued.
    c. South China Airlines cannot sue and cannot be sued also.
    d. South China Airlines can be sued in Philippine Courts but cannot sue.

SUGGESTED ANSWER:

d. South China Airlines can be sued in Philippine Courts but cannot sue.

61. So that ABC Corporation could venture into more projects, it needed to raise funds by issuing new shares to increase its capitalization. X, Y, Z, J and G are the five existing shareholders of the company. They hold 20% each. How will the additional shares be divided among the existing shareholders?
    a. **The existing shareholders can subscribe to the new shares equivalent to their existing shareholdings because the Corporation Code provides that each of the existing stockholders will have preemptive rights to the extent of their existing shareholdings.**
    b. The existing shareholders' preemptive rights is equivalent to the percentage that they want.
    c. Each of the existing shareholder can exercise their right of first refusal against each other.
    d. Preemptive rights and right of first refusal are one and the same.

SUGGESTED ANSWER:

a. The existing shareholders can subscribe to the new shares equivalent to their existing shareholdings because the Corporation Code provides that each of the existing stockholders will have preemptive rights to the extent of their existing shareholdings.

62. If ABC Corporation will increase its authorized capital stock, the Corporation Code requires -
    a. the approval of the majority of the Board of Directors only.
    b. the approval of the majority of the stockholders and the Board of Directors.
    c. the approval of 2/3 of the shareholders of the outstanding capital stock as well as the approval of the Securities and Exchange Commission.
    d. the approval of the majority of the Board of Directors and approval of the shareholders holding 2/3 share of the outstanding capital stock.

Recommendation in respect of MCQ #62:

It is recommended that examinees be given full credit for whatever answer they gave as

the question is vague. It does not state that the increase of the authorized capital stock also requires the approval of the SEC.

63. X is a minority stockholder of CCC Corporation. Y is a member of the Board of Directors of CCC Corporation and at the same time he is the President. X believes that Y is mismanaging CCC Corporation hence, as a stockholder and in behalf of the other stockholders, he wanted to sue Y. Which statement is most accurate?
    a. X can institute a derivative suit in behalf of himself as a stockholder.
    b. <u>A derivative suit must be instituted in behalf of the corporation.</u>
    c. Derivative suit is an exclusive remedy that X can institute.
    d. Derivative suit is not the remedy in this situation.

<u>SUGGESTED ANSWER:</u>

b. A derivative suit must be instituted in behalf of the corporation

64. The term GGG Corporation in accordance with its Articles of Incorporation ended last January 30, 2012. The term was not extended. What will happen to the corporation?
    a. <u>The corporation is dissolved ipso facto.</u>
    b. There is a need to pass a board resolution to formally dissolve the corporation.
    c. The Board of Directors must pass a resolution for the corporation to formally go into liquidation.
    d. The stockholders must pass a resolution to dissolve the corporation.

<u>SUGGESTED ANSWER:</u>

a. The corporation is dissolved ipso facto.

65. The term of one (1) year of the Board of Directors of AAA Corporation expired last February 15, 2012. No new election of the Board of Directors was called, hence, the existing members of Board continue as Directors in hold over capacity. Which statement is most accurate?
    a. <u>This is allowed provided there is a valid and justifiable reason for not calling for an election of the new members of the Board.</u>

b. This is not allowed because the term of the directors must only be for one (1) year.
c. The positions of the members of the Board of Directors will be automatically declared vacant.
d. Acting as members of the Board of Directors in a hold over capacity must be ratified by the stockholders.

SUGGESTED ANSWER:

a. This is allowed provided there is a valid and justifiable reason for not calling for an election of the new members of the Board.

66. AAA Corporation is a foreign corporation that wants to operate a representative office here in the Philippines. As required by the Corporation Code, there is a need to appoint a Resident Agent as a condition precedent to the issuance of a license to transact business in the Philippines. After two (2) years, AAA Corporation removed its Resident Agent and did not appoint anyone anymore. Which statement is the most accurate?
    a. **This can be a ground for revocation or suspension of its license to do business.**
    b. There is no more effect in the license because anyway at the time of registration, a resident agent was appointed.
    c. This can be a ground for suspension only.
    d. This will result in automatic revocation of its license to do business in the Philippines.

SUGGESTED ANSWER:

a. This can be a ground for revocation or suspension of its license to do business.

67. The By-laws of ABC Corporation is silent as to when a stockholder can be qualified to attend the meeting of the stockholders. The Corporate Secretary sent out the notice of the stockholders meeting two (2) days before the meeting and at that time X was not yet a stockholder. On the day of the meeting, however, X became a shareholder which was duly recorded in the stock and transfer book. Which statement is most accurate?
    a. **X is a stockholder of ABC Corporation as of the time of meeting of the stockholders for the**

purpose of electing the members of the board.

b. X is not qualified to elect members of the board because at the time the notice of the meeting was sent, she was not yet a stockholder.

c. Qualifications as to who are considered as stockholders on record for purposes of being able to elect members of the board are to be determined by the By-laws alone.

d. None of the above.

SUGGESTED ANSWER:

a. X is a stockholder of ABC Corporation as of the time of meeting of the stockholders for the purpose of election the members of the board

68. X, who is the Executive Vice President of ABC Corporation, a listed company, can be held liable or guilty of insider trading if, he -

a. bought shares of ABC Corporation when it was planning to acquire another company to improve its asset base, the news of which increased the price of the shares in the Stock Exchange.

b. bought shares of XYC Corporation, a sister company of ABC Corporation when he learned that XYC Corporation was about to also list its share in the Philippine Stock Exchange.

c. bought shares of ZZZ Corporation when he learned that ABC Corporation would acquire ZZZ Corporation.

d. All of the above.

SUGGESTED ANSWER:

d. All of the above.

69. The purpose of the "Tender Offer" Rule is to -

a. ensure an even playing field for all shareholders of a company in terms of opportunity to sell their shareholdings.

b. ensure that minority shareholders in a publicly listed company are protected in the sense that they will equally have the same opportunity as the majority shareholders in terms of selling their shares.

c. ensure that the shareholders who would also want to sell their shareholdings will have

the opportunity for a better price.

d. <u>All of the above.</u>

<u>SUGGESTED ANSWER:</u>

d. All of the above.

70. Section 38 of The Securities Regulation Code defines an independent director as a person who must not have a relation with the corporation which would interfere with his exercise of independent judgment in carrying out the responsibilities of a director. To ensure independence therefore, he must be -
    a. nominated and elected by the entire shareholders;
    b. nominated and elected by the minority shareholders;
    c. <u>nominated and elected by the majority shareholders;</u>
    d. appointed by the Board.

<u>SUGGESTED ANSWER:</u>

c. Nominated and elected by the majority shareholders;

71. "Securities" issued to the public are required by law to be registered with -
    a. the Bangko Sentral ng Pilipinas;
    b. the Philippine Stock Exchange;
    c. <u>the Securities and Exchange Commission;</u>
    d. the Securities and Exchange Commission and the Philippine Stock Exchange.

<u>SUGGESTED ANSWER:</u>

c. The Securities and Exchange Commission

72. The government agency granted with the power of supervision and examination over banks and non-bank financial institutions performing quasi-banking functions, to ensure that the conduct of its business is on a sound financial basis that will provide continued solvency and liquidity is -
    a. The Philippine Deposit Insurance Corporation;
    b. <u>The Bangko Sentral ng Pilipinas;</u>
    c. The Anti-Money Laundering Council;
    d. The Securities and Exchange Commission.

<u>SUGGESTED ANSWER:</u>

b. The Bangko Sentral ng Pilipinas

73. X maintains a savings deposit in the amount of Php·1 Million with ABC Bank Corporation. X also has obtained a loan from ABC Bank Corporation in the amount of Php1 Million. In case of default,
    a. **ABC Bank can set-off the loan from the savings account being maintained by X with ABC Bank.**
    b. Set-off is not possible because legal compensation is not allowed in banking transaction.
    c. Deposit accounts are usually earmarked for specific purpose hence offsetting is not legally possible.
    d. Off -setting is not possible because the obligation of X is a "simple loan".

SUGGESTED ANSWER:

a. ABC Bank can set-off the loan from the savings account being maintained by X with ABC bank.

74. XYZ Corporation is engaged in lending funds to small vendors in various public markets. To fund the lending, XYZ Corporation raised funds through borrowings from friends and investors. Which statement is most accurate?
    a. XYZ Corporation is a bank.
    b. **XYZ Corporation is a quasi-bank.**
    c. XYZ Corporation is an Investment Company.
    d. XYZ is none of the above.

SUGGESTED ANSWER:

b. XYZ Corporation is quasi-bank.

75. XXX Bank Corporation and ZZZ Corporation were merged into XX ZZ Bank Corporation. So as not to create any unnecessary conflict, all the former directors of both banks wanted to be appointed /elected as members of the Board of Directors of the merged bank. Each bank used to have eleven (11) members of the board. The maximum number of directors of the merged bank is -
    a. 15;
    b. 22;
    c. 21;
    d. 11.

SUGGESTED ANSWER:

c. 21

76. All senior officers of ABC Bank are entitled to obtain a housing loan. X is an Executive Vice President for Operations of ABC Bank. She obtained a housing loan with the

ABC Bank. Which statement is most accurate?

a. The housing loan of X requires a guarantor from somebody who is not connected with the bank.
b. The housing loan of X requires the approval of the Board of Directors of the bank.
c. The housing loan of X, being a benefit for employees, does not require (a) but will require (b).
d. <u>The housing loan of X, being a benefit for employees, will not require (a) and (b).</u>

<u>SUGGESTED ANSWER:</u>

d. The housing loan of X, being a benefit for employees, will not require (a) and (b).

77. ABC Holdings Company, a Hong Kong company, owns 10% of XYZ Bank. Because of the peace and order situation in the Philippines, ABC Holding Company wanted to sell its shareholdings in XYZ Bank. Unfortunately, nobody is interested to buy a 1 0% shareholdings in a bank. The board of directors of XYZ Bank thought that it would be a good idea to buy back the shares owned by ABC Holding Company. Which statement is most acurate?

a. Buying back the shares by XYZ Bank is absolutely not allowed.
b. <u>Buying back the shares may be allowed provided it is with the approval of the Monetary Board and disposed of within six (6) months.</u>
c. Buying back the shares may be allowed provided such shares 'will be disposed of within ten (1 0) years.
d. Buying back the shares may be done anytime provided the Board of Directors will approve the same.

<u>SUGGESTED ANSWER:</u>

b. Buying back the shares may be allowed provided it is with the approval of the Monetary Board and disposed of within six (6) months.

78. X is being charged for violation of Anti-Graft and Corrupt Practices because he is suspected of having accumulated unexplained wealth. X maintains deposit accounts with ABC Bank. The Ombudsman filed criminal cases against X before the Sandiganbayan. Can the Court issue subpoenas against ABC Bank

to produce all documents pertaining to all the deposit accounts of X?

a. **Yes, because there is already a pending case and provided the subpoena must be specific as to which account.**
b. Yes, it is enough that the specific bank is identified.
c. No, because the issuance of the subpoena has no real legal basis.
d. Even without a subpoena, information about the deposit accounts of X can be submitted to the Sandiganbayan because it will be used in a pending case.

SUGGESTED ANSWER:

a. Yes, because there is already a pending case and provided the subpoena must be specific as to which account.

79. X, a private individual, maintains a dollar deposit with ABC Bank. X is suspected to be the leader of a Kidnap for Ransom Gang and he is suspected of depositing all ransom money in said deposit account which are all in US Dollars. The police want to open said account to know if there are really deposits in big amounts. Which statement is most accurate?

a. **The same rules under Secrecy of Bank Deposit Act will apply.**
b. An approval from the Monetary Board is necessary to open the account.
c. Because the deposit is in US Dollars, it is covered by the Foreign Currency Deposit Act which allows disclosure only upon the written permission of the depositor.
d. Approval from the Court is necessary to order disclosure of the account.

SUGGESTED ANSWER:

a. The same rules under Secrecy of Bank deposit Act will apply.

80. X is a depositor of AAA Bank. She has three (3) deposit accounts all under her name. One, in checking account, one in saving account and another one in time deposit account. Each account has a balance of Php250,000. AAA Bank became insolvent. Philippine Deposit Insurance Corporation closed the Bank. X therefore is unable to withdraw from all of the accounts. She then filed her claims with the Philippine Deposit Insurance

Corporation. Which statement is most accurate?

a. **X can claim a total of Php500,000 for all the three (3) accounts.**
b. X can only claim from one (1) account of Php250,000.
c. X can claim a total of Php750,000 from all the three (3) accounts.
d. X cannot claim anything from any of the deposit accounts.

SUGGESTED ANSWER:

a. X can claim a total of Php 500,000 for all the three (3) accounts.

81. The Bank Secrecy Law (RA 1405) prohibits disclosing any information about deposit records of an individual without court order except -

a. **in an examination to determine gross estate of a decedent.**
b. in an investigation for violation of Anti-Graft and Corrupt Practices.
c. in an investigation by the Ombudsman.
d. in an impeachment proceeding.

SUGGESTED ANSWER:

a. In an examination to determine gross estate of a decedent.

82. X works as a research computer engineer with the Institute of Computer Technology, a government agency. When not busy with his work, but during office hours, he developed a software program for law firms that will allow efficient monitoring of the cases, which software program is not at all related to his work. Assuming the program is patentable, who has the right over the patent?

a. **X;**
b. Institute of Computer Technology;
c. Neither X nor the Institute of Computer Technology can claim patent right over the invention;
d. X and the employer of X will jointly have the rights over the patent.

SUGGESTED ANSWER:

a. X

83. The "test of dominancy" in the Law on Trademarks, is a way to determine whether there exists an infringement of a trademark by -

a. determining if the use of the mark has been dominant in the market.
b. <u>focusing on the similarity of the prevalent features of the competing marks which might create confusion.</u>
c. looking at the mark whether they are similar in size, form or color.
d. looking at the mark whether there is one specific feature that is dominant.

<u>SUGGESTED ANSWER:</u>

b. Focusing on the similarity of the prevalent features of the competing marks which might create confusion.

84. X's painting of Madonna and Child was used by her mother to print some personalized gift wrapper. As part of her mother's efforts to raise funds for Bantay Bata, the mother of X sold the wrapper to friends. Y, an entrepeneur, liked the painting in the wrapper and made many copies and sold the same through National Bookstore. Which statement is most accurate?
    a. Y can use the painting for his use because this is not a copyrightable material.
    b. <u>X can sue Y for infringement because artistic works are protected from moment of creation.</u>
    c. Works of art need to be copyrighted also to get protection under the law.
    d. Y can use the drawing even though not copyrighted because it is already a public property having been published already.

<u>SUGGESTED ANSWER:</u>

b. X can sue Y for infringement because artistic works are protected from moment of creation.

85. Compulsory Licensing of Inventions which are duly patented may be dispensed with or will be allowed exploitation even without agreement of the patent owner under certain circumstances, like national emergency, for reason of public interest, like national security, etc. The person who can grant such authority is -
    a. the Director General of the Intellectual Property Office;
    b. <u>the Director of Legal Affairs of the Intellectual Property Office;</u>
    c. the owner of the Patent right;

d. any agent of the owner of the Patent right.

SUGGESTED ANSWER:

b. the Director of Legal Affairs of the Intellectual Property Office;

86. The Fair Use Doctrine allows others to utilize copyrighted works under certain conditions. The factors to consider whether use is fair or not would be the purpose and character of the use, nature of the copyrighted work, amount and substantiality of the portions used, and what else?
    a. effect of the use upon the creator of the work.
    b. effect of the use upon the potential market of the work.
    c. effect of the use upon the public in general.
    d. effect of the use upon the class in which the creator belongs.

SUGGESTED ANSWER:

b. effect of the use upon the potential market of the work.

87. Which phrase best completes the statement - A chattel mortgage can be constituted to secure:
    a. obligations both past and future;
    b. obligations existing at the time the mortgage is constituted;
    c. future obligations only;
    d. past obligations only.

SUGGESTED ANSWER:

b. obligation existing at the time the mortgage is constituted;

88. Which phrase best completes the statement - A chattel mortgage can cover:
    a. only property described in the deed without exception;
    b. can also cover substituted property;
    c. properties described in the deed except in case of stock in trade being a substitute;
    d. after acquired property.

SUGGESTED ANSWER:

c. properties described in the deed except in case of stock in trade being a substitute;

89. Which phrase best completes the statement - The Deed of Chattel mortgage, if not registered with the



Register of Deeds where debtor resides:

a. is not valid, hence not binding between the mortgagor and the mortgagee;
b. <u>is binding between the mortgagor and the mortgagee but will not affect third party;</u>
c. to be valid between the mortgagor and the mortgagee, it must be coupled with the delivery of the subject matter of the chattel mortgage;
d. is as if a non-existent chattel mortgage.

<u>SUGGESTED ANSWER:</u>

b. is binding between the mortgagor and the mortgagee but will not affect third party.

90. Which phrase best completes the statement - To bind third parties, a chattel mortgage of shares of stock must be registered:

a. with the Register of Deeds where the debtor resides;
b. with the Register of Deeds where the principal office of the corporation is;
c. in the Stock and Transfer Book of the corporation with the Corporate Secretary;
d. <u>with the Register of Deeds where the debtor resides and the principal office of the corporation.</u>

<u>SUGGESTED ANSWER:</u>

d. With the Register of Deeds where the debtor resides and the principal office of the corporation.

91. Which phrase best completes the statement - The affidavit of good faith in a Deed of Chattel Mortgage is:

a. <u>an oath where the parties swear that the mortgage is made for the purpose of securing the obligations specified and that the obligation is just and valid;</u>
b. an affidavit, the absence of which will vitiate the mortgage between the parties;
c. necessary only if the chattel being mortgaged are growing crops;
d. a certification from the mortgagor that he is the mortgagor of the chattel.

<u>SUGGESTED ANSWER:</u>

a. an oath where then parties swear that the mortgage is made for the purpose of securing the obligations specified and that the obligation is just and valid.

92. X defaulted in his loan with Y. Y instituted extra-judicial foreclosure of the property subject of a real estate mortgage that secured the loan. X has one year within which to redeem the property. After the foreclosure, X filed an action questioning the validity of the extra-judicial foreclosure sale. Which statement is most accurate?
    a. The one (1) year period within which to redeem will be interrupted by the filing of an action questioning the validity of the foreclosure.
    b. <u>The one (1) year period will not be interrupted by the filing of the action.</u>
    c. The one (1) year period will be extended for another year because of the filing of an action questioning the validity of the foreclosure sale.
    d. If the action which questions the validity of the foreclosure prospers, the period will be interrupted.

<u>SUGGESTED ANSWER:</u>

b. the one (1) year period will not be interrupted by the filing of the action.

93. What is the effect if the. proceeds in an extra-judicial foreclosure sale is not sufficient to pay for the obligation?
    a. <u>the mortgagee can claim for deficiency judgment from the debtor.</u>
    b. the mortgagee can claim for deficiency judgment from the mortgagor even though it is a third party mortgage.
    c. the mortgagee has no more recourse or claim against the debtor.
    d. the mortgagee cannot claim for deficiency judgment from the debtor because its an extrajudicial foreclosure.

<u>SUGGESTED ANSWER:</u>

a. The mortgage can claim for deficiency judgement from the debtor.

94. X mortgaged her residential house and lot in favor of ABC Bank. X defaulted in her loan and so the bank foreclosed the real estate mortgage on the residential house. Y then bought the residential house and lot before the expiration of the

redemption period. Can Y now take possession of the property?

a. <u>No, because it is still covered by the redemption period and the purchaser is not yet entitled as a matter of right to take possession of the property.</u>

b. Yes, the purchaser is now entitled to the possession of the house.

c. No, because there is a need to talk to X to leave the house.

d. No, because Y was not the one who foreclosed the mortgage on the property.

<u>SUGGESTED ANSWER:</u>

a. No, because it is still covered by the redemption period and the purchaser is not yet entitled as a matter of right to take possession of the property.

95. Which phrase best completes the statement - When a debt is secured by a real estate mortgage, upon default of the debtor:

a. the only remedy of the creditor is to foreclose the real estate mortgage;

b. another remedy is filing an action for collection and then foreclose if collection is not enough;

c. <u>the creditor can foreclose the mortgage and demand collection for any deficiency;</u>

d. None of the above.

<u>SUGGESTED ANSWER:</u>

c. the creditor can foreclose the mortgage and demand collection for any deficiency.

96. XYZ Corporation bought ten (1 0) units of Honda Civic from CCC Corporation. ABC Bank granted a loan to XYC Corporation which executed a financing agreement which provided for the principal amount, the installment payments, the interest rates and the due dates. On due dates of the installment payments, XYZ Corporation was asked to pay for some handling charges and other fees which were not mentioned in the Financing Agreement. Can XYC Corporation refuse to pay the same?

a. No, because handling charges and other fees are usual in certain banking transactions.

b. <u>Yes, because ABC Bank is required to provide XYZ Corporation not only the</u>



amount of the monthly installments but also the details of the finance charges as required by the Truth in Lending Act.

c. No, because the Finance Agreement is a valid document to establish the existence of the obligation.

d. Yes, because legally, finance charges are never allowed in any banking transaction.

SUGGESTED ANSWER:

b. Yes, because ABC Bank is required to provide XYZ Corporation not only the amount of the monthly installments but also the details of the finance charges as required by the Truth in Lending Act.

97. Which of the following is an exception to the secrecy of bank deposits which are in Philippine Pesos, but NOT an exception to the secrecy of foreign currency deposits?

a. Upon BangkoSentralngPilipinas (SSP) inquiry into or examination of deposits or investments with any bank, when the inquiry or examination is made in the course of the SSP's periodic special examination of said bank to ensure compliance with the Anti-Money Laundering Act (AMLA);

b. Upon Philippine Deposit Insurance Corporation (PDIC) and SSP inquiry into and examination of deposit accounts in case there is a finding of unsafe or unsound banking practice;

c. Upon inquiry in cases of impeachment;

d. Upon inquiry by the Commissioner of Internal Revenue in the event a taxpayer files an application to compromise his tax liabilities on the ground of financial incapacity.

SUGGESTED ANSWER:

c. Upon inquiry in cases of impeachment.

98. The Anti-Money Laundering Law is a law that seeks to prevent money laundering activities by providing for more transparency in the Philippine Financial System, hence the



following institutions are covered by the law, except:

a. bank and any financial institutions;
b. pawnshops;
c. <u>casino operators;</u>
d. All of the above.

<u>SUGGESTED ANSWER:</u>

c. casino operators

99. For purposes of determining violation of the prov1s1ons of Anti-Money Laundering Law, a transaction is considered as a "Suspicious Transaction" with "Covered Institutions" regardless of the amount involved, where which the following circumstances exist/s?

a. the amount involved is not commensurate with the client's business or financial capacity;
b. there is no underlying legal or trade obligation, purpose or economic justification;
c. client is not properly identified;
d. <u>All of the above.</u>

<u>SUGGESTED ANSWER:</u>

d. all of the above

100. The main feature of the Foreign Investment Act of 1991 is to introduce the concept of "Negative Lists". Under the said law, what is a "Negative List"?

a. <u>It is a list of business activities or enterprises in the Philippines that foreigners are disqualified to engage in.</u>
b. It is a list of business activities or enterprises in the Philippines that foreigners are qualified to engage in.
c. It is a list of business activities or enterprises that are open to foreign investments provided it is with the approval of the Board of Investment.
d. It is a list of business activities or enterprises that are open to foreign investments provided it is with the approval of the Securities and Exchange Commission.

<u>SUGGESTED ANSWER:</u>

a. It is a list of business activities or enterprises in the Philippines that foreigners are disqualified to engage in.



2011 Mercantile Law Exam MCQ (November 20, 2011)

(1) P rode a Sentinel Liner bus going to Baguio from Manila. At a stop-over in Tarlac, the bus driver, the conductor, and the passengers disembarked for lunch. P decided, however, to remain in the bus, the door of which was not locked. At this point, V, a vendor, sneaked into the bus and offered P some refreshments. When P rudely declined, V attacked him, resulting in P suffering from bruises and contusions. Does he have cause to sue Sentinel Liner?

(A) Yes, since the carrier's crew did nothing to protect a passenger who remained in the bus during the stop-over.

(B) No, since the carrier's crew could not have foreseen the attack.

(C) Yes, since the bus is liable for anything that goes wrong in the course of a trip.

(D) No, since the attack on P took place when the bus was at a stop-over.

(2) A cargo ship of X Shipping, Co. ran aground off the coast of Cebu during a storm and lost all its cargo amounting to Php50 Million. The ship itself suffered damages estimated at Php80 Million. The cargo owners filed a suit against X Shipping but it invoked the doctrine of limited liability since its vessel suffered an Php80 Million damage, more than the collective value of all lost cargo. Is X Shipping correct?

(A) Yes, since under that doctrine, the value of the lost cargo and the damage to the ship can be set-off.

(B) No, since each cargo owner has a separate and individual claim for damages.

(C) Yes, since the extent of the ship's damage was greater than that of the value of the lost cargo.

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

(3) A writes a promissory note in favor of his creditor, B. It says: "Subject to my option, I promise to pay B Php1 Million or his order or give Php1 Million worth of cement or to authorize him to sell my house worth Php1 Million. Signed, A." Is the note negotiable?

(A) No, because the exercise of the option to pay lies with A, the maker and debtor.

(B) No, because it authorizes the sale of collateral securities in case the note is not paid at maturity.

(C) Yes, because the note is really payable to B or his order, the other provisions being merely optional.

(D) Yes, because an election to require something to be done in lieu of payment of money does not affect negotiability.

(4) ABC Corp. increased its capital stocks from Php10 Million to Php15 Million and, in the process, issued 1,000 new shares divided into Common Shares "B" and Common Shares "C." T, a stockholder owning 500 shares, insists on buying the newly issued shares through a right of pre-emption. The company claims, however, that its By-laws deny T any right of pre-emption. Is the corporation correct?

(A) No, since the By-Laws cannot deny a shareholder his right of pre-emption.

(B) Yes, but the denial of his pre-emptive right extends only to 500 shares.

(C) Yes, since the denial of the right under the By-laws is binding on T.

(D) No, since pre-emptive rights are governed by the articles of incorporation.

(5) M makes a promissory note that states: "I, M, promise to pay Php5,000.00 to B or bearer. Signed, M." M negotiated the note by delivery to B, B to N, and N to O. B had known that M was bankrupt when M issued the note. Who would be liable to O?

(A) M and N since they may be assumed to know of M's bankruptcy

(B) N, being O's immediate negotiator of a bearer note

(C) B, M, and N, being indorsers by delivery of a bearer note

(D) B, having known of M's bankruptcy

(6) S delivered 10 boxes of cellphones to Trek Bus Liner, for transport from Manila to Ilocos Sur on the following day, for which S paid the freightage. Meanwhile, the boxes were stored in the bus liner's bodega. That night, however, a robber broke into the bodega and stole S's boxes. S sues Trek Bus Liner for contractual breach but the latter argues that S has no cause of action based on such breach since the loss occurred while the goods awaited transport. Who is correct?

(A) The bus liner since the goods were not lost while being transported.

(B) S since the goods were unconditionally placed with T for transportation.

(C) S since the freightage for the goods had been paid.

(D) The bus liner since the loss was due to a fortuitous event.

(7) X Corp. operates a call center that received orders for pizzas on behalf of Y Corp. which operates a chain of pizza restaurants. The two companies have the same set of corporate officers. After 2 years, X Corp. dismissed its call agents for no apparent reason. The agents filed a collective suit for illegal dismissal against both X Corp. and Y Corp. based on the doctrine of piercing the veil of corporate fiction. The latter set up the defense that the agents are in the employ of X Corp. which is a separate juridical entity. Is this defense appropriate?

(A) No, since the doctrine would apply, the two companies having the same set of corporate officers.

(B) No, the real employer is Y Corp., the pizza company, with X Corp. serving as an arm for receiving its outside orders for pizzas.

(C) Yes, it is not shown that one company completely dominates the finances, policies, and business practices of the other.

(D) Yes, since the two companies perform two distinct businesses.

(8) A negotiable instrument can be indorsed by way of a restrictive indorsement, which prohibits further negotiation and constitutes the indorsee as agent of the indorser. As agent, the indorsee has the right, among others, to

(A) demand payment of the instrument only.

(B) notify the drawer of the payment of the instrument.

(C) receive payment of the instrument.

(D) instruct that payment be made to the drawee.

(9) Under the Negotiable Instruments Law, a signature by procuration operates as a notice that the agent has but a limited authority to sign. Thus, a person who takes a bill that is drawn, accepted, or indorsed by procuration is duty-bound to inquire into the extent of the agent's authority by:

(A) examining the agent's special power of attorney.

(B) examining the bill to determine the extent of such authority.

(C) asking the agent about the extent of such authority.

(D) asking the principal about the extent of such authority.

(10) Under the Negotiable Instruments Law, if the holder has a lien on the instrument which arises either from a contract or by implication of law, he would be a holder for value to the extent of

(A) his successor's interest.

(B) his predecessor's interest.

(C) the lien in his favor.

(D) the amount indicated on the instrument's face.

(11) The liability of a common carrier for the goods it transports begins from the time of

(A) conditional receipt.

(B) constructive receipt.

(C) actual receipt.

(D) either actual or constructive receipt.

(12) On X's failure to pay his loan to ABC Bank, the latter foreclosed the Real Estate Mortgage he executed in its favor. The auction sale was set for Dec. 1, 2010 with the notices of sale published as the law required. The sale was, however, cancelled when Dec. 1, 2010 was declared a holiday and re-scheduled to Jan. 10, 2011 without republication of notice. The auction sale then proceeded on the new date. Under the circumstances, the auction sale is

(A) rescissible.

(B) unenforceable.

(C) void.

(D) voidable.

(13) X executed a promissory note with a face value of Php50,000.00, payable to the order of Y. Y indorsed the note to Z, to whom Y owed Php30,000.00. If X has no defense at all against Y, for how much may Z collect from X?

(A) Php20,000.00, as he is a holder for value to the extent of the difference between Y's debt and the value of the note.

(B) Php30,000.00, as he is a holder for value to the extent of his lien.

(C) Php50,000.00, but with the obligation to hold Php20,000.00 for Y's benefit.

(D) None, as Z's remedy is to run after his debtor, Y.

(14) Under the Anti-Money Laundering Law, a covered institution is required to maintain a system of verifying the true identity of their clients as well as persons purporting to act on behalf of

(A) those doing business with such clients.

(B) unknown principals.

(C) the covered institution.

(D) such clients.

(15) It is settled that neither par value nor book value is an accurate indicator of the fair value of a share of stock of a corporation. As to unpaid subscriptions to its shares of stock, as they are regarded as corporate assets, they should be included in the

(A) capital value.

(B) book value.

(C) par value.

(D) market value.

(16) P sold to M 10 grams of shabu worth Php5,000.00. As he had no money at the time of the sale, M wrote a promissory note promising to pay P or his order Php5,000. P then indorsed the note to X (who did not know about the shabu), and X to Y. Unable to collect from P, Y then sued X on the note. X set up the defense of illegality of consideration. Is he correct?

(A) No, since X, being a subsequent indorser, warrants that the note is valid and subsisting.

(B) No, since X, a general indorser, warrants that the note is valid and subsisting.

(C) Yes, since a void contract does not give rise to any right.

(D) Yes, since the note was born of an illegal consideration which is a real defense.

(17) In a contract of carriage, the common carrier is liable for the injury or death of a passenger resulting from its employee's fault although the latter acted beyond the scope of his authority. This is based on the

(A) rule that the carrier has an implied duty to transport the passenger safely.



(B) rule that the carrier has an express duty to transport the passenger safely

(C) Doctrine of Respondeat Superior.

(D) rule in culpa aquiliana.

(18) A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves. An example of such a defense is -

(A) <u>fraud in inducement.</u>

(B) duress amounting to forgery.

(C) fraud in esse contractus.

(D) alteration.

(19) In elections for the Board of Trustees of non-stock corporations, members may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. This is true -

(A) unless set aside by the members in plenary session.

(B) in every case even if the Board of Trustees resolves otherwise.

(C) <u>unless otherwise provided in the Articles of Incorporation or in the By-laws.</u>

(D) in every case even if the majority of the members decide otherwise during the elections.

(20) The rule is that the valuation of the shares of a stockholder who exercises his appraisal rights is determined as of the day prior to the date on which the vote was taken. This is true -

(A) <u>regardless of any depreciation or appreciation in the share's fair value.</u>

(B) regardless of any appreciation in the share's fair value.

(C) regardless of any depreciation in the share's fair value.

(D) only if there is no appreciation or depreciation in the share's fair value.

(21) T Shipping, Co. insured all of its vessels with R Insurance, Co. The insurance policies stated that the insurer shall answer for all damages due to perils of the sea. One of the insured's ship, the MV Dona Priscilla, ran aground in the Panama Canal when its engine pipes leaked and the oil seeped into the cargo compartment. The leakage was caused by the extensive mileage that the ship had accumulated. May the insurer be made to answer for the damage to the cargo and the ship?

(A) Yes, because the insurance policy covered any or all damage arising from perils of the sea.

(B) Yes, since there appears to have been no fault on the part of the shipowner and shipcaptain.

(C) No, since the proximate cause of the damage was the breach of warranty of seaworthiness of the ship.

(D) No, since the proximate cause of the damage was due to ordinary usage of the ship, and thus not due to a peril of the sea.

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

(A) Yes, since X and Y render services to Z.

(B) No, since X and Y have no pecuniary interest on the life of Z arising from their employment with him.

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

(D) Yes, since X and Y are Z's employees.

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

(A) No one, as there is merely a partnership contract among A, B and C.

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

(C) Only C, as he is an industrial partner.

(D) Only B, as he is a capitalist partner.

(24) X is the holder of an instrument payable to him (X) or his order, with Y as maker. X then indorsed it as follows: "Subject to no recourse, pay to Z. Signed, X." When Z went to collect from Y, it turned out that Y's signature was forged. Z now sues X for collection. Will it prosper?

(A) Yes, because X, as a conditional indorser, warrants that the note is genuine.

(B) <u>Yes, because X, as a qualified indorser, warrants that the note is genuine.</u>

(C) No, because X made a qualified indorsement.

(D) No, because a qualified indorsement does not include the warranty of genuineness.

(25) A bill of exchange has T for its drawee, U as drawer, and F as holder. When F went to T for presentment, F learned that T is only 15 years old. F wants to recover from U but the latter insists that a notice of dishonor must first be made, the instrument being a bill of exchange. Is he correct?

(A) Yes, since a notice of dishonor is essential to charging the drawer.

(B) No, since T can waive the requirement of notice of dishonor.

(C) <u>No, since F can treat U as maker due to the minority of T, the drawee.</u>

(D) Yes, since in a bill of exchange, notice of dishonor is at all times required.

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

(A) at the time of the issuance of the policy.

(B) at any time before the payment of premium.

(C) at the time of the payment of the premium.

(D) <u>at any time before the policy becomes effective.</u>

(27) T, the captain of MV Don Alan, while asleep in his cabin, dreamt of an Intensity 8 earthquake along the path of his ship. On waking up, he immediately ordered the ship to return to port. True enough, the earthquake and tsunami struck three days later and his ship was saved. Was the deviation proper?

(A) Yes, because the deviation was made in good faith and on a reasonable ground for believing that it was necessary to avoid a peril.

(B) <u>No, because no reasonable ground for avoiding a peril existed at the time of the deviation.</u>

(C) No, because T relied merely on his supposed gift of prophecy.

(D) Yes, because the deviation took place based on a reasonable belief of the captain.

(28) X, drawee of a bill of exchange, wrote the words: "Accepted, with promise to make payment within two days. Signed, X." The drawer questioned the acceptance as invalid. Is the acceptance valid?

(A) Yes, because the acceptance is in reality a clear assent to the order of the drawer to pay.

(B) Yes, because the form of the acceptance is really immaterial.

(C) No, because the acceptance must be a clear assent to the order of the drawer to pay.

(D) No, because the document must not express that the drawee will perform his promise within two days.

(29) X came up with a new way of presenting a telephone directory in a mobile phone, which he dubbed as the "iTel" and which uses lesser time for locating names and telephone numbers. May X have his "iTel" copyrighted in his name?

(A) No, because it is a mere system or method.

(B) Yes, because it is an original creation.

(C) Yes, because it entailed the application of X's intellect.

(D) No, because it did not entail any application of X's intellect.

(30) D, debtor of C, wrote a promissory note payable to the order of C. C's brother, M, misrepresenting himself as C's agent, obtained the note from D, then negotiated it to N after forging C's signature. N indorsed it to E, who indorsed it to F, a holder in due course. May F recover from E?

(A) No, since the forgery of C's signature results in the discharge of E.

(B) Yes, since only the forged signature is inoperative and E is bound as indorser.

(C) No, since the signature of C, the payee, was forged.

(D) Yes, since the signature of C is immaterial, he being the payee.

(31) A material alteration of an instrument without the assent of all parties liable thereon results in its avoidance, EXCEPT against a

(A) prior indorsee.



(B) subsequent acceptor.

(C) subsequent indorser.

(D) prior acceptor.

(32) X constituted a chattel mortgage on a car (valued at Php1 Million pesos) to secure a P500,000.00 loan. For the mortgage to be valid, X should have

(A) the right to mortgage the car to the extent of half its value.

(B) ownership of the car.

(C) unqualified free disposal of his car.

(D) registered the car in his name.

(33) B borrowed Php1 million from L and offered to him his BMW car worth Php1 Million as collateral. B then executed a promissory note that reads: "I, B, promise to pay L or bearer the amount of Php1 Million and to keep my BMW car (loan collateral) free from any other encumbrance. Signed, B." Is this note negotiable?

(A) Yes, since it is payable to bearer.

(B) Yes, since it contains an unconditional promise to pay a sum certain in money.

(C) No, since the promise to just pay a sum of money is unclear.

(D) No, since it contains a promise to do an act in addition to the payment of money.

(34) A bank can be placed under receivership when, if allowed to continue in business, its depositors or creditors would incur

(A) probable losses

(B) inevitable losses

(C) possible losses

(D) a slight chance of losses

(35) EFG Foundation, Inc., a non-profit organization, scheduled an election for its six-member Board of Trustees. X, Y and Z, who are minority members of the foundation, wish to exercise cumulative voting in order to protect their interest, although the Foundation's Articles and By-laws are silent on the matter. As to each of the three, what is the maximum number of votes that he/she can cast?

(A) 6

(B) 9

(C) 12



(D) 3

(36) If the drawer and the drawee are the same person, the holder may present the instrument for payment without need of a previous presentment for acceptance. In such a case, the holder treats it as a

(A) non-negotiable instrument.

(B) promissory note.

(C) letter of credit.

(D) check.

(37) D draws a bill of exchange that states: "One month from date, pay to B or his order Php100,000.00. Signed, D." The drawee named in the bill is E. B negotiated the bill to M, M to N, N to O, and O to P. Due to non-acceptance and after proceedings for dishonor were made, P asked O to pay, which O did. From whom may O recover?

(A) B, being the payee

(B) N, as indorser to O

(C) E, being the drawee

(D) D, being the drawer

(38) T, an associate attorney in XYZ Law Office, wrote a newspaper publisher a letter disputing a columnist's claim about an incident in the attorney's family. T used the law firm's letterhead and its computer in preparing the letter. T also requested the firm's messenger to deliver the letter to the publisher. Who owns the copyright to the letter?

(A) T, since he is the original creator of the contents of the letter.

(B) Both T and the publisher, one wrote the letter to the other who has possession of it.

(C) The law office since T was an employee and he wrote it on the firm's letterhead.

(D) The publisher to whom the letter was sent.

(39) E received goods from T for display and sale in E's store. E was to turn over to T the proceeds of any sale and return the ones unsold. To document their agreement, E executed a trust receipt in T's favor covering the goods. When E failed to turn over the proceeds from his sale of the goods or return the ones unsold despite demand, he was charged in court for estafa. E moved to dismiss on the ground that his liability is only civil. Is he correct?

(A) No, since he committed fraud when he promised to pay for the goods and did not.

(B) No, since his breach of the trust receipt agreement subjects him to both civil and criminal liability for estafa.

(C) Yes, since E cannot be charged with estafa over goods covered a trust receipt.

(D) Yes, since it was merely a consignment sale and the buyer could not pay.

(40) The authorized alteration of a warehouse receipt which does not change its tenor renders the warehouseman liable according to the terms of the receipt

(A) in its original tenor if the alteration is material.

(B) in its original tenor.

(C) as altered if there is fraud.

(D) as altered.

(41) Any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument results in the discharge of the party secondarily liable unless made with the latter's consent. This agreement refers to one which the holder made with the

(A) principal debtor.

(B) principal creditor.

(C) secondary creditor.

(D) secondary debtor.

(42) Upon execution of a trust receipt over goods, the party who is obliged to release such goods and who retains security interest on those goods, is called the

(A) holder.

(B) shipper.

(C) entrustee.

(D) entrustor.

(43) X, warehouseman, sent a text message to Y, to whom X had issued a warehouse receipt for Y's 500 sacks of corn, notifying him of the due date and time to settle the storage fees. The message stated also that if Y does not settle the warehouse charges within 10 days, he will advertise the goods for sale at a public auction. When Y ignored the demand, X sold 100 sacks of corn at a public auction. For X's failure to comply with the statutory requirement of written notice to satisfy his lien, the sale of the 100 sacks of corn is

(A) voidable.

(B) rescissible.

(C) unenforceable.

(D) void.

(44) On June 1, 2011, X mailed to Y Insurance, Co. his application for life insurance, with payment for 5 years of premium enclosed in it. On July 21, 2011, the insurance company accepted the application and mailed, on the same day, its acceptance plus the cover note. It reached X's residence on August 11, 2011. But, as it happened, on August 4, 2011, X figured in a car accident. He died a day later. May X's heirs recover on the insurance policy?

(A) Yes, since under the Cognition Theory, the insurance contract was perfected upon acceptance by the insurer of X's application.

(B) No, since there is no privity of contract between the insurer and X's heirs.

(C) No, since X had no knowledge of the insurer's acceptance of his application before he died.

(D) Yes, since under the Manifestation Theory, the insurance contract was perfected upon acceptance of the insurer of X's application.

(45) A bill of exchange has D as drawer, E as drawee and F as payee. The bill was then indorsed to G, G to H, and H to I. I, the current holder presented the bill to E for acceptance. E accepted but, as it later turned out, D is a fictitious person. Is E freed from liability?

(A) No, since by accepting, E admits the existence of the drawer.

(B) No, since by accepting, E warrants that he is solvent.

(C) Yes, if E was not aware of that fact at the time of acceptance.

(D) Yes, since a bill of exchange with a fictitious drawer is void and inexistent.

(46) Due to his debt to C, D wrote a promissory note which is payable to the order of C. C's brother, M, misrepresenting himself as agent of C, obtained the note from D. M then negotiated the note to N after forging the signature of C. May N enforce the note against D?

(A) Yes, since D is the principal debtor.

(B) No, since the signature of C was forged.



(C) No, since it is C who can enforce it, the note being payable to the order of C.

(D) Yes, since D, as maker, is primarily liable on the note.

(47) T Corp. has a corporate term of 20 years under its Articles of Incorporation or from June 1, 1980 to June 1, 2000. On June 1, 1991 it amended its Articles of Incorporation to extend its life by 15 years from June 1, 1980 to June 1, 2015. The SEC approved this amendment. On June 1, 2011, however, T Corp decided to shorten its term by 1 year or until June 1, 2014. Both the 1991 and 2011 amendments were approved by majority vote of its Board of Directors and ratified in a special meeting by its stockholders representing at least 2/3 of its outstanding capital stock. The SEC, however, disapproved the 2011 amendment on the ground that it cannot be made earlier than 5 years prior to the expiration date of the corporate term, which is June 1, 2014. Is this SEC disapproval correct?

(A) No, since the 5-year rule on amendment of corporate term applies only to extension, not to shortening, of term.

(B) Yes, any amendment affecting corporate term cannot be made earlier than 5 years prior to the corporation's expiration date.

(C) No, since a corporation can in fact have a corporate life of 50 years.

(D) Yes, the amendment to shorten corporate term cannot be made earlier than 5 years prior to the corporation's expiration date.

(48) B, while drunk, accepted a passenger in his taxicab. B then drove the taxi recklessly, and inevitably, it crashed into an electric post, resulting in serious physical injuries to the passengers. The latter then filed a suit for tort against B's operator, A, but A raised the defense of having exercised extraordinary diligence in the safety of the passenger. Is his defense tenable?

(A) Yes, as a common carrier can rebut the presumption of negligence by raising such a defense.

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

(C) No, as B, the common carrier's employee, was obviously negligent due to his intoxication.

(D) Yes, as a common carrier can invoke extraordinary diligence in the safety of passengers in tort cases.

(49)X is a director in T Corp. who was elected to a 1-year term on Feb. 1, 2010. On April 11, 2010, X resigned and was replaced by R, who assumed as director on May 17, 2010. On Nov. 21, 2010, R died. S was then elected in his place. Until which time should S serve as director?

(A) April 11, 2011.

(B) Feb. 1, 2011.

(C) May 17, 2011.

(D) Nov. 21, 2011.

(50) M, the maker, issued a promissory note to P, the payee which states: "I, M, promise to pay P or order the amount of Php1 Million. Signed, M." P negotiated the note by indorsement to N, then N to O also by indorsement, and O to Q, again by indorsement. But before O indorsed the note to Q, O's wife wrote the figure "2" on the note after "Php1" without O's knowledge, making it appear that the note is for Php12 Million. For how much is O liable to Q?

(A) Php1 Million since it is the original tenor of the note.

(B) Php1 Million since he warrants that the note is genuine and in all respects what it purports to be.

(C) Php12 Million since he warrants his solvency and that he has a good title to the note.

(D) Php12 Million since he warrants that the note is genuine and in all respects what it purports to be.

(51) X Corp., whose business purpose is to manufacture and sell vehicles, invested its funds in Y Corp., an investment firm, through a resolution of its Board of Directors. The investment grew tremendously on account of Y Corp.'s excellent business judgment. But a minority stockholder in X Corp. assails the investment as ultra vires. Is he right and, if so, what is the status of the investment?

(A) Yes, it is an ultra vires act of the corporation itself but voidable only, subject to stockholders' ratification.

(B) Yes, it is an ultra vires act of its Board of Directors and thus void.

(C) Yes, it is an ultra vires act of its Board of Directors but voidable only, subject to stockholders' ratification.

(D) Yes, it is an ultra vires act of the corporation itself and, consequently, void.

(52) Notice of dishonor is not required to be made in all cases. One instance where such notice is not necessary is when the indorser is the one to whom the instrument is suppose to be presented for payment. The rationale here is that the indorser

(A) already knows of the dishonor and it makes no sense to notify him of it.

(B) is bound to make the acceptance in all cases.

(C) has no reason to expect the dishonor of the instrument.

(D) must be made to account for all his actions.

(53) "Eagleson Refillers, Co.," a firm that sells water to the public, opposes the trade name application of "Eagleson Laundry, Co.," on the ground that such trade name tends to deceive trade circles or confuse the public with respect to the water firm's registered trade name. Will the opposition prosper?

(A) Yes, since such use is likely to deceive or confuse the public.

(B) Yes, since both companies use water in conducting their business.

(C) No, since the companies are not engaged in the same line of business.

(D) No, since the root word "Eagle" is a generic name not subject to registration.

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

(A) actual.

(B) constructive first and if it fails, then actual.

(C) either actual or constructive.

(D) constructive.

(55) The Corporation Code sanctions a contract between two or more corporations which have interlocking directors, provided there is no fraud that attends it and it is fair and reasonable under the circumstances. The interest of an interlocking director in one corporation may be either substantial or nominal. It is nominal if his interest:

(A) does not exceed 25% of the outstanding capital stock.

(B) exceeds 25% of the outstanding capital stock.

(C) exceeds 20% of the outstanding capital stock.

(D) does not exceed 20% of the outstanding capital stock.

(56) X, an amateur astronomer, stumbled upon what appeared to be a massive volcanic eruption in Jupiter while peering at the planet through his telescope. The following week, X, without notes, presented a lecture on his findings before the Association of Astronomers of the Philippines. To his dismay, he later read an article in a science journal written by Y, a professional astronomer, repeating exactly what X discovered without any attribution to him. Has Y infringed on X's copyright, if any?

(A) No, since X did not reduce his lecture in writing or other material form.

(B) Yes, since the lecture is considered X's original work.

(C) No, since no protection extends to any discovery, even if expressed, explained, illustrated, or embodied in a work.

(D) Yes, since Y's article failed to make any attribution to X.

(57) In case of disagreement between the corporation and a withdrawing stockholder who exercises his appraisal right regarding the fair value of his shares, a three-member group shall by majority vote resolve the issue with finality. May the wife of the withdrawing stockholder be named to the threemember group?

(A) No, the wife of the withdrawing shareholder is not a disinterested person.

(B) Yes, since she could best protect her husband's shareholdings.

(C) Yes, since the rules do not discriminate against wives.

(D) No, since the stockholder himself should sit in the three-member group.

(58) Apart from economic rights, the author of a copyright also has moral rights which he may transfer by way of assignment. The term of these moral rights shall last

(A) during the author's lifetime and for 50 years after his death.

(B) forever.

(C) 50 years from the time the author created his work.

(D) during the author's lifetime.

(59) Which of the following indorsers expressly warrants in negotiating an instrument that 1) it is genuine and true; 2) he has a good title to it; 3) all prior parties have capacity to negotiate; and 4) it is valid and subsisting at the time of his indorsement?

(A) The irregular indorser.

(B) The regular indorser.

(C) The general indorser.

(D) The qualified indorser.

(60) Where the insurer was made to pay the insured for a loss covered by the insurance contract, such insurer can run after the third person who caused the loss through subrogation. What is the basis for conferring the right of subrogation to the insurer?

(A) Their express stipulation in the contract of insurance.

(B) The equitable assignment that results from the insurer's payment of the insured.

(C) The insured's formal assignment of his right to indemnification to the insurer.

(D) The insured's endorsement of its claim to the insurer.

(61) X invented a device which, through the use of noise, can recharge a cellphone battery. He applied for and was granted a patent on his device, effective within the Philippines. As it turns out, a year before the grant of X's patent, Y, also an inventor, invented a similar device which he used in his cellphone business in Manila. But X files an injunctive suit against Y to stop him from using the device on the ground of patent infringement. Will the suit prosper?

(A) No, since the correct remedy for X is a civil action for damages.

(B) No, since Y is a prior user in good faith.

(C) Yes, since X is the first to register his device for patent registration.

(D) Yes, since Y unwittingly used X's patented invention.

(62) P, a sales girl in a flower shop at the Ayala Station of the Metro Rail Transit (MRT) bought two tokens or tickets, one for her ride to work and another for her ride

home. She got to her flower shop where she usually worked from 8 a.m. to 5 p.m. At about 3 p.m., while P was attending to her duties at the flower shop, two crews of the MRT got into a fight near the flower shop, causing injuries to P in the process. Can P sue the MRT for contractual breach as she was within the MRT premises where she would shortly take her ride home?

(A) No, since the incident took place, not in an MRT train coach, but at the MRT station.

(B) No, since P had no intention to board an MRT train coach when the incident occured.

(C) Yes, since she already had a ticket for her ride home and was in the MRTs premises at the time of the incident.

(D) Yes, since she bought a round trip ticket and MRT had a duty while she was at its station to keep her safe for her return trip.

(63) Forgery of bills of exchange may be subdivided into, a) forgery of an indorsement on the bill and b) forgery of the drawer's signature, which may either be with acceptance by the drawee, or

(A) with acceptance but the bill is paid by the drawee.

(B) without acceptance but the bill is paid by the drawer.

(C) without acceptance but the bill is paid by the drawee.

(D) with acceptance but the bill is paid by the drawer.

(64) If an insurance policy prohibits additional insurance on the property insured without the insurer's consent, such provision being valid and reasonable, a violation by the insured

(A) reduces the value of the policy.

(B) avoids the policy.

(C) offsets the value of the policy with the additional insurances's value.

(D) forfeits premiums already paid.

(65) X found a check on the street, drawn by Y against ABC Bank, with Z as payee. X forged Z's signature as an indorser, then indorsed it personally and delivered it to DEF Bank. The latter, in turn, indorsed it to ABC Bank which charged it to the Y's account. Y later sued ABC Bank but it set up the forgery as its defense. Will it prosper?

(A) No, since the payee's signature has been forged.

(B) No, since Y's remedy is to run after the forger, X.

(C) Yes, since forgery is only a personal defense.

(D) Yes, since ABC Bank is bound to know the signature of Y, its client.

(66) The rule is that no stock dividend shall be issued without the approval of stockholders representing at least 2/3 of the outstanding capital stock at a regular or special meeting called for the purpose. As to other forms of dividends:

(A) a mere majority of the entire Board of Directors applies.

(B) a mere majority of the quorum of the Board of Directors applies.

(C) a mere majority of the votes of stockholders representing the outstanding capital stock applies.

(D) the same rule of 2/3 votes applies.

(67) X, at Y's request, executed a Real Estate Mortgage (REM) on his (X's) land to secure Y's loan from Z. Z successfully foreclosed the REM when Y defaulted on the loan but half of Y's obligation remained unpaid. May Z sue X to enforce his right to the deficiency?

(A) Yes, but solidarily with Y.

(B) Yes, since X's is deemed to warrant that his land would cover the whole obligation.

(C) No, since it is the buyer at the auction sale who should answer for the deficiency.

(D) No, because X is not Z's debtor.

(68) May a publicly listed universal bank own 100% of the voting stocks in another universal bank and in a commercial bank?

(A) Yes, if with the permission of the Bangko Sentral ng Pilipinas.

(B) No, since it has no power to invest in equities.

(C) Yes, as there is no prohibition on it.

(D) No, since under the law, the 100% ownership on voting stocks must be in either bank only.

(69) Perils of the ship, under marine insurance law, refer to loss which in the ordinary course of events results from

(A) natural and inevitable actions of the sea.

(B) natural and ordinary actions of the sea.

(C) unnatural and inevitable actions of the sea.

(D) unnatural and ordinary actions of the sea.

(70) Under the Intellectual Property Code, lectures, sermons, addresses or dissertations prepared for oral delivery, whether or not reduced in writing or other material forms, are regarded as

(A) non-original works.

(B) original works.

(C) derivative works.

(D) not subject to protection.

(71) Can a drawee who accepts a materially altered check recover from the holder and the drawer?

(A) No, he cannot recover from either of them.

(B) Yes from both of them.

(C) Yes but only from the drawer.

(D) Yes but only from the holder.

(72) The rule is that the intentional cancellation of a person secondarily liable results in the discharge of the latter. With respect to an indorser, the holder's right to cancel his signature is:

(A) without limitation.

(B) not limited to the case where the indorsement is necessary to his title.

(C) limited to the case where the indorsement is not necessary to his title.

(D) limited to the case where the indorsement is necessary to his title.

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

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

(B) No, since Y may be regarded as ABC's agent and he already knew of X's previous hospitalization.

(C) Yes, it would constitute concealment that amounts to misrepresentation on X's part.

(D) No, since the previous illness is not a material fact to the insurance coverage.

(74) Several American doctors wanted to set up a group clinic in the Philippines so they could render modern medical services. If the clinic is to be incorporated under our laws, what is the required foreign equity participation in such a corporation?

(A) 40%

(B) 0%

(C) 60%

(D) 70%

(75) X executed a promissory note in favor of Y by way of accommodation. It says: "Pay to Y or order the amount of Php50,000.00. Signed, X." Y then indorsed the note to Z, and Z to T. When T sought collection from Y, the latter countered as indorser that there should have been a presentment first to the maker who dishonors it. Is Y correct?

(A) No, since Y is the real debtor and thus, there is no need for presentment for payment and dishonor by the maker.

(B) Yes, since as an indorser who is secondarily liable, there must first be presentment for payment and dishonor by the maker.

(C) No, since the absolute rule is that there is no need for presentment for payment and dishonor to hold an indorser liable.

(D) Yes, since the secondary liability of Y and Z would only arise after presentment for payment and dishonor by the maker.

(76) The Board of Directors of XYZ Corp. unanimously passed a Resolution approving the taking of steps that in reality amounted to willful tax evasion. On discovering this, the government filed tax evasion charges against all the company's members of the board of directors. The directors invoked the defense that they have no personal liability, being mere directors of a fictional being. Are they correct?

(A) No, since as a rule only natural persons like the members of the board of directors can commit corporate crimes.

(B) Yes, since it is the corporation that did not pay the tax and it has a personality distinct from its directors.

(C) Yes, since the directors officially and collectively performed acts that are imputable only to the corporation.

(D) No, since the law makes directors of the corporation solidarily liable for gross negligence and bad faith in the discharge of their duties.

(77) T is the registered trademark owner of "CROCOS" which he uses on his ready-to-wear clothes. Banking on the popularity of T's trade mark, B came up with his own "CROCOS" mark, which he then used for his "CROCOS" burgers. T now sues B for trademark infringement but B argues that his product is a burger, hence, there is no infringement. Is B correct?

(A) No, since the owner of a well-known mark registered in the Philippines has rights that extends even to dissimilar kinds of goods.

(B) Yes, since the right of the owner of a well-known mark registered in the Philippines does not extend to goods which are not of the same kind.

(C) Yes, as B was in bad faith in coming up with his own "CROCOS" mark.

(D) No, since unlike T, he did not register his own "CROCOS" mark for his product.

(78) A, the proprietor of a fleet of ten taxicabs, decides to adopt, as his business name, "A Transport Co., Inc." May this be allowed?

(A) No, it would be deceptive since he is a proprietor, not a corporation.

(B) No, since "A" is a generic name, not suitable for registration.

(C) Yes, since his line of business is public transportation.

(D) Yes, since such name would give his business a corporate identity.

(79) T delivers two refrigerators to the warehouse of W who then issues a negotiable receipt undertaking the delivery of the refrigerators to "T or bearer." T entrusted the receipt to B for safekeeping only. B negotiated it, however, to F who bought it in good faith and for value. Who is entitled to the delivery of the refrigerators?

(A) T, since he is the real owner of the refrigerators.

(B) F, since he is a purchaser in good faith and for value.



(C) B, since T entrusted the receipt to him.

(D) W, since he has as a warehouseman a lien on the goods.

(80) The Articles of Incorporation must be accompanied by a Treasurer's Affidavit certifying under oath, among others, that the total subscription paid is:

(A) not less than P25,000.00.

(B) not more than P5,000.00.

(C) not less than P5,000.00.

(D) not more than P25,000.00.

(81) In a special meeting called for the purpose, 2/3 of the stockholders representing the outstanding capital stock in X. Co. authorized the company's Board of Directors to amend its By-laws. By majority vote, the Board then approved the amendment. Is this amendment valid?

(A) No since the stockholders cannot delegate their right to amend the By-laws to the Board.

(B) Yes since the majority votes in the Board was sufficient to amend the By-laws.

(C) No, because the voting in the Board should have been by majority of a quorum.

(D) Yes since the votes of 2/3 of the stockholders and majority of the Board were secured.

(82) A group of Malaysians wanted to invest in the Philippines' insurance business. After negotiations, they agreed to organize "FIMA Insurance Corp." with a group of Filipino businessmen. FIMA would have a PhP50 Million paid up capital, PhP40 Million of which would come from the Filipino group. All corporate officers would be Filipinos and 8 out of its 10-member Board of Directors would be Filipinos. Can FIMA operate an insurance business in the Philippines?

(A) No, since an insurance company must have at least PhP75 Million paid-up capital.

(B) Yes, since there is substantial compliance with our nationalization laws respecting paid-up capital and Filipino dominated Board of Directors.

(C) Yes, since FIMA's paid up capital more than meets the country's nationalization laws.

(D) No, since an insurance company should be 100% owned by Filipinos.

(83) Under the Public Service Act, an administrative agency has the power to approve provisionally the rates of public utilities without a hearing in case of urgent public needs. The exercise of this power is

(A) supervisory.

(B) absolute.

(C) discretionary.

(D) mandatory.

(84) X, creditor of Y, obtained a judgment in his favor in connection with Y's unpaid loan to him. The court's sheriff then levied on the goods that Y stored in T's warehouse, for which the latter issued a warehouse receipt. A month before the levy, however, Z bought the warehouse receipt for value. Who has a better right over the goods?

(A) T, being the warehouseman with a lien on the goods

(B) Z, being a purchaser for value of the warehouse receipt

(C) X, being Y's judgment creditor

(D) Y, being the owner of the goods

(85) A promissory note states, on its face: "I, X, promise to pay Y the amount of Php 5,000.00 five days after completion of the on-going construction of my house. Signed, X." Is the note negotiable?

(A) Yes, since it is payable at a fixed period after the occurrence of a specified event.

(B) No, since it is payable at a fixed period after the occurrence of an event which may not happen.

(C) Yes, since it is payable at a fixed period or determinable future time.

(D) No, since it should be payable at a fixed period before the occurrence of a specified event.

(86) P sold to M a pair of gecko (tuko) for Php50,000.00. M then issued a promissory note to P promising to pay the money within 90 days. Unknown to P and M, a law was passed a month before the sale that prohibits and declares void any agreement to sell gecko in the country. If X acquired the note in good faith and for value, may he enforce payment on it?

(A) No, since the law declared void the contract on which the promissory note was founded.



(B) No, since it was not X who bought the gecko.

(C) Yes, since he is a holder in due course of a note which is distinct from the sale of gecko.

(D) Yes, since he is a holder in due course and P and M were not aware of the law that prohibited the sale of gecko.

(87) P authorized A to sign a bill of exchange in his (P's) name. The bill reads: "Pay to B or order the sum of Php1 million. Signed, A (for and in behalf of P)." The bill was drawn on P. B indorsed the bill to C, C to D, and D to E. May E treat the bill as a promissory note?

(A) No, because the instrument is payable to order and has been indorsed several times.

(B) Yes, because the drawer and drawee are one and the same person.

(C) No, because the instrument is a bill of exchange.

(D) Yes, because A was only an agent of P.

(88) Z wrote out an instrument that states: "Pay to X the amount of Php1 Million for collection only. Signed, Z." X indorsed it to his creditor, Y, to whom he owed Php1 million. Y now wants to collect and satisfy X's debt through the Php1 million on the check. May he validly do so?

(A) Yes, since the indorsement to Y is for Php1 Million.

(B) No, since Z is not a party to the loan between X and Y.

(C) No, since X is merely an agent of Z, his only right being to collect.

(D) Yes, since X owed Y Php1 Million.

(89) X Shipping, Co., insured its vessel MV Don Teodoro for Php100 Million with ABC Insurance, Co. through T, an agent of X Shipping. During a voyage, the vessel accidentally caught fire and suffered damages estimated at Php80 Million. T personally informed ABC Insurance that X Shipping was abandoning the ship. Later, ABC insurance denied X Shipping's claim for loss on the ground that a notice of abandonment through its agent was improper. Is ABC Insurance right?

(A) Yes, since X Shipping should have ratified its agent's action.

(B) No, since T, as agent of X Shipping who procured the

insurance, can also give notice of abandonment for his principal.

(C) Yes, since only the agent of X Shipping relayed the fact of abandonment.

(D) No, since in the first place, the damage was more than ¾ of the ship's value.

(90) A law was passed disqualifying former members of Congress from sitting in the Board of Directors of government-owned or controlled corporations. Because of this, the Board of Directors of ABC Corp., a government-owned and controlled corporation, disqualified C, a former Congressman, from continuing to sit as one of its members. C objected, however, insisting that under the Corporation Code members of the board of directors of corporations may only be removed by vote of stockholders holding 2/3 of its outstanding capital stock in a regular or special meeting called for that purpose. Is C correct?

(A) Yes, since the new law cannot be applied to members of the board of directors already elected prior to its passage.

(B) No, since the disqualification takes effect by operation of law, it is sufficient that he was declared no longer a member of the board.

(C) Yes, since the provisions of the Corporation Code applies as well to government-owned and controlled corporations.

(D) No, since the board has the power to oust him even without the new law.

(91) 002-38-0001 G, a grocery goods supplier, sold 100 sacks of rice to H who promised to pay once he has sold all the rice. H meantime delivered the goods to W, a warehouseman, who issued a warehouse receipt. Without the knowledge of G and W, H negotiated the receipt to P who acquired it in good faith and for value. P then claimed the goods from W, who released them. After the rice was loaded on a ship bound for Manila, G invokes his right to stop the goods in transit due to his unpaid lien. Who has a better right to the rice?

(A) P, since he has superior rights as a purchaser for value and in good faith.

(B) P, regardless of whether or not he is a purchaser for value and in good faith.

(C) G, since as an unpaid seller, he has the right of stoppage in transitu.

(D) W, since it appears that the warehouse charges have not been paid.

(92) In a signature by procuration, the principal is bound only in case the agent acted within the actual limits of his authority. The signature of the agent in such a case operates as notice that he has

(A) a qualified authority to sign.

(B) a limited authority to sign.

(C) a special authority to sign.

(D) full authority to sign.

(93) In return for the 20 years of faithful service of X as a househelper to Y, the latter promised to pay Php100,000.00 to X's heirs if he (X) dies in an accident by fire. X agreed. Is this an insurance contract?

(A) Yes, since all the elements of an insurance contract are present.

(B) Yes, since X' services may be regarded as the consideration.

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

(D) No, since it is in fact an innominate contract between X and Y.

(94) A bill of exchange states on its face: "One (1) month after sight, pay to the order of Mr. R the amount of Php50,000.00, chargeable to the account of Mr. S. Signed, Mr. T." Mr. S, the drawee, accepted the bill upon presentment by writing on it the words "I shall pay Php30,000.00 three (3) months after sight." May he accept under such terms, which varies the command in the bill of exchange?

(A) Yes, since a drawee accepts according to the tenor of his acceptance.

(B) No, since, once he accepts, a drawee is liable according to the tenor of the bill.

(C) Yes, provided the drawer and payee agree to the acceptance.

(D) No, since he is bound as drawee to accept the bill according to its tenor.

(95) May the indorsee of a promissory note indorsed to him "for deposit" file a suit against the indorser?

(A) Yes, as long as the indorser received value for the restrictive indorsement.

(B) Yes, as long as the indorser received value for the conditional indorsement.

(C) Yes, whether or not the indorser received value for the conditional indorsement.

(D) Yes, whether or not the indorser received value for the restrictive indorsement.

(96) X issued a check in favor of his creditor, Y. It reads: " Pay to Y the amount of Seven Thousand Hundred Pesos (Php700,000.00). Signed, X". What amount should be construed as true in such a case?

(A) Php700,000.00.

(B) Php700.00.

(C) Php7,000.00.

(D) Php700,100.00.

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

(A) Yes, because there was breach of implied warranty.

(B) No, because there was no intent to breach an implied warranty.

(C) Yes, because it relates to a material representation.

(D) No, because there was only representation of intention.

(98) The Articles of Incorporation of ABC Transport Co., a public utility, provides for ten (10) members in its Board of Directors. What is the prescribed minimum number of Filipino citizens in its Board?

(A) 10

(B) 6

(C) 7

(D) 5

(99) P authorized A to sign a negotiable instrument in his (P's) name. It reads: "Pay to B or order the sum of Php1 million. Signed, A (for and in behalf of P)." The instrument shows that it was drawn on P. B then indorsed to C, C to D, and D to E. E then treated it as a bill of exchange. Is presentment for acceptance necessary in this case?

(A) <u>No, since the drawer and drawee are the same person.</u>

(B) No, since the bill is non-negotiable, the drawer and drawee being the same person.

(C) Yes, since the bill is payable to order, presentment is required for acceptance.

(D) Yes, in order to hold all persons liable on the bill.

(100) The corporate term of a stock corporation is that which is stated in its Articles of Incorporation. It may be extended or shortened by an amendment of the Articles when approved by majority of its Board of Directors and:

(A) approved and ratified by at least 2/3 of all stockholders.

(B) approved by at least 2/3 of the stockholders representing the outstanding capital stock.

(C) ratified by at least 2/3 of all stockholders.

(D) <u>ratified by at least 2/3 of the stockholders representing the outstanding capital stock.</u>

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