ANSWERS TO BAR EXAMINATION QUESTIONS IN

MERCANTILE LAW

ARRANGED BY TOPIC

(1990 – 2006)

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F O R E W A R D

This work is not intended for sale or commerce. This work is freeware. It may be freely copied and distributed. It is primarily intended for all those who desire to have a deeper understanding of the issues touched by the Philippine Bar Examinations and its trend. It is specially intended for law students from the provinces who, very often, are recipients of deliberately distorted notes from other unscrupulous law schools and students. Share to others this work and you will be richly rewarded by God in heaven. It is also very good karma.

We would like to seek the indulgence of the reader for some Bar Questions which are improperly classified under a topic and for some topics which are improperly or ignorantly phrased, for the authors are just Bar Reviewees who have prepared this work while reviewing for the Bar Exams under time constraints and within their limited knowledge of the law. We would like to seek the reader's indulgence for a lot of typographical errors in this work.

The Authors
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Commercial Transaction (2003)

What do you understand by the term "commercial transaction"? Is it essential that at least one party to a contract be a merchant in order to consider such a commercial transaction? (4%)

SUGGESTED ANSWER:

A "Commercial transaction" is defined as ..... It is not essential that at least one party to the commercial transaction be a merchant. What is essential is that the transaction evince an intent to engage in commerce or trade.

Joint Account (2000)

What is a joint account? (2%)

SUGGESTED ANSWER:

A joint account is a transaction of merchants where other merchants agree to contribute the amount of capital agreed upon, and participating in the favorable or unfavorable results thereof in the proportion they may determine.

Joint Account vs. Partnership (2000)

Distinguish joint account from partnership. (3%)

SUGGESTED ANSWER:

The following are the distinctions between joint account and partnership:

(1) A partnership has a firm name while a joint account has none and is conducted in the name of the ostensible partner.

(2) While a partnership has juridical personality and may sue or be sued under its firm name, a joint account has no juridical personality and can sue or be sued only in the name of the ostensible partner.

(3) While a partnership has a common fund, a joint account has none.

(4) While in a partnership, all general partners have the right of management, in a joint account, the ostensible partner manages its business operations.

(5) While liquidations of a partnership may, by agreement, be entrusted to a partner or partners, in a joint account liquidation thereof can only be done by the ostensible partner.

Theory of Cognition vs. Theory of Manifestation (1997)

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

SUGGESTED ANSWER:

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

Banking Law

Banks: Applicability: Foreign Currency Deposit Act & Secrecy of Bank Deposits (2005)

Hi Yielding Corporation filed a complaint against five of its officers for violation of Section 31 of the Corporation Code. The corporation claimed that the said officers were guilty of advancing their personal interests to the prejudice of the corporation, and that they were grossly negligent in handling its affairs. Aside from documents and contracts, the corporation also submitted in evidence records of the officers' U.S. Dollar deposits in several banks overseas - Boston Bank, Bank of Switzerland, and Bank of New York.

For their part, the officers filed a criminal complaint against the directors of Hi Yielding Corporation for violation of Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act of the Philippines. The officers alleged that their bank deposits were illegally disclosed for want of a court order, and that such deposits were not even the subject of the case against them. a) Will the complaint filed against the directors of Hi Yielding Corporation prosper? Explain.

SUGGESTED ANSWER:

No, because the Foreign Currency Deposit Act (R.A. No. 6426), including its punitive provisions, refers to foreign currency deposits accounts constituted within the Philippines. It has no application at all to accounts, even though they are banks, opened and constituted abroad.

b) Was there a violation of the Secrecy of Bank Deposits Law (Republic Act No. 1405)? Explain. (5%)

SUGGESTED ANSWER:

No, because the punitive provisions of the Secrecy of Bank Deposits Law (R.A. No. 1405), including the statutory exemptions provided therein, are not applicable to FCDU accounts, even when constituted locally. (**Intengan v. Court of Appeals, G.R. No. 128996, February 15, 2002**)

Banks: Collateral Security (2002)

Andrew is engaged in the business of building low-cost housing units under contracts with real estate developers. He applied for a loan of P3 Million from Ready Credit Bank (the Bank), which required Andrew to provide collateral security for it. Andrew offered to assign to the Bank his receivables amounting to P4 million from Home Builders Development Corporation (the Obligor). The Bank accepted the offer. Accordingly, Andrew obtained the loan and he executed a promissory note undertaking to pay the loan in full in one lump sum on September 1, 2002, together with interest thereon at the rate of 20% per annum. At the same time, Andrew executed a Deed of Assignment in favor of the Bank assigning to the Bank his receivables from the Obligor. The deed of assignment read:

"I, Andrew Lee, hereby assign, transfer and convey, absolutely and unconditionally, to Ready Credit Bank (hereinafter called the Bank) all of my right, title and interest in and to my accounts receivable from Home Builders Development Corporation (hereinafter called the Obligor) arising from delivery of housing units with a total contract price of P4,000,000.00, the description and contract value of which are attached hereto as Annex A (hereinafter called the Receivables)."

"In the event that I shall be unable to pay my outstanding indebtedness owned to the Bank, the Bank shall have the right, without any further formality or act on its part, to collect the Receivables from the Obligor and to apply the proceeds thereof toward payment of my said indebtedness."

Andrew failed to pay the loan on its due date on September 1, 2002. When the Bank attempted to collect from the Obligor, the Bank discovered that the latter had already closed operations and liquidated all its assets. The Bank sued Andrew for collection, but Andrew moved to dismiss the complaint on the ground that the debt had already been paid by reason of his execution of the aforesaid Deed of Assignment which, being absolute and unconditional, was in essence a dacion en pago. The Bank opposed the motion, contending that the Deed of Assignment was only a security for a loan. If you were the Judge, how would you resolve the motion to dismiss filed by Andrew? Explain (5%)

SUGGESTED ANSWER:

(Since the question is outside the scope of the Bar Examination, it is recommended that the candidate be given full credit of 5%, whatever may be his answer, and he be given a bonus if he made an answer in the following manner:)

The motion to dismiss should be granted. The simple absolute and unconditional conveyance embodied in the deed of assignment would be operative, and the assignment would constitute essentially a mode of payment or dacion en pago.

Banks: Secrecy of Bank Deposits; Garnishment (2004)

CDC maintained a savings account with CBank. On orders of the MM Regional Trial Court, the Sheriff garnished P50,000 of his account, to satisfy the judgment in favor of his creditor, MO. CDC complained that the garnishment violated the Law on the Secrecy of Bank Deposits because the existence of his savings account was disclosed to the public. (5%) Is CDC's complaint meritorious or not? Reason briefly.

SUGGESTED ANSWER:

No. CDC's complaint is not meritorious. It was held in **China Banking Corporation v. Ortega, 49 SCRA 355 (1973)** that peso deposits may be garnished and the depositary bank can comply with the order of garnishment without violating the Law on the Secrecy of Bank Deposits. Execution is the goal of litigation as it is its fruit. Garnishment is part of the execution process. Upon service of the notice of garnishment on the bank where the defendant deposited funds, such funds become part of the subject matter of litigation.

Banks; Classifications of Banks (2002)

There are six (6) classes of banks identified in the General Banking Law of 2000. Name at least four (4) of them and explain the distinguishing characteristic or function of each one. (5%)

SUGGESTED ANSWER:

Any four (4) of the following six (6) classes of banks identified in the General Banking Law of 2002, to wit:

1 **Universal Banks** – These are those which used to be called expanded commercial banks and the operations of which are now primarily governed by the General Banking Law of 2002. They can exercise the powers of an investment house and invest in non-allied enterprises. They have the highest capitalization requirement.

2 **Commercial Banks** – These are ordinary or regular commercial banks, as distinguished from a universal bank. They have a lower capitalization requirement than universal banks and cannot exercise the powers of an investment house and invest in non-allied enterprises.

3 **Thrift Banks** – These banks (such as savings and mortgage banks, stock savings and loan associations, and private development banks) may exercise most of the powers and functions of a commercial bank except that they cannot, among others, open current or check accounts without prior Monetary Board approval, and they cannot issue letters of credit. Their operations are governed primarily by the Thrift Banks Act of 1995 (RA 7906).

4 **Rural Banks** – these are those which are organized primarily to extend loans and other credit facilities to farmers, fishermen or farm families, as well as cooperatives, merchants, and private and public employees and whose operations are primarily governed by the Rural Banks Act of 1992 (RA 7353).

5 **Cooperative Banks** – these are those which are organized primarily to provide financial and credit services to cooperatives and whose operations are primarily governed by the Cooperative Code of the Philippines (RA 6938).

6 **Islamic Banks** – these are those which are organized primarily to provide financial and credit services in a manner or transaction consistent with the Islamic Shari'ah. At present, only the Al Amanah Islamic Investment Bank of the Philippines has been organized as an Islamic Bank.

Banks; Conservator vs. Receiver (2006)

Distinguish between the role of a conservator and that of a receiver of a bank. (2.5%)

SUGGESTED ANSWER:

The Conservator is appointed for a period not exceeding one (1) year, to take charge of the assets, liabilities, and the management of a bank or a quasi-bank in a state of continuing inability, or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of depositors and creditors. On the other hand, the Receiver is appointed to manage a bank or quasi-bank that is unable to pay its liabilities in

the ordinary course of business, or has insufficient realizable assets to meet its liabilities, or cannot continue in business without probable losses to its depositors or creditors; or has willfully violated a final cease and desist order, involving acts or transactions amounting to fraud or a dissipation of the assets of the institution. The main purpose of the Receiver is to recommend the rehabilitation or liquidation of the bank.

Banks; Diligence Required (1992)

Placido, a bank depositor, left his checkbook on his desk at his house. Unknown to him, a visitor at the time, noticing the same, took a check therefrom, filled it up in the amount of P3,000.00 and succeeded in encashing the check on the same day. Placido's account was thereby debited in the same amount.

Discovering the erroneous debit, Placido demanded that the bank credit him with a like amount. The bank refused on the ground that Placido was negligent in leaving his checkbook on his desk so that he could not put up the defense of forgery or want of authority under the NIL.

The Facts disclose that even to the naked eye, there were marked differences between Placido's signature and the one in the check forged by the visitor. As between Placido and the bank, who should bear the loss? Explain.

SUGGESTED ANSWER:

The bank should bear the loss. A drawee bank must exercise the highest diligence in safeguarding the accounts of its client-depositors. The bank is also charged with genuineness of the signatures of its current account holders. But what can be more striking is that there were marked differences between Placido's signature and the one in the check forged by the visitor. Certainly, Placido was not negligent in leaving his checkbook in his own desk (**PNB v Quimpo 158 SCRA 582**)

Banks; Insolvency; Prohibited Transactions (2000)

The Monetary Board of the BSP closed Urban Bank after it encountered crippling financial difficulties that resulted in a bank run. X, one of the members of the BOD of the bank, attended and stayed throughout the entire meeting of the Board that was held well in advance of the bank run and before news had begun to trickle to the business community about the dire financial pit the bank had fallen into. Immediately after the meeting, X caused the preparation and issuance of a manager's check payable to himself in the sum of 5 million pesos equivalent to the amount placed or invested in the bank by a business acquaintance. He now claims that he is keeping the funds in trust for the owner and that he had committed no violation of the General Banking Act (RA 337, as amended) for which he should be punished. Do you agree that there has been no violation of the statute? (3%)

SUGGESTED ANSWER:

No. I do not agree that there is no violation of the statute (RA 337, as amended). X violated Sec 85 when he caused the preparation and issuance of a manager's check payable to himself in the sum of P5 million. This is paying out or permitting to be paid out funds of the bank after the latter became insolvent. This act is penalized by fine of not less than P1,000.00 nor more than P10,000.00 and by imprisonment for not less than two nor more than ten years.

Banks; Insolvency; Requirements (1997)

Give the basic requirements to be complied with by the BSP before the Monetary Board can declare a bank insolvent, order it closed and forbid it from doing further business in the Philippines.

SUGGESTED ANSWER:

Before the Monetary Board can declare a bank insolvent, order it closed and forbid it from doing further business in the Philippines, the following basic requirements must be complied with by the BSP, to wit:

1 There must be an examination by the head of the Department of Supervision or his examiners or agents into the condition of the bank.

2 The examination discloses that the condition of the bank is one of insolvency, or that its continuance in business would involve probable loss to creditors or depositors.

3 The head of said Department shall inform in writing the Monetary Board of such facts.

4 Upon finding said information or statement to be true, the Monetary Board shall appoint a receiver to take charge of the assets and liabilities of the bank.

5 Within 60 days, the Monetary Board shall determine and confirm if the bank is insolvent, and public interest requires, to order the liquidation of the bank.

Banks; Restrictions on Loan Accommodations (2002)

As part of the safeguards against imprudent banking, the General Banking Law imposes limits or restrictions on loans and credit accommodations which may be extended by banks. Identify at least two (2) of these limits or restrictions and explain the rationale of each of them. (5%)

SUGGESTED ANSWER:

Any two (2) of the following limits or restrictions on loan and credit transactions which may be extended by banks, as part of the safeguards against imprudent banking, to wit:

1 **SBL Rules** – (i.e., Single Borrower's Limit) rules are those promulgated by the Bangko Sentral ng Pilipinas, upon the authority of Section 35 of the General Banking Law of 2000, which regulate the total amount of loans, credit accommodations and guarantees that may be extended by a bank to any person, partnership, association, corporation or other entity. The rules seek to protect a bank from making excessive loans to a single borrower by prohibiting it from lending beyond a specified ceiling.

2 **DOSRI Rules** – These rules promulgated by the BSP, upon authority of Section 5 of the General Banking Law of 2000, which regulate the amount of credit accommodations that a bank may extend to its

directors, officers, stockholders and their related interests (thus, DOSRI). Generally, a bank's credit accommodations to its DOSRI must be in the regular course of business and on terms not less favorable to the bank than those offered to non-DOSRI borrowers.

3. No commercial bank shall make any loan or discount on the security of shares of its own capital stock.

Banks; Restrictions on Loan Accommodations (2006)

Pio is the president of Western Bank. His wife applied for a loan with the said bank to finance an internet cafe. The loan officer told her that her application will not be approved because the grant of loans to related interests of bank directors, officers, and stockholders is prohibited by the General Banking Law. Explain whether the loan officer is correct. (5%)

SUGGESTED ANSWER:

Section 36 of the General Banking Law of 2000 does not entirely prohibit directors or officers of the bank, directly or indirectly, from borrowing from the bank. In this case, Pio is the president of Western Bank, which makes him an officer, director and stockholder of the said bank. The General Banking Law provides for additional restrictions to the bank before it can lend to its directors or officers. A written approval of the majority vote of all the directors of the bank, excluding the director concerned, is required. Furthermore, such dealings must be upon terms not less favorable to the bank than those offered to others (*Section 1326, Central Bank's "Manual of Regulations for Banks and Other Financial Intermediaries, cited in Ranioso v. CA, G.R. No. 117416, December 8, 2000*). A violation of this provision will cause his or her position to be declared vacant and the erring director or officer subjected to the penal provisions of the New Central Bank Act.

Banks; Safety Deposit Box; Liability

MN and OP rented a safety deposit box at SIBANK. The parties signed a contract of lease with the conditions that: the bank is not a depository of the contents of the safe and has neither the possession nor control of the same; the bank assumed no interest in said contents and assumes no liability in connection therewith. The safety deposit box had two keyholes: one for the guard key which remained with the bank; and the other for the renters' key. The box can be opened only with the use of both keys. The renters deposited certificates of title in the box. But later, they discovered that the certificates were gone. MN and OP now claim for damages from SIBANK. Is the bank liable? Explain briefly. (5%)

SUGGESTED ANSWER:

The bank is liable, based on the decisions of the Supreme Court in *CA Agro-Industrial Development Corp. v. Court of Appeals, 219 SCRA 426 (1993) and Sia v. Court of Appeals, 222 SCRA 24 (1993).* In those cases, the Supreme Court ruled that the renting out of safety deposit boxes is a "*special kind of deposit*" wherein the bank is the depositary. In the absence of any stipulation prescribing the degree of diligence required, that of a good father of a family is to be observed by the depositary. Any stipulation exempting the depositary from any liability arising from the loss of the thing deposited would be void for being contrary to law and public policy. The deposit box is located in the bank premises and is under the absolute control of the bank.

Banks; Secrecy of Bank Deposit; AMLC (2006)

Rudy is jobless but is reputed to be a jueteng operator. He has never been charged or convicted of any crime. He maintains several bank accounts and has purchased 5 houses and lots for his children from the Luansing Realty, Inc. Since he does not have any visible job, the company reported his purchases to the Anti-Money Laundering Council (AMLC). Thereafter, AMLC charged him with violation of the Anti-Money Laundering Law. Upon request of the AMLC, the bank disclosed to it Rudy's bank deposits amounting to P100 Million. Subsequently, he was charged in court for violation of the Anti-Money Laundering Law.

1. Can Rudy move to dismiss the case on the ground that he has no criminal record? (2.5%)

SUGGESTED ANSWER:

No. Under the Anti-Money Laundering Law, Rudy would be guilty of a "money laundering crime" committed when the proceeds of an "unlawful activity," like jueteng operations, are made to appear as having originated from legitimate sources. The money laundering crime is separate from the unlawful activity of being a jueteng operator, and requires no previous conviction for the unlawful activity (See also Sec. 3, Anti-Money Laundering Act of 2001).

2. To raise funds for his defense, Rudy sold the houses and lots to a friend. Can Luansing Realty, Inc. be compelled to transfer to the buyer ownership of the houses and lots? (2.5%)

SUGGESTED ANSWER:

Luansing Realty, Inc. is a real estate company, hence it is not a covered institution under Section 3 of the Anti-Money Laundering Act. Only banking institutions, insurance companies, securities dealers and brokers, pre-need companies and other entities administering or otherwise dealing in currency, commodities or financial derivatives are covered institutions. Hence, Luansing Realty, Inc. may not use the Anti-Money Laundering Act to refuse to transfer to the buyer ownership of the houses and lots.

3. In disclosing Rudy's bank accounts to the AMLC, did the bank violate any law? (2.5%)

SUGGESTED ANSWER:

No, the bank did not violate any law. The bank being specified as a "covered institution" under the Anti-Money Laundering Law, is obliged to report to the AMLC covered and suspicious transactions, without thereby violating any law. This is one of the exceptions to the Secrecy of Bank Deposit Act.

4. Supposing the titles of the houses and lots are in possession of the Luansing Realty, Inc., is it under obligation to deliver the titles to Rudy? (2.5%)

SUGGESTED ANSWER:

Yes, it has an obligation to deliver titles to Rudy. As Luansing Realty, Inc. is not a covered institution under Section 3 of the Anti-Money Laundering Act, it may not invoke this law to refuse delivery of the titles to Rudy.

Banks; Secrecy of Bank Deposit; Exceptions (2006)

Under Republic Act No.1405 (The Bank Secrecy Law), bank deposits are considered absolutely confidential and may not be examined, inquired or looked into by any person, government official, bureau or office. What are the exceptions? (5%)

SUGGESTED ANSWER:

The exceptions to the Bank Secrecy Law are the following:

1. Special or general examination of a bank, authorized by the Bangko Sentral ng Pilipinas' Monetary Board, in connection with a bank fraud or serious irregularity.
2. Examination by an independent Auditor, hired by the Bank and for the Bank's exclusive use.
3. Disclosure with the Depositor's written permission.
   In case of Impeachment.
   In cases of Bribery or dereliction of duty by a Public Officer, upon order of a competent court.
   In cases of money deposited/invested which, in turn, is the subject of Litigation, upon order of a competent Court.

4. DOSRI Loans: Loans with their Banks of Bank Directors, Officers, Stockholders and related interests.
   Loans in excess of 5% of the Bank's Capital & Surplus
   The Borrower waived his right as regards the Secrecy of Bank Deposits

5. Violation of the Anti-Graft and Corrupt Practices Act.
6. Coup d' etat Law (RA 6968, Oct 24,1990).
7. BIR Commissioner's authority to verify a decedent's Gross Estate and a taxpayer's request for a compromise agreement due to incapacity to pay his tax liability.
8. Foreign Currency Deposits by foreign lenders & investors under PDs 1034.
9. Violations of the Anti-Money Laundering Law.
10. When the State exercises/invokes its Police Power. *(NOTA BENE: It is suggested that any 6 of the above be given full credit)*

Banks; Secrecy of Bank Deposits (1990)

Manosa, a newspaper columnist, while making a deposit in a bank, overheard a pretty bank teller informing a co-employee that Gigi, a well known public official, has just a few hundred pesos in her bank account and that her next check will in all probability bounce. Manosa wrote this information in his newspaper column. Thus, Gigi filed a complaint with the City Fiscal of Manila for unlawfully disclosing information about her bank account. a) Will the said suit prosper? Explain your answer.

b) Supposing that Gigi is charged with unlawfully acquiring wealth under RA 1379 and that the fiscal issued a *subpoena duces tecum* for the records of the bank account of Gigi. May Gigi validly oppose the said issuance on the ground that the same violates the law on secrecy of bank deposits? Explain your answer.

SUGGESTED ANSWER:

a) The Secrecy of Bank Deposits Act prohibits, subject to its exclusionary clauses, any person from examining, inquiring or looking into all deposits of whatever nature with banks or banking institutions in the Philippines which by law are declared "absolutely confidential" in nature. Manosa who merely overheard what appeared to be a vague remark of a Bank employee to a co-employee and writing the same in his newspaper column is neither the inquiry nor disclosure contemplated by law.

ALTERNATIVE ANSWER:

a) The complaint against Manosa will not prosper because merely writing a vague remark of a Bank employee to a co-employee is not the disclosure contemplated by law. If anyone should be liable, it will be the bank employee who disclosed the information.

SUGGESTED ANSWER:

b) Among the instances excepted from the coverage of the Secrecy of Bank Deposits Act are Anti-graft cases. Hence Gigi may not validly oppose the issuance of a *subpoena duces tecum* for the bank records on her.

Banks; Secrecy of Bank Deposits (1991)

The law (RA 6832) creating a Commission to conduct a Thorough Fact-Finding Investigation of the Failed Coup d'etat of Dec 1989, Recommend Measures to Prevent the Occurrence of Similar Attempts At a Violent Seizure of Power and for Other Purposes, provides that the Commission may ask the Monetary Board to disclose information on and/or to grant authority to examine any bank deposits, trust or investment funds, or banking transactions in the name of and/or utilized by a person, natural or juridical, under investigation by the Commission, in any bank or banking institution in the Philippines, when the Commission has reasonable ground to believe that said deposits, trust or investment funds, or banking transactions have been used in support or in furtherance of the objectives of the said coup d'etat. Does the above provision not violate the Law on Secrecy of Bank Deposits (RA 1405)?

SUGGESTED ANSWER:

The Law on Secrecy of Bank Deposits is itself merely a statutory enactment, and it may, therefore, be modified, or amended (such as by providing further exceptions therefrom), or even repealed, expressly or impliedly, by a subsequent law. The Secrecy of Bank Deposits Act did not amount to a contract between the depositors and depository banks within the meaning of the non-impairment clause of the Constitution. Even if it did, the police power of the State is superior to the non-

impairment clause. RA 6832, creating a commission to conduct an investigation of the failed 1989 coup d'etat and to recommend measures to prevent similar attempts to seize power is a valid exercise of police power.

Banks; Secrecy of Bank Deposits (1992)
Socorro received $10,000 from a foreign bank although she was entitled only to $1,000.00. In an apparent plan to conceal the erroneously sent amount, she opened a dollar account with her local bank, deposited the $10,000 and issued 4 checks in the amount of $2,000 and 1 check for $1,000 each payable to different individuals who deposited the same in their respective dollar accounts with different local banks.

The sender bank then brought a civil suit before the RTC for the recovery of the erroneously sent amount. In the course of the trial, the sender presented testimonies of bank officials to show that the funds were, in fact, deposited in a bank by Socorro and paid out to several persons, who participated in the concealment and dissipation of the amount that Socorro had erroneously received.

Socorro moved to strike out said testimonies from the record invoking the law on secrecy of bank deposits. If you were the Judge, would you issue an order to strike them out? Why?
SUGGESTED ANSWER:
I will not strike out the testimonies from the record. The testimonies of bank officials indicating where the questioned dollar accounts were opened in depositing misappropriated sums must be considered as likewise involved in litigation – one which is among the excepted cases under the Secrecy of Bank Deposits Act **(Melon Bank v Magsino 190 SCRA 633)**

Banks; Secrecy of Bank Deposits (1994)
Miguel, a special customs agent is charged before the Ombudsman with having acquired property out of proportion to his salary, in violation of the Anti-Graft and Corrupt Practices Act. The Ombudsman issued a *subpoena duces tecum* to the Banco de Cinco commanding its representative to furnish the Ombudsman records of transactions by or in the name of Miguel, his wife and children. A second subpoena was issued expanding the first by including the production of records of friends of Miguel in said bank and in all its branches and extension offices, specifically naming them.

Miguel moved to quash the subpoenas arguing that they violate the Secrecy of Bank Deposits Law. In addition, he contends that the subpoenas are in the nature of "fishing expedition" or "general warrants" and are constitutionally impermissible with respect to private individuals who are not under investigation. Is Miguel's contention tenable?

SUGGESTED ANSWER:
No. Miguel's contention is not tenable. The inquiry into illegally acquired property extends to cases where such property is concealed by being held by or recorded in the name of other persons. To sustain Miguel's theory and restrict the inquiry only to property held by or in the name of the government official would make available to persons in government who illegally acquire property an easy means of evading prosecution. All they have to do would be to simply place the property in the name of persons other than their spouses and children *(Banco Filipino Savings vs. Purisima 161 scra 576; Sec 8 Anti-Graft Law as amended by BP 195)*

Banks; Secrecy of Bank Deposits (1995)
Michael withdrew without authority funds of the partnership in the amounts of P500th and US$50th for services he claims he rendered for the benefit of the partnership. He deposited the P500th in his personal peso current account with Prosperity Bank and the US$50th in his personal foreign currency savings account with Eastern Bank.

The partnership instituted an action in court against Michael, Prosperity, and Eastern to compel Michael to return the subject funds to the partnership and pending litigation to order both banks to disallow any withdrawal from his accounts.

At the initial hearing of the case the court ordered Prosperity to produce the records of Michael's peso current account, and Eastern to produce the records of his foreign currency savings account.

Can the court compel Prosperity and Eastern to disclose the bank deposits of Michael? Discuss fully.
SUGGESTED ANSWER:
Yes, as far as the peso account is concerned. Sec 2 of RA 1405 allows the disclosure of bank deposits in case where the money deposited is the subject matter of litigation. Since the case filed against Michael is aimed at recovering the amount he withdrew from the funds of the partnership, which amount he allegedly deposited in his account, a disclosure of his bank deposits would be proper.

No, with respect to the foreign currency account. Under the Foreign Currency Law, the exemption to the prohibition against disclosure of information concerning bank deposits is the written consent of the depositor.

Banks; Secrecy of Bank Deposits (1998)
1998 (20) An insurance company is deluded into releasing a check to A for P35th to pay for Treasury Bills (T-bills) which A claims to be en route on board an armored truck from a government bank. The check is delivered to A who deposits it to his account with XYZ Bank before the insurance company realizes it is a scam. Upon such realization, the insurance company files an action against A for recovery of the amount defrauded and obtains a writ of preliminary attachment. In addition to the writ, the Bank is also served a subpoena to examine the account records of A. The Bank declines to provide any information in response to the writ and moves to quash the subpoena invoking secrecy of bank

deposits under RA 1405, as amended. Can the Bank justifiably invoke RA 1405 and a) not respond to the writ and b) quash the subpoena for examination? (5%)

SUGGESTED ANSWER:

Yes. Whether the transaction is considered a sale or money placement does not make the money "subject matter of litigation" within the meaning of Sec 2 of RA 1405 which prohibits the disclosure or inquiry into bank deposit except "in cases where the money deposited or invested is the subject matter of litigation" nor will it matter whether the money was "swindled."

Banks; Secrecy of Bank Deposits (2000)

GP is a suspected jueteng lord who is rumored to be enjoying police and military protection. The envy of many drug lords who had not escaped the dragnet of the law, GP was summoned to a hearing of the Committee on Racketeering and Other Syndicated Crimes of the House of Representatives, which was conducting a congressional investigation "in aid of legislation" on the involvement of police and military personnel, and possibly even of local government officials, in the illegal activities of suspected gambling and drug lords. Subpoenaed to attend the investigation were officers of certain identified banks with a directive to them to bring the records and documents of bank deposits of individuals mentioned in the subpoenas, among them GP. GP and the banks opposed the production of the banks' records of deposits on the ground that no such inquiry is allowed under the Law on Secrecy of Bank Deposits (RA 1405 as amended). Is the opposition of GP and the banks valid? Explain.

SUGGESTED ANSWER:

Yes. The opposition is valid. GP is not a public official. The investigation does not involve one of the exceptions to the prohibition against disclosure of any information concerning bank deposits under the Law on Secrecy of Bank Deposits. The Committee conducting the investigation is not a competent court or the Ombudsman authorized under the law to issue a subpoena for the production of the bank record involving such disclosure.

Banks; Secrecy of Bank Deposits; Exceptions (2004)

The Law on Secrecy of Bank Deposits provides that all deposits of whatever nature with banks or banking institutions are absolutely confidential in nature and may not be examined, inquired or looked into by any person, government official, bureau or office. However, the law provides exceptions in certain instances. Which of the following may not be among the exceptions:

1. In cases of impeachment.
2. In cases involving bribery
3. In cases involving BIR inquiry.
4. In cases of anti-graft and corrupt practices.
5. In cases where the money involved is the subject of litigation. Explain your answer or choice briefly. (5%)

SUGGESTED ANSWER:

Under Section 6(F) of the National Internal Revenue Code, the Commissioner of Internal Revenue can inquire into the deposits of a decedent for the purpose of determining the gross estate of such decedent. Apart from this case, a BIR inquiry into bank deposits cannot be made. Thus, exception 3 may not always be applicable.

Turning to exception 4, an inquiry into bank deposits is possible only in prosecutions for unexplained wealth under the Anti-Graft and Corrupt Practices Act, according to the Supreme Court in the cases of *Philippine National Bank v. Gancayco, 15 SCRA 91 (1965) and Banco Filipino Savings and Mortgage Bank v. Purisima, 161 SCRA 576 (1988).* However, all other cases of anti-graft and corrupt practices will not warrant an inquiry into bank deposits. Thus, exception 4 may not always be applicable. Like any other exception, it must be interpreted strictly.

Exceptions 1, 2 and 5, on the other hand, are provided expressly in the Law on Secrecy of Bank Depositors. They are available to depositors at all times.

Banks; Secrecy of Bank Deposits; Garnishment (2001)

The Law on Secrecy of Bank Deposits, otherwise known as RA 1405, is intended to encourage people to deposit their money in banking institutions and also to discourage private hoarding so that the same may be properly utilized by banks to assist in the economic development of the country. Is a notice of garnishment served on a bank at the instance of a creditor of a depositor covered by the said law? State the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

No. The notice of garnishment served on a bank at the instance of a creditor is not covered by the Law on Secrecy of Bank Deposits. Garnishment is just a part of the process of execution. The moment a notice of garnishment is served on a bank and there exists a deposit by the judgment debtor, the bank is directly accountable to the sheriff, for the benefit of the judgment creditor, for the whole amount of the deposit. In such event, the amount of the deposit becomes, in effect, a subject of the litigation.

BSP; Receivership; Jurisdiction (1992)

Family Bank was placed under statutory receivership and subsequently ordered liquidated by the Central Bank (CB) due to fraud and irregularities in its lending operations which rendered it insolvent. Judicial proceedings for liquidation were thereafter commenced by the CB before the RTC. Family Bank opposed the petition. Shortly thereafter, Family Bank filed in the same court a special civil action against the CB seeking to enjoin and dismiss the liquidation proceeding on the ground of grave abuse of discretion by the CB. The court poised to: 1) restrain the CB from closing Family Bank; and 2) authorize Family Bank to withdraw money from its deposits during the pendency of the case. If you were the Judge, would you issue such orders? Why?

SUGGESTED ANSWER:

No. The RTC has no authority to restrain the monetary board of the BSP from statutory authority to undertake receivership and ultimate liquidation of a bank. Any opposition to such an action could be made to the court itself where assistance is sought. The action of the RTC where the proceeding is pending appeal have to be made in the Court of Appeals.

Legal Tender (2000)

After many years of shopping in the Metro Manila area, housewife HW has developed the sound habit of making cash purchases only, none on credit. In one shopping trip to Mega Mall, she got the shock of her shopping life for the first time, a store's smart salesgirl refused to accept her coins in payment for a purchase worth not more than one hundred pesos. HW was paying seventy pesos in 25centavo coins and twenty five pesos in 10 centavo coins. Strange as it may seem, the salesgirl told HW that her coins were not "legal tender." Do you agree with the salesgirl in respect of her understanding of "legal tender?" Explain (2%)

SUGGESTED ANSWER:

No. The salesgirl's understanding that coins are not legal tender is not correct. Coins are legal tender in amounts not exceeding fifty pesos for denominations from twenty five centavos and above, and in amounts not exceeding twenty pesos for denominations ten centavos and less.

PDIC Law vs. Secrecy of Bank Deposits Act (1997)

An employee of a large manufacturing firm earns a salary which is just a bit more than what he needs for a comfortable living. He is thus able to still maintain a P10,000 savings account, a P20,000 checking account, a P30,000 money market placement and a P40,000 trust fund in a medium-size commercial bank. a) State which of the four accounts are deemed insured by the PDIC. b) State which of the above accounts are covered by the Law on Secrecy of Bank Deposits.

SUGGESTED ANSWER:

a) The P10th savings account and the P20th checking account are deemed insured by the PDIC. b) The P10th savings account and the P20th checking account are covered by the Law on Secrecy of Bank Deposits.

Responsibilities & Objectives of BSP (1998)

What are the responsibilities and primary objectives of the BSP? (5%)

SUGGESTED ANSWER:

The BSP shall provide policy directions in the areas of money, banking and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in the Central Bank Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, such as quasi-banks and institutions performing similar functions.

The primary objective of the BSP is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall promote and maintain monetary stability and convertibility of the Peso.

Truth in Lending Act (1991)

Dana Gianina purchased on a 36 month installment basis the latest model of the Nissan Sentra Sedan car from the Jobel Cars Inc. In addition to the advertised selling price, the latter imposed finance charges consisting of interests, fees and service charges. It did not, however, submit to Dana a written statement setting forth therein the information required by the Truth in Lending Act (RA 3765). Nevertheless, the conditional deed of sale which the parties executed mentioned that the total amount indicated therein included such finance charges.

Has there been substantial compliance of the aforesaid Act?

If your answer to the foregoing question is in the negative, what is the effect of the violation on the contract?

In the event of a violation of the Act, what remedies may be availed of by Dana?

SUGGESTED ANSWER:

a) There was no substantial compliance with the Truth in Lending Act. The law provides that the creditor must make a full disclosure of the credit lost. The statement that the total amount due includes the principal and the financial charges, without specifying the amounts due on each portion thereof would be insufficient and unacceptable.

b) A violation of the Truth in Lending Act will not adversely affect the validity of the contract itself.

c) It would allow Dana to refuse payment of financial charges or, if already paid, to recover the same. Dana may also initiate criminal charges against the creditor.

ALTERNATIVE ANSWER:

c) (Per Atty Jomby Paras if u read the provisions closely) Under the Truth in Lending Act, said financial charges are valid, and Dana may not refuse payment thereof. Only criminal charges may be initiated against the creditor.

Truth in Lending Act (2000)

Embassy Appliances sells home theater components that are designed and customized as entertainment centers for consumers within the medium-to-high price bracket. Most, if not all, of these packages are sold on installment basis, usually by means of credit cards allowing a maximum of 36 equal monthly payments. Preferred credit cards of this type are those issued by banks, which regularly hold mall wide sales blitzes participated in by appliance retailers like Embassy Appliances. You are a buyer of a home theater center at Embassy Appliances. The salesclerk who is attending to you simply swipes your credit card on the electronic approval machine (which momentarily prints out your charge slip since you have unlimited credit), tears the slip from the machine, hands the same over to you for your signature, and

without more, proceeds to arrange the delivery and installation of your new home theater system. You know you will receive a statement on your credit card purchases from the bank containing an option to pay only a minimum amount, which is usually 1/36 of the total price you were charged for your purchase. Did Embassy Appliances comply with the provisions of the Truth in Lending Act (RA 3765)?

SUGGESTED ANSWER:

There is no need for Embassy Appliances to comply with the Truth in Lending Act. The transaction is not a sale on installment basis. Embassy Appliances is a seller on cash basis. It is the credit card company which allows the buyer to enjoy the privilege of paying the price on installment basis.

Bulk Sales Law

Bulk Sales Law; Covered Transactions (1994)

Stanrus Inc a department store with outlets in Makati, Mandaluyong, and Quezon City, is contemplating to refurbish and renovate its Makati store in order to introduce the most modern and state of the art equipment in merchandise display. To carry out its plan, it intends to sell ALL of the existing fixtures and equipment (display cases, wall decorations, furniture, counters, etc.) to Crossroads Department Store. Thereafter, it will buy and install new fixtures and equipment and continue operations. Crossroads wants to know from you as counsel: 1) Whether the intended sale is "bulk sale." 2) How can it protect itself from future claims of

creditors of Stanrus.

SUGGESTED ANSWER:

1) Yes. The sale involves all fixtures and equipment, not in the ordinary course of trade and the regular prosecution of business of Stanrus, Inc. (Sec 2 Act 3952, as amended)

2) Crossroads should require from Stanrus Inc. submission of a written waiver of the Bulk Sales Law by the creditors as shown by verified statements or to comply with the requirements of the Bulk Sales Law, that is, the seller must notify his creditors of the terms and conditions of the sale, and also, before receiving from the vendee any part of the purchase price, deliver to such vendee a written sworn statement of the names and addresses of all his creditors together with the amount of indebtedness due to each (Sec 2 Act 3952, amended)

Bulk Sales Law; Covered Transactions (2000)

Company X, engaged in the business of manufacturing car parts and accessories, operates a factory with equipment, machinery and tools for this purpose. The manufactured goods are sold wholesale to distributors and dealers throughout the Philippines. Company X was among the business entities adversely hit by the 1997 Asian business crisis. Its sales dropped with the decline in car sales and its operating costs escalated, while its creditor banks and other financial institutions tightened their loan portfolios. Company X was faced with the dismal choice of either suspending its operations or selling its business. It chose the latter. Having struck a deal with Company Z, a more viable entity engaged in the same business, Company X sold its entire business to the former without much fanfare or any form of publicity. In fact, evidence exists that the transaction was furtively entered into to avoid the prying eyes of Company X's creditors. The creditor banks and other financial institutions sued Company X for violation of the Bulk Sales Law. Decide. (5%)

SUGGESTED ANSWER:

Company X violated the Bulk Sales Law when it sold its entire business to Company Z furtively to avoid the prying eyes of its creditors. Its manufactured goods are sold wholesale to distributors and dealers. The sale of all or substantially all of its stocks, not in the ordinary course of business, constitutes bulk sale. The transaction being a bulk sale, entering into such transaction without complying with the requirements of the Bulk Sales Law, Company X violated said law.

Bulk Sales Law; Covered Transactions (2006)

Pursuant to a writ of execution issued by the Regional Trial Court in "Express Bank v. Don Rubio," the sheriff levied and sold at public auction 8 photocopying machines of Don Rubio. Is the sheriff's sale covered by the Bulk Sales Law? (5%)

SUGGESTED ANSWER:

No. The sale by sheriff at public sale is not a sale by a merchant. Section 8 of the Bulk Sales Law itself provides that it has no application to executors, administrators, receivers, assignees in insolvency, or public officers, acting under process. The Bulk Sales Law only applies to the sale or encumbrance of a merchant of goods, merchandise or commodity done "in bulk" as defined by the Law itself.

Bulk Sales Law; Exclusions (1993)

In the annual meeting of XYZ Corporation, the stockholders unanimously adopted a resolution proposed by the BOD to sell substantially all the fixtures and equipment used in and about its business. The President of the Corporation approached you and asked for legal assistance to effect the sale. 1) What steps should you take so that the sale may be valid? 2) What are the two instances when the sale, transfer,

mortgage or assignment of stock of goods, wares, merchandise, provision, or materials otherwise than in the ordinary course of trade and the regular prosecution of the business of the vendor are not deemed to be a sale or transfer in bulk?

SUGGESTED ANSWER:

1) The requirements of the Bulk Sales Law must be complied with. The seller delivers to the purchaser a list of his creditors and the purchaser in turn notifies such creditors of the proposed sale at a stipulated time in advance.

2) If the sale and transfer is made a) by the vendor, mortgagor, transferor or assignor who produces and delivers a written waiver of the provisions of the Bulk Sales Law from his creditors as shown by verified statement; and b) by a vendor, mortgagor, transferor or assignor who is an executor, administrator, receiver, assignee in insolvency, or public officer acting under judicial process, the sale or transfer is not covered by the Bulk Sales Law.

Bulk Sales Law; Obligation of the Vendor (1995)

House of Pizza (Pizza) is the owner and operator of a nationwide chain of pizza outlets. House of Liquor (Liquor) is a retailer of all kinds of liquor.

House of Foods (Foods) has offered to purchase all of the outlets, equipment, fixtures and furniture of Pizza. Foods also offered to purchase from Liquor all of its moderately priced stock constituting 50% of its total inventory.

Both Pizza and Liquor have creditors. What legal requirements must Pizza and Liquor comply with in order for Foods to consummate the transactions? Discuss fully.

SUGGESTED ANSWER:
Pizza and Liquor must prepare an affidavit stating the names of all their creditors, their addresses, the amounts of their credits and their respective maturities. Pizza and Liquor must submit said affidavit to Foods which, in turn, should notify the creditors about the transaction which is about to be concluded with Pizza and Liquor.
ALTERNATIVE ANSWER:
As far as Liquor is concerned, it must prepare an affidavit stating the names of all its creditors, their addresses, the amounts of their credits and their respective maturities. It must submit said affidavit to its buyer, who in turn, should notify the creditors about the transaction which is about to be concluded with his seller.

But as far as Pizza is concerned, it is not covered by the Bulk Sales Law. So Foods can consummate the transaction without doing anything.

Bulk Sales Law; Obligation of the Vendor (1997)

The sole proprietor of a medium-size grocery shop, engaged in both wholesale and retail transactions, sells the entire business "lock, stock and barrel" because of his plan to emigrate abroad with his family. Is he covered by the provisions of the Bulk Sales Law? In the affirmative, what must be done by the parties so as to comply with the law?

SUGGESTED ANSWER:
Yes. This is a sale of the stock of goods, fixtures and entire business, not in the ordinary course of business or trade of the vendor. Before receiving from the vendee any part of the purchase price, the vendor must deliver to such vendee a written statement, duly sworn, of the names and addresses of all creditors to whom said vendor may be indebted, together with the amount of indebtedness due or owing, on account of the goods, fixtures or business subject matter of the bulk sale.

Bulk Sales Law; Obligation of the Vendor (2001)

A is a merchant engaged in the sale of a variety of goods and merchandise. Because of the economic crisis, he incurred indebtedness to X, Y and Z. Thereafter, A sold to B all the stock of goods and merchandise. a) What steps should A undertake to effect a valid sale in bulk of his goods to B. (2%).

SUGGESTED ANSWER:
A must prepare an affidavit stating the names of all his creditors, in this case, X, Y, and Z, their addresses, the amount of their credits and their maturity. A should give the affidavit to B who, in turn, should furnish a copy to each creditor and notify the creditors that there is a proposed bulk sale in order to enable the latter to protect their interests.

b) Suppose A submitted a false statement on the schedule of his creditors. What is the effect of such false statement as to Vendee B. (2%)

SUGGESTED ANSWER:
If the vendee does not have knowledge of the falsity of the schedule, the sale is valid. However, if the vendee has knowledge of such falsity, the sale is void because he is in bad faith.

c) What is the right of creditors X, Y, and Z if A failed to comply with the procedure/steps required by law under question letter (a) hereof? (1%)

SUGGESTED ANSWER:
The recourse of X, Y, and Z is to question the validity of the sale from A to B so as to recover the goods and merchandise to satisfy their credits.

Consumer Protection Law

Metric System Law (1994)

Angelene is a customer of Meralco Electric Company (MECO). Because of the abrupt rise in electricity rates, Angelene complained with MECO insisting that she should be charged the former rates. However, Angelene did not tender any payment.

When MECO's employees served the first 48-hour notice of disconnection, Angelene protested. MECO, however, did not implement the 48-hour notice of disconnection. Instead, its employees examined Angelene's electric meter, changed the same, and installed another. Still, Angelene, made no tender of payment.

MECO served a second 48-hour notice of disconnection on June 22, 1984. It gave Angelene until 5 pm of June 25, 1984 within which to pay. As no payment had been made, MECO cut Angelene's electric service on June 28, 1984. Angelene contends that the 48-hour written notice of disconnection rule cannot be invoked by MECO

when there is a bona fide and just dispute as to the amount due as her electric consumption rate. Is Angelene's contention valid?

SUGGESTED ANSWER:

No. Angelene's only legal recourse in this case was to pay the electric bill under protest. Her failure to do so justified MECO to cut the electric service *(Ceniza v CA 218 S 290)*

Corporation Law

BOD: Election of Aliens as members (2005)

A Korean national joined a corporation which is engaged in the furniture manufacturing business. He was elected to the Board of Directors. To complement its furniture manufacturing business, the corporation also engaged in the logging business. With the additional logging activity, can the Korean national still be a member of the Board of Directors? Explain. (3%)

SUGGESTED ANSWER:

Yes, just as long as sixty percent (60%) of the Board of Directors are Filipinos. Corporations that are sixty percent (60%) owned by Filipinos can engage in the business of exploration, development and utilization of natural resources. (Art. XII, Sec. 2, 1987 Constitution) The election of aliens as members of the Board Of Directors engaging in partially-nationalized activities is allowed in proportion to their allowable participation or share in the capital of such entities. (Sec. 2-A, Anti-Dummy Law) Nothing in the facts shows that more than forty percent (40%) of the Board of Directors are foreigners.

BOD; Capacity of Directors (1996)

Rodman, the President of TF Co, wrote a letter to Gregorio, offering to sell to the latter 5,000 bags of fertilizer at P100 per bag. Gregorio signed his conformity to the letter-offer, and paid a down-payment of P50th. A few days later, the Corporate Secretary of TF informed Gregorio of the decision of their BOD not to ratify the letter offer. However, since Gregorio had already paid the down-payment, TF delivered 500 bags of fertilizer which Gregorio accepted. TF made it clear that the delivery should be considered an entirely new transaction. Thereafter, Gregorio sought enforcement of the letter-offer. Is there a binding contract for the 5,000 bags of fertilizer? Explain.

SUGGESTED ANSWER:

No, there is no binding contract for the 5,000 bags of fertilizer. First, the facts do not indicate that Rodman, the President of TF Co, was authorized by the BOD to enter into the said contract or that he was empowered to do so under some provision of the by-laws of TF Co. The facts do not also indicate that Rodman has been clothed with the apparent power to execute the contract or agreements similar to it. Second, TF Co has specifically informed Gregorio that it has not ratified the contract for the sale of 5,000 bags of fertilizer and that the delivery to Gregorio of 500 bags, which Gregorio accepted, is an entirely new transaction. *(Yao Ka Sin Trading v CA GR 53820 June 15, 1992 209s763)*

BOD; Compensation (1991)

After many difficult years, which called for sacrifices on the part of the company's directors, ABC Manufacturing Inc was finally earning substantial profits. Thus, the President proposed to the BOD that the directors be paid a bonus equivalent to 15% of the company's net income before tax during the preceding year. The President's proposal was unanimously approved by the BOD. A stockholder of ABC questioned the bonus. Does he have grounds to object?

SUGGESTED ANSWER:

Yes, the stockholder as a valid and legal ground to object to the payment to the directors of a bonus equivalent to 15% of the company's net income. The law provides that the total annual compensation of the directors, in the preceding year, cannot exceed 10% of the company's net income before income tax (Sec 30 Corp Code).

BOD; Conflict of Interest (1994)

ABC Pigger Inc is engaged in raising and selling hogs in the local market. Mr. De Dios, one of its directors while traveling abroad, met a leather goods manufacturer who was interested in buying pig skins from the Philippines. Mr De Dios set up a separate company and started exporting pig skins to his foreign contact but the pig skins exported were not sourced from ABC. His fellow directors in ABC complained that he should have given this business to ABC. How would you decide on this matter?

SUGGESTED ANSWER:

I would decide in favor of Mr De Dios. ABC is engaged in raising and selling hogs in the local market. The company that Mr De Dios had set up was to engage, as it did, in the export of pigs skins. There is thus no conflict of interest between Mr. De Dios and ABC Pigger Inc so as to make the case fall within the conflict of interest situation under the law (Sec 34 Corp Code)

> *Observation: The term "conflict of interest" is susceptible to varied views and interpretations.*

BOD; Interlocking Directors (1995)

Chito Santos is a director of both Platinum Corporation and Kwik Silver Corporation. He owns 1% of the outstanding capital stock of Platinum and 40T of Kwik. Platinum plans to enter into a contract with Kwik that will make both companies earn very substantial profits. The contract is presented at the respective board meetings of Platinum and Kwik.

1. In order that the contract will not be voidable, what conditions will have to be complied with? Explain.
2. If these conditions are not met, how may this contract be ratified? Explain.

SUGGESTED ANSWER:

1. At the meeting of the BOD of Platinum to approve the contract, Chito would have to make sure that

a) his presence as director at the meeting is not necessary to constitute a quorum for such meeting;

b) his vote is not necessary for the approval of the contract; and c) the contract is fair and reasonable under the circumstances.

At the meeting of the BOD of Kwik to approve the contract, Chito would have to make sure that - a) there is no fraud involved; and b) the contract is fair and reasonable under the circumstances.

SUGGESTED ANSWER:
2. If the conditions relating to the quorum and required number of votes are not met, the contract must be ratified by the vote of stockholders representing at least 2/3 of the outstanding capital stock in a meeting called for the purpose. Furthermore, the adverse interest of Chito in the contract must be disclosed and the contract is fair and reasonable. (Secs. 32 and 33, BP 68)

BOD; Interlocking Directors (1996)
Leonardo is the Chairman and President, while Raphael is a Director of NT Corporation. On one occasion, NT Co, represented by Leonardo and A Ent, a single proprietorship owned by Raphael, entered into a dealership agreement whereby NT Co appointed A Ent as exclusive distributor of its products in Northern Luzon. Is the dealership agreement valid? Explain.
SUGGESTED ANSWER:
The dealership agreement is voidable at the option of NT Co inasmuch as the facts do not indicate that the same was approved by the BOD of NT Co before it was signed or, assuming such approval, that it was approved under the following conditions: 1) That the presence of Raphael, the owner of A Ent,
in the meeting of the BOD at which the agreement was approved was not necessary to constitute a quorum for such meeting;
2) That the vote of Raphael was not necessary for the approval of the agreement; 3) That the agreement is fair and reasonable under the circumstances (Sec 32 Corp Code)
ALTERNATIVE ANSWER:
The dealership agreement is valid upon the assumption that the same was approved by the BOD of NT Co before it was signed and that such approval was made under the following conditions: 1) That the presence of Raphael, the owner of A Ent,
in the meeting of the BOD at which the agreement was approved was not necessary to constitute a quorum for such meeting;
2) That the vote of Raphael was not necessary for the approval of the agreement; 3) That the agreement is fair and reasonable under the circumstances (Sec 32 Corp Code)

By-Laws; Validity; limiting qualifications of BOD members (1998)
The BOD of X Co, acting on a standing authority of the stockholders to amend the by-laws, amended its by-laws so as to disqualify any of its stockholders who is also a stockholder and director of a competitor from being elected to its BOD.

Y, a stockholder holding sufficient assets to assure him of a seat in the BOD, filed a petition with the SEC for a declaration of nullity of the amended by-laws. He alleged among other things that as a stockholder, he had acquired rights inherent in stock ownership such as the right to vote and be voted upon in the election of directors. Is the stockholder's petition tenable? (5%)
SUGGESTED ANSWER:
No. There is no vested right of a stockholder to be elected as director. When a person buys stock in a corporation he does so with the knowledge that its affairs are dominated by a majority of the stockholders. To this extent, the stockholder parted with his personal right to regulate the disposition of his property which he invested in the capital stock of the corporation and surrendered it to the will of the majority of his fellow incorporators or stockholders.

Corporations have the power to make by-laws declaring a person employed in the service of a rival company to be ineligible for the Corporation's BOD. An amendment which renders a director ineligible, or if elected, subjects him to removal, if he is also a director in a corporation whose business is in competition with or is antagonistic to the other corporation is valid.

By-Laws; Validity; limiting qualifications of BOD members (2000)
At the annual stockholders' meeting of MS Corporation, the stockholders unanimously passed a resolution authorizing the Board of Directors to amend the corporate by-laws so as to disqualify any stockholder who is also a director or stockholder of a competing business from being elected to the Board of Directors of MS Corporation. The by-laws were accordingly amended. GK, a stockholder of MS Corporation and a majority stockholder of a competitor, sought election to the Board of Directors of MS Corporation. His nomination was denied on the ground that he was ineligible to run for the position. Seeking a nullification of the offending disqualification provision, GK consults you about its validity under the Corporation Code of the Phils. What would your legal advice be? (3%)

SUGGESTED ANSWER:
The provision in the amended by-laws disqualifying any stockholder who is also a director or stockholder of a competing business from being elected to the Board of Directors of MS Corp is valid. The corporation is empowered to adopt a code of by-laws for its government not inconsistent with the Corp Code. Such disqualifying provision is not inconsistent with the Corp Code.

By-Laws; Validity; limiting qualifications of BOD members (2001)

Is a by-law provision of X Corporation "rendering ineligible or if elected, subject to removal, a director if he is also a director in a corporation whose business is in competition with or is antagonistic to said corporation" valid and legal? State your reasons. (5%).

SUGGESTED ANSWER:

Yes, the by-law provision is valid. It is the right of a corporation to protect itself against possible harm and prejudice that may be caused by its competitors. The position of director is highly sensitive and confidential. To say the least, to allow a person, who is a director in a corporation whose business is in competition with or is antagonistic to X Corporation, to become also a director in X Corporation would be harboring a conflict of interest which is harmful to the latter *(Gokongwei Jr v SEC 89 S 336 (1979); 97 S 78 (1980)).*

By-Laws; Validity; limiting qualifications of BOD members (2003)

To prevent the entry of Marlo Enriquez, whom it considered as one antagonistic to its interests, into its Board of Directors, Bayan Corporation amended its articles of incorporation and by-laws to add certain qualifications of stockholders to be elected as members of its Board of Directors. When presented for approval at a meeting of its stockholders duly called for the purpose, the amendments were overwhelmingly ratified. Marlo Enriquez brought suits against Bayan Corporation to question the amendments. Would the action prosper? Why? (4%)

SUGGESTED ANSWER:

(per Dondee) The SC reiterated in the case of *SMC vs. SEC decided in April 11, 1979,* that it is recognized by all authorities that 'every corporation has the inherent power to adopt by-laws 'for its internal government, and to regulate the conduct and prescribe the rights and duties of its members towards itself and among themselves in reference to the management of its affairs.'" At common law, the rule was "that the power to make and adopt by-laws was inherent in every corporation as one of its necessary and inseparable legal incidents. And it is settled throughout the United States that in the absence of positive legislative provisions limiting it, every private corporation has this inherent power as one of its necessary and inseparable legal incidents, independent of any specific enabling provision in its charter or in general law, such power of self-government being essential to enable the corporation to accomplish the purposes of its creation."

Close Corporations; Deadlocks (1995)

Robert, Rey and Ben executed a joint venture agreement to form a close corporation under the Corp Code the outstanding capital stock of which the three of them would equally own. They also provided therein that any corporate act would need the vote of 70% of the outstanding capital stock. The terms of the agreement were accordingly implemented and the corresponding close corporation was incorporated. After 3 years, Robert, Rey and Ben could not agree on the business in which to invest the funds of the corporation. Robert wants the deadlock broken.

1. What are the remedies available to Robert under the Corp code to break the deadlock? Explain.
2. Are there any remedies to prevent the paralyzation of the business available to Robert under PD 902-A while the petition to break the deadlock is pending litigation? Explain.

SUGGESTED ANSWER:

1. Robert can petition the SEC to arbitrate the dispute, with such powers as provided in Sec 104 of the Corp Code.
2. The SEC can appoint a rehabilitation receiver or a management committee.

Closed Corporation; Restriction; Transfer of shares (1994)

Rafael inherited from his uncle 10,000 shares of Sta. Ana Corporation, a close corporation. The shares have a par value of P10.00 per share. Rafael notified Sta. Ana that he was selling his shares at P70.00 per share. There being no takers among the stockholders, Rafael sold the same to his cousin Vicente (who is not a stockholder) for P700,000.

The Corporate Secretary refused to transfer the shares in Vicente's name in the corporate books because Alberto, one of the stockholders, opposed the transfer on the ground that the same violated the by-laws. Alberto offered to buy the shares at P12.50 per share, as fixed by the by-laws or a total price of P125,000 only.

While the by-laws of Sta. Ana provides that the right of first refusal can be exercised "at a price not exceeding 25% more than the par value of such shares, the Articles of Incorporation simply provides that the stockholders of record "shall have preferential right to purchase said shares." It is silent as to pricing.

Is Rafael bound by the pricing proviso under the by-laws of Sta. Ana Corporation?

SUGGESTED ANSWER:

Yes. In a close corporation, the restriction as to the transfer of shares has to be stated/ annotated in the Articles of Incorporation, the By-Laws and the certificate of stock. This serves as notice to the person dealing with such shares like Rafael in this case. With such notice, he is bound by the pricing stated in the By-laws.

ALTERNATIVE ANSWER:

No, Rafael is not bound by the pricing proviso under the By-laws of Sta Ana Corporation. Under the corporation law, the restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock, otherwise, the same shall not be binding on any purchaser thereof in good faith. Moreover the restriction shall not be more onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable term or period stated therein.

Here, limiting the price to be paid, when the right of first refusal is exercised, to not more than 25% par value, without any qualification whatsoever, is not in the articles. It is merely stated in the By-laws. Therefore such limitation shall not be binding on the purchaser. *(GoSock & Sons & Sy Gui Huat Inc v IAC 19 Feb 87 Min Res)*

Controversy; Intra-Corporate (1994)
Because of disagreement with the BOD and a threat by the BOD to expel her for misconduct and inefficiency, Carissa offered in writing to resign as President and member of the BOD, and to sell to the company all her shares therein for P300,000.00 Her offer to resign was "effective as soon as my shares are fully paid." At its meeting, the BOD accepted Carissa's resignation, approved her offer to sell back her shares of stock to the company, and promised to buy the stocks on a staggered basis. Carissa was informed of the BOD Resolution in a letter-agreement to which she affixed her consent. The Company's new President singed the promissory note. After payment P100,000 the company defaulted in paying the balance of P200,000.

Carissa wants to sue the Company to collect the balance. If you were retained by Carissa as her lawyer, where will you file the suit? A) Labor Arbiter; b) RTC; or c) SEC?
SUGGESTED ANSWER:
The RTC has jurisdiction over this case which involves intra-corporate controversy. As of 2006, the applicable rule is that there is a TRANSFERRED JURISDICTION under Sec. 5.2 of the SRC, the Commission's jurisdiction over all cases enumerated under PD 902-A sec. 5 has been transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court.

Controversy; Intra-Corporate (1996)
In 1970, Magno joined AMD Co as a Junior Accountant. He steadily rose from the ranks until he became AMD's Executive VP. Subsequently, however because of his involvement in certain anomalies, the AMD BOD considered him resigned from the company due to loss of confidence.

Aggrieved, Magno filed a complaint in the SEC questioning the validity of his termination, and seeking reinstatement to his former position, with backwages, vacation and sick leave benefits, 13th month pay and Christmas bonus, plus moral and exemplary damages, attorney's fees and costs. AMD filed a motion to dismiss, arguing that the SEC has no jurisdiction over cases of illegal dismissal, and has no power to award damages. Should the motion to dismiss be granted? Explain.
SUGGESTED ANSWER:
As of 2006, the applicable rule is that there is a TRANSFERRED JURISDICTION under Sec. 5.2 of the SRC, the Commission's jurisdiction over all cases enumerated under PD 902-A sec. 5 has been transferred to the Courts of general jurisdiction or the appropriate REGIONAL TRIAL COURT.

Controversy; Intra-Corporate (1996)
Jennifer and Gabriel owned the controlling stocks in MFF Co and CLO Inc, both family corporations. Due to serious disagreements, Jennifer assigned all her shares in MFF to Gabriel, while Gabriel assigned all his shares in CLO to Jennifer. Subsequently, Jennifer and CLO filed a complaint against Gabriel and MFF in the SEC seeking to recover the corporate records and funds of CLO which Gabriel allegedly refused to turn over, and which remained in the offices of MFF. Is there an intra-corporate controversy in this case?

SUGGESTED ANSWER:
Yes, there is an intra-corporate controversy in this case. The fact that, when the complaint against Gabriel and MFF was filed with the SEC (per 2006, RTC's Jurisdiction), Jennifer and CLO were no longer stockholders of MFF did not divest the SEC (per 2006, RTC's Jurisdiction) of its jurisdiction over the case inasmuch as Jennifer was a former stockholder of MFF and the controversy arose out of this relation. *(SEC v CA GR 93832 Aug 23 91; 201s124)*

Controversy; Intra-Corporate (2006)
What is an intra-corporate controversy? (8%)
SUGGESTED ANSWER:
An intra-corporate controversy is a conflict between stockholders, members or partners and the corporation, association or partnership regarding the regulation of the corporation. The controversy must arise out of intra-corporate or partnership relations of the parties; or between such corporation, partnership or association and the State insofar as it concerns their individual franchises. It is further required that the dispute be intrinsically connected with the regulation of the corporation *(Speed Distributing Corp., et al. v. Court of Appeals, et al, G.R. No. 149351, March 17, 2004; Intestate Estate of Alexander T.Ty v. Court of Appeals, G.R. No. 112872, April 19, 2001).*

Is the Securities and Exchange Commission the venue for actions involving intra-corporate controversies? (2%)

SUGGESTED ANSWER:
No, pursuant to Subsection 5.2 of the Securities Regulation Code, the quasi-judicial jurisdiction of the Securities and Exchange Commission to hear corporate cases, including intra-corporate controversies, under Section 5 of Pres. Decree No. 902-A, has been expressly transferred to the designated Regional Trial Court. Pursuant to a memorandum circular issued by the Supreme Court, only particularly designated RTC special commercial courts in each judicial region have original and exclusive jurisdiction over such cases *(See Intestate Estate of Alexander T. Ty v. Court of Appeals, G.R. No. 112872, April 19, 2001).*

Controversy; Intra-corporate; Jurisdiction (1997)
Juan was a stockholder of X Co. He owned a total of 500 shares evidenced by Cert of Stock No 1001. He sold the shares to Pedro. After getting paid, Juan indorsed and delivered said Certificate of Stock No 1001 to Pedro. The following day, Juan went to the offices of the corporation and claimed that his Certificate of Stock No 1001 was lost and that, despite diligent efforts, the certificate could

not be located. The formalities prescribed by law for the replacement of the "lost" certificate were complied with. Eventually X Co issued in substitution of the "lost" certificate, Cert of Stock No 2002. Juan forthwith transferred for valuable consideration the new certificate to Jose who knew nothing of the previous sale to Pedro. In time, the corporation was confronted with the conflicting claims of Jose and Pedro. The BOD of X Co invited you to enlighten them on these questions; viz: a) If a suit were to be initiated in order to resolve the controversy between Pedro and Jose, should the matter be submitted to the SEC or to the regular courts? b) Between Jose and Pedro, whom should the corporation so recognize as the rightful stockholder?

How would you respond to the above queries?

SUGGESTED ANSWER:

a) The matter should be submitted to the regular courts – specifically in the Regional Trial Court where the principal office of the corporation is located. The controversy between Pedro and Jose is not an intra-corporate controversy.

b) If there is no over-issuance of shares resulting from the two-transactions of Juan, the corporation should recognize both Pedro and Jose as rightful stockholders. This is without prejudice to the right of the corporation to claim against Juan for the value of the shares which Juan sold to Jose.

Corporation Sole; Definition (2004)

What is a corporation sole?

SUGGESTED ANSWER:

Section 110 of the Corporation Code defines a "corporation sole" as one formed for the purpose of administering and managing, as trustee, the affairs, property and temporalities of any religious denomination, sect or church. It is formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of such religious denomination, sect or church.

Corporation: Issuance of shares of stock to pay for the services (2005)

Janice rendered some consultancy work for XYZ Corporation. Her compensation included shares of stock therein. Can XYZ Corporation issue shares of stock to pay for the services of Janice as its consultant? Discuss your answer. (2%)

SUGGESTED ANSWER:

Yes, provided the approval of stockholders representing two-thirds (2/3) of the outstanding capital stock is obtained. Although the facts indicate that the consultancy work has already been "rendered" constituting "previously contracted debt," under Section 39 of the Corporation Code, the pre-emptive rights of existing stockholders need not be respected "in payment of a previously contracted debt," but only with the indicated stockholders' approval. Under Section 62 of the Corporation Code, consideration for the issuance of stock may include labor performed for or services actually rendered to the corporation.

Corporation: Right of Repurchase of Shares; Trust Fund Doctrine (2005)

Under what conditions may a stock corporation acquire its own shares? (2%)

SUGGESTED ANSWER:

In line with the trust fund doctrine that generally renders it unlawful for the corporation to return assets to the stockholders representing capital, a corporation may acquire its own shares *only when there exists in the books unrestricted retained earnings to cover the repurchase of shares.* The purpose of the repurchase of shares must be a legitimate business purpose of the corporation, such as to:

1 ELIMINATE fractional shares arising out of stock dividends;

2 COLLECT or COMPROMISE an indebtedness to the corporation arising out of unpaid subscription in a delinquency sale;

3 to PURCHASE delinquent shares sold during the sale; and

4 to PAY dissenting or withdrawing stockholders entitled to such payment under the Corporation Code. (Sees. 41 and 82, Corporation Code)

Corporation: Sole Proprietorship (2004)

YKS Trading filed a complaint for specific performance with damages against PWC Corporation for failure to deliver cement ordered by plaintiff. In its answer, PWC denied liability on the ground, inter alia, that YKS has no personality to sue, not being incorporated, and that the President of PWC was not authorized to enter into a contract with plaintiff by the PWC Board of Directors, hence the contract is ultra vires. YKS Trading replied that it is a sole proprietorship owned by YKS, and that the President of PWC had made it appear in several letters presented in evidence that he had authority to sign contracts on behalf of the Board of Directors of PWC. Will the suit prosper or not? Reason briefly. (5%)

SUGGESTED ANSWER:

Yes the suit will prosper. As a sole proprietorship, the proprietor of YKS Trading has the capacity to act and the personality to sue PWC. It is not necessary for YKS Trading to be incorporated before it can sue. On the other hand, PWC is estopped from asserting that its President had no authority to enter into the contract, considering that, in several of PWC's letters, it had clothed its President with apparent authority to deal with YKS Trading.

Corporation; Articles of Incorporation (1990)

The articles of incorporation to be registered in the SEC contained the following provisions -- a) "First Article. The name of the corporation shall be Toho Marketing Company."

b) "Third Article. The principal office of such corporation shall be located in Region III, in such municipality therein as its Board of Directors may designate."

c) "Seventh Article. The capital stock of the corporation is One Million Pesos (P1,000,000) Philippine Currency."

What are your comments and suggested changes to the proposed articles?

SUGGESTED ANSWER:

a) On the First Article, I would suggest that the corporate name indicate the fact of incorporation by using either "Toho Marketing Corporation" or "Toh Marketing Company, Incorporated."

b) The Third Article should indicate the City or the Municipality and the Province in the Philippines, and not merely the region or as its BOD may later designate, to be its place of principal office.

c) The Seventh Article must additionally point out the number of shares into which the capital stock is divided, as well as the par value thereof or a statement that said stock or a portion thereof are without par value. (Sec 14 & 15 Corp Code)

Corporation; Bulk Sales Law (2005)

Divine Corporation is engaged in the manufacture of garments for export. In the course of its business, it was able to obtain loans from individuals and financing institutions. However, due to the drop in the demand for garments in the international market, Divine Corporation could not meet its obligations. It decided to sell all its equipment such as sewing machines, perma-press machines, high speed sewers, cutting tables, ironing tables, etc., as well as its supplies and materials to Top Grade Fashion Corporation, its competitor. (5%) 1) How would you classify the transaction?

SUGGESTED ANSWER:

The transactions would constitute a sale of "substantially all of the assets of Divine Corporation complying with the test under Sec. 40 of the Corporation Code, the transactions not being "in the ordinary course of business," and one "thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated."

ALTERNATIVE ANSWER:

It is a sale and transfer in bulk in contemplation of the Bulk Sales Law. Under Sec. 2 of the Bulk Sales Law, a bulk sale includes any sale, transfer, mortgage, or assignment of all, or substantially all, of the business or trade theretofore conducted by the vendor, mortgagor, transferor, or assignor. This is exactly what happened in the case at bar.

2) Can Divine Corporation sell the aforesaid items to its competitor, Top Grade Fashion Corporation? What are the requirements to validly sell the items? Explain.

SUGGESTED ANSWER:

For such a transaction to be valid, it requires not only the favorable resolution of the Board of Directors of Divine Corporation, but also the ratificatory vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock, as mandated under Sec. 40 of the Corporation Code. The sale would be void in case of failure to meet the twin approvals. *(Islamic Directorate of the Philippines v. Court of Appeals, G.R. No. 117897, May 14, 1997)*

ALTERNATIVE ANSWER:

Divine Corporation can sell the items to its competitor, Top Grade Fashion Corporation. However, Divine Corporation must comply with Sections 3, 4 and 5 of the Bulk Sales Law, namely: (1) deliver sworn statement of the names and addresses of all the creditors to whom the vendor or mortgagor may be indebted together with the amount of indebtedness due or owing to each of the said creditors; (2) apply the purchase or mortgage money to the pro-rata payment of bona fide claims of the creditors; and (3) make a full detailed inventory of the stock of goods, wares, merchandise, provisions or materials, in bulk, and notify every creditor at least ten (10) days before transferring possession.

3) How would you protect the interests of the creditors of Divine Corporation?

SUGGESTED ANSWER:

Considering that Divine Corporation has entered a de facto stage of dissolution with the ceasing of its operations, I would invoke on behalf of the creditors the protection under Sec. 122 of the Corporation Code, that the proceeds of the sale should first be applied towards the settlement of the obligations of the corporation, before any amount can be paid to the stockholders.

ALTERNATIVE ANSWER:

Under the Bulk Sales Law, if the proceeds are not; applied proportionately towards the settlement of the accounts of the corporate debts, to have the sale of the subject matters to Top Grade Fashion Corp., as being "fraudulent and void" and obtain satisfaction from the properties which are deemed to still be owned by Divine Corporation in spite of delivery to the buyer. The creditors can collect on the credit against Divine Corporation, and if it cannot pay, the creditors can apply for attachment on the property fraudulently sold. **(See People v. Mapoy, G.R. No. 48836, September 21, 1942)**

4) In case Divine Corporation violated the law, what remedies are available to Top Grade Fashion Corporation against Divine Corporation?

SUGGESTED ANSWER:

If the sale by Divine Corporation did not obtain the required two-thirds (2/3) vote of the outstanding capital stock, then the transaction is void. *(Islamic Directorate of the Philippines v. Court of Appeals, G.R. No, 117897, May 14, 1997)*

Top Grade Fashion Corporation can have the purchase declared void and recover the purchase price paid, as well as damages against the directors and officers who undertook the transaction in violation of the law.

ALTERNATIVE ANSWER:

For violation of the Bulk Sales Law, the principal officers of the Divine Corporation can be held criminally liable. In addition, Top Grade can sue Divine Corporation for damages. Violation of the Bulk Sales Law would render such a sale fraudulent and void. Since Top Grade would be compelled to return the goods to Divine Corporation,

Top Grade can compel Divine Corporation to return the purchase price and pay damages.

Corporation; By-laws (2001)

Suppose that the by-laws of X Corp, a mining firm provides that "The directors shall be relieved from all liability for any contract entered into by the corporation with any firm in which the directors may be interested." Thus, director A acquired claims which overlapped with X's claims and were necessary for the development and operation of X's mining properties. a) Is the by-law provision valid? Why? (3%) b) What happens if director A is able to consummate

his mining claims over and above that of the corporation's claims? (2%)

SUGGESTED ANSWER:

a) No. It is in violation of Section 32 of the Corp Code.

b) A should account to the corporation for the profits which he realized from the transaction. He grabbed the business opportunity from the corporation. (Section 34, Corp Code)

Corporation; Commencement; Corporate Existence (2003)

1. When does a corporation acquire corporate existence?

SUGGESTED ANSWER:

2. CBY & Co., Inc., registered with the Securities and Exchange Commission its articles of incorporation. It failed, however, for one reason or another, to have its by-laws filed with, and registered by, the Commission. It nevertheless transacted and did business as a corporation for sometime. A suit was commenced by its minority stockholders assailing the continued existence of CBY & Co., Inc., because of the non-adoption and registration of its by-laws. Would the action prosper? Why? (6%)

SUGGESTED ANSWER:

Corporation; Conversion of Stock Corporation (2001)

X company is a stock corporation composed of the Reyes family engaged in the real estate business. Because of the regional crisis, the stockholders decided to convert their stock corporation into a charitable non-stock and non-profit association by amending the articles of incorporation. a) Could this be legally done? Why? (3%) b) Would your answer be the same if at the inception,

X Company is a non-stock corporation? Why? (2%)

SUGGESTED ANSWER:

a) Yes, it can be legally done. In converting the stock corporation to a non-stock corporation by a mere amendment of the articles of incorporation, the stock corporation is not distributing any of its assets to the stockholders. On the contrary, the stockholders are deemed to have waived their right to share in the profits of the corporation which is a gain not a loss to the corporation.

b) No, my answer will not be the same. In a non-stock corporation, the members are not entitled to share in the profits of the corporation because all present and future profits belong to the corporation. In converting the non-stock corporation to a stock corporation by a mere amendment of the Articles of Incorporation, the non-stock corporation is deemed to have distributed an asset of the corporation – i.e. its profits, among its members, without a prior dissolution of the corporation. Under Sec 122, the non-stock corporation must be dissolved first.

(Observation: The question is rather vague more particularly question 1b. The question does not specify that the conversion is from a non-stock corporation to a stock corporation. The candidate is likely to be confused because of the words "if at the inception, X Co is a nonstock corporation." Hence, any answer along the same line should be treated with liberality)

Corporation; De Facto Corporation (1994)

A corporation was created by a special law. Later, the law creating it was declared invalid. May such corporation claim to be a de facto corporation?

SUGGESTED ANSWER:

No. A private corporation may be created only under the Corporation Code. Only public corporations may be created under special law.

Where a private corporation is created under a special law, there is no attempt at a valid incorporation. Such corporation cannot claim a de facto status.

Corporation; Dissolution; Methods of Liquidation (2001)

X Corporation shortened its corporate life by amending its Articles of Incorporation. It has no debts but owns a prime property located in Quezon City. How would the said property be liquidated among the five stockholders of said corporation? Discuss two methods of liquidation. (5%)

SUGGESTED ANSWER:

The prime property of X Corporation can be liquidated among the five stockholders after the property has been conveyed by the corporation to the five stockholders, by dividing or partitioning it among themselves in any two of the following ways: 1) by PHYSICAL DIVISION or PARTITION based on the proportion of the values of their stockholdings; or

2) SELLING THE PROPERTY to a third person and dividing the proceeds among the five stockholders in proportion to their stockholdings; or

3) after the determination of the value of the property, by ASSIGNING or TRANSFERRING THE PROPERTY to one stockholder with the obligation on the part of said stockholder to pay the other four stockholders the amount/s in proportion to the value of the stockholding of each.

Corporation; Incorporation; Requirements (2006)

What is the minimum and maximum number of incorporators required to incorporate a stock corporation?

Is this also the same minimum and maximum number of directors required in a stock corporation? (2.5%)

SUGGESTED ANSWER:

Under Section 10 of the Corporation Code, any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose.

This is the same minimum and maximum number of directors required in a stock corporation under Section 14(6) of the Corporation Code.

Corporation; Incorporation; Residency Requirements (2006)

Must all incorporators and directors be residents of the Philippines? (2.5%)

SUGGESTED ANSWER:

Not all directors and incorporators need to be residents of the Philippines. Under Section 10 of the Corporation Code, only a majority of the incorporators need to be residents of the Philippines. As provided in Section 23 of the same Code, only a majority of the members of the Board of Directors need to be residents of the Philippines.

Corporation; Incorporation; Requisites (2002)

You have been asked to incorporate a new company to be called FSB Savings & Mortgage Bank, Inc. List the documents that you must submit to the Securities and Exchange Commission (SEC) to obtain a certificate of incorporation for FSB Savings & Mortgage Bank, Inc. (5%)

SUGGESTED ANSWER:

The documents to be submitted to the Securities and Exchange Commission (SEC) to incorporate a new company to be called FSB Savings & Mortgage Bank, Inc., to obtain the certificate of incorporation for said company, are: 1) Articles of Incorporation 2) Treasurer's Affidavit; 3) Certificate of Authority from the Monetary Board of the BSP;

4) Verification slip from the records of the SEC whether or not the proposed name has already been adopted by another corporation, partnership or association;

5) Letter undertaking to change the proposed name if already adopted by another corporation, partnership or association;

6) Bank certificate of deposit concerning the paid-up capital;

7) Letter authorizing the SEC or Monetary Board or its duly authorized representative to examine the bank records regarding the deposit of the paid-up capital;

8) Registration Sheet;

Corporation; Meetings; BOD & Stockholders (1993)

Under the Articles of Incorporation of Manila Industrial Corp, its principal place of business shall be in Pasig, MM. The principal corporate offices are at the Ortigas Center, Pasig, MM while its factory processing leather products, is in Manila. The corporation holds its annual stockholders' meeting at the Manila Hotel in Manila and its BOD meeting at a hotel in Makati MM. The by-laws are silent as to the place of meetings of the stockholders and directors. 1) Who shall preside at the meeting of the directors? 2) Can Ting, a stockholder, who did not attend the stockholders' annual meeting in Manila, question the validity of the corporate resolutions passed at such meeting? 3) Can the same stockholder question the validity of the resolutions adopted by the BOD at the meeting held in Makati?

SUGGESTED ANSWER:

1) The President presides over the meeting of the directors, if there is no position of Chairman provided in the By-Laws. If there is the position of Chairman provided in the By-Laws, the Chairman presides over the meeting of the Directors (Sec 54 Corp Code)

2) No. The law provides that the annual stockholders' meeting shall be held in the city or municipality where the principal office of the Corporation is located. For this purpose, the law also provides that Metro Manila is considered a city or municipality. Since the principal place of business of MIC is Pasig, MM, the holding of the annual stockholders meeting in Manila is proper. (Sec 51 Corp)

3) No. The law allows the BOD to hold its meeting anywhere in the Philippines. The holding of the BOD meeting in Makati was proper and the validity of the resolutions adopted by the Board in that meeting cannot be questioned. (Sec 53 Corp code)

Corporation; Nationality of Corporation (1998)

What is the nationality of a corporation organized and incorporated under the laws of a foreign country, but owned 100% by Filipinos? (2%)

SUGGESTED ANSWER:

Under the control test of corporate nationality, this foreign corporation is of Filipino Nationality. Where there are grounds for piercing the veil of corporate entity, that is, disregarding the fiction, the corporation will follow the nationality of the controlling members or stockholders, since the corporation will then be considered as one and the same.

Corporation; Non-Stock Corporation (1993)

The AB Memorial Foundation was incorporated as a non-profit, non-stock corporation in order to establish and maintain a library and museum in honor of the deceased parents of the incorporators. Its Articles of Incorporation provided for a board of trustees composed of 5 incorporators, which authorized to admit new members. The Articles of Incorporation also allow the foundation to receive donations from members. As of Jan 30, 1993, 60 members had been admitted by the BOT.

1) Can the Foundation use the funds donated to it by its members for purchase of food and medicine for distribution to the victims of the Pinatubo eruption? 2) Can the Foundation operate a specialty restaurant that caters to the general public in order to augment its funds? 3) One of the original trustees died and the other two resigned because they immigrated to the US. How will the vacancies in the BOT be filled?

SUGGESTED ANSWER:

1) Yes, (Sec 36(9) of the Corp Code) as long as the amount of donation is reasonable.

2) If the purposes of the corporation are limited to the establishment and maintenance of the library and museum as stated in the problem, the foundation cannot operate a specialty restaurant that caters to the general public. In such case, the action of the foundation will be ultra vires.

ALTERNATIVE ANSWER:

2) If the act of the corporation is justified by the secondary purpose of the corporation which includes the act of operating a restaurant, the foundation will be within its power to do so.

3) Since there are only 2 of the members of the BOT remaining and there is no quorum, the vacancies will have to be filled up in a special meeting of the members (sec 29 Corp)

Corporation; Power to Invest Corporate Funds for other Purpose (1995)

Stikki Cement Co was organized primarily for cement manufacturing. Anticipating substantial profits, its President proposed that Stikki invest in a) a power plant project, b) a concrete road project, and c) quarry operations for limestone in the manufacture of cement. 1) What corporate approvals or votes are needed for the proposed investments? Explain. 2) Describe the procedure in securing these approvals.

SUGGESTED ANSWER:

1. Unless the power plant and the concrete road project are reasonable necessary to the manufacture of cement by Stikki (and they do not appear to be so), then the approval of said projects by a majority of the BOD and the ratification of such approval by the stockholders representing at least 2/3 of the outstanding capital stock would be necessary.

As for the quarry operations for limestone, the same is an indispensable ingredient in the manufacture of cement and may, therefore, be considered reasonably necessary to accomplish the primary purpose of Stikki. In such case, only the approval of the BOD would be necessary (Sec 42 BP 68)

ALTERNATIVE ANSWER:

1. The majority vote of the BOD is necessary. The investment in a) a power plant project, b) a concrete road project, and c) quarry operations of limestone used in the manufacture of cement, is within the express or implied power of the corporation, or at least the same is incidental to, or necessary for the existence of the corporation.

SUGGESTED ANSWER:

2.a) The procedure in securing the approval of the BOD is as follows:

a notice of the BOD should be sent to all the directors. The notice should state the purpose of the meeting.

At the meeting, each of the project should be approved by a majority of the BOD (not merely a majority of those present at the meeting)

2.b) The procedure in securing the approval of the stockholders is as follows:

Written notice of the proposed investment and the time and place of the stockholders' meeting should be sent to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

At the meeting, each of the projects should be approved by the stockholders representing at least 2/3 of the outstanding capital stock. (Sec 42 BP 68)

Corporation; Power to Invest Corporate Funds in another Corporation (1996)

When may a corporation invest its funds in another corporation or business or for any other purposes?

SUGGESTED ANSWER:

A corporation may invest its funds in another corporation or business or for any other purpose other than the primary purpose for which it was organized when the said investment is approved by a majority of the BOD and such approval is ratified by the stockholders representing at least 2/3 of the outstanding capital stock. Written notice of the proposed investment and the date, time and place of the stockholders' meeting at which such proposal will be taken up must be sent to each stockholder. (Sec 42 Corp Code)

Corporation; Recovery of Moral Damages (1998)

In a complaint filed against XYZ Corporation, Luzon Trading Corporation alleged that its President & General Manager, who is also a stockholder, suffered mental anguish, fright, social humiliation and serious anxiety as a result of the tortuous acts of XYZ Corporation.

In its counterclaim, XYZ Co claimed to have suffered moral damages due to besmirched reputation or goodwill as a result of Luzon Trading Co's complaint. 1) May Luzon Trading Co recover damages based on the allegations of the complaint? (2%) 2) May XYZ Co recover moral damages? (3%)

SUGGESTED ANSWER:

No. A corporation, being an artificial person which has no feelings, emotions or senses, and which cannot experience physical suffering or mental anguish, is not entitled to moral damages.

ALTERNATIVE ANSWER:

Yes. When a juridical person has a good reputation that is debased, resulting in social humiliation, moral damages may be awarded. Moreover, goodwill can be considered an asset of the corporation.

TAKE NOTE: In the case of **FBN Inc. vs AMEC, January 17, 2005**, the SC ruled that; FBNI contends that AMEC is not entitled to moral damages because it is a corporation.

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals cites Mambulao Lumber Co. v. PNB, et al. to justify the award of moral damages. However, the Court's statement in Mambulao that "a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages" is an obiter dictum.

Nevertheless, AMEC's claim for moral damages falls under item 7 of Article 2219 of the Civil Code. This provision expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. Article 2219(7) does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person such as a corporation can validly complain for libel or any other form of defamation and claim for moral damages.

Moreover, where the broadcast is libelous per se, the law implies damages. In such a case, evidence of an honest mistake or the want of character or reputation of the party libeled goes only in mitigation of damages. Neither in such a case is the plaintiff required to introduce evidence of actual damages as a condition precedent to the recovery of some damages. In this case, the broadcasts are libelous per se. Thus, AMEC is entitled to moral damages.

Corporation; Separate Juridical Personality (1995)
Ronald Sham doing business under the name of SHAMRON Machineries (Shamron) sold to Turtle Mercantile (Turtle) a diesel farm tractor. In payment, Turtle's President and Manager Dick Seldon issued a check for P50th in favor of Shamron. A week later, Turtle sold the tractor to Briccio Industries (Briccio) for P60th. Briccio discovered that the engine of the tractor was reconditioned so he refused to pay Turtle. As a result, Dick Seldon ordered "Stop Payment" of the check issued to Shamron.

Shamron sued Turtle and Dick Seldon. Shamron obtained a favorable judgment holding co-defendants Turtle and Dick Seldon jointly and severally liable. Comment on the decision of the trial court. Discuss fully.
SUGGESTED ANSWER:
The trial court erred in holding Dick Seldon, President and GM of Turtle, jointly and severally liable with Turtle. In issuing the check issued to Shamron and, thereafter, stopping payment thereof, Seldon was acting in his capacity as an officer of Turtle. He was not acting in his personal capacity. Furthermore, no facts have been provided which would indicate that the action of Seldon was dictated by an intent to defraud Shamron by himself or in collusion with Turtle. Having acted in what he considered as his duty as an officer of the corporation, Seldon should not be held personally liable.

Corporation; Separate Juridical Personality (1996)
PR Co owns a beach resort with several cottages. Jaime, the President of PR, occupied one of the cottages for residential purposes. After Jaime's term expired, PR wanted to recover possession of the cottage. Jaime refused to surrender the cottage, contending that as a stockholder and former President, he has a right to possess and enjoy the properties of the corporation. Is Jaime's contention correct? Explain.
SUGGESTED ANSWER:
Jaime's contention is not correct. Jaime may own shares of stock in PR Corp but such ownership does not entitle him to the possession of any specific property of the corporation or a definite portion thereof. Neither is he a co-owner of corporate property. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its stockholders.

Stockholders like Jaime only own shares of stock in the corporation. Such shares of stock do not represent specific corporate property. *(Rebecca Boyer-Roxas v CA GR 100866 Jul 14, 92 211s470)*

Corporation; Separate Juridical Personality (1996)
Richard owns 90% of the shares of the capital stock of GOM Co. On one occasion, GOM represented by Richard as President and General Manager executed a contract to sell a subdivision lot in favor of Tomas. For failure of GOM to develop the subdivision, Tomas filed an action for rescission and damages against GOM and Richard. Will the action prosper? Explain.
SUGGESTED ANSWER:
The action may prosper against GOM but definitely not against Richard. Richard has a legal personality separate and distinct from that of GOM. If he singed the contract to sell, he did so as the President and General Manager of GOM and not in his personal capacity. Mere ownership by Richard of 90% of the capital stock of GOM is not of itself sufficient ground to disregard his separate legal personality absent a showing, for example that he acted maliciously or in bad faith *(EPG Const Co v CA GR 103372 Jn 22,92 210s230)*

Corporation; Separate Juridical Personality (1999)
As a result of perennial business losses, a corporation's net worth has been wiped out. In fact, it is now in negative territory. Nonetheless, the stockholders did not like to give up. Creditor-banks, however, do not share the confidence of the stockholders and refuse to grant more loans. a) What tools are available to the stockholders to

replenish capital? (3%)

b) Assuming that the corporation continues to operate even with depleted capital, would the stockholders or the managers be solidarily liable for the obligations incurred by the corporation? Explain. (3%)

SUGGESTED ANSWER:

a) In the face of the refusal of the creditor-banks to grant more loans, the following are tools available to the stockholders to replenish capital, to wit:

1) additional subscription to shares of stock of the corporation by stockholders or by investors;
2) advances by the stockholders to the corporation;
3) payment of unpaid subscription by the stockholders.

SUGGESTED ANSWER:

b) No. As a general rule, the stockholders or the managers cannot be held solidarily liable for the obligations incurred by the corporation. The corporation has a separate and distinct personality from that of the stockholders or managers. The latter are presumed to be acting in good faith in continuing the operation of the corporation. The obligations incurred by the corporation are those of the corporation which alone is liable therefor. However, when the corporation is already insolvent, the directors and officers become trustees of the business and assets of the corporation for the benefit of the creditors and are liable for negligence or mismanagement.

Corporation; Separate Juridical Personality (2000)

Marulas Creative Technology Inc., an e-business enterprise engaged in the manufacture of computer media accessories; rents an office and store space at a commercial building owned by X. Being a start-up company, Marulas enjoyed some leniency in its rent payments; but after three years, X put a stop to it and asked Marulas president and general manager, Y, who is a stockholder, to pay the back rentals amounting to a hundred thousand pesos or to vacate the premises at the end of the month. Marulas neither paid its debt nor vacated the premises. X sued Marulas and Y for collection of the unpaid rentals, plus interest and costs of litigation. Will the suit prosper against X? Against Y? (5%)

SUGGESTED ANSWER:

Yes, the suit will prosper against Marulas. It is the one renting the office and store space, as lessee, from the owner of the building, X, as lessor.

But the suit against Y will not prosper. Y, as president and general manager, and also stockholder of Marulas Creative Technology, Inc., has a legal personality separate and distinct from that of the corporation. The liability of the corporation is that of the corporation and not that of its officers and stockholders who are not liable for corporate liabilities.

Corporation; Separate Juridical Personality (2000)

Nine individuals formed a private corporation pursuant to the provisions of the Corporation Code of the Philippines (BP 68). Incorporator S was elected director and president – general manager. Part of his emolument is a Ford Expedition, which the corporation owns. After a few years, S lost his corporate positions but he refused to return the motor vehicle claiming that as a stockholder with a substantial equity share, he owns that portion of the corporate assets now in his possession. Is the contention of S valid? Explain (5%)

SUGGESTED ANSWER:

No. The contention of S is not valid. The Ford Expedition is owned by the corporation. The corporation has a legal personality separate and distinct from that of its stockholder. What the corporation owns is its own property and not the property of any stockholder even how substantial the equity share that stockholder owns.

Corporation; Set-Off; Unpaid Subscription (1994)

Victor was employed in MAIA Corporation. He subscribed to 1,500 shares of the corporation at P100 per share or a total of P150,000. He made an initial down payment of P37,500.00. He was appointed President and General Manager. Because of his disagreement with the BOD, he resigned and demanded payment of his unpaid salaries, his cost of living allowance, his bonus, and reimbursement of his gasoline and representation expenses.

MAIA Corporation admits that it owed Victor P40,000. but told him that this will be applied to the unpaid balance of his subscription in the amount of P100,000.00 There was no call or notice for the payment of the unpaid subscription. Victor questioned the set-off. 1) May MAIA set-off the unpaid subscription with victor's claim for salaries? 2) Would your answer be the same if indeed there had been a call for the unpaid subscription?

SUGGESTED ANSWER:

1) No. MAIA cannot setoff the unpaid subscription with Victor's claim for salaries. The unpaid subscription is not yet due as there is no call.

2) Yes. The reason is that Victor is entitled to the payment of his salaries which MAIA has no right to withhold in payment of unpaid subscription. To do so would violate Labor Laws *(Apodaco v NLRC 172 S 442)*

Corporation; Stock Corporation (2001)

"XY" is a recreational club which was organized to operate a golf course for its members with an original authorized capital stock of P100M. The articles of incorporation nor the by-laws did not provide for distribution of dividends although there is a provision that after its dissolution, the assets shall be given to a charitable corporation. Is "XY" a stock corporation? Give reasons for your answer? (5%)

SUGGESTED ANSWER:

XY is a stock corporation because it is organized as a stock corporation and there is no prohibition in its Articles of Incorporation or its by-laws for it to declare dividends. When a corporation is organized as a stock corporation and its articles of Incorporation or By-Laws

are silent, the corporation is deemed to have the power to declare dividends under Sec 43. Since it has the power to declare dividends, XY is a stock corporation.

The provision of the Articles of Incorporation that at dissolution the assets of the corporation shall be given to a charitable corporation does not prohibit the corporation from declaring dividends before dissolution.

Corporation; Validity of Corporate Acts (1998)

The stockholders of People Power Inc (PPI) approved two resolutions in a special stockholders' meeting: a) Resolution increasing the authorized capital stock of PPI; and b) Resolution authorizing the BOD to issue, for cash payment, the new shares from the proposed capital stock increase in favor of outside investors who are non-stockholders.

The foregoing resolutions were approved by stockholders representing 99% of the total outstanding capital stock. The sole dissenter was Jimmy Morato who owned 1% of the stock.

1. Are the resolutions binding on the corporation and its stockholders including Jimmy Morato, the dissenting stockholder? (3%)
2. What remedies, if any, are available to Morato? (2%)

SUGGESTED ANSWER:

1. No. The resolutions are not binding on the corporation and its stockholders including Jimmy Morato. While these resolutions were approved by the stockholders, the directors' approval, which is required by law in such case, does not exist.
2. Jimmy Morato can petition the SEC (Now RTC) to declare the 2 resolutions, as well as any and all actions taken by the BOD thereunder, null and void.

Corporation; Validity of Corporate Acts (2002)

Which of the following corporate acts are valid, void, or voidable? Indicate your answer by writing the paragraph number of the query, followed by your corresponding answer as "Valid," "Void," or "Voidable," as the case may be. If your answer is "Void," explain your answer. In case of a "Voidable" answer, specify what conditions must be present or complied with to make the corporate act valid. (5%) 1) XL Foods Corporation, which is engaged in the fast-food business, entered into a contract with its President Jose Cruz, whereby the latter would supply the corporation with its meat and poultry requirements.

SUGGESTED ANSWER:

Voidable – A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation (Sec 32, Corporation Code).

2) The Board of Directors of XL Foods Corporation declared and paid cash dividends without approval of the stockholders.

SUGGESTED ANSWER:

Valid

3) XL Foods Corporation guaranteed the loan of its sister company XL Meat Products, Inc.

SUGGESTED ANSWER:

Void – This is an ultra vires act on part of XL Foods Corporation, and is not one of the powers provided for in Sec. 36 of the Corporation Code.

Corporation; Voluntary Dissolution (2002)

Name three (3) methods by which a stock corporation may be voluntarily dissolved. Explain each method. (5%)

SUGGESTED ANSWER:

The three (3) methods by which a stock corporation may be voluntarily dissolved are: 1) Voluntary Dissolution where no creditors are affected. This is done by a majority vote of the directors, and resolution of at least 2/3 vote of stockholders, submitted to the Securities and Exchange Commission.

2) Voluntary dissolution where creditors are affected. This is done by a petition for dissolution which must be filed with the Securities and Exchange Commission, signed by a majority of the members of the board of directors, verified by the president or secretary, and upon affirmative vote of stockholders representing at least 2/3 of the outstanding capital stock.

3) Dissolution by shortening of the corporate term. This is done by amendment of the articles of incorporation.

Corporation; Voting Trust Agreement (1992)

A distressed company executed a voting trust agreement for a period of three years over 60% of its outstanding paid up shares in favor of a bank to whom it was indebted, with the Bank named as trustee. Additionally, the Company mortgaged all its properties to the Bank. Because of the insolvency of the Company, the Bank foreclosed the mortgaged properties, and as the highest bidder, acquired said properties and assets of the Company.

The three-year period prescribed in the Voting Trust Agreement having expired, the company demanded the turn-over and transfer of all its assets and properties, including the management and operation of the Company, claiming that under the Voting Trust Agreement, the Bank was constituted as trustee of the management and operations of the Company.

Does the demand of the Company tally with the concept of a Voting Trust Agreement? Explain briefly.

SUGGESTED ANSWER:

The demand of the company does not tally with the concept of a Voting Trust Agreement. The Voting Trust Agreement merely conveys to the trustee the right to vote the shares of grantor/s. The consequence of foreclosure of the mortgaged properties would be alien to the Voting Trust Agreement and its effects.

NOTE: (per Dondee) The law simply provides that a voting trust agreement is an agreementin writing whereby one or more stockholders of a corporation consentto transfer his or theirshares to a trustee in orderto vestin the lattervoting or other rights pertaining to said shares for a period not exceeding five years upon the fulfi

Undersection 59 ofthe C orporation Code, supra, a voting trust agreem ent may confer upon a trustee all or any of the stockholder's voting rights butalso otherrights pertaining to his shares as long as the voting trustagreem entis not entered for the purpose of circum venting the law againstmonopolies and illegalcombinations in restraintoftrade or created forpurposes offraud." (section 59, 5th paragraph ofthe Corporation Code). Thus, the traditional concept of a voting trust agreem ent primarily intended to single out a stockholder's right to vote from his other rights as such and m ade irrevocable for a lim ited duration m ay in practice becom e a legal device whereby a transfer of the stockholders shares is effected subjectto the specific provision ofthe voting trustagreem ent.

The execution of a voting trust agreement is, therefore, m ay create a dichotom y between the equitable or beneficial ownership ofthe corporate shares ofa stockholder, on the one hand, and the legaltitle thereto on the other hand. *(Lee vs. CA, Feb. 4, 1992)*

imentofstat utory conditions and such other terms and conditions specified in the agreem ent. The five-year period m ay be extended in cases where the voting trust is executed pursuant to a loan agreementw hereby the period is contingentup on full payme ntofthe loan.

Derivative Suit: Requisites (2004)

AA, a minority stockholder, filed a suit against BB, CC, DD, and EE, the holders of majority shares of MOP Corporation, for alleged misappropriation of corporate funds. The complaint averred, inter alia, that MOP Corporation is the corporation in whose behalf and for whose benefit the derivative suit is brought. In their capacity as members of the Board of Directors, the majority stockholders adopted a resolution authorizing MOP Corporation to withdraw the suit. Pursuant to said resolution, the corporate counsel filed a Motion to Dismiss in the name of the MOP Corporation. Should the motion be granted or denied? Reason briefly. (5%)

SUGGESTED ANSWER:

No. All the requisites for a valid derivative suit exist in this case. First, AA was exempt from exhausting his remedies within the corporation, and did not have to make a demand on the Board of Directors for the latter to sue. Here, such a demand would be futile, since the directors who comprise the majority (namely, BB, CC, DD and EE) are the ones guilty of the wrong complained of.

Second, AA appears to be stockholder at the time the alleged misappropriation of corporate funds.

Third, the suit is brought on behalf and for the benefit of MOP Corporation. In this connection, it was held in *Conmart (Phils.) Inc. v. Securities and Exchange Commission, 198 SCRA 73 (1991)* that to grant to the corporation concerned the right of withdrawing or dismissing the suit, at the instance of the majority stockholders and directors who themselves are the persons alleged to have committed the breach of trust against the interests of the corporation would be to emasculate the right of minority stockholders to seek redress for the corporation. Filing such action as a derivative suit even by a lone stockholder is one of the protections extended by law to minority stockholders against abuses of the majority.

Derivative Suit: Watered Stock (1993)

A became a stockholder of Prime Real Estate Corporation (PREC) on July 10, 1991, when he was given one share by another stockholder to qualify him as a director. A was not re-elected director in the July 1, 1992 annual meeting but he continued to be a registered shareholder of PREC.

When he was still a director, A discovered that on Jan 5, 1991, PREC issued free of charge 10,000 shares to X a lawyer who assisted in a court case involving PREC.

1) Can A now bring an action in the name of the corporation to question the issuance of the shares to X without receiving any payment?

2) Can X question the right of A to sue him in behalf of the corporation on the ground that A has only one share in his name?

3) Can the shares issued to X be considered as watered stock?

SUGGESTED ANSWER:

1) As a general rule, A cannot bring a derivative suit in the name of the corporation for wrongful acts which occurred before he became a stockholder. However, if the act complained of is a continuing one, A may do so.

2) No. In a derivative suit, the action is instituted/ brought in the name of a corporation and reliefs are prayed for therein for the corporation, by a minority stockholder. The law does not qualify the term "minority" in terms of the number of shares owned by a stockholder bringing the action in behalf of the corporation. *(SMC v Khan 176 SCRA 448)*

3) No. WATERED SHARES are those sold by the corporation for less than the par/book value. In the instant case, it will depend upon the value of services rendered in relation to the total par value of the shares.

Derivative Suit; Close Corporation; Corporate Opportunity (2005)

Malyn, Schiera and Jaz are the directors of Patio Investments, a close corporation formed to run the Patio Cafe, an al fresco coffee shop in Makati City. In 2000, Patio Cafe began experiencing financial reverses, consequently, some of the checks it issued to its beverage distributors and employees bounced.

In October 2003, Schiera informed Malyn that she found a location for a second cafe in Taguig City. Malyn objected because of the dire financial condition of the corporation.

Sometime in April 2004, Malyn learned about Fort Patio Cafe located in Taguig City and that its development was undertaken by a new corporation known as Fort Patio, Inc., where both Schiera and Jaz are directors. Malyn also found that Schiera and Jaz, on behalf of Patio Investments, had obtained a loan of P500,000.00 from PBCom Bank, for the purpose of opening Fort Patio Cafe. This loan was secured by the assets of Patio Investments and personally guaranteed by Schiera and Jaz.

Malyn then filed a corporate derivative action before the Regional Trial Court of Makati City against Schiera and Jaz, alleging that the two directors had breached their fiduciary duties by misappropriating money and assets of Patio Investments in the operation of Fort Patio Cafe. (5%) 1) Did Schiera and Jaz violate the principle of

corporate opportunity? Explain.

SUGGESTED ANSWER:

Yes. Although Malyn refused the business before, nevertheless, using the resources and credit standing of the company, Schiera and Jaz clearly demonstrated that the business could have been successfully pursued in the name of the close corporation. More importantly, Schiera and Jaz are guilty of diverting the resources of the close corporation to another entity, equivalent to fraud and bad faith.

2) Was it proper for Malyn to file a derivative suit with a prayer for injunctive relief? Explain.

SUGGESTED ANSWER:

Although it is a close corporation, nevertheless the principles of separate juridical personality still apply. The business of the corporation is still separate and distinct from the proprietary interests of its stockholders and directors. Consequently, since the business opportunity and the resource's used pertain to the close corporation, the standing to sue and to recover remains with the close corporation and not with Malyn. Therefore, it is still necessary to file a derivative suit on behalf of the close corporation, although the proceedings would be governed under the Interim Rules of Procedure for Intra-Corporate Disputes.

3) Assuming that a derivative suit is proper; may the action continue if the corporation is dissolved during the pendency of the suit? Explain.

SUGGESTED ANSWER:

Yes, for in spite of the dissolution of any corporation, it remains a juridical person for purpose of dissolution for three years from the date of dissolution, precisely one of the purposes is to allow the winding-up of its affairs, including the termination of pending suits.

Derivative Suit; Minority Stockholder (2003)

Gina Sevilla, a minority stockholder of Bayan Corporation, felt that various investments of the company's capital were *ultra vires* if not, indeed, made in violation of law. She filed a derivative suit seeking to nullify the questioned investments. Would her action prosper? Why?

SUGGESTED ANSWER:

Yes, she is already a stockholder at the time the alleged misappropriation of corporate funds. And that filing such action as a derivative suit even by a lone stockholder is one of the protections extended by law to minority stockholders against abuses of the majority. Nevertheless, Gina must first exhaust any administrative remedies before her suit be consider in court.

Distinction: De facto Corporation vs. Corporation by Estoppel (2004)

Is there a difference between a de facto corporation and a corporation by estoppel? Explain briefly. (2%)

SUGGESTED ANSWER:

A DE FACTO CORPORATION is one which actually exists for all practical purposes as a corporation but which has no legal right to corporate existence as against the State. It is essential to the existence of a de facto corporation that there be (1) a valid law under which a corporation might be incorporated, (2) a bona fide attempt to organize as a corporation under such law, and (3) actual use or exercise in good faith of corporate powers conferred upon it by law.

A CORPORATION BY ESTOPPEL exists when persons assume to act as a corporation knowing it to be without authority to do so. In this case, those persons will be liable as general partners for all debts, liabilities and damages incurred or arising as a result of their actions.

Distinction: Dividends vs. Profit: Cash Dividend vs. Stock Dividend (2005)

Distinguish dividend from profit; cash dividend from stock dividend. (2%)

SUGGESTED ANSWER:

PROFITS are residual amounts representing return of capital after deducting all corporate costs and expenses from revenues. The accumulated profits, from year to year, represent the corporate retained earnings from which the dividends can be declared.

CASH DIVIDENDS represent an actual distribution of accumulated profits to the stockholders as a return on their investments. Declaration of cash dividends requires only the approval of the majority of the Board of Directors in a proper resolution.

STOCK DIVIDENDS are simply transfers of retained earnings to capital stock, thereby increasing the number of shares of stocks of each stockholder with no required cash contribution. A two-thirds vote of the stockholders, coupled with a majority vote of the Board of Directors, is needed to declare stock dividends.

Distinction; Private vs. Public Corporation (2004)

Distinguish clearly a private corporation from a public corporation

SUGGESTED ANSWER:

A PRIVATE CORPORATION is one formed for some private purpose, benefit or end, while a PUBLIC CORPORATION is formed for the government of a portion of the State for the general good or welfare. The true test is the purpose of the corporation. If the corporation is created for political or public purpose connected with the administration of government, then it is a public corporation. If not, it is a private corporation although the whole or substantially the whole interest in the corporation belongs to the State. A public corporation is created by special legislation or act of Congress. A private corporation must be organized under the Corporation Code.

Distinction; Stock vs. Non-Stock Corporation (2004)

Distinguish clearly a stock corporation from a non-stock corporation.

SUGGESTED ANSWER:

A stock corporation is one that has capital stock divided into shares and is authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held. All other corporations are non-stock corporations.

Dividends: Declaration of Dividends (2005)

Under what circumstances may a corporation declare dividends? (2%)'

SUGGESTED ANSWER:

No form of dividends can be declared and paid by the corporation except from unrestricted retained earnings appearing on its books. Dividends must be paid in amounts proportional to all stockholders on the basis of outstanding stock held by them. Cash or property dividends, can be declared from such unrestricted retained earnings by a proper resolution of the Board of Directors. Stock dividends, however, must be declared by a proper resolution of the Board of Directors from existing unrestricted retained earnings and ratified by stockholders representing at least two-thirds (2/8) of the outstanding capital stock of the corporation, obtained in a meeting duly called for the purpose. (Sec. 43, Corporation Code)

Dividends: Sources of Dividends; Trust Fund Doctrine (2005)

From what funds are cash and stock dividends sourced? Explain why. (2%)

SUGGESTED ANSWER:

All cash and stock dividends are always paid out of the unrestricted retained earnings (also called surplus profit) of the corporation. If the corporation has no unrestricted retained earnings, the dividends would have to be sourced from the capital stock. This is illegal. It violates the "TRUST FUND DOCTRINE" that provides that the capital stock of the corporation is a trust fund to be kept intact during the life of the corporation for the benefit of the creditors of the corporation. *(Commissioner of Internal-Revenue v. Court of Appeal®, G.R. No. 108576, January 20, 1999; Boman Environmental Development Corp. v. Court of Appeals, G.R. No. 77860, November 22, 1988; and Steinberg v. Velasco, G.R. No. 30460, March 12,1929)*

Dividends; Declaration of Dividends (1990)

At least 2/3 of the stockholders of Solar Corporation, meeting upon the recommendation of the BOD, declared a 50% stock dividend during their annual meeting. The notice of the annual stockholders' meeting did not mention anything about a stock dividend declaration. The matter was taken up only under the item "other business" in the agenda of the meeting. C.K. Senwa, a stockholder, who received his copy of the notice but did not attend the meeting, subsequently learned about the 50% stock dividend declaration. He desires to have the stock dividend declaration cancelled and set aside, and wishes to retain your services as a lawyer for the purpose. Will you accept the case? Discuss with reasons.

SUGGESTED ANSWER:

I will not accept the case. Sec 43 of the Corp Code states that no stock dividend shall be issued without the approval of the stockholders representing not less than 2/3 of the outstanding capital stock at a regular or special meeting duly called for that purpose. Conformably with Sec 50 of the Corp Code, a written notice of the holding of the regular meeting sent to the shareholders will suffice. The notice itself specified the said subject matter.

ALTERNATIVE ANSWER:

Yes, I will accept the case. The problem does not indicate that there is action by the BOD which is also necessary for the declaration of 50% stock dividend.

Dividends; Declaration of Dividends (1991)

During the annual stockholders meeting, Riza, a stockholder proposed to the body that a part of the corporation's unreserved earned surplus be capitalized and stock dividends be distributed to the stockholders, arguing that as owners of the company, the stockholders, by a majority vote, can do anything. As chairman of the meeting, how would you rule on the motion to declare stock dividends?

SUGGESTED ANSWER:

As the chairman of the meeting, I would rule against the motion considering that a declaration of stock dividends should initially be taken by the BOD and thereafter to be concurred in by a 2/3 vote of the stockholders (Sec 43 Corp Code). There is no prohibition, however, against the stockholders' resolving to recommend to the BOD that it consider a declaration of stock dividends for concurrence thereafter by the stockholders.

Dividends; Declaration of Dividends (2001)

For the past three years of its commercial operation, X, an oil company, has been earning tremendously in excess of 100% of the corporation's paid-in capital. All of the stockholders have been claiming that they share in the profits of the corporation by way of dividends but the Board of Directors failed to lift its finger. a) Is Corporation X guilty of violating a law? If in the affirmative, state the basis (2%)

SUGGESTED ANSWER:

Corporation X is guilty of violating Section 43 of the Corp Code. This provision prohibits stock corporations

from retaining surplus profits in excess of 100% of their paid-in capital.

b) Are there instances when a corporation shall not be held liable for not declaring dividends? (3%)

SUGGESTED ANSWER:

The instances when a corporation shall not be held liable for not declaring dividends are:

1) Can A now bring an action in the name of the corporation to question the issuance of the shares to X without receiving any payment?

2) Can X question the right of A to sue him in behalf of the corporation on the ground that A has only one share in his name?

3) Cannot the shares issued to X be considered as watered stock?
when justified by definite corporate expansion projects or programs approved by the BOD; or

1) **Dividends; Right; Managing Corporation (1991)**

ABC Management Inc. presented to the DEF Mining Co, the draft of its proposed "Management Contract." As an incentive, ABC included in the terms of compensation that ABC would be entitled to 10% of any stock dividend which DEF may declare during the lifetime of the Management Contract. Would you approve of such provision? If not, what would you suggest as an alternative?

SUGGESTED ANSWER:

I would not approve a proposed stipulation in the management contract that the managing corporation, as an additional compensation to it, should be entitled to 10% of any stock dividend that may be declared. Stockholders are the only ones entitled to receive stock dividends *(Nielsen & Co v Lepanto Mining 26 s 569)* I would add that the unsubscribed capital stock of a corporation may only be issued for cash or property or for services already rendered constituting a demandable debt (Sec 62 Corp Code). As an alternative, I would suggest that the managing corporation should instead be given a net profit participation and, if it later so desires, to then convert the amount that may be due thereby to equity or shares of stock at no less than the par value thereof.

Doctrine of Corporate Opportunity (2005)

Briefly discuss the doctrine of corporate opportunity. (2%)

SUGGESTED ANSWER:

In brief, the doctrine disqualifies a director, trustee or officer from appropriating for his personal benefit a transaction or opportunity that pertains to the corporation, and which under the duty of loyalty he should first bring to the corporation for its use or exploitation.

The doctrine of corporate opportunity is an enforcement of the duty of loyalty of corporate directors and officers. When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, an interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. Equity imposes liability upon him not to deal for his own benefit. (Sec. 31, Corporation Code)

Under Sec. 34 of the Corporation Code where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/8) of the outstanding capital stock.

Effect: Expiration of Corporate Term (2004)

XYZ Corporation entered into a contract of lease with ABC, Inc., over a piece of real estate for a term of 20 years, renewable for another 20 years, provided that XYZ's corporate term is extended in accordance with law. Four years after the term of XYZ Corporation expired, but still within the period allowed by the lease contract for the extension of the lease period, XYZ Corp. notified ABC, Inc., that it is exercising the option to extend the lease. ABC, Inc., objected to the proposed extension, arguing that since the corporate life of XYZ Corp. had expired, it could no longer opt to renew the lease. XYZ Corp. countered that withstanding the lapse of its corporate term it still has the right to renew the lease because no quo warranto proceedings for involuntary dissolution of XYZ Corp. has been instituted by the Office of the Solicitor General. Is the contention of XYZ Corp. meritorious? Explain briefly. (5%)

SUGGESTED ANSWER:

XYZ Corporation's contention is not meritorious. Based on the ruling of the Supreme Court in *Philippine National Bank vs. CFI of Rizal, 209 SCRA (1992).* XYZ Corp. was dissolved ipso facto upon the expiration of its original term. It ceased to be a body corporate for the purpose of continuing the business for which it was organized, except only for purposes connected with its winding up or liquidation. Extending the lease is not an act to wind up or liquidate XYZ Corp.'s affairs. It is contrary to the idea of winding up the affairs of the corporation.

Effects; Merger of Corporations (1999)

Two corporations agreed to merge. They then executed an agreement specifying the surviving corporation and the absorbed corporation. Under the agreement of merger dated November 5, 1998, the surviving corporation acquired all the rights, properties and liabilities of the absorbed corporation. 1) What would happen to the absorbed corporation?

Must the absorbed corporation undertake dissolution and the winding up procedures? Explain your answer. (3%)

SUGGESTED ANSWER:

No. There is no need for the absorbed corporation to undertake dissolution and winding up procedure. As a result of the merger, the absorbed corporation is automatically dissolved and its assets and liabilities are acquired and assumed by the surviving corporation.

2) Pending approval of the merger by the SEC, may the surviving corporation already institute suits to collect all receivables due to the absorbed corporation from its customers? Explain your answer. (3%)

SUGGESTED ANSWER:

No. The merger does not become effective until and unless approved by the SEC. Before approval by the SEC of the merger, the surviving corporation has no legal personality with respect to receivables due to the absorbed corporation.

3) A case was filed against a customer to collect on the promissory note issued by him after the date of the merger agreement. The customer raised the defense that while the receivables as of the date of the merger agreement was transferred to the surviving corporation, those receivables which were created after the merger agreement remained to be owned by the absorbed corporation. These receivables would be distributed to the stockholders conformably with the dissolution and liquidation procedures under the New Corporation Code? Discuss the merits of this argument. (3%)

SUGGESTED ANSWER:

Whether the receivable was incurred by the absorbed corporation before or after the merger agreement, or before or after the approval thereof by the SEC, the said receivable would still belong to the surviving corporation under Sec 80 of the Corp. Code which does not make any distinction as to the assets and liabilities of the absorbed corporation that the surviving corporation would inherit.

Effects; Winding Up Period of a Corporation (1997)

The corporation, once dissolved, thereafter continues to be a body corporate for three years for purposes of prosecuting and defending suits by and against it and of enabling it to settle and close its affairs, culminating in the final disposition and distribution of its remaining assets. If the 3 year extended life expires without a trustee or receiver being designated by the corporation within that period and by that time (expiry of the 3 year extended term), the corporate liquidation is not yet over, how, if at all, can a final settlement of the corporate affairs be made?

SUGGESTED ANSWER:

The liquidation can continue with the winding up. The members of the BOD can continue with the winding of the corporate affairs until final liquidation. They can act as trustees or receivers for this purpose.

Effects; Winding Up Period of a Corporation (2000)

The SEC approved the amendment of the Articles of Incorporation of GHQ Corp shortening its corporate life to only 25 years in accordance with Sec 120 of the Corp

Code. As shortened, the corporation continued its business operations until May 30, 1997, the last day of its corporate existence. Prior to said date, there were a number of pending civil actions, of varying nature but mostly money claims filed by creditors, none of which was expected to be completed or resolved within five years from May 30, 1997.

If the creditors had sought your professional help at that time about whether or not their cases could be pursued beyond May 30, 1997, what would have been your advice? (2%)

SUGGESTED ANSWER:

The cases can be pursued even beyond May 30, 1997, the last day of the corporate existence of GHQ Corp. The Corporation is not actually dissolved upon the expiration of its corporate term. There is still the period for liquidation or winding up.

NOTE: Under Section 122 of the C orporation C ode, a corporation whose corporate existence is terminated in any manner continues to be a body corporate for three (3) years afterits dissolution forpurposes ofprosecuting and defending suits by and againstitand to enable itto se[ttl]e and close its affairs, culminating in the disposition and distribution of its remaining assets.

The termination ofthe life of a corporate entity does not by itself cause the extinction or dim inution of the rights and liabilities ofsuch entity. 27 If the three-yearextended life has expired without a trustee or receiver having been expressly designated by the corporation, within thatperiod, the board of directors (or trustees) itself, m ay be permi[tted to so] continue as "trustees" by legal implication to complete the corporate liquidation. [...] (PEPSI-COLA PHILIPPINES, INC., vs. THE COURT OF APPEALS, [G.R. No. 145855. November 24, 2004.])

Foreign Corporation; "Doing Business" in the Philippines (1998)

When is a foreign corporation deemed to be "doing business in the Philippines?" (3%)

SUGGESTED ANSWER:

A foreign corporation is deemed to be "doing business in the Philippines" if it is continuing the body or substance of the business or enterprise for which it was organized. It is the intention of an entity to continue the body of its business in the country. The grant and extension of 90day credit terms of a foreign corporation to a domestic corporation for every purchase shows an intention to continue transacting with the latter.

Foreign Corporation; "Doing Business" in the Philippines; Acts or Activities (2002)

Give at least three (3) examples of the acts or activities that are specifically identified under our foreign investment laws as constituting "doing business" in the Philippines (3%)

SUGGESTED ANSWER:

Any three (3) of the following acts or activities constitute "doing business" in the Philippines under our foreign investment laws:

1. Soliciting orders

2. Opening offices by whatever name
3. Participating in the management, supervision or control of any domestic entity
4. Entering into service contracts
5. Appointing representatives or distributors, operating under the control of the foreign entity, who is domiciled in the Philippines or who stays in the country for a period or periods totaling at least 180 days in any calendar year.

Foreign Corporation; "Doing Business" in the Philippines; Test (2002)

What is the legal test for determining if an unlicensed foreign corporation is doing business in the Philippines? (2%)

SUGGESTED ANSWER:

The test is whether or not the unlicensed foreign corporation has performed an act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business corporation.

Joint Venture; Corporation (1996)

May a corporation enter into a joint venture?

SUGGESTED ANSWER:

A corporation may enter into a joint venture. However, inasmuch as the term 'joint venture' has no precise legal definition, it may take various forms. It could take the form of a simple pooling of resources (not involving incorporation) between two or more corporations for a specific project, purpose or undertaking, or for a limited time. It may involve the creation of a more formal structure and, hence, the formation of a corporation. If the joint venture would involve the creation of a partnership, as the term is understood under the Civil Code, then a corporation cannot be a party to it.

Liabilities; BOD; Corporate Acts (1996)

When may a corporate director, trustee, or officer be held personally liable with the corporation?

SUGGESTED ANSWER:

A corporate director, trustee or officer may be held personally liable with the corporation under the following circumstances: 1) When he assents to a patently unlawful act of the corporation; 2) When he acts in bad faith or with gross negligence in directing the affairs of the corporation, or in conflict with the interest of the corporation resulting in damages to the corporation, its stockholders or other persons; 3) When he consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; *4)* When he agrees to hold himself personally and solidarily liable with the corporation; or *5)* When he is made, by a specific provision of law, to personally answer for the corporate action. *(Tramat Mercantile Inc v CA GR 111008, Nov 7, 94 238s14)*

Liabilities; Stockholders, Directors, Officers (1997)

A, B, and C are shareholders of XYZ Co. A has an unpaid subscription of P100th, B's shares are fully paid up, while C owns only nominal but fully paid up shares and is a director and officer. XYZ becomes insolvent, and it is established that the insolvency is the result of fraudulent practices within the company. If you were counsel for a creditor of XYZ, would you advise legal action against A, B, and C?

SUGGESTED ANSWER:

a) As to A—an action can be brought against A for P100th which is the amount of unpaid subscription. Since the corporation is insolvent, the limit of the stockholder's liability to the creditor is only up to the extent of his unpaid subscription.

b) As to B—there is no cause of action against B because he has already fully paid for his subscription. As stated earlier, the limit of the stockholder's liability to the creditor of the corporation, when the latter becomes insolvent, is the extent of his subscription.

c) As to C—an action can be filed against C, not as stockholder because he has already paid up the shares, but in his capacity as director and officer because of the corporation's insolvency being the result of fraudulent practices within the company. Directors are liable jointly and severally for damages sustained by the corporation, stockholders or other persons resulting from gross negligence or bad faith in directing the affairs of the corporation. (Sec 31 Corp Code)

Piercing the Corporate Veil (1994)

Mr. Pablo, a rich merchant in his early forties, was a defendant in a lawsuit which could subject him to substantial damages. A year before the court rendered judgment, Pablo sought his lawyer's advice on how to plan his estate to avoid taxes. His lawyer suggested that he should form a corporation with himself, his wife and his children (all students and still unemployed) as stockholders and then transfer all his assets and liabilities to this corporation. Mr Pablo followed the recommendation of his lawyer. 1 year later, the court rendered judgment against Pablo and the plaintiff sought to enforce this judgment. The sheriff, however, could not locate any property in the name of Pablo and therefore returned the writ of execution unsatisfied. What remedy, if any, is available to the plaintiff?

SUGGESTED ANSWER:

The plaintiff can avail himself of the doctrine of piercing the veil of corporate fiction which can be invoked when a corporation is formed or used in avoiding a just obligation. While it is true that a family corporation may be organized to pursue an estate tax; planning, which is not per se illegal or unlawful *(Delpher Trades Corp v IAC 157 SCRA 349)* the factual settings, however, indicate the existence of a lawsuit that could subject Pablo to a

substantial amount of damages. It would thus be difficult for Pablo to convincingly assert that the incorporation of the family corporation was intended merely as a case of "estate tax planning." *(Tan Boon Bee v Jarencio 41337 30June88)*

Piercing the Corporate Veil (1996)

E Co sold its assets to M Inc after complying with the requirements of the Bulk Sales Law. Subsequently, one of the creditors of E Co tried to collect the amount due it, but found out that E Co had no more assets left. The creditor then sued M Inc on the theory that M Inc is a mere alter ego of E Co. Will the suit prosper? Explain.

SUGGESTED ANSWER:

The suit will not prosper. The sale by E Co of its assets to M Inc does not result in the transfer of the liabilities of the latter to, nor in the assumption thereof by, the former. The facts given do not indicate that such transfer or assumption took place or was stipulated upon by the parties in their agreement. Furthermore, the sale by E Co of its assets is a sale of its property. It does not involve the sale of the shares of stock of the corporation belonging to its stockholders. There is therefore no merger or consolidation that took place. E Co continues to exist and remains liable to the creditor.

Piercing the Corporate Veil (2001)

Plaintiffs filed a collection action against X Corporation. Upon execution of the court's decision, X Corporation was found to be without assets. Thereafter plaintiffs filed an action against its present and past stockholder Y Corporation which owned substantially all of the stocks of X Corporation. The two corporations have the same board of directors and Y Corporation financed the operations of X Corporation. May Y Corporation be held liable for the debts of X Corporation? Why? (5%)

SUGGESTED ANSWER:

Yes, Y Corporation may be held liable for the debts of X Corporation. The doctrine of piercing the veil of corporation fiction applies to this case. The two corporations have the same board of directors and Y Corporation owned substantially all of the stocks of X Corporation, which facts justify the conclusion that the latter is merely an extension of the personality of the former, and that the former controls the policies of the latter. Added to this is the fact that Y Corporation controls the finances of X Corporation which is merely an adjunct, business conduit or alter ego of Y Corporation *(CIR v Norton & Harrison Co 11 S 714 (1964))*

Piercing the Corporate Veil (2004)

How does one pierce the veil of corporate fiction?

SUGGESTED ANSWER:

The veil of corporate fiction may be pierced by proving in court that the notion of legal entity is being used to defeat public convenience, justify wrong, protect fraud, or defend crime or the entity is just an instrument or alter ego or adjunct of another entity or person.

Piercing the Corporate Veil (2006)

What is the doctrine of "piercing the veil of corporate entity?" Explain.

SUGGESTED ANSWER:

The doctrine of "piercing the veil of corporate entity," is the doctrine that allows the courts to look behind the separate juridical personality of a corporation and treat the corporation as an association of persons and thereby make the individual actors personally liable for corporate liabilities. The fiction of corporate identity is disregarded and the individuals comprising it can be treated identically. The stockholders can be held directly liable for corporate obligations, even to the extent of their personal assets *(Concept Builders v. NLRC, Marabe, et al, G.R. No. 108734, May 29, 1996).*

To what circumstances will the doctrine apply? (2.5%)

The doctrine is applicable when the notion of legal entity is used to — 1) Defeat public convenience. 2) Justify wrong. 3) Protect fraud. 4) Defend crime *(PNB v. Andrada Electric, G.R. No. 142936, April 17, 2002).*

5) Shield a violation of the proscription against forum shopping *(First Philippine International Bank v. Court of Appeals, G.R. No. 137537, January 24, 1996).*

6) Work inequities among members of the corporation internally, involving no rights of the public or third persons *(Secosa v. Heirs ofErwin Suarez Francisco, G.R. No. 156104, June 29, 2004).*

7) Evade the lawful obligations of the corporation like a judgment credit *(Sibagat Timber Corp. v. Garcia, G.R. No. 112546, December 11, 1992). 8)* Escape liability arising from a debt *(Arcilla v. Court of Appeals, G.R. No. 88113, October 23, 1992).*

9) Avoid inclusion of corporate assets as part of the estate of the decedent *(Cease v. Court of Appeals, G.R. No. L-35861, October 18, 1979).*

10) To promote or to shield unfair objectives *(Villanueva v. Adre, G.R. No. 80863, April 27, 1989).*

Pre-emptive Right (2001)

Suppose that X Corporation has already issued the 1000 originally authorized shares of the corporation so that its BOD and stockholders wish to increase X's authorized capital stock. After complying with the requirements of the law on increase of capital stock, X issued an additional 1000 shares of the same value. a) Assume that the stockholder A presently holds 200 out of the 1000 original shares. Would A have a pre-emptive right to 200 of the new issue of 1000 shares? Why? (3%)

b) When should stockholder A exercise the pre-emptive right? (2%)

SUGGESTED ANSWER:

a) Yes, A would have a pre-emptive right to 200 of the new issue of 1000 shares. A is a stockholder of record holding 200 shares in X Corpo. According to the Corp Code, each stockholder has the pre-emptive right to all issues of shares made by the corporation in proportion to

the number of shares he holds on record in the corporation.

b) Pre-emptive right must be exercised in accordance with the Articles of Incorporation or the By-Laws. When the Articles of Incorporation and the By-Laws are silent, the BOD may fix a reasonable time within which the stockholders may exercise the right.

Pre-Emptive Right vs. Appraisal Right (1999)

ABC Corporation has an authorized capital stock of P1M divided into 50,000 common shares and 50,000 preferred shares. At its inception, the Corporation offered for subscription all the common shares. However, only 40,000 shares were subscribed. Recently, the directors thought of raising additional capital and decided to offer to the public all the authorized shares of the Corporation at their market value. a) Would Mr. X, a stockholder holding 4,000 shares,

have pre-emptive rights to the remaining 10,000 shares? (2%) b) Would Mr. X have pre-emptive rights to the 50,000 preferred shares? (2%)

c) Assuming that the existing stockholders are entitled to pre-emptive rights, at what price will the shares be offered? (2%)

d) Assuming a stockholder disagrees with the issuance of new shares and the pricing for the shares, may the stockholder invoke his appraisal rights and demand payment for his shareholdings? (2%)

SUGGESTED ANSWER:

a. Yes. Mr. X, a stockholder holding 4,000 shares, has pre-emptive right to the remaining 10,000 shares. All stockholders of a stock corporation shall enjoy preemptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings.

ALTERNATIVE ANSWER.

a. No, Mr X does not have pre-emptive right over the remaining 10,000 shares because these shares have already been offered at incorporation and he chose not to subscribe to them. He, therefore, has waived his right thereto and the corporation may offer them to anyone.

SUGGESTED ANSWER:

b. Yes. Mr. X would have pre-emptive rights to the 50,000 preferred shares. All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings.

ALTERNATIVE ANSWER:

b. Yes, Mr. X has preemptive right over the 50,000 preferred shares because they were not offered before by the corporation for subscription.

SUGGESTED ANSWER:

c. The shares will be offered to existing stockholders, who are entitled to preemptive right, at a price fixed by the BOD, which shall not be less than the par value of such shares.

SUGGESTED ANSWER:

d. No, the stockholder may not exercise appraisal right because the matter that he dissented from is not one of those where right of appraisal is available under the corporation code.

SEC; Jurisdiction; Transferred Jurisdiction (1996)

What is the original and exclusive jurisdiction of the SEC?

SUGGESTED ANSWER:

The SEC has original and exclusive jurisdiction over cases involving: a) Devices or schemes amounting to fraud and

misrepresentation; b) Controversies arising out of intra-corporate or partnership relations; c) Controversies in the election or appointment of directors, officers, etc; d) Petitions to be declared in a state of suspension of payments (Sec 5 PD 902-A)

TAKE NOTE: The **RTC** has jurisdiction over the cases which involves intra-corporate controversy. As of 2006, the applicable rule is that there is a TRANSFERRED JURISDICTION under Sec. 5.2 of the SRC, the Commission's jurisdiction over all cases enumerated under PD 902-A sec. 5 has been transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court.

Stockholder; Delinquent; Unpaid Subscription (1997)

The BOD of a corporation, by a vote of ten in favor of one against, declared due and payable all unpaid subscription to the capital stock. The lone dissenting director failed to pay on due date, i.e., 19 Sept 1997, his unpaid subscription. Other than the shares wherein he was unable to complete payment, he did not own any share in the corporation. On 23 Sept 1997, he was informed by the BOD that, unless due payment is meanwhile received, he: a) could no longer serve as a director of the

corporation forthwith:

b) would not be entitled to the cash and stock dividends which were declared and payable on 24 Sep 1997; and

c) could not vote in the stockholders meeting scheduled to take place on 26 Sept 1997.

Was the action of the BOD on each of the foregoing matters valid?

SUGGESTED ANSWER:

a) No. The period of 30 days within which the stockholder can pay the unpaid subscription had not yet expired.

b) No. The delinquency did not deprive the stockholder of his right to receive dividends declared. However, the cash dividend declared may be applied by the corporation to the unpaid subscription. (Sec 71 Corp Code)

c) No. The period of 30 days within which the stockholder can pay the unpaid subscription had not yet expired.

Stockholders: Preemptive Right (2004)

The Board of Directors of ABC, Inc., a domestic corporation, passed a resolution authorizing additional issuance of shares of stocks without notice nor approval of the stockholders. DX, a stockholder, objected to the issuance, contending that it violated his right of pre-emption to the unissued shares. Is his contention tenable? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. DX's contention is tenable. Under Section 39 of the Corporation Code, all stockholders of ABC, Inc. enjoy preemptive right to subscribe to all issues of shares of any class, including the reissuance of treasury shares in proportion to their respective shareholdings.

Stockholders; Appraisal Right (2003)

In what instances may the right of appraisal be availed of under the Corporation Code?

SUGGESTED ANSWER:

SECTION 81. Instances of Appraisal Right. — Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:

1 In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;

2 In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Code; and

3 In case of merger or consolidation. (n)

Stockholders; Removal of Officers & BOD (2001)

In 1999, Corporation A passed a board resolution removing X from his position as manager of said corporation. The by-laws of A corporation provides that the officers are the president, vice-president, treasurer and secretary. Upon complaint filed with the SEC, it held that a manager could be removed by mere resolution of the board of directors. On motion for reconsideration, X alleged that he could only be removed by the affirmative vote of the stockholders representing 2/3 of the outstanding capital stock. Is X's contention legally tenable. Why? (5%)

SUGGESTED ANSWER:

No. Stockholders' approval is necessary only for the removal of the members of the BOD. For the removal of a corporate officer or employee, the vote of the BOD is sufficient for the purpose.

Stockholders; Removal; Minority Director (1991)

Assuming that the minority block of the XYZ Corporation is able to elect only 1 director and therefore, the majority stockholders can always muster a 2/3 vote, would you allow the majority stockholders to remove the one director representing the minority?

SUGGESTED ANSWER:

No. I will not allow the majority stockholders to remove the director. While the stockholders may, by a 2/3 vote, remove a director, the law also provides, however, that his right may not, without just cause, be exercised so as to deprive the minority of representation in the BOD *(Sec 28 Corp code; Gov't vs Agoncillo 50p348)*

Stockholders; Rights (1996)

What are the rights of a stockholder?

SUGGESTED ANSWER:

The rights of a stockholder are as follows: 1) The right to vote, including the right to appoint a proxy; 2) The right to share in the profits of the corporation, including the right to declare stock dividends; 3) The right to a proportionate share of the assets of

the corporation upon liquidation; 4) The right of appraisal; 5) The pre-emptive right to shares; 6) The right to inspect corporate books and records; 7) The right to elect directors; 8) Such other rights as may contractually be granted to

the stockholders by the corporation or by special law.

Stockholders; Voting Power of Stockholders (1990)

Mercy subscribed to 1,000 shares of stock of Rosario Corporation. She paid 25% of said subscription. During the stockholders' meeting, can Mercy vote all her subscribed shares? Explain.

SUGGESTED ANSWER:

Yes, Mercy can vote all her subscribed shares. Section 72 of the Corporation Code states that holders of subscribed shares not fully paid which are not delinquent shall have all the rights of a stockholder.

Stocks; Increase of Capital Stock (2001)

Suppose X Corporation has an authorized capital stock of P1M divided into 100,000 shares of stock with par value of P10 each. a) Give two ways whereby said authorized capital stock may be increased to about P1.5M. (3%) b) Give three practical reasons for a corporation to increase its capital stock (2%)

SUGGESTED ANSWER:

a) Two ways of increasing the Authorized Capital Stock of X corporation to P1.5M are:

1) Increase the number of shares from 100,000 to 150,000 shares with the same par value of P10.00 each.
2) Increase par value of 100,000 shares to P15.00 each.

b) Three practical reasons for a corporation to increase its capital stock are: 1) to generate more working capital;

2) to have more shares with which to pay for the acquisition of more assets like acquisition of company car, stocks, house, machinery or business; and
3) to have extra share with which to cover or meet the requirement for declaration of stock dividend.

Stocks; Sale, Transfer of Certificates of Stock (1996)
Arnold has in his name 1,000 shares of the capital stock of ABC Co as evidenced by a stock certificate. Arnold delivered the stock certificate to Steven who now claims to be the real owner of the shares, having paid for Arnold's subscription. ABC refused to recognize and register Steven's ownership. Is the refusal justified? Explain.

SUGGESTED ANSWER:
ABC's refusal to recognize and register Steven's ownership is justified. The facts indicate that the stock certificate for the 1,000 shares in question is in the name of Arnold. Although the certificate was delivered by Arnold to Steven, the facts do not indicate that the certificate was duly endorsed by Arnold at the time it was delivered to Steven or that the procedure for the effective transfer of shares of stock set out in the by-laws of ABC Co, if any, was observed. Since the certificate was not endorsed in favor of Steven (or anybody else for that matter), the only conclusion could be no other than that the shares in question still belong to Arnold. *(Razon v IAC GR 74306 Mar 16,92 207s234)*

Stocks; Sale, Transfer of Certificates of Stock (2001)
A is the registered owner of Stock Certificate No. 000011. He entrusted the possession of said certificate to his best friend B who borrowed the said endorsed certificate to support B's application for passport (or for a purpose other than transfer). But B sold the certificate to X, a bona fide purchaser who relied on the endorsed certificates and believed him to be the owner thereof. a) Can A claim the shares of stock from X? Explain (3%) b) Would your answer be the same if A lost the stock certificate in question or if it was stolen from him? (2%)
SUGGESTED ANSWER:
a) No. Assuming that the shares were already transferred to B, A cannot claim the shares of stock from X. The certificate of stock covering said shares have been duly endorsed by A and entrusted by him to B. By his said acts, A is now estopped from claiming said shares from X, a bona fide purchaser who relied on the endorsement by A of the certificate of stock.

b) Yes. In the case where the certificate of stock was lost or stole from A, A has a right to claim the certificate of stock from the thief who has no right or title to the same. "One who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same." (Art 559 NCC)

Stocks; Sale, Transfer of Certificates of Stock (2004)
Four months before his death, PX assigned 100 shares of stock registered in his name in favor of his wife and his children. They then brought the deed of assignment to the proper corporate officers for registration with the request for the transfer in the corporation's stock and transfer books of the assigned shares, the cancellation of the stock certificates in PX's name, and the issuance of new stock certificates in the names of his wife and his children as the new owners. The officers of the Corporation denied the request on the ground that another heir is contesting the validity of the deed of assignment. May the Corporation be compelled by mandamus to register the shares of stock in the names of the assignees? Explain briefly. (5%)

SUGGESTED ANSWER:
Yes. The corporation may be compelled by mandamus to register the shares of stock in the name of the assignee. The only legal limitation imposed by Section 63 of the Corporation Code is when the Corporation holds any unpaid claim against the shares intended to be transferred. The alleged claim of another heir of PX is not sufficient to deny the issuance of new certificates of stock to his wife and children. It would be otherwise if the transferee's title to the shares has no prima facie validity or is uncertain.

Trust Fund Doctrine (1992)
A Corporation executed a promissory note binding itself to pay its President/Director, who had tendered his resignation, a certain sum in payment of the latter's shares and interests in the company. The corporation defaulted in paying the full amount so that said former President filed suit for collection of the balance before the SEC. a) Under what conditions is a stock corporation empowered to acquire its own shares? b) Is the arrangement between the corporation and its President covered by the trust fund doctrine? Explain your answers briefly.

SUGGESTED ANSWER:
a) A stock corporation may only acquire its own shares of stock if the trust fund doctrine is not impaired. This is to say, for instance, that it may purchase its own shares of stock by utilizing merely its surplus profits over and above the subscribed capital of the corporation.
ALTERNATIVE ANSWER:
a) (an answer enumerating the instances or cases under the Corporation Code where the Corp allows the acquisition of shares such as in the stockholder's exercise of appraisal right, failure of bids in the sale of delinquent shares, etc.)

SUGGESTED ANSWER:
b) The arrangement between the corporation and its President to the extent that it calls for the payment of the latter's shares is covered by the trust fund doctrine. The only exceptions from the trust fund doctrine are the redemption of redeemable shares and, in the case of close corporation, when there should be a deadlock and the SEC orders the payment of the appraised value of a stockholder's share.

Trust Fund Doctrine; Intra-Corporate Controversy (1991)

On December 6, 1988, A, an incorporator and the General Manager of the Paje Multi Farms Co, resigned as GM and sold to the corporation his shares of stocks in the corporation for P300th, the book value thereof, payable as follows: a) P100th as down payment; b) P100th on or before 31 July1989; and c) the remaining balance of P100th on or before 30 Sep 1989. A promissory note, with an acceleration clause, was executed by the corporation for the unpaid balance.

The corporation failed to pay the first installment on due date. A then sued Paje on the promissory note in the RTC. a) Does the court have jurisdiction over the case? b) Would your answer be the same if A instead sold his shares to his friend Mabel and the latter filed a case with the RTC against the corporation to compel it to register the sale and to issue new certificates of stock in her name?

SUGGESTED ANSWER:

a) The RTC has jurisdiction over the case. The SC said that a corporation may only buy its own shares of stock if it has enough surplus profits therefore.

b) My answer would be the same. An action to compel a corporation to register a sale and to issue new certificates of stock is itself an intra-corporate matter that exclusively lies with the RTC.

TAKE NOTE: The RTC has jurisdiction over the cases which involves intra-corporate controversy. As of 2006, the applicable rule is that there is a TRANSFERRED JURISDICTION under Sec. 5.2 of the SRC, the Commission's jurisdiction over all cases enumerated under PD 902-A sec. 5 has been transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court.

Credit Transactions

Chattel Mortgage vs. After-Incurred Obligations (1991)

To secure the payment of an earlier loan of P20,000 as well as subsequent loans which her friend Noreen, would extend to her, Karen executed in favor of Noreen a chattel mortgage over her (Karen) car. Is the mortgage valid?

SUGGESTED ANSWER:

A chattel mortgage cannot effectively secure after-incurred obligations. While a stipulation to include after-incurred obligations in a chattel mortgage is itself not invalid, the obligation cannot, however, be deemed automatically secured by that mortgage until after a new chattel mortgage or an addendum to the original chattel mortgage is executed to cover the obligation after it has been actually incurred. Accordingly, unless such supplements are made, the chattel mortgage in the problem given would be deemed to secure only the loan of P20,000 *(Sec 5 Act 1505; Belgian Catholic Missionaries v Magallanes Press 49p647)*

Chattel Mortgage vs. After-Incurred Obligations (1999)

On December 1, 1996, Borrower executed a chattel mortgage in favor of the Bank to secure a loan of P3M. In due time the loan was paid. On December 1, 1997, Borrower obtained another loan for P2M which the Bank granted under the same security as that which secured the first loan.

For the second loan, Borrower merely delivered a promissory note; no new chattel mortgage agreement was executed as the parties relied on a provision in the 1996 chattel mortgage agreement which included future debts as among the obligations secured by the mortgage. The provision reads:

> "In case the Mortgagor executes subsequent promissory note or notes either as a renewal, as an extension, or as a new loan, this mortgage shall also stand as security for the payment of said promissory note or notes without necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes were existing on date hereof."

As Borrower failed to pay the second loan, the Bank proceeded to foreclose the Chattel Mortgage.Borrower sued the Bank claiming that the mortgage was no longer in force. Borrower claimed that a fresh chattel mortgage should have been executed when the second loan was granted. a) Decide the case and ratiocinate. (4%) b) Suppose the chattel mortgage was not registered,

would its validity and effectiveness be impaired? Explain. (4%)

SUGGESTED ANSWER:

The foreclosure of the chattel mortgage regarding the second loan is not valid. A chattel mortgage cannot validly secure after incurred obligations. The affidavit of good faith required under the chattel mortgage law expressly provides that "the foregoing mortgage is made for securing the obligation specified in the conditions hereof, and for no other purpose." The after-incurred obligation not being specified in the affidavit, is not secured by mortgage.

Yes. The chattel mortgage is not valid as against any person, except the mortgagor, his executors and administrators.

Chattel Mortgage; Foreclosure (1997)

Ritz bought a new car on installments which provided for an acceleration clause in the event of default. To secure payment of the unpaid installments, as and when due, he constituted two chattel mortgages, i.e., one over his very old car and the other covering the new car that he had just bought as aforesaid, on installments. After Ritz defaulted on three installments, the seller-mortgagee foreclosed on the old car. The proceeds of the foreclosure were not enough to satisfy the due obligation; hence, he similarly sought to foreclose on the new car.

Would the seller-mortgagee be legally justified in foreclosing on this second chattel mortgage?

SUGGESTED ANSWER:

No. The two mortgages were executed to secure the payment of the unpaid installments for the purchase of a new car. When the mortgage on the old car was foreclosed, the seller-mortgagee is deemed to have renounced all other rights. A foreclosure of additional property, that is, the new car covered by the second mortgage would be a nullity.

Chattel Mortgage; Ownership of Thing Mortgaged (1990)

Zonee, who lives in Bulacan, bought a 1988 model Toyota Corolla sedan on July 1, 1989 from Anadelaida, who lives in Quezon City, for P300th, paying P150th as downpayment and promising to pay the balance in 3 equal quarterly installments beginning October 1, 1989. Anadelaida executed a deed of sale of the vehicle in favor of Zonee and, to secure the unpaid balance of the purchase price, had Zonee execute a deed of chattel mortgage on the vehicle in Anadelaida's favor.

Ten days after the execution of the abovementioned documents, Zonee had the car transferred and registered in her name. Contemporaneously, Anadelaida had the chattel mortgage on the car registered in the Chattel Mortgage Registry of the Office of the Register of Deeds of Quezon City.

In Sep 1989, Zonee sold the sedan to Jimbo without telling the latter that the car was mortgaged to Anadelaida. When Zonee failed to pay the first installment on October 1, 1989, Anadelaida went to see Zonee and discovered that the latter had sold the car to Jimbo. a) Jimbo refused to give up the car on the ground that the chattel mortgage executed by Zonee in favor of Anadelaida is not valid because it was executed before the car was registered in Zonee's name, i.e., before Zonee became the registered owner of the car. Is the said argument meritorious? Explain your answer.

b) Jimbo also argued that even if the chattel mortgage is valid, it cannot affect him because it was not properly registered with the government offices where it should be registered. What government office is Jimbo referring to?

SUGGESTED ANSWER:

a) Jimbo's argument is not meritorious. Zonee became the owner of the property upon delivery; registration is not essential to vest that ownership in the buyer. The execution of the chattel mortgage by the buyer in favor of the seller, in fact, can demonstrate the vesting of such ownership to the mortgagor.

b) Jimbo was referring to the Register of Deeds of Bulacan where Zonee was a resident. The Chattel Mortgage Law requires the registration to be made in the Office of the Register of Deeds of the province where the mortgagor resides and also in which the property is situated as well as the LTO where the vehicle is registered. (Sec 4 Chattel Mortgage Law)

Credit Transactions (1999)

Various buyers of lots in a subdivision brought actions to compel either or both the developer and the bank to lease and deliver free and clear the titles to their respective lots.

The problem arose because notwithstanding prior sales mostly on installments – made by the developer to buyers, developer had mortgaged the whole subdivision to a commercial bank. The mortgage was duly executed and registered with the appropriate governmental agencies. However, as the lot buyers were completely unaware of the mortgage lien of the bank, they religiously paid the installments due under their sale contracts.

As the developer failed to pay its loan, the mortgage was foreclosed and the whole subdivision was acquired by the bank as the highest bidder. a) May the bank dispossess prior purchasers of individual lots or, alternatively, require them to pay again for the paid lots? Discuss (3%)

b) What are the rights of the bank vis-à-vis those buyers with remaining unpaid installments? Discuss. (3%)

Recommendation: Since the subject matter of these two (2) questions is not included within the scope of the Bar Questions in Mercantile Law, as it is within Civil Law, it is suggested that whatever answer is given by the examinee, or the lack of answer should be given full credit. If the examinee gives a good answer, he should be given additional credit.

SUGGESTED ANSWER:

No. The bank may not dispossess the prior purchasers of the individual lots, much less require them to pay for the said lots. The bank has to respect the rights of the prior purchasers of the individual lots. The purchasers have the option to pay the installments of the mortgagee.

The bank has to respect the rights of the buyers with remaining unpaid installments. The purchaser has the option to pay the installments to the mortgagee who should apply the payments to the mortgage indebtedness.

Mortgage (1999)

Debtor purchased a parcel of land from a realty company payable in five yearly installments. Under the contract of sale, title to the lot would be transferred upon full payment of the purchase price.

But even before full payment, debtor constructed a house on the lot. Sometime thereafter, debtor mortgaged the house to secure his obligation arising from the issuance of a bond needed in the conduct of his business. The mortgage was duly registered with the proper chattel mortgage registry.

Five years later after completing payment of the purchase price, debtor obtained title to the lot. And even as the chattel mortgage on the house was still subsisting, debtor mortgaged to a bank the lot and improvement thereon to secure a loan. This real estate mortgage was duly registered and annotated at the back of the title.

Due to business reverses, debtor failed to pay his creditors. The chattel mortgage was foreclosed when the debtor failed to reimburse the surety company for payments made on the bond. In the foreclosure sale, the surety company was awarded the house as the highest bidder.

Only after the foreclosure sale did the surety company learn of the real estate mortgage in favor of the lending investor on the lot and the improvement thereon. Immediately, it filed a complaint praying for the exclusion of the house from the real estate mortgage. It was submitted that as the chattel mortgage was executed and registered ahead, it was superior to the real estate mortgage.

On the suggestion that a chattel mortgage on a house- a real property- was a nullity, the surety company countered that when the chattel mortgage was executed, debtor was not yet the owner of the lot on which the house was built. Accordingly, the house was a personal property and a proper subject of a chattel mortgage.

Discuss the validity of the position taken by the surety company. (3%)

Who has a better claim to the house, the surety company or the lending investor? Explain (3%)

Would the position of the surety company be bolstered by the fact that it acquired title in a foreclosure sale conducted by the Provincial Sheriff. Explain (3%)

SUGGESTED ANSWER:

a) The house is always a real property even though it was constructed on a land not belonging to the builder. However, the parties may treat it as a personal property and constitute a chattel mortgage thereon. Such mortgage shall be valid and binding but only on the parties. It will not bind or affect third parties.

b) The lending investor has a better claim to the house. The real estate mortgage covering the house and lot was duly registered and binds the parties and third persons. On the other hand, the chattel mortgage on the house securing the credit of the surety company did not affect the rights of third parties such as the lending investor despite registration of the chattel mortgage.

c) No. The chattel mortgage over the house which was foreclosed did not affect the rights of third parties like the lending investor. Since the third parties are not bound by the chattel mortgage, they are not also bound by any enforcement of its provisions. The foreclosure of such chattel mortgage did not bolster or add anything to the position of the surety company.

Mortgage vs. Levy (2003)

To pay for her loan obtained from Stela, Liza constituted in Stela's favor a chattel mortgage over an electric generator. Cecil, a creditor of Liza, levied on attachment the generator. Stela filed a third party claim. Cecil opposed the claim. Rule on their conflicting claims.

SUGGESTED ANSWER:

Mortgage; Extrajudicial Foreclose (2006)

A real estate mortgage may be foreclosed judicially or extrajudicially. In what instance may a mortgagee extrajudicially foreclose a real estate mortgage? (5%)

SUGGESTED ANSWER:

When a sale is made under a special power inserted or attached to any real-estate mortgage, thereafter given as security for the payment of money or the fulfillment of any other obligation, then the mortgagee may extrajudicially foreclose the real estate mortgage (Sec. 1, Act No. 3135, as amended).

Mortgage; Foreclosure (2003)

May the sale at public auction by a bank of a property mortgaged to it be nullified because the price was extremely low? Why?

SUGGESTED ANSWER:

Mortgage; Foreclosure (2003)

Because of failure of Janette and Jeanne to pay their loan to X Bank, the latter foreclosed on the mortgage constituted on their property which was put up by them as security for the payment of the loan. The price paid for the property at the foreclosure sale was not enough to liquidate the obligation. The bank sued for deficiency. In their answer, Janette and Jeanne did not deny the existence of the loan nor the fact of their default. They, however, interposed the defenses that the price at the auction was extremely low and that their loan, despite the loan documents, was a long-term loan which had not yet matured. If you were the judge, how would you rule on the case? Why? (6%)

SUGGESTED ANSWER:

Mortgage; Foreclosure of Improvements (1999)

Borrower obtained a loan against the security of a mortgage on a parcel of land. While the mortgage was subsisting, borrower leased for fifty years the mortgaged property to Land Development Company (LDC). The mortgagee was duly advised of the lease. Thereafter, LDC constructed on the mortgaged property an office condominium.

Borrower defaulted on his loan and mortgagee foreclosed the mortgage. At the foreclosure sale, the mortgagee was awarded the property as the highest bidder. The corresponding Certificate of Sale was executed and after the lapse of one year, title was consolidated in the name of mortgagee.

Mortgagee then applied with the RTC for the issuance of a writ of possession not only over the land but also the condominium building. The mortgagee contended that the mortgage included all accessions, improvements and accessories found on the mortgaged property.

LDC countered that it had built on the mortgaged property with the prior knowledge of mortgagee which had received formal notice of the lease. a) How would you resolve the dispute between the mortgagee and LDC? (3%) b) Is the mortgagee entitled to the lease rentals due from LDC under the lease agreement? (3%)

> **Recommendation:** *Since the subject matter of these two (2) questions is not included within the scope of the Bar Questions in Mercantile Law, as it is within Civil Law, it is suggested that whatever answer is given by the examinee, or the lack of answer should be given full credit. If the examinee gives a good answer, he should be given additional credit.*

SUGGESTED ANSWER:

a. The mortgagee has a better right than LDC. The mortgage extends to the improvements introduced on the land, with the declarations, amplifications, and limitations established by law, whether the estate remains in the possession of the mortgagor or passes into the hands of a third person (Art 2127 NCC). The notice given by LDC to the mortgagee was not enough to remove the building from coverage of the mortgage considering that the building was built after the mortgage was constituted and the notice was only as regards the lease and not as to the construction of the building. Since the mortgagee was informed of the lease and did not object to it, the mortgagee became bound by the terms of the lease when it acquired the property as the highest bidder. Hence, the mortgagee steps into the shoes of the mortgagor and acquires the rights of the lessor under Art 1768 of the NCC. This provision gives the lessor the right to appropriate the condominium building but after paying the lessee half of the value of the building at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvement even though the land will suffer damage thereby.

1st Alternative Answer:

a. The mortgagee has a better right to the building. Under Art 2127 of the NCC, the mortgage extends to all improvements on the mortgaged property regardless of who and when the improvements were introduced. LDC cannot complain otherwise, because it knew that the property it was leasing was mortgaged when it built the condominium.

2nd alternative Answer:

a. Assuming that the office condominium was duly constituted under the Condominium Law, before LDC could validly constitute the same as a condominium, it should cause to be recorded in the register of deeds of the province or city where the land is situated an enabling or master deed showing, among others, a certificate of the registered owner and of all registered holders of any lien or encumbrance on the property that they consent to the registration of the deed. (Sec 4. RA 4726). If the mortgagee gave its consent thereto, then LDC should prevail. If no consent was given, the condominium was included in the mortgage.

SUGGESTED ANSWER:

b. The lease rentals belong to the mortgagor. However, the mortgage extends to rentals not yet received when the obligation becomes due and the mortgagee may ran after the said rentals for the payment of the mortgage debt.

Mortgage; Foreclosure; Effect of mere taking by creditor-mortgagor of property (1992)

X & Co obtained a loan from a local bank in the amount of P500th, mortgaging as security therefore its real property. Subsequently, the company applied with the same bank for a Letter of Credit (LC) for $200th in favor of a foreign bank to cover the importation of machinery. To guarantee payment of the obligation under the LC, the company and its President and Treasurer executed a surety agreement in the local bank's favor.

The machinery arrived and was released to the company under a trust receipt agreement. As the company defaulted in the payment of its obligations, the bank took possession of the imported machinery. At the same time, it sought to foreclose the mortgaged property and to hold the company as well as its President and Treasurer, liable under the Surety Agreement.

Did the taking of possession of the machinery by the bank result in the 1) full payment of the obligations of the company and its officers, and 2) foreclosure of the mortgage?

SUGGESTED ANSWER:

1) The taking of possession of the machinery by the bank did not result in full payment of the obligations owing from the company and its officers. The taking of such possession must be considered merely as a measure in order to protect or further safeguard the bank's security interest. *Dacion en pago* can only be considered as having taken place when a creditor accepts and appropriates the ownership of the goods in payment of a due obligation. *(PNB v Pineda 197 s 1)*

2) The mere taking of possession of mortgaged assets does not amount to foreclosure. Foreclosure requires a sale at public auction. The foreclosure, therefore, has not as yet been effected.

Mortgage; Redemption Period; Foreclosed Property (2002)

Primetime Corporation (the Borrower) obtained a P10 Million, five-year term loan from Universal Bank (the Bank) in 1996. As security for the loan and as required by the Bank, the Borrower gave the following collateral security in favor of the Bank: 1) a real estate mortgage over the land and building owned by the Borrower and located in Quezon City; 2) the joint and several promissory note of Pr. Primo Timbol, the President of the Borrower; and 3) a real estate mortgage over the residential house and lot owned by Mr. Timbol, also located in Quezon City.

Because of business reverses, neither the Borrower nor Mr. Timbol was able to pay the loan. In June 2001, the Bank extrajudicially foreclosed the two real estate mortgages, with the Bank as the only bidder in the foreclosure sale. On September 16, 2001, the certificates of sale of the two properties in favor of the Bank were registered with the Register of Deeds of Quezon City.

Ten months later, both the Borrower and Mr. Timbol were able to raise sufficient funds to redeem their respective properties from the Bank, but the Bank refused to permit redemption on the ground that the period for redemption had already expired, so that the Bank now has absolute ownership of both properties. The Borrower and Mr. Timbol came to you today, September 15, 2002, to find out if the position of the Bank is correct. What would be your answer? State your reasons (5%).

SUGGESTED ANSWER:

1 With respect to the real estate mortgage over the land and building owned by the Borrower, Primetime Corporation, a juridical body, the period of redemption is only three (3) months, which period already expired.

2 As to the real estate mortgage over the residential house and lot owned by Mr. Timbol, the period of redemption is one (1) year from the date of registration of the certificate of sale, which period has not yet expired in this case.

Mortgage; Remedies (2003)

Carmakers, Inc., sold a motor vehicle on installment basis to Chari Paredes. The transaction was reflected on a promissory note executed by Chari in favor of Carmakers. The note was secured by a mortgage over the car. Contemporaneous with the execution of the note and the mortgage deed, Carmakers, Inc., assigned the instruments sans recourse to Adelantado Finance Corporation. Chari defaulted in her obligations. Could Adelantado Finance corporation take action against both Carmakers Inc., and Chari? Why? (6%)

SUGGESTED ANSWER:

Preference of Credits (2002)

As of June 1, 2002, Edzo Systems Corporation (Edzo) was indebted to the following creditors:

(1) Ace Equipment Supplies – for various personal computers and accessories sold to Edzo on credit amounting to P300,000.

(2) Handyman Garage – for mechanical repairs (parts and service) performed on Edzo's company car amounting to P10,000.

(3) Joselyn Reyes – former employee of Edzo who sued Edzo for unlawful termination of employment and was able to obtain a final judgment against Edzo for P100,000.

(4) Bureau of Internal Revenue – for unpaid value-added taxes amounting to P30,000.

(5) Integrity Bank – which granted Edzo a loan in 2001 in the amount of P500,000. The loan was not secured by any asset of Edzo, but it was guaranteed unconditionally and solidarily by Edzo's President and controlling stockholder, Eduardo Z. Ong, as accommodation surety.

The loan due to Integrity Bank fell due on June 15, 2002. Despite pleas for extension of payment by Edzo, the bank demanded immediate payment. Because the bank threatened to proceed against the surety, Eduardo Z. Ong, Edzo decided to pay up all its obligations to Integrity Bank. On June 20, 2002, Edzo paid to Integrity Bank the full principal amount of P500,000, plus accrued interests amounting to P55,000. As a result, Edzo had hardly any cash left for operations and decided to close its business. After paying the unpaid salaries of its employees, Edzo filed a petition for insolvency on July 1, 2002.

How would you, as judge in the insolvency proceedings, rank the respective credits or claims of the five (5) creditors mentioned above in terms of preference or priority against each other? (5%)

SUGGESTED ANSWER:

The claim of Handyman Garage for P10,000 has a specific lien on the car repaired.

The remaining four (4) claims have preference or priority against each other in the following order:

(1) No. 4 – claim of the BIR for unpaid value added taxes

(2) No. 3 – claim of Joselyn Reyes for Unlawful termination

(3) No. 1 – claim of Ace equipment Supplies as an unpaid seller; and

(4) No. 5 – claim of Integrity Bank.

Promissory Note: Liability (2001)

X, Y and Z signed a promissory note in favor of A stating: "We promise to pay A on December 31, 2001 the sum of P5,000.00" When the note fell due, A sued X and Y who put up the defense that A should have impleaded Z. Is the defense valid? Why? (5%)

SUGGESTED ANSWER:

The defense is not valid. The liability of X, Y, and Z under the promissory note is joint. Such being the case, Z is not an indispensable party. The fact that A did not implead Z will not prevent A from collecting the proportionate share of X and Y in the payment of the loan.

(Observation: Even if the liability of X, Y, and Z is solidary, the defense would still not be valid)

Remedies; Available to Mortgagee-Creditor (1996)

Finding a 24-month payment plan attractive, Anjo purchased a Tamaraw FX from Toyota QC. He paid a down-payment of P100th and obtained financing for the balance from IOU Co. He executed a chattel mortgage

over the vehicle in favor of IOU. When Anjo defaulted, IOU foreclosed the chattel mortgage, and sought to recover the deficiency. May IOU still recover the deficiency? Explain.

SUGGESTED ANSWER:

IOU may no longer recover the deficiency. Under Art 1484 of the NCC, in a contract of sale of personal property the price of which is payable in installments, the vendor may, among several options, foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In such case, however, the vendor shall have no further action against the purchaser to recover any unpaid balance of the price and any agreement to the contrary is void. While the given facts did not explicitly state that Anjo's failure to pay covered 2 or more installments, this may safely be presumed because the right of IOU Co to foreclose the chattel mortgage under the circumstances is premised on Anjo's failure to pay 2 or more installments. The foreclosure would not have been valid if it were not so. (The given facts did not also state explicitly whether Anjo's default was a payment default or a default arising from a breach of a negative pledge or breach of a warranty. In such case, however, IOU Company would not have been able to foreclose the chattel mortgage validly as such foreclosure, under the circumstances contemplated by the law, could only be effected for a payment default covering two or more installments) *(Luis Ridad v Filipinas Investment and Finance Co GR L-39806 Jan27,83 120s246)*

Remedies; Available to Mortgagee-Creditor (2001)

Debtor "A" issued a promissory note in the amount of P10M in favor of commercial bank Y secured by mortgage of his properties worth P30M. When A failed to pay his indebtedness, despite demands made by bank Y, the latter instituted a collection suit to enforce payment of the P10M account. Subsequently, bank Y also filed foreclosure proceedings against A for security given for the account. If you were the judge, how would you resolve the two cases? (5%)

SUGGESTED ANSWER:

The case for collection will be allowed to proceed. But the foreclosure proceedings have to be dismissed. In instituting foreclosure proceedings, after filing a collection case involving the same account or transaction, bank Y is guilty of splitting a cause of action. The loan of P10M is the principal obligation while the mortgage securing the same is merely an accessory to said loan obligation. The collection of the loan and the foreclosure of the mortgage securing said loan constitute one and the same cause of action. The filing of the collection case bars the subsequent filing of the foreclosure proceedings.

Remedies; Secured Debt (1991)

To secure the payment of his loan of P200th, A executed in favor of the Angeles Banking Co in 1 document, a real estate mortgage over 3 lots registered in his name and a chattel mortgage over his 3 cars and 1 Isuzu cargo truck. Upon his failure to pay the loan on due date, the bank foreclosed the mortgage on the 3 lots, which were subsequently sold for only P99th at the foreclosure sale. Thereafter, the bank filed an ordinary action for the collection of the deficiency. A contended that the mortgage contract he executed was indivisible and consequently, the bank had no legal right to foreclose only the real estate mortgage and leave out the chattel mortgage, and then sue him for a supposed deficiency judgment. If you were the Judge, would you sustain the contention of A?

SUGGESTED ANSWER:

If I were the Judge, I would dismiss the action as being premature since the proper remedy would be to complete the foreclosure of the mortgages and only thereafter can there by an action for collection of any deficiency. In *Caltex v IAC (GR 74730, 25 Aug 89)*, the remedies on a secured debt, said the court, are either an action to collect or to foreclose a contract of real security. These remedies are alternative remedies, although an action for any deficiency is not precluded, subject to certain exceptions such as those stated in Art 1484 of the Civil Code, by a foreclosure on the mortgages. While the factual settings in the case of *Suria v IAC (30 June 87)* are not similar to the facts given in the problem, the SC implied that foreclosure as a remedy in secured obligations must first be availed of by a creditor in preference to other remedies that might also be invoked by him.

ALTERNATIVE ANSWER:

The indivisibility of a contract of real security, such as a real estate mortgage or a chattel mortgage, only means that a division or a partial payment of a secured obligation does not warrant a corresponding division or proportionate reduction of the security given. A creditor in such secured debts may pursue the remedy of foreclosure, in part or in full, or file an ordinary action for collection on any amount due. A favorable judgment can warrant an issuance of a writ of execution on any property, not exempt from execution, belonging to the judgment debtor. There should be no legal obstacle for a creditor to waive, in full or in part, his right to foreclosure on contracts of real security.

Insurance Law

Beneficiary: Effects: Irrevocable Beneficiary (2005)

What are the effects of an irrevocable designation of a beneficiary under the Insurance Code? Explain. (2%)

SUGGESTED ANSWER:

The irrevocable designation gives the beneficiary a vested right over Life Insurance. The Insured cannot act to divest the irrevocable beneficiary, in whole or in part, without the beneficiary's consent. To be specific:

(1) The beneficiary designated in a life insurance contract cannot be changed without the consent of the beneficiary because he has a vested interest in the policy *(Philamlife v. Pineda, G.R. No. 54216, July 19,*

1989, citing Gercio v. Sun Life, G.R. No. 23703, September 28, 1925; and Go v. Redfern, G.R. No. 47705, April 25, 1841);

(2) Neither can the Insured take the cash surrender value, assign or even borrow on said policy without the beneficiary's consent *(Nario v. Philamlife, G.R. No. 22796, June 26, 1967);*

(3) The Insured cannot add another beneficiary because that would reduce the amount which the first beneficiary may recover and therefore adversely affect his vested right *(Go v. Redfern, G.R. No. 47705, April 25, 1941);*

(4) Unless the policy allows, the Insured cannot even designate another beneficiary should the original beneficiary predecease him. His estate acquires the beneficiary's vested right upon his death; and

(5) The Insured cannot allow his creditors to attach or execute on the policy. *(Philamlife v. Pineda, G.R. No. 54216, July 19, 1989)*

Beneficiary: Rights; Irrevocable Beneficiary (2005)

Jacob obtained a life insurance policy for P1 Million designating irrevocably Diwata, a friend, as his beneficiary. Jacob, however, changed his mind and wants Yob and Jojo, his other friends, to be included as beneficiaries considering that the proceeds of the policy are sufficient for the three friends. Can Jacob still add Yob and Jojo as his beneficiaries? Explain. (2%)

SUGGESTED ANSWER:

No, Jacob can no longer add Yob and Jojo as his beneficiaries in addition to Diwata. As the irrevocable beneficiary, Diwata has acquired a-vested right over Jacob's life insurance policy. Any additional beneficiaries will reduce the amount which Diwata, as the first beneficiary, may recover, which will adversely affect her vested right. *(Go v. Redfern, G.R. No. 47705, April 25, 1941)*

Beneficiary; Life Insurance; Prohibited Beneficiaries (1998)

Juan de la Cruz was issued Policy No. 8888 of the Midland Life Insurance Co on a whole life plan for P20,000 on August 19, 1989. Juan is married to Cynthia with whom he has three legitimate children. He, however, designated Purita, his common-law wife, as the revocable beneficiary. Juan referred to Purita in his application and policy as the legal wife. 3 years later, Juan died. Purita filed her claim for the proceeds of the policy as the designated beneficiary therein. The widow, Cynthia, also filed a claim as the legal wife. To whom should the proceeds of the insurance policy be awarded? (5%)

SUGGESTED ANSWER:

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

Concealment; Material Concealment (2001)

A applied for a non-medical life insurance. The insured did not inform the insurer that one week prior to his application for insurance, he was examined and confined at St. Luke's Hospital where he was diagnosed for lung cancer. The insured soon thereafter died in a plane crash. Is the insurer liable considering that the fact concealed had no bearing with the cause of death of the insured? Why? (5%)

SUGGESTED ANSWER:

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

Concealment; Material Concealment: Incontestability Clause (1994)

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

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

SUGGESTED ANSWER:

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

The right of the insurer to rescind is only lost if the beneficiary has commenced an action on the policy. There is no such action in this case. *(Tan v CA 174 s 143)*

Concealment; Material Concealment: Incontestability Clause (1996)

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

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

Will Petra's suit prosper? Explain.

SUGGESTED ANSWER:

No, Petra's suit will not prosper (assuming that the policy of life insurance has been in force for a period of less than 2 years from the date of its issue). The matters which Juan failed to disclose was material and relevant to the approval and issuance of the insurance policy. They would have affected Good Life's action on his application, either by approving it with the corresponding adjustment for a higher premium or rejecting the same. Moreover, a disclosure may have warranted a medical examination of Juan by Good Life in order for it to reasonably assess the risk involved in accepting the application. In any case, good faith is no defense in concealment. The waiver of a medical examination in the 'non-medical' life insurance from Good Life makes it even more necessary that Juan supply complete information about his previous hospitalization for such information constitutes an important factor which Good Life takes into consideration in deciding whether to issue the policy or not. *(See Sunlife Assurance Co of Canada v CA GR 105135, June 22, 1995 245 s 268)*

If the policy of life insurance has been in force for a period of 2 years or more from the date of its issue (on which point the given facts are vague) then Good Life can no longer prove that the policy is void ab initio or is rescindible by reason of the fraudulent concealment or misrepresentation of Juan (Sec 48 Ins Code)

Concealment; Material Concealment: Incontestability Clause (1997)

The assured answers "No" to the question in the application for a life policy: "Are you suffering from any form of heart illness?" In fact, the assured has been a heart patient for many years. On 7 Sep 1991, the assured is killed in a plane crash. The insurance company denies the claim for insurance proceeds and returns the premiums paid. Is the decision of the insurance company justified?

SUGGESTED ANSWER:

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

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

Concealment; Material Concealment; Incontestability Clause (1991)

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

SUGGESTED ANSWER:

I would rule in favor of the insurance company. The incontestability clause, applies only if the policy had been in effect for at least 2 years. The 2 year period is counted from the time the insurance becomes effective until the death of the insured and not thereafter *(Tan v CA GR 48044 29Jun1989)*

ALTERNATIVE ANSWER:

I would rule in favor of the insurance company. Although an insurer may not rescind the contract on ground of misrepresentation after an action is commenced for recovery under the policy, the insurer is not precluded from invoking the ground of misrepresentation as a defense in the action for recovery. This is alright since the bar problem is not covered yet by the incontestability clause.

Concealment; Material Concealment; Incontestability Clause (1998)

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

On March 1, 1992, Renato died of heart failure. May the heirs file a claim on the proceeds of the life insurance policy of Renato? (5%)

SUGGESTED ANSWER:

Yes. The life insurance policy in question was issued on January 9, 1990. More than 2 years had elapsed when Renato, the insured, died on March 1, 1992. The incontestability clause applies.

INCONTESTABILITY CLAUSE

The insurer has two years from the date of issuance of the insurance contract or of its last reinstatement within which to contest the policy, whether or not, the insured still lives within such period. After two years, the defenses of concealment or misrepresentation, no matter how patent or well founded, no longer lie.

Insurable Interest: Bank Deposit (2000)

BD has a bank deposit of half a million pesos. Since the limit of the insurance coverage of the Philippine Deposit Insurance Corp (PDIC) (RA 3591) is only one tenth of BD's deposit, he would like some protection for the excess by taking out an insurance against all risks or contingencies of loss arising from any unsound or unsafe banking practices including unforeseen adverse effects of

the continuing crisis involving the banking and financial sector in the Asian region. Does BD have an insurable interest within the meaning of the Insurance Code of the Philippines (PD1460)? (2%)

SUGGESTED ANSWER:

Yes. BD has insurable interest in his bank deposit. In case of loss of said deposit, more particularly to the extent of the amount in excess of the limit covered by the PDIC Act, PBD will be damnified. He will suffer pecuniary loss of P300,000.00, that is, his bank deposit of half a million pesos minus P200,000.00 which is the maximum amount recoverable from the PDIC.

Insurable Interest: Public Enemy (2000)

May a member of the MILF or its breakaway group, the Abu Sayyaf, be insured with a company licensed to do business under the Insurance Code of the Phils (PD 1460)? Explain. (3%)

SUGGESTED ANSWER:

A member of the MILF or the Abu Sayyaf may be insured with a company licensed to do business under the Insurance Code of the Phils. What is prohibited to be insured is a public enemy. A public enemy is a citizen or national of a country with which the Philippines is at war. Such member of the MILF or the Abu Sayyaf is not a citizen or national of another country, but of the Philippines.

Insurable Interest: Separate Insurable Interest (1999)

A businessman in the grocery business obtained from First Insurance an insurance policy for P5M to fully cover his stocks-in-trade from the risk of fire.

Three months thereafter, a fire of accidental origin broke out and completely destroyed the grocery including his stocks-in-trade. This prompted the businessman to file with First Insurance a claim for five million pesos representing the full value of his goods.

First Insurance denied the claim because it discovered that at the time of the loss, the stocks-in-trade were mortgaged to a creditor who likewise obtained from Second Insurance Company fire insurance coverage for the stocks at their full value of P5M. a) May the businessman and the creditor obtain

separate insurance coverages over the same stocks-in-trade? Explain (3%) b) First Insurance refused to pay claiming that double

insurance is contrary to law. Is this contention tenable? (3%) c) Suppose you are the Judge, how much would you

allow the businessman and the creditor to recover from their respective insurers. Explain (3%)

SUGGESTED ANSWER:

a) Yes. The businessman, as owner, and the creditor, as mortgagee, have separate insurable interests in the same stocks-in-trade. Each may insure such interest to protect his own separate interest. b) The contention of First Insurance that double insurance is contrary to law is untenable. There is no law providing that double insurance is illegal per se. Moreover, in the problem at hand, there is no double insurance because the insured with the First Insurance is different from the insured with the Second Insurance Company. The same is true with respect to the interests insured in the two policies.

c) As Judge, I would allow the businessman to recover his total loss of P5M representing the full value of his goods which were lost through fire. As to the creditor, I would allow him to recover the amount to the extent of or equivalent to the value of the credit he extended to the businessman for the stocks-in-trade which were mortgaged by the businessman.

Insurable Interest; Equitable Interest (1991)

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

SUGGESTED ANSWER:

Pablo had an existing insurable interest on the piece of machinery he bought. The purchase of goods under a perfected contract of sale already vests equitable interest on the property in favor of the buyer even while it is pending delivery *(Filipino Merchants Ins Co v CA GR 85144 28Nov1989)*

Insurable Interest; Life vs. Property Insurance (1997)

a) A obtains a fire insurance on his house and as a generous gesture names his neighbor as the beneficiary. If A's house is destroyed by fire, can B successfully claim against the policy? b) A obtains insurance over his life and names his neighbor B the beneficiary because of A's secret love for B. If A dies, can B successfully claim against the policy?

SUGGESTED ANSWER:

a) No. In property insurance, the beneficiary must have insurable interest in the property insured. (Sec 18 Ins Code). B does not have insurable interest in the house insured.

b) Yes. In life insurance, it is not required that the beneficiary must have insurable interest in the life of the insured. It was the insured himself who took the policy on his own life.

Insurable Interest; Life vs. Property Insurance (2000)

IS, an elderly bachelor with no known relatives, obtained life insurance coverage for P250,000.00 from Starbrite Insurance Corporation, an entity licensed to engage in the insurable business under the Insurance Code of the Philippines (PD1460). He also insured his residential house for twice that amount within the same corporation. He immediately assigned all his rights to the insurance proceeds to BX, a friend-companion living with him. Three years later, IS died in a fire that gutted his insured house two days after he had sold it. There is

no evidence of suicide or arson or involvement of BX in these events. BX demanded payment of the insurance proceeds from the two policies, the premiums for which IS had been faithfully paying during all the time he was alive. Starbrite refused payment, contending that BX had no insurable interest and therefore was not entitled to receive the proceeds from IS's insurance coverage on his life and also on his property. Is Starbrite's contention valid? Explain? (5%)

SUGGESTED ANSWER:

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

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

Insurable Interest; Life vs. Property Insurance (2002)

Distinguish insurable interest in property insurance from insurable interest in life insurance. (5%)

SUGGESTED ANSWER:

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

b) In property insurance, the actual value of the interest therein is the limit of the insurance that can validly be placed thereon. In life insurance, there is no limit to the amount of insurance that may be taken upon life.

c) In property insurance, an interest insured must exist when the insurance takes effect and when the loss occurs but need not exist in the meantime. In life insurance, it is enough that insurable interest exists at the time when the contract is made but it need not exist at the time of loss.

Insurable Interest; Property Insurance (1994)

In a civil suit, the Court ordered Benjie to pay Nat P500,000.00. To execute the judgment, the sheriff levied upon Benjie's registered property (a parcel of land and the building thereon),and sold the same at public auction to Nat, the highest bidder. The latter, on March 18, 1992, registered with the Register of Deeds the certificate of sale issued to him by the sheriff. Meanwhile, on January 27, 1993, Benjie insured with Garapal Insurance for P1,000,000.00 the same building that was sold at public auction to Nat. Benjie failed to redeem the property by March 18, 1993. On March 19, 1993, a fire razed the building to the ground. Garapal Insurance refused to make good its obligation to Benjie under the insurance contract. 1) Is Garapal Insurance legally justified in refusing payment to Benjie? 2) Is Nat entitled to collect on the insurance policy?

SUGGESTED ANSWER:

1)Yes. At the time of the loss, Benjie was no longer the owner of the property insured as he failed to redeem the property. The law requires in property insurance that a person can recover the proceeds of the policy if he has insurable interest at the time of the issuance of the policy and also at the time when the loss occurs. At the time of fire, Benjie no longer had insurable interest in the property insured.

2) No. While at the time of the loss he had insurable interest in the building, as he was the owner thereof, Nat did not have any interest in the policy. There was no automatic transfer clause in the policy that would give him such interest in the policy.

Insurable Interest; Property Insurance (2001)

JQ, owner of a condominium unit, insured the same against fire with the XYZ Insurance Co., and made the loss payable to his brother, MLQ. In case of loss by fire of the said condominium unit, who may recover on the fire insurance policy? State the reason(s) for your answer. (5%)

SUGGESTED ANSWER:

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

Insurance; Cash & Carry Basis (2003)

What is meant by "cash and carry" in the business of insurance?

SUGGESTED ANSWER:

Insurance; Co-Insurance vs. Re-Insurance (1994)

Distinguish co-insurance from re-insurance.

SUGGESTED ANSWER:

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

REINSURANCE is where the insurer procures a third party, called the reinsurer, to insure him against liability by reason of such original insurance. Basically, a

reinsurance is an insurance against liability which the original insurer may incur in favor of the original insured.

Insurance; Double Insurance (2005)
When does double insurance exist? (2%)
SUGGESTED ANSWER:
Under Section 93 of the Insurance Code, there is double insurance when there is over-insurance with two or more companies, covering the same property, the same insurable interest and the same risk. Double insurance exists where the same person is insured by several insurers separately in respect of the same subject matter and interests. *(Geagonia v. Court of Appeals, G.R. No. 114427, February 6, 1995)*

Insurance; Double Insurance; effect (1993)
Julie and Alma formed a business partnership. Under the business name Pino Shop, the partnership engaged in a sale of construction materials. Julie insured the stocks in trade of Pino Shop with WGC Insurance Co for P350th. Subsequently, she again got an insurance contract with RSI for P1m and then from EIC for P200th. A fire of unknown origin gutted the store of the partnership. Julie filed her claims with the three insurance companies. However, her claims were denied separately for breach of policy condition which required the insured to give notice of any insurance effected covering the stocks in trade. Julie went to court and contended that she should not be blamed for the omission, alleging that the insurance agents for WGC, RSI and EIC knew of the existence of the additional insurance coverages and that she was not informed about the requirement that such other or additional insurance should be stated in the policy. Is the contention of Julie tenable? Explain. May she recover on her fire insurance policies? Explain.

SUGGESTED ANSWER:
1) No. An insured is required to disclose the other insurances covering the subject matter of the insurance being applied for. *(New Life Ent v CA 207 s 669)*

2) No, because she is guilty of violation of a warranty/ condition.

Insurance; Effects; Payment of Premiums by Installment (2006)
The Peninsula Insurance Company offered to insure Francis' brand new car against all risks in the sum of PI Million for 1 year. The policy was issued with the premium fixed at 160,000.00 payable in 6 months. Francis only paid the first two months installments. Despite demands, he failed to pay the subsequent installments. Five months after the issuance of the policy, the vehicle was carnapped. Francis filed with the insurance company a claim for its value. However, the company denied his claim on the ground that he failed to pay the premium resulting in the cancellation of the policy. Can Francis recover from the Peninsula Insurance Company? (5%)

SUGGESTED ANSWER:
Yes, when insured and insurer have agreed to the payment of premium by installments and partial payment has been made at the time of loss, then the insurer becomes liable. When the car loss happened on the 5th month, the six months agreed period of payment had not yet elapsed *(UCPB General Insurance v. Masagana Telamart, G.R. No. 137172, April 4, 2001)*. Francis can recover from Peninsula Insurance Company, but the latter has the right to deduct the amount of unpaid premium from the insurance proceeds.

Insurance; Life Insurance; Assignment of Policy (1991)
The policy of insurance upon his life, with a face value of P100th was assigned by Jose, a married man with 2 legitimate children, to his nephew Y as security for a loan of P50th. He did not give the insurer any written notice of such assignment despite the explicit provision to that effect in the policy. Jose died. Upon the claim on the policy by the assignee, the insurer refused to pay on the ground that it was not notified of the assignment. Upon the other hand, the heirs of Jose contended that Y is not entitled to any amount under the policy because the assignment without due notice to the insurer was void. Resolve the issues.
SUGGESTED ANSWER:
A life insurance is assignable. A provision, however, in the policy stating that written notice of such an assignment should be given to the insurer is valid (Secs 181-182 Ins Code). The failure of the notice of assignment would thus preclude the assignee from claiming rights under the policy. The failure of notice did not, however, avoid the policy; hence, upon the death of Jose, the proceeds would, in the absence of a designated beneficiary, go to the estate of the insured. The estate, in turn, would be liable for the loan of P50,000 owing in favor of Y.

Insurance; Perfection of Insurance Contracts (2003)
Josie Gatbonton obtained from Warranty Insurance Corporation a comprehensive motor vehicle insurance to cover her brand new automobile. She paid, and the insurer accepted payment in check. Before the check could be encashed, Josie was involved in a motor vehicle accident where her car became a total wreck. She sought payment from the insurer. Could the insurer be made liable under the insurance coverage? (6%)
SUGGESTED ANSWER:
(per Dondee) Yes, because there was a perfected contract of insurance the moment there is a meeting of the minds with respect to the object and the cause of payment. The payment of check is a valid payment unless upon encashment the check bounced.

Insurance; Property Insurance; Prescription of Claims (1996)
Robin insured his building against fire with EFG Assurance. The insurance policy contained the usual stipulation that any action or suit must be filed within one year after the rejection of the claim.

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

SUGGESTED ANSWER:

No, Robin's action should not be given due course. Is filing of the request for reconsideration did not suspend the running of the prescriptive period of one year stipulated in the insurance policy. Thus, when robin commenced judicial action against EFG Assurance on March 20, 1995, his ability to do so had already prescribed. The one-year period is counted from Feb 28, 1994 when EFG denied Robin's claim, not from the date (presumably after April 3, 1994) when EFG reiterated its position denying Robin's claim. The reason for this rule is to insure that claims against insurance companies are promptly settled and that insurance suits are brought by the insured while the evidence as to the origin and cause of the destruction has not yet disappeared. *(See Sun Ins Office Ltd v CA gr 89741, Mar 13 91 195s193)*

Insurance; Return of Premiums (2000)

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

SUGGESTED ANSWER:

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

1 To the WHOLE PREMIUM, if no part of his interest in the thing insured be exposed to any of the perils insured against.

2 Where the insurance is made for a definite period of time and the insured surrenders his policy, to such portion of the premium as corresponds with the unexpired time at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

3 When the contract is voidable on account of the fraud or misrepresentation of the insurer or of his agent or on account of facts the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

ALTERNATIVE INSTANCE:

In case of an over insurance by several insurers, the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

Insured; Accident Policy (2004)

CNI insure SAM under a homeowner's policy against claims for accidental injuries by neighbors. SAM's minor son, BOY, injured 3 children of POS, a neighbor, who sued SAM for damages. SAM's lawyer was ATT, who was paid for his services by the insurer for reporting periodically on the case to CNI. In one report, ATT disclosed to CNI that after his investigations, he found the injuries to the 3 children not accidental but intentional.

SAM lost the case in court, and POS was awarded one million pesos in damages which he sought to collect from the insurer. But CNI used ATTs report to deny the claim on the ground that the injuries to POS's 3 children were intentional, hence excluded from the policy's coverage. POS countered that CNI was estopped from using ATTs report because it was unethical for ATT to provide prejudicial information against his client to the insurer, CNI. Who should prevail: the claimant, POS; or the insurer, CNI? Decide with reasons briefly. (5%)

SUGGESTED ANSWER:

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

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

Insured; Accident vs. Suicide (1990)

Luis was the holder of an accident insurance policy effective Nov 1, 1988 to Oct 31, 1989. At a boxing contest held on Jan 1, 1989 and sponsored by his employer, he slipped and was hit on the fact by his opponent so he fell and his head hit one of the posts of the boxing ring. He was rendered unconscious and was dead on arrival at the hospital due to "intra-cranial hemorrhage."

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

SUGGESTED ANSWER:

Yes, the father who is a beneficiary under the accidental insurance can successfully claim indemnity for the death of the insured. Clearly, the proximate cause of death was the boxing contest. Death sustained in a boxing contest is an accident. *(De la Cruz v Capital Ins & Surety Co 17s559)*

Insured; Accident vs. Suicide (1993)

S Insurance Co issued a personal accident policy to Bob Tan with a face value of P500th. In the evening of Sep 5, 1992, after his birthday party, Tan was in a happy mood but not drunk. He was playing with his hand gun, from which he previously removed the magazine. As his secretary was watching television, he stood in front of her and pointed the gun at her. She pushed it aside and said that it may be loaded. He assured her that it was not and then pointed it at his temple. The next moment, there was an explosion and Tan slumped to the floor lifeless.

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

SUGGESTED ANSWER:

No. These two contentions are not tenable. The insurer is liable for injury or death even due to the insured's gross negligence. The fact that the insured removed the magazine from the hand gun means that the insured did not willfully expose himself to needless peril. At most, the insured is only guilty of negligence *(Sun Ins v CA 211 s 554)*

Insured; Accident vs. Suicide (1995)

Sun-Moon Insurance issued a Personal Accident Policy to Henry Dy with a face value of P500th. A provision in the policy states that "the company shall not be liable in respect of "bodily injury' consequent upon the insured person attempting to commit suicide or willfully exposing himself to needless peril except in an attempt to save human life." Six months later Henry Dy died of a bullet wound in his head. Investigation showed that one evening Henry was in a happy mood although he was not drunk. He was playing with his handgun from which he had previously removed its magazine. He pointed the gun at his sister who got scared. He assured her it was not loaded. He then pointed the gun at his temple and pulled the trigger. The gun fired and Henry slumped on the floor.

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

SUGGESTED ANSWER:

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

Insurer: Effects: Several Insurers (2005)

What is the nature of the liability of the several insurers in double insurance? Explain. (2%)

SUGGESTED ANSWER:

The nature of the liability of the several insurers in double insurance is that each insurer is bound to the contribute ratably to the loss in proportion to the amount for which he is liable under his contract as provided for by Sec 94 of ICP par. The ratable contribution of each of each insurer will be determined based on the following formula: AMOUNT OF POLICY divided by TOTAL INSURANCE TAKEN multiplied by LOSS = LIABILITY OF THE INSURER.

ALTERNATIVE ANSWER:

Each insurer is bound, as between himself and other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract. (Sec. 94, Insurance Code)

Insurer; 3rd Party Liability (1996)

While driving his car along EDSA, Cesar sideswiped Roberto, causing injuries to the latter, Roberto sued Cesar and the third party liability insurer for damages and/or insurance proceeds. The insurance company moved to dismiss the complaint, contending that the liability of Cesar has not yet been determined with finality. a) Is the contention of the insurer correct? Explain. b) May the insurer be held liable with Cesar?

SUGGESTED ANSWER:

No, the contention of the insurer is not correct. There is no need to wait for the decision of the court determining Cesar's liability with finality before the third party liability insurer could be sued. The occurrence of the injury to Roberto immediately gave rise to the liability of the insurer under its policy. In other words, where an insurance policy insures directly against liability, the insurer's liability accrues immediately upon the occurrence of the injury or event upon which the liability depends *(Sherman Shafer v Judge RTC Olongapo City Branch 75 GR l-78848, Nov 14 88 167s386)*

The insurer cannot be held solidarily liable with Cesar. The liability of the insurer is based on contract while that of Cesar is based on tort. If the insurer were solidarily liable with Cesar, it could be made to pay more than the amount stated in the policy. This would, however, be contrary to the principles underlying insurance contracts. On the other hand, if the insurer were solidarily liable with Cesar and it is made to pay only up to the amount

stated in the insurance policy, the principles underlying solidary obligations would be violated. *(Malayan Ins Co v CA GR L-36413 Sep 26, 88 165s536; Figuracion vda de Maglana v Consolacion GR 60506 Aug 6, 92 212s268)*

Insurer; 3rd Party Liability (2000)

X was riding a suburban utility vehicle (SUV) covered by a comprehensive motor vehicle liability insurance (CMVLI) underwritten by FastPay Insurance Company when it collided with a speeding bus owned by RM Travel Inc. The collision resulted in serious injuries to X; Y, a passenger of the bus; and Z, a pedestrian waiting for a ride at the scene of the collision. The police report established that the bus was the offending vehicle. The bus had CMVLI policy issued by Dragon Ins Co. X, Y, and Z jointly sued RM Travel and Dragon Ins for indemnity under the Insurance Code of the Phils (PD1460). The lower court applied the "no fault" indemnity policy of the statute, dismissed the suit against RM Travel, and ordered Dragon Ins to pay indemnity to all three plaintiffs. Do you agree with the court's judgment? Explain (2%)

SUGGESTED ANSWER:

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

Insurer; 3rd Party Liability; No Fault Indemnity (1994)

What is your understanding of a "no fault indemnity" clause found in an insurance policy?

SUGGESTED ANSWER:

Under the "NO FAULT INDEMNITY" clause, any claim for death or injury of any passenger or third party shall be paid without the necessity of proving fault or negligence of any kind. The indemnity in respect of any one person shall not exceed P5,000.00, provided they are under oath, the following proofs shall be sufficient:

1. police report of the accident;
2nd death certificate and evidence sufficient to establish the proper payee; or
3. medical report and evidence of medical or hospital disbursement in respect of which refund is claimed. Claim may be made against one motor vehicle only.

Insurer; 3rd Party Liability; Quitclaim (1994)

Raul's truck bumped the car owned by Luz. The car was insured by Cala Insurance. For the damage caused, Cala paid Luz P5,000.00 in amicable settlement. Luz executed a release of claim, subrogating Cala to all her rights against Raul. When Cala demanded reimbursement from Raul, the latter refused saying that he had already paid Luz P4,500 for the damage to the car as evidenced by a release of claim executed by Luz discharging Raul.

So Cala demanded reimbursement from Luz, who refused to pay, saying that the total damage to the car was P9,500.00 Since Cala paid P5,000 only, Luz contends that she was entitled to go after Raul to claim the additional P4,500.00 1) Is Cala, as subrogee of Luz, entitled to reimbursement from Raul? 2) May Cala recover what it has paid Luz?

SUGGESTED ANSWER:

1) No. Luz executed a release in favor of Raul *(Manila Mahogany Mfg Corp v CA GR 52756, 12 Oct 1987)*

2) Yes. Cala lost its right against Raul because of the release executed by Luz. Since the release was made without the consent of Cala, Cala may recover the amount of P5,000 form Luz *(Manila Mahogany Mfg Corp v CA GR 52756, 12 Oct 1987).*

Insurer; Authorized Driver Clause (1991)

Sheryl insured her newly acquired car, a Nissan Maxima against any loss or damage for P50th and against 3rd party liability for P20th with the XYZ Ins Co. Under the policy, the car must be driven only by an authorized driver who is either: 1) the insured, or 2) any person driving on the insured's order or with his permission: provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle and is not disqualified from driving such motor vehicle by order of a court.

During the effectivity of the policy, the car, then driven by Sheryl herself, who had no driver's license, met an accident and was extensively damaged. The estimated cost of repair was P40th. Sheryl immediately notified XYZ, but the latter refused to pay on the policy alleging that Sheryl violated the terms thereof when she drove it without a driver's license. Is the insurer correct?

SUGGESTED ANSWER:

The insurer was not correct in denying the claim since the proviso "that the person driving is permitted in accordance with the licensing, etc." qualified only a person driving the vehicle other than the insured at the time of the accident *(Palermo v Pyramid Ins Co GR 36480 31 May 88)*

ALTERNATIVE ANSWER:

The insurer is correct. The clause "authorized driver" in the policy evidently applies to both the insured and any other person driving the vehicle at the time of the accident. The term "authorized driver" should be construed as a person who is authorized by law to driver the vehicle *(Peza v Alikpala 160s31)*

Insurer; Authorized Driver Clause (2003)

Rick de la Cruz insured his passenger jeepney with Asiatic Insurers, Inc. The policy provided that the authorized driver of the vehicle should have a valid and existing driver's license. The passenger jeepney of Rick de la Cruz which was at the time driven by Jay Cruz,

figured in an accident resulting in the death of a passenger. At the time of the accident, Jay Cruz was licensed to drive but it was confiscated by an LTO agent who issued him a Traffic Violation Report (TVR) just minutes before the accident. Could Asiatic Insurers, Inc., be made liable under its policy? Why? (6%)

SUGGESTED ANSWER:

Asiatic Insurers, Inc., should be made liable under the policy. The fact that the driver was merely holding a TVR does not violate the condition that the driver should have a valid and existing driver's license.

Besides, such a condition should be disregarded because what is involved is a passenger jeepney, and what is involved here is not own damage insurance but third party liability where the injured party is a third party not privy to the contract of insurance.

Insurer; Authorized Driver Clause; vehicle is stolen (1993)

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

After a month, the car was carnapped while parked in the parking space in front of the Intercontinental Hotel in Makati. HL's wife who was driving said car before it was carnapped reported immediately the incident to various government agencies in compliance with the insurance requirements.

Because the car could not be recovered, HL filed a claim for the loss of the car with the insurance company but it was denied on the ground that his wife who was driving the car when it was carnapped was in the possession of an expired driver's license, a violation of the "authorized driver" clause of the insurance company. 1) May the insurance company be held liable to indemnify HL for the loss of the insured vehicle? Explain. 2) Supposing that the car was brought by HL on installment basis and there were installments due and payable before the loss of the car as well as installments not yet payable. Because of the loss of the car, the vendor demanded from HL the unpaid balance of the promissory note. HL resisted the demand and claimed that he was only liable for the installments due and payable before the loss of the car but no longer liable for other installments not yet due at the time of the loss of the car. Decide.

SUGGESTED ANSWER:

1) Yes. The car was lost due to theft. What applies in this case is the "theft" clause, and not the "authorized driver" clause. It is immaterial that HL's wife was driving the car with an expired driver's license at the time it was carnapped. *(Perla Compania de Seguros v CA 208 s 487)*

2) The promissory note is not affected by whatever befalls the subject matter of the accessory contract. The unpaid balance on the promissory note should be paid and not only the installments due and payable before the loss of the car.

Insurer; Group Insurance; Employer-Policy Holder (2000)

X company procured a group accident insurance policy for its construction employees variously assigned to its provincial infrastructure projects. Y Insurance Company underwrote the coverage, the premiums of which were paid for entirely by X Company without any employee contributions. While the policy was in effect, five of the covered employees perished at sea on their way to their provincial assignments. Their wives sued Y Insurance Company for payment of death benefits under the policy. While the suit was pending, the wives signed a power of attorney designating X Company executive, PJ, as their authorized representative to enter into a settlement with the insurance company. When a settlement was reached, PJ instructed the insurance company to issue the settlement check to the order of X Company, which will undertake the payment to the individual claimants of their respective shares. PJ misappropriated the settlement amount and the wives pursued their case against Y Insurance Co. Will the suit prosper? Explain (3%)

SUGGESTED ANSWER:

Yes. The suit will prosper. Y Ins Co is liable. X Co, through its executive, PJ, acted as agent of Y Ins Co. The latter is thus bound by the misconduct of its agent. It is the usual practice in the group insurance business that the employer-policy holder is the agent of the insurer.

Insurer; Liability of the Insurers (1990)

a) Suppose that Fortune owns a house valued at P600th and insured the same against fire with 3 insurance companies as follows: X – P400th Y – P200th Z – P600th

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

SUGGESTED ANSWER:

Fortune may recover from the insurers in such order as he may select up to their concurrent liability (Sec 94 Ins Code)

Valued Policy

b) If each of the fire insurance policies obtained by Fortune in the problem (a) is a valued policy and the value of his house was fixed in each of the policies at P1m, how much would Fortune recover from X if he has already obtained full payment on the insurance policies issued by Y and Z?

SUGGESTED ANSWER:

Fortune may still recover only the balance of P200,000 from X insurance company since the insured may only recover up to the extent of his loss.

ALTERNATIVE:

Having already obtained full payment on the insurance policies issued by Y and Z, Fortune may no longer recover from X insurance policy.

Open Policy

c) If each of the policies obtained by Fortune in the problem (a) above is an open policy and it was immediately determined after the fire that the value of Fortune's house was P2.4m, how much may he collect from X,Y and Z?

SUGGESTED ANSWER:

In an open policy, the insured may recover his total loss up to the amount of the insurance cover. Thus, the extent of recovery would be P400th from X, P200th from Y, and P600th from Z.

d) In problem (a), what is the extent of the liability of the insurance companies among themselves?

SUGGESTED ANSWER:

In problem (a), the insurance companies among themselves would be liable, viz: X – 4/12 of P600th = P200th Y – 2/12 of P600th = P100th Z – 6/12 of P600th = P300th

e) Supposing in problem (a) above, Fortune was able to collect from both Y and Z, may he keep the entire amount he was able to collect from the said 2 insurance companies?

SUGGESTED ANSWER:

No, he can only be indemnified for his loss, not profit thereby; hence he must return P200th of the P800th he was able to collect.

Loss: Actual Total Loss (1996)

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

SUGGESTED ANSWER:

Yes, RC's claim for total loss is justified. The rice, which was imported from Thailand for sale locally, is obviously intended for consumption by the public. The complete physical destruction of the rice is not essential to constitute an actual total loss. Such a loss exists in this case since the rice, having been soaked in sea water and thereby rendered unfit for human consumption, has become totally useless for the purpose for which it was imported *(Pan Malayan Ins Co v CA gr 95070 Sep 5, 1991)*

Loss: Constructive Total Loss (2005)

M/V Pearly Shells, a passenger and cargo vessel, was insured for P40,000,000.00 against "constructive total loss." Due to a typhoon, it sank near Palawan. Luckily, there were no casualties, only injured passengers. The ship owner sent a notice of abandonment of his interest over the vessel to the insurance company which then hired professionals to afloat the vessel for P900,000.00. When re-floated, the vessel needed repairs estimated at P2,000,000.00. The insurance company refused to pay the claim of the ship owner, stating that there was "no constructive total loss." a) Was there "constructive total loss" to entitle the ship

owner to recover from the insurance company? Explain. b) Was it proper for the ship owner to send a notice of

abandonment to the insurance company? Explain. (5%)

SUGGESTED ANSWER:

No, there was no "constructive total loss" because the vessel was refloated and the costs of refloating plus the needed repairs (P 2.9 Million) will not be more than three-fourths of the value of the vessel. A constructive total loss is one which gives to a person insured a right to abandon. (Sec, 131, Insurance Code) There would have been a constructive total loss had the vessel MN Pearly Shells suffer loss or needed refloating and repairs of more than the required three-fourths of its value, i.e., more than P30.0 Million *(Sec. 139, Insurance Code, cited in Oriental Assurance v. Court of Appeals and Panama Saw Mill, G.R. No. 94052, August 9, 1991)*

However, the insurance company shall pay for the total costs of refloating and needed repairs (P2.9 Million).

c) Was it proper for the ship owner to send a notice of abandonment to the insurance company? Explain.

SUGGESTED ANSWER:

No, it was not proper for the ship owner to send a notice of abandonment to the insurance company because abandonment can only be availed of when, in a marine insurance contract, the amount to be expended to recover the vessel would have been more than three-fourths of its value. Vessel MN Pearly Shells needed only P2.9 Million, which does not meet the required three-fourths of its value to merit abandonment. (Section 139, Insurance Code, cited in *Oriental Assurance v. Court of Appeals and Panama Saiv Mill, G.R. No. 94052, August 9, 1991)*

Loss: Total Loss Only (1992)

An insurance company issued a marine insurance policy covering a shipment by sea from Mindoro to Batangas of 1,000 pieces of Mindoro garden stones against "total loss only." The stones were loaded in two lighters, the first with 600 pieces and the second with 400 pieces. Because of rough seas, damage was caused the second lighter resulting in the loss of 325 out of the 400 pieces. The owner of the shipment filed claims against the insurance company on the ground of constructive total loss inasmuch as more than ¾ of the value of the stones had been lost in one of the lighters. Is the insurance company liable under its policy? Why?

SUGGESTED ANSWER:

The insurance company is not liable under its policy covering against "total loss only" the shipment of 1,000 pieces of Mindoro garden stones. There is no constructive total loss that can claimed since the ¾ rule is to be computed on the total 1,000 pieces of Mindoro

garden stones covered by the single policy coverage *(see Oriental Assurance Co v CA 200 s 459)*

Marine Insurance; Implied Warranties (2000)
What warranties are implied in marine insurance?
SUGGESTED ANSWER:
The following warranties are implied in marine insurance: 1) That the ship is seaworthy to make the voyage and/or to take in certain cargoes 2) That the ship shall not deviate from the voyage insured; 3) That the ship shall carry the necessary documents to show nationality or neutrality and that it will not carry any document which will cast reasonable suspicion thereon; 4) That the ship shall not carry contraband, especially if it is making a voyage through belligerent waters.

Marine Insurance; Peril of the Ship vs. Peril of the Sea (1998)
A marine insurance policy on a cargo states that "the insurer shall be liable for losses incident to perils of the sea." During the voyage, seawater entered the compartment where the cargo was stored due to the defective drainpipe of the ship. The insured filed an action on the policy for recovery of the damages caused to the cargo. May the insured recover damages? (5%)
SUGGESTED ANSWER:
No. The proximate cause of the damage to the cargo insured was the defective drainpipe of the ship. This is peril of the ship, and not peril of the sea. The defect in the drainpipe was the result of the ordinary use of the ship. To recover under a marine insurance policy, the proximate cause of the loss or damage must be peril of the sea.

Mutual Insurance Company; Nature & Definition (2006)
What is a mutual insurance company or association?
SUGGESTED ANSWER:
A mutual life insurance corporation is a cooperative that promotes the welfare of its own members, with the money collected from among themselves and solely for their own protection and not for profit. Members are both the insurer and insured. A mutual life insurance company has no capital stock and relies solely upon its contributions or premiums to meet unexpected losses, contingencies and expenses *(Republic v. Sunlife, G.R. No 158085, October 14, 2005).*

Intellectual Property

Copyright (1995)
What intellectual property rights are protected by copyright?
SUGGESTED ANSWER:
Sec 5 of PD 49 provides that Copyright shall consist in the exclusive right:

1) Can A now bring an action in the name of the corporation to question the issuance of the shares to X without receiving any payment?

2) Can X question the right of A to sue him in behalf of the corporation on the ground that A has only one share in his name?

3) Cannot the shares issued to X be considered as watered stock?
when justified by definite corporate expansion projects or programs approved by the BOD; or

1)

2) when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its or his consent, and such consent has not been secured; or

3) when it can be clearly shown that such retention is

Copyright; Commissioned Artist (1995)
Solid Investment House commissioned Mon Blanco and his son Steve, both noted artists, to paint a mural for the Main Lobby of the new building of Solid for a contract price of P2m. a) who owns the mural? Explain b) Who owns the copyright of the mural? Explain.

SUGGESTED ANSWER:
a) Solid owns the mural. Solid was the one who commissioned the artists to do the work and paid for the work in the sum of P2m

b)Unless there is a stipulation to the contrary in the contract, the copyright shall belong in joint ownership to Solid and Mon and Steve.

Copyright; Commissioned Artist (2004)
BR and CT are noted artists whose paintings are highly prized by collectors. Dr. DL commissioned them to paint a mural at the main lobby of his new hospital for children. Both agreed to collaborate on the project for a total fee of two million pesos to be equally divided between them. It was also agreed that Dr. DL had to provide all the materials for the painting and pay for the wages of technicians and laborers needed for the work on the project.

Assume that the project is completed and both BR and CT are fully paid the amount of P2M as artists' fee by DL. Under the law on intellectual property, who will own the mural? Who will own the copyright in the mural? Why? Explain. (5%)
SUGGESTED ANSWER:
Under Section 178.4 of the Intellectual Property Code, in case of commissioned work, the creator (in the absence of a written stipulation to the contrary) owns the copyright, but the work itself belongs to the person who commissioned its creation. Accordingly, the mural belongs to DL. However, BR and CT own the copyright, since there is no stipulation to the contrary.

Copyright; Infringement (1994)

The Victoria Hotel chain reproduces videotapes, distributes the copies thereof to its hotels and makes them available to hotel guests for viewing in the hotel guest rooms. It charges a separate nominal fee for the use of the videotape player. 1) Can the Victoria Hotel be enjoined for infringing copyrights and held liable for damages? 2) Would it make any difference if Victoria Hotel does not charge any fee for the use of the videotape?

SUGGESTED ANSWER:
1) Yes. Victoria Hotel has no right to use such video tapes in its hotel business without the consent of the creator/ owner of the copyright.

2) No. The use of the videotapes is for business and not merely for home consumption. *(Filipino Society of Composers, Authors Publishers v Tan 148 s 461; pd 1988)*

Copyright; Infringement (1997)
In an action for damages on account of an infringement of a copyright, the defendant (the alleged pirate) raised the defense that he was unaware that what he had copied was a copyright material. Would this defense be valid?
SUGGESTED ANSWER:
No. An intention to pirate is not an element of infringement. Hence, an honest intention is no defense to an action for infringement.
ALTERNATIVE ANSWER:
Yes. The owner of the copyright must make others aware that the material in question is under or covered by a copyright. This is done by the giving of such notice at a prominent portion of the copyright material. When the alleged pirate is thus made aware thereof, his act of pirating the copy material will constitute infringement.

Copyright; Infringement (1998)
Juan Xavier wrote and published a story similar to an unpublished copyrighted story of Manoling Santiago. It was, however, conclusively proven that Juan Xavier was not aware that the story of Manoling Santiago was protected by copyright. Manoling Santiago sued Juan Xavier for infringement of copyright. Is Juan Xavier liable? (2%)
SUGGESTED ANSWER:
Yes. Juan Xavier is liable for infringement of copyright. It is not necessary that Juan Xavier is aware that the story of Manoling Santiago was protected by copyright. The work of Manoling Santiago is protected at the time of its creation.

Copyright; Infringement (2006)
In a written legal opinion for a client on the difference between apprenticeship and learnership, Liza quoted without permission a labor law expert's comment appearing in his book entitled "Annotations on the Labor Code." Can the labor law expert hold Liza liable for infringement of copyright for quoting a portion of his book without his permission? (5%)

SUGGESTED ANSWER:
Liza cannot be held liable for infringement of copyright since under the Intellectual Property Code, one of the limitations to the copyright is the making of quotations from a published work for purpose of any judicial proceedings or for giving of professorial advice by legal practitioner, provided that the source and name of the author are identified (See Section 184.1[k] of the Intellectual Property Code of the Philippines).

Copyright; Photocopy; when allowed (1998)
May a person have photocopies of some pages of the book of Professor Rosario made without violating the copyright law? (3%)
SUGGESTED ANSWER:
Yes. The private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, is permitted, without the authorization of the owner of the copyright in the work.

Infringement vs. Unfair Competition (1996)
What is the distinction between infringement and unfair competition?
SUGGESTED ANSWER:
The distinction between infringement (presumably trademark) and unfair competition are as follows: 1) Infringement of trademark is the unauthorized use of a trademark, whereas unfair competition is the passing off of one's goods as those of another;

2) Fraudulent intent is unnecessary in infringement of trademark, whereas fraudulent intent is essential in unfair competition;

3) The prior registration of the trademark is a prerequisite to an action for infringement of trademark, whereas registration of the trademark is not necessary in unfair competition. *(Del Monte Corp v CA 78325 Jan 25,90 181s410)*

Infringement vs. Unfair Competition (2003)
In what way is an infringement of a trademark similar to that which pertains to unfair competition?
SUGGESTED ANSWER:

Infringement; Jurisdiction (2003)
K-9 Corporation, a foreign corporation alleging itself to be the registered owner of trademark "K-9" and logo "K", filed an Inter Partes case with the Intellectual Property Office against Kanin Corporation for the cancellation of the latter's mark "K-9" and logo "K." During the pendency of the case before the IPO, Kanin Corporation brought suit against K-9 Corporation before the RTC for infringement and damages. Could the action before the RTC prosper? Why?
SUGGESTED ANSWER:

Patent; Non-Patentable Inventions (2006)
Supposing Albert Einstein were alive today and he filed with the Intellectual Property Office (IPO) an application for patent for his theory of relativity expressed in the

formula E=mc2. The IPO disapproved Einstein's application on the ground that his theory of relativity is not patentable. Is the IPO's action correct? (5%)

SUGGESTED ANSWER:

Yes, the IPO is correct because under the Intellectual Property Code, discoveries, scientific theories and mathematical methods, are classified to be as "non-patentable inventions." Eintein's theory of relativity falls within the category of being a non-patentable "scientific theory."

Patents: Gas-Saving Device: first to file rule (2005)

Cezar works in a car manufacturing company owned by Joab. Cezar is quite innovative and loves to tinker with things. With the materials and parts of the car, he was able to invent a gas-saving device that will enable cars to consume less gas. Francis, a co-worker, saw how Cezar created the device and likewise, came up with a similar gadget, also using scrap materials and spare parts of the company. Thereafter, Francis filed an application for registration of his device with the Bureau of Patents. Eighteen months later, Cezar filed his application for the registration of his device with the Bureau of Patents.

1) Is the gas-saving device patentable? Explain.

SUGGESTED ANSWER:

Yes, the gas-saving device is patentable because it provides a technical solution to a problem in a field of human activity. It is new and involves an inventive step, and certainly industrially applicable. It therefore fulfills the requisites mandated by the intellectual Property Code for what is patentable.

2) Assuming that it is patentable, who is entitled to the patent? What, if any, is the remedy of the losing party?

SUGGESTED ANSWER:

Cezar is entitled to the patent because he was the real inventor. Francis, copying from the work of Cezar, cannot claim the essential criteria of an inventor, who must possess essential elements of novelty, originality and precedence to be entitled to protection. Nevertheless, under the "first to file rule," Francis application would have to be given priority. Cezar, however, has within three months from the decision, to have it cancelled as the rightful inventor; or within one year from publication, to file an action to prove his priority to the invention, which has been taken from him and fraudulently registered by Francis.

3) Supposing Joab got wind of the inventions of his employees and also laid claim to the patents, asserting that Cezar and Francis were using his materials and company time in making the devices, will his claim prevail over those of his employees? Explain.

SUGGESTED ANSWER:

No, Joab's claim cannot prevail over those of his employees. In the first place, Joab did not commission any of the two employees to invent the device, and its invention did not fall within their regular duties. What prevails is the provision of the Intellectual Property Code that holds that the invention belongs to the employee, if the inventive activity is not a part of his regular duties, even if he uses the time, facilities and materials of the employer.

Patents: Infringement; Remedies & Defenses (1993)

Ferdie is a patent owner of a certain invention. He discovered that his invention is being infringed by Johann. 1) What are the remedies available to Ferdie against Johann? 2) If you were the lawyer of Johann in the infringement suit, what are the defenses that your client can assert?

SUGGESTED ANSWER:

1) The following remedies are available to Ferdie against

1) Can A now bring an action in the name of the corporation to question the issuance of the shares to X without receiving any payment?

2) Can X question the right of A to sue him in behalf of the corporation on the ground that A has only one share in his name?

3) Can the shares issued to X be considered as

2) These are the defenses that can be asserted in an infringement suit:

Patent is invalid (Sec 45 RA 165, as amended)

Patent is not new or patentable

Specification of the invention does not comply with Sec 14

Patent was issued not to the true and actual inventor, designer or author of the utility model or the plaintiff did not derive his rights from the true and actual inventor, designer or author of the utility model (Sec 28 RA 165 as amended)

Patents: Infringement (1992)

In an action for infringement of patent, the alleged infringer defended himself by stating 1) that the patent issued by the Patent Office was not really an invention which was patentable; 2) that he had no intent to infringe so that there was no actionable case for infringement; and 3) that there was no exact duplication of the patentee's existing patent but only a minor improvement. With those defenses, would you exempt the alleged violator from liability? Why?

SUGGESTED ANSWER:

I would not exempt the alleged violator from liability for the following reasons: 1) A patent once issued by the Patent Office raises a

presumption that the article is patentable; it can, however be shown otherwise (Sec 45 RA 165). A mere statement or allegation is not enough to destroy that presumption. (*Aquas v de Leon 30 Jan 82 L32160*)

2) An intention to infringe is not necessary nor an element in a case for infringement of a patent.

3) There is no need of exact duplication of the patentee's existing patent such as when the improvement made by another is merely minor *(Frank v Benito, 51p713)*. To be independently patentable, an improvement of an existing patented invention must be a major improvement *(Aquas v de Leon L-32160 30Jan82)*

Patents; Rights over the Invention (1990)

Cheche invented a device that can convert rainwater into automobile fuel. She asked Macon, a lawyer, to assist in getting her invention patented. Macon suggested that they form a corporation with other friends and have the corporation apply for the patent, 80% of the shares of stock thereof to be subscribed by Cheche and 5% by Macon. The corporation was formed and the patent application was filed. However, Cheche died 3 months later of a heart attack.

Franco, the estranged husband of Cheche, contested the application of the corporation and filed his own patent application as the sole surviving heir of Cheche. Decide the issue with reasons.

SUGGESTED ANSWER:

The estranged husband of Checke cannot successfully contest the application. The right over inventions accrue from the moment of creation and as a right it can lawfully be assigned. Once the title thereto is vested in the transferee, the latter has the right to apply for its registration. The estranged husband of Cheche, if not disqualified to inherit, merely would succeed to the interest of Cheche.

Note: An examinee who answers on the basis of the issue of validity of the transfer of patent as a valid consideration for subscription of the shares of stocks should be given due credit.

Trademark (1990)

In 1988, the Food and Drug Administration approved the labels submitted by Turbo Corporation for its new drug brand name, "Axilon." Turbo is now applying with the Bureau of Patents, Trademarks and Technology Transfer for the registration of said brand name. It was subsequently confirmed that "Accilonne" is a generic term for a class of anti-fungal drugs and is used as such by the medical profession and the pharmaceutical industry, and that it is used as a generic chemical name in various scientific and professional publications. A competing drug manufacturer asks you to contest the registration of the brand name "Axilon" by Turbo. What will you advice be?

SUGGESTED ANSWER:

The application for registration by Turbo Corporation may be contested. The Trademark Law would not allow the registration of a trademark which, when applied to or used in connection with his products, is merely descriptive or deceptively misdescriptive of them. Confusion can result from the use of "Axilon" as the generic product itself.

ALTERNATIVE ANSWER:

Medical drugs may be procured only upon prescription made by a duly licensed physician. The possibility of deception could be rather remote. Since it cannot really be said that physicians can be so easily deceived by such trademark as "Axilon," it may be hard to expect an opposition thereto to succeed.

ANOTHER ANSWER:

The application for registration of Turbo Corporation may be contested. The factual settings do not indicate that there had been prior use for at least 2 months of the trademark "Axilon."

Trademark (1994)

Laberge, Inc., manufactures and markets after-shave lotion, shaving cream, deodorant, talcum powder and toilet soap, using the trademark "PRUT", which is registered with the Phil Patent Office. Laberge does not manufacture briefs and underwear and these items are not specified in the certificate of registration.

JG who manufactures briefs and underwear, wants to know whether, under our laws, he can use and register the trademark "PRUTE" for his merchandise. What is your advice?

SUGGESTED ANSWER:

Yes. The trademark registered in the name of Laberge Inc covers only after-shave lotion, shaving cream, deodorant, talcum powder and toilet soap. It does not cover briefs and underwear.

The limit of the trademark is stated in the certificate issued to Laberge Inc. It does not include briefs and underwear which are different products protected by Larberge's trademark.

JG can register the trademark "PRUTE" to cover its briefs and underwear *(Faberge Inc v IAC 215 s 316)*

Trademark, Test of Dominancy (1996)

What is the "test of dominancy?"

SUGGESTED ANSWER:

The test of dominancy requires that if the competing trademark contains the main or essential features of another and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; not is it necessary that the infringing label should suggest an effort to imitate. Similarity in size, form and color, while relevant, is not conclusive. *(Asia Brewery v CA GR 103543 Jul5,93 224s437)*

Trademark; Infringement (1991)

Sony is a registered trademark for TV, stereo, radio, cameras, betamax and other electronic products. A local company, Best Manufacturing Inc produced electric fans which it sold under the trademark Sony without the consent of Sony. Sony sued Best Manufacturing for infringement. Decide the case.

SUGGESTED ANSWER:

There is no infringement. In order that a case for infringement of trademark can prosper, the products on which the trademark is used must be of the same kind. The electric fans produced by Best Manufacturing cannot

be said to be similar to such products as TV, stereo and radio sets or cameras or betamax products of Sony.

ALTERNATIVE ANSWER:

There is infringement. If the owner of a trademark which manufactures certain types of goods could reasonably be expected to engage in the manufacture of another product using the same trademark, another party who uses the trademark for that product can be held liable for using that trademark. Using this standard, infringement exists because Sony can be reasonably expected to use such trademark on electric fans.

Trademark; Test of Dominancy (1996)

N Corporation manufactures rubber shoes under the trademark "Jordann" which hit the Phil market in 1985, and registered its trademark with the Bureau of Patents, Trademarks and Technology (BPTTT) in 1990. PK Company also manufactures rubber shoes with the trademark "Javorski" which it registered with BPTTT in 1978.

In 1992, PK Co adopted and copied the design of N Corporation's "Jordann" rubber shoes, both as to shape and color, but retained the trademark "Javorski" on its products.

May PK Company be held liable to N Co? Explain.

SUGGESTED ANSWER:

PK Co may be liable for unfairly competing against N Co. By copying the design, shape and color of N Corporation's "Jordann" rubber shoes and using the same in its rubber shoes trademarked "Javorski," PK is obviously trying to pass off its shoes for those of N. It is of no moment that he trademark "Javorski" was registered ahead of the trademark "Jordann." Priority in registration is not material in an action for unfair competition as distinguished from an action for infringement of trademark. The basis of an action for unfair competition is confusing and misleading similarity in general appearance, not similarity of trademarks

(Converse Rubber Co v Jacinto Rubber & Plastics Co GR 27425 and 30505, Apr28,80 97s158)

Tradename: International Affiliation (2005)

S Development Corporation sued Shangrila Corporation for using the "S" logo and the tradename "Shangrila". The former claims that it was the first to register the logo and the tradename in the Philippines and that it had been using the same in its restaurant business. Shangrila Corporation counters that it is an affiliate of an international organization which has been using such logo and tradename "Shangrila" for over 20 years. However, Shangrila Corporation registered the tradename and logo in the Philippines only after the suit was filed.

Which of the two corporations has a better right to use the logo and the tradename? Explain.

SUGGESTED ANSWER:

S Development Corporation has a better right to use the logo and the tradename, since the protective benefits of the law are conferred by the fact of registration and not by use. Although Shangrila Corporation's parent had used the tradename and logo long before, the protection of the laws will be for S Development Corporation because it was the first entity to register the intellectual properties.

How does the international affiliation of Shangrila Corporation affect the outcome of the dispute? Explain. (5%)

SUGGESTED ANSWER:

The international affiliation of Shangrila Corporation may be critical in the event that its affiliates or parent company abroad had registered in a foreign jurisdiction the tradename and the logo. A well-known mark and tradename is subject to protection under Treaty of Paris for the Protection of Intellectual Property to which the Philippines is a member.

Insolvency & Corporate Recovery

Insolvency vs. Suspension of Payment (1998)

Distinguish insolvency from suspension of payments. (3%)

SUGGESTED ANSWER:

a) In insolvency, the liabilities of the debtor are more than his assets, while in suspension of payments, assets of the debtor are more than his liabilities.

b) In insolvency, the assets of the debtor are to be converted into cash for distribution among his creditors, while in suspension of payments, the debtor is only asking for time within which to convert his frozen assets into liquid cash with which to pay his obligations when the latter fall due.

Insolvency: Voluntary Insolvency (2005)

Aaron, a well-known architect, is suffering from financial reverses. He has four creditors with a total claim of P26 Million. Despite his intention to pay these obligations, his current assets are insufficient to cover all of them. His creditors are about to sue him. Consequently, he was constrained to file a petition for insolvency. (5%) a) Since Aaron was merely forced by circumstances to petition the court to declare him insolvent, can the judge properly treat the petition as one for involuntary insolvency? Explain.

SUGGESTED ANSWER:

No. This is a case for voluntary insolvency because this was filed by an insolvent debtor owing debts exceeding the amount of P1,000.00 under Section 14 of the Insolvency Law. Under Section 20 of the Insolvency Law, the petition must be filed by three or more creditors. In the case at bar, it is Aaron, the debtor, who filed the insolvency proceedings.

b) If Aaron is declared an insolvent by the court, what would be the effect, if any, of such declaration on his creditors? Explain.

SUGGESTED ANSWER:

A declaration by the court that the petitioner is insolvent will have the following effects:

1) The sheriff shall take possession of all assets of the debtor until the appointment of a receiver or assignee;

2) Payment to the debtor of any debts due to him and the delivery to the debtor of any property belonging to him, and the transfer of any property by him are forbidden;

3) All civil proceedings pending against the insolvent shall be stayed; and

4) Mortgages and pledges are not affected by the order declaring a person insolvent. (Sec. 59, Insolvency Law)

c) Assuming that, Aaron has guarantors for his debts, are the guarantors released from their obligations once Aaron is discharged from his debts? Explain.

SUGGESTED ANSWER:

No, precisely under the principle of excussion, the liability of the guarantors arises only after the exhaustion of the assets of the principal obligor. The effect of discharge merely confirms exhaustion of the assets of the obligor available to his creditors.

ALTERNATIVE ANSWER:

Yes. Article 2076 of the Civil Code provides: The obligation of the guarantor is extinguished at the same time as that of the debtor, and for the same causes as all other obligations.

d) What remedies are available to the guarantors in case they are made to pay the creditors? Explain.

SUGGESTED ANSWER:

Under Article 2081, the guarantor may set up against the creditor all the defenses that pertain to the principal debtor. The discharge obtained by Aaron on the principal obligation can now be used as a defense by the guarantors against the creditors. The guarantors are also entitled to indemnity under Article 2066 of the Civil Code.

Insolvency; Assets vs. Liabilities (1998)

Horacio opened a coffee shop using money borrowed from financial institutions. After 3 months, Horacio left for the US with the intent of defrauding his creditors. While his liabilities are worth P1.2m, his assets, however are worth P1.5m. May Horacio be declared insolvent? (2%)

SUGGESTED ANSWER:

No. Horacio may not be declared insolvent. His assets worth P1.5m are more than his liabilities worth P1.2m.

Insolvency; Assignees (1996)

On June 16, 1995, Vicente obtained a writ of preliminary attachment against Carlito. The levy on Carlito's property occurred on June 25, 1995. On July 29, 1995, another creditor filed a petition for involuntary insolvency against Carlito. The insolvency court gave due course to the petition. In the meantime, the case filed by Vicente proceeded and resulted in a judgment award in favor of Vicente. May the judgment obtained by Vicente be enforced independently of the insolvency proceedings? Explain.

SUGGESTED ANSWER:

The judgment obtained by Vicente can be enforced independently of the insolvency proceedings. Under Sec 32 of the Insolvency Law, the assignment to the assignee of all the real and personal property, estate and effects of the debtor made by the clerk of the court shall vacate and set aside any judgment entered in any action commenced with 30 days immediately prior to the commencement of insolvency proceedings. In this case, however, the action filed by Vicente against Carlito was commenced by Vicente not later than June 16, 1995 (the facts on this point are not clear) when Vicente obtained a writ of preliminary attachment against Carlito or more than 30 days before the petition for involuntary insolvency was filed against Carlito by his other creditors. (i.e. on July 29, 1995) *(Radiola-Toshiba Phil v IAC GR 75222 July18,91 199s373)*

Insolvency; Effect; Declaration of Insolvency (1991)

What are the effects of a judgment in insolvency in Voluntary Insolvency cases?

SUGGESTED ANSWER:

The adjudication or declaration of insolvency by the court, after hearing or default, shall have the following effects: a) Forbid the payment to the debtor of any debt due to

him and the delivery to him of any property belonging to him; b) Forbid the transfer of any property by him; and c) Stay of all civil proceedings against the insolvent but

foreclosure may be allowed (Secs 18 & 24 Insolvency Law)

Insolvency; Fraudulent Payment (2002)

As of June 1, 2002, Edzo Systems Corporation (Edzo) was indebted to the following creditors: a) Ace Equipment Supplies – for various personal

computers and accessories sold to Edzo on credit amounting to P300,000.

b) Handyman Garage – for mechanical repairs (parts and service) performed on Edzo's company car amounting to P10,000.

c) Joselyn Reyes – former employee of Edzo who sued Edzo for unlawful termination of employment and was able to obtain a final judgment against Edzo for P100,000.

d) Bureau of Internal Revenue – for unpaid value-added taxes amounting to P30,000.

e) Integrity Bank – which granted Edzo a loan in 2001 in the amount of P500,000. The loan was not secured by any asset of Edzo, but it was guaranteed unconditionally and solidarily by Edzo's President and controlling stockholder, Eduardo Z. Ong, as accommodation surety.

The loan due to Integrity Bank fell due on June 15, 2002. Despite pleas for extension of payment by Edzo, the

bank demanded immediate payment. Because the bank threatened to proceed against the surety, Eduardo Z. Ong, Edzo decided to pay up all its obligations to Integrity Bank. On June 20, 2002, Edzo paid to Integrity Bank the full principal amount of P500,000, plus accrued interests amounting to P55,000. As a result, Edzo had hardly any cash left for operations and decided to close its business. After paying the unpaid salaries of its employees, Edzo filed a petition for insolvency on July 1, 2002.

In the insolvency proceedings in court, the assignee in insolvency sought to invalidate the payment made by Edzo to Integrity Bank for being a fraudulent transfer because it was made within 30 days before the filing of the insolvency petition. In defense, Integrity Bank asserted that the payment to it was for a legitimate debt that was not covered by the prohibition because it was "a valuable pecuniary consideration made in good faith," thus falling within the exception specified in the Insolvency Law. As judge in the pending insolvency case, how would you decide the respective contentions of the assignee in insolvency and of Integrity Bank? Explain (5%)

SUGGESTED ANSWER:
The contention of the assignee in insolvency is correct. The payment made by Edzo to Integrity Bank was a fraudulent preference or payment, being made within thirty (30) days before the filing of the insolvency petition.

Insolvency; Jurisdiction; Sole Proprietorship (1990)
One day Jerry Haw, doing business under the name Starlight Enterprise, a sole proprietorship, finds himself short on cash and unable to pay his debts as they fall due although he has sufficient property to cover such debts. He asks you, as his retained counsel, for advice on the following queries: a) Should he file a petition with the SEC to be declared in a state of suspension of payments in view of the said financial condition he faces? Explain your answer. b) Should he sell profit participation certificates to his 10 brothers and sisters in order to raise cash for his business? Explain.

SUGGESTED ANSWER:
a) I would counsel Jerry to file the Petition for Suspension of Payment with the ordinary courts, rather than the SEC. SEC's jurisdiction over such cases is confined only to petitions filed by corporations and partnerships under its regulatory powers.

b) Instead of selling profit participation certificates, I would urge Jerry to enter into a partnership or to incorporate in order to raise cash for his business.
ALTERNATIVE ANSWER:
b) Jerry may sell profit participation certificates to his brothers and sisters without registering the same with the SEC because his sale is an exempted transaction being isolated and not a sale to the public.

Insolvency; obligations that survive (1997)
An insolvent debtor, after lawful discharge following an adjudication of insolvency, is released from, generally, all debts, claims, liabilities and demands which are or have been proved against his estate. Give 5 obligations of the insolvent debtor to survive.

SUGGESTED ANSWER:
The 5 obligations of the insolvent debtor that survive are as follows:
1 Taxes and assessments due the government, national or local;
2 Obligations arising from embezzlement or fraud;
3 Obligation of any person liable with the insolvent debtor for the same debt, either as a solidary codebtor, surety, guarantor, partner, indorser or otherwise.
4 Alimony or claim for support; and
5 Debts not provable against the estate (such as after-incurred obligations) of, or not included in the schedule submitted by, the insolvent debtor.

Insolvency; Voluntary Insolvency Proceeding (1991)
Is the issuance of an order, declaring a petition in a Voluntary Insolvency proceeding insolvent, mandatory upon the court?
SUGGESTED ANSWER:
Assuming that the petition was in due form and substance and that the assets of the petitioner are less than his liabilities, the court must adjudicate the insolvency (Sec 18 Insolvency Law)

Insolvency; Voluntary vs. Involuntary Solvency (1995)
Distinguish between voluntary insolvency and involuntary insolvency.
SUGGESTED ANSWER:
In voluntary insolvency, it is the debtor himself who files the petition for insolvency, while in involuntary insolvency, at least 3 creditors are the ones who file the petition for insolvency against the insolvent debtor.
ALTERNATIVE ANSWER:
The following are the distinctions:
1 In involuntary insolvency, 3 or more creditors are required, whereas in voluntary insolvency, one creditor may be sufficient;
2 In involuntary insolvency, the creditors must be residents of the Philippines, whose credits or demand accrued in the Philippines, and none of the creditors has become a creditor by assignment within 30 days prior to the filing of the petition, whereas in voluntary insolvency, these are not required.
3 In involuntary insolvency, the debtor must have done any of the acts of insolvency as enumerated by Sec 20, whereas in voluntary insolvency, the debtor must not have done any of said acts.
4 In involuntary insolvency, the amount of indebtedness must not be less than P1,000 whereas in voluntary insolvency, it must exceed P1,000.
5 In involuntary insolvency, the petition must be accompanied by a bond, whereas such is not required in voluntary insolvency.

Law on Corporate Recovery (2003)

X Corporation applied for its rehabilitation and submitted a rehabilitation plan which called for the entry by it into a joint venture agreement with Y Corporation. Under the agreement, Y Corporation was to lend to X Corporation its credit facilities with certain banks to obtain funds not only to operate X Corporation but also for a part thereof in the amount of P1 million as initial deposit in a sinking fund to be augmented annually in amounts equivalent to 10% of the yearly income from its operation of the business of X Corporation. From this fund the creditors of X Corporation were to be paid annually, starting from the second year of operations, with the entire indebtedness to be liquidated in 15 years. The creditors of X Corporation objected to the plan because Y Corporation would be taking over the business and assets of X Corporation. Could the court approve the plan despite the objections of the creditors of X Corporation and could the creditors be compelled to follow the plan? Could Y Corporation, in managing the business of X Corporation in the meantime, be deemed to have taken-over X Corporation itself? (6%)

SUGGESTED ANSWER:

Rehabilitation; Stay Order (2006)

The Blue Star Corporation filed with the Regional Trial Court a petition for rehabilitation on the ground that it foresaw the impossibility of paying its obligations as they fall due. Finding the petition sufficient in form and substance, the court issued an Order appointing a rehabilitation receiver and staying the enforcement of all claims against the corporation.

What is the rationale for the Stay Order? (5%)

SUGGESTED ANSWER:

The purpose of the stay order is intended to give the management committee or rehabilitation receiver the leeway to make the business viable again, without having to divert attention and resources to litigation in various fora *(Philippine Airlines v. Spouses Kurangking, et al, G.R. No. 146698, September 24, 2002; BF Homes, Inc. v. Court of Appeals, G.R. Nos. 76879 & 77143, October 3, 1990; Rubberworld [Phils.] Inc. v. NLRC, G.R. No. 126773, April 14, 1999; Sobrejuanite v. ASB Dev. Corp., G.R. No. 165675, September 30, 2005).* It also prevents a creditor from obtaining an advantage or preference over another with respect to actions against the corporation *(Finasia Investments and Finance Corp v. Court of Appeals, G. R. No. 107002, October 7,1994).*

Suspension of Payment vs. Insolvency (1995)

Distinguish between suspension of payments and insolvency.

SUGGESTED ANSWER:

In suspension of payments, the debtor is not insolvent. He only needs time within which to convert his asset/s into cash with which to pay his obligations when they fall due. In the case of insolvency, the debtor is insolvent, that is, his assets are less than his liabilities.

ALTERNATIVE ANSWER:

The following are the distinctions:

1 In suspension of payments, the debtor has sufficient property to cover all his debts but foresees the impossibility of meeting them when they respectively fall due, whereas, in insolvency, the debtor does not have sufficient property to pay all his debts in full;

2 In suspension of payments, the purpose is to suspend or delay payment of debts which remain unaffected although a postponement of payment is declared, whereas, in insolvency, the object is to obtain discharge from all debts and liability;

3 In suspension of payments, no limit for the amount of indebtedness is required, whereas, in insolvency, the debts must exceed P1,000 in case of voluntary insolvency, or must not be less than P1,000 in case of involuntary insolvency.

Suspension of Payments vs. Stay Order (2003)

Distinguish the stay order in corporate rehabilitation from a declaration in a state of suspension of payments? (4%)

SUGGESTED ANSWER:

Suspension of Payments; Rehabilitation Receiver (1999)

Debtor Corporation and its principal stockholders filed with the Securities and Exchange Commission (SEC) a petition for rehabilitation and declaration of a state of suspension of payments under PD 902-A. The objective was for SEC to take control of the corporation and all its assets and liabilities, earnings and operations, and to determine the feasibility of continuing operations and rehabilitating the company for the benefit of investors and creditors.

Generally, the unsecured creditors had manifested willingness to cooperate with Debtor Corporation. The secured creditors, however, expressed serious objections and reservations.

First Bank had already initiated judicial foreclosure proceedings on the mortgage constituted on the factory of Debtor Corporation.

Second Bank had already initiated foreclosure proceedings on a third-party mortgage constituted on certain assets of the principal stockholders.

Third Bank had already filed a suit against the principal stockholders who had held themselves liable jointly and severally for the loans of Debtor Corporation with said Bank.

After hearing, the SEC directed the appointment of a rehabilitation receiver and ordered the suspension of all actions and claims against the Debtor corporation as well as against the principal stockholders. a) Discuss the validity of the SEC order or suspension?

(2%)

b) Discuss the effects of the SEC order of suspension on the judicial foreclosure proceedings initiated by First Bank. (2%)

c) Would the order of suspension have any effect on the foreclosure proceedings initiated by Second Bank? Explain (2%)

d) Would the order of suspension have any effect on the suit filed by Third Bank? Explain. (2%)

e) What are the legal consequences of a rehabilitation receivership? (2%)

f) What measures may the receiver take to preserve the assets of Debtor Corporation? (2%)

SUGGESTED ANSWER:

a. The SEC order of suspension of payment is valid with respect to the debtor corporation, but not with respect to the principal stockholders. The SEC has jurisdiction to declare suspension of payments with respect to corporations, partnership or associations, but not with respect to individuals.

SUGGESTED ANSWER:

b. The SEC order of suspension of payment suspended the judicial proceedings initiated by the First Bank. According to the Supreme Court in a line of cases, the suspension order applies to secured creditors and to the action to enforce the security against the corporation regardless of the stage thereof.

SUGGESTED ANSWER:

c. The order of suspension of payments suspended the foreclosure proceedings initiated by the Second Bank. While the foreclosure is against the property of a third party, it is in reality an action to collect the principal obligation owned by the corporation. During the time that the payment of the principal obligation is suspended, the debtor corporation is considered to be not in default and, therefore, even the right to enforce the security, whether owned by the debtor-corporation or of a third party, has not yet arisen.

ALTERNATIVE ANSWER:

c. The suspension order does not apply to a third party mortgage because in such a case, the credit is not yet being enforced against the corporation but against the third party mortgagor's property.

SUGGESTED ANSWER:

d. For the same reason as in (c), the order of suspension of payments suspended the suit filed by Third Bank against the principal stockholders.

ALTERNATIVE ANSWER:

d. The action against the principal stockholders' surety in favor of the corporation is not suspended as it is not an action against the corporation but against the stockholders whose personality is separate from that of the corporation.

SUGGESTED ANSWER:

e. Under PD 902A, the appointment of a rehabilitation receiver will suspend all actions for claims against the corporation and the corporation will be placed under rehabilitation in accordance with a rehabilitation plan approved by the SEC.

SUGGESTED ANSWER:

f. To preserve the assets of the Debtor Corporation, the receiver may take custody of, and control over, all the existing assets and property of the corporation; evaluate existing assets and liabilities, earnings and operations of the corporation; and determine the best way to salvage and protect the interest of the investors and creditors.

Suspension of Payments; Remedies (2003)

When is the remedy of declaration in a state of suspension of payments available to a corporation?

SUGGESTED ANSWER:

(per dondee) This remedy is available to a corporation when it experiences inability to pay one's debts and liabilities, and where the petitioning corporation either:

1 has sufficient property to cover all its debts but foresees the impossibility of meeting them when they fall due (solvent but illiquid) or

2 has no sufficient property (insolvent) but is under the management of a rehabilitation receiver or a management committee, the applicable law is P.D. No. 902-A pursuant to Sec. 5 par.

Letters of Credit

Letter of Credit: Mortgage (2005)

Ricardo mortgaged his fishpond to AC Bank to secure a P1 Million loan. In a separate transaction, he opened a letter of credit with the same bank for $500,000.00 in favor of HS Bank, a foreign bank, to purchase outboard motors. Likewise, Ricardo executed a Surety Agreement in favor of AC Bank.

The outboard motors arrived and were delivered to Ricardo, but he was not able to pay the purchase price thereof. a) Can AC Bank take possession of the outboard motors? Why? b) Can AC Bank also foreclose the mortgage over the fishpond? Explain. (5%)

SUGGESTED ANSWER:

a) No, for AC Bank has no legal standing, much less a lien, on the outboard motors. Insofar as AC Bank is concerned, it has privity with the person of Ricardo under the Surety Agreement, and a lien on the fishpond based on the real estate mortgage constituted therein.

b) Yes, but only to enforce payment of the principal loan of P1million secured by the real estate mortgage on the fishpond

Letter of Credit; Certification from Consignee (1993)

BV agreed to sell to AC, a Ship and Merchandise Broker, 2,500 cubic meters of logs at $27 per cubic meter FOB. After inspecting the logs, CD issued a purchase order.

On the arrangements made upon instruction of the consignee, H&T Corporation of LA, California, the SP Bank of LA issued an irrevocable letter of credit available at sight in favor of BV for the total purchase price of the logs. The letter of credit was mailed to FE Bank with the instruction "to forward it to the beneficiary." The letter of credit provided that the draft to be drawn is on SP Bank and that it be accompanied by, among other things, a certification from AC, stating that the logs have been approved prior shipment in accordance with the terms and conditions of the purchase order.

Before loading on the vessel chartered by AC, the logs were inspected by custom inspectors and representatives of the Bureau of Forestry, who certified to the good condition and exportability of the logs. After the loading was completed, the Chief Mate of the vessel issued a mate receipt of the cargo which stated that the logs are in good condition. However, AC refused to issue the required certification in the letter of credit. Because of the absence of certification, FE Bank refused to advance payment on the letter of credit. 1) May Fe Bank be held liable under the letter of credit? Explain. 2) Under the facts above, the seller, BV, argued that FE Bank, by accepting the obligation to notify him that the irrevocable letter of credit has been transmitted to it on his behalf, has confirmed the letter of credit. Consequently, FE Bank is liable under the letter of credit. Is the argument tenable? Explain.

SUGGESTED ANSWER:

1) No. The letter of credit provides as a condition a certification of AC. Without such certification, there is no obligation on the part of FE Bank to advance payment of the letter of credit. *(Feati Bank v CA 196 S 576)*

2) No. FE Bank may have confirmed the letter of credit when it notified BV, that an irrevocable letter of credit has been transmitted to it on its behalf. But the conditions in the letter of credit must first be complied with, namely that the draft be accompanied by a certification from AC. Further, confirmation of a letter of credit must be expressed. *(Feati Bank v CA 196 s 576)*

Letters of Credit; Liability of a confirming and notifying bank (1994)

In letters of credit in banking transactions, distinguish the liability of a confirming bank from a notifying bank.

SUGGESTED ANSWER:

In case anything wrong happens to the letter of credit, a confirming bank incurs liability for the amount of the letter of credit, while a notifying bank does not incur any liability.

Letters of Credit; Liability of a Notifying Bank (2003)

a) What liability, if any is incurred by an advising or notifying bank in a letter of credit transaction?

SUGGESTED ANSWER:

It incurs no liability unless it is also the negotiating bank

b) Bravo Bank received from Cisco Bank by registered mail an irrevocable letter of credit issued by Delta Bank for the account of Y Company in the amount of US$10,000,000 to cover the sale of canned fruit juices. The beneficiary of the letter of credit was X Corporation which later on partially availed itself of the letter of credit by submitting to Bravo Bank all documents relative to the shipment of the cans of fruit juices. Bravo Bank paid X Corporation for its partial availment. Later, however, it refused further availment because of suspicions of fraud being practiced upon it and, instead , sued X Corporation to recover what it had paid the latter. How would you rule if you were the judge to decide the controversy? (6%)

SUGGESTED ANSWER:

Letters of Credit; Three Distinct Contract Relationships (2002)

Explain the three (3) distinct but intertwined contract relationships that are indispensable in a letter of credit transaction.

SUGGESTED ANSWER:

The three (3) distinct but intertwined contract relationships that are indispensable in a letter of credit transaction are:

1) Between the applicant/buyer/importer and the beneficiary/seller/exporter – The applicant/buyer/importer is the one who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title, while the beneficiary/seller/exporter is the one who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment for the goods. Their relationship is governed by the contract of sale.

2) Between the issuing bank and the beneficiary/seller/exporter – The issuing bank is the one that issues the letter of credit and undertakes to pay the seller upon receipt of the draft and proper documents of title and to surrender the documents to the buyer upon reimbursement. Their relationship is governed by the terms of the letter of credit issued by the bank.

3) Between the issuing bank and the applicant/buyer/importer – Their relationship is governed by the terms of the application and agreement for the issuance of the letter of credit by the bank.

Maritime Commerce

Average; Particular Average vs. General Average (2003)

M/V Ilog de Manila with a cargo of 500 tons of iron ore left the Port of Zamboanga City bound for Manila. For one reason or another, M/V Ilog de Manila hit a submerged obstacle causing it to sink along with its cargo. A salvor, Salvador, Inc., was contracted to refloat the vessel for P1 Million. What kind of average was the refloating fee of P1 million, and for whose account should it be? Why? (4%)

SUGGESTED ANSWER:

Particular Average. The owner of the vessel shall shoulder the average. Generally speaking, simple or particular averages include all expenses and damages caused to the vessel or cargo which have not inured to the common benefit (Art. 809, and are, therefore, to be borne only by the owner of the property which gave rise to the same (Art. 810) while general or gross averages include "all the damages and expenses which are deliberately caused in order to save the vessel, its cargo, or both at the same time, from a real and known risk" (Art. 811). Being for the common benefit, gross averages are to be borne by the owners of the articles saved (Art. 812). In the present case there is no proof that the vessel had to be put afloat to save it from an imminent danger.

Bottomry (1994)

Gigi obtained a loan from Jojo Corporation, payable in installments. Gigi executed a chattel mortgage in favor of Jojo whereby she transferred "in favor of Jojo, its successors and assigns, all her title, rights ... to a vessel of which Gigi is the absolute owner." The chattel mortgage was registered with the Philippine Coast Guard pursuant to PD 1521. Gigi defaulted and had a total accountability of P3M. But Jojo could not foreclose the mortgage on the vessel because it sank during a typhoon. Meanwhile, Lutang Corporation which rendered salvage services for refloating the vessel sued Gigi. Whose lien should be given preference, that of Jojo or Lutang?

SUGGESTED ANSWER:

Lutang Corporation's lien should be given preference. The lien of Jojo by virtue of a loan of bottomry was extinguished when the vessel sank. Under such loan on bottomry Jojo acted not only as creditor but also as insurer. Jojo's right to recover the amount of the loan is predicated on the safe arrival of the vessel at the port of destination. The right was lost when the vessel sank (Sec 17 PD 1521)

Carriage of Goods: Deviation: Liability (2005)

On a clear weather, M/V Sundo, carrying insured cargo, left the port of Manila bound for Cebu. While at sea, the vessel encountered a strong typhoon forcing the captain to steer the vessel to the nearest island where it stayed for seven days. The vessel ran out of provisions for its passengers. Consequently, the vessel proceeded to Leyte to replenish its supplies.

Assuming that the cargo was damaged because of such deviation, who between the insurance company and the owner of the cargo bears the loss? Explain.

SUGGESTED ANSWER:

The insurance company should bear the loss to the cargo because the deviation of the vessel was proper in order to avoid a peril, which was the strong typhoon. The running out of provisions was a direct consequence of the proper deviation in order to avoid the peril of the typhoon.

ALTERNATIVE ANSWER:

The owner of the cargo bears the loss because in the case at bar, they stayed too long at the island, making it an improper deviation. Every deviation not specified in Sec. 124 is improper. (Sec. 125, Insurance Code)

Carriage of Goods; Deviation; When Proper (2005)

Under what circumstances can a vessel properly proceed to a port other than its port of destination? Explain. (4%)

SUGGESTED ANSWER:

Deviation is proper:

a) when caused by circumstances over which neither the master nor the owner of the ship has any control; b) when necessary to comply with a warranty or avoid a peril, whether or not the peril is insured against; c) when made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or d) when in good faith, for the purpose of saving human life, or relieving another vessel in distress. (Sec. 124, Insurance Code)

Carriage of Goods; Exercise Extraordinary Diligence (2005)

Star Shipping Lines accepted 100 cartons of sardines from Master to be delivered to 555 Company in Manila. Only 88 cartons were delivered, however, these were in bad condition. 555 Company claimed from Star Shipping Lines the value of the missing goods, as well as the damaged goods. Star Shipping Lines refused because the former failed to present a bill of lading. Resolve with reasons the claim of 555 Company. (4%)

SUGGESTED ANSWER:

The claim of 555 Company is meritorious, even if it fails to present a bill of lading. Although a bill of lading is the best evidence of the contract of carriage for cargo, nevertheless such contract can exist even without a bill of lading. Like any other contract, a contract of carriage is a meeting of minds that gives rise to an obligation on the part of the carrier to transport the goods. Jurisprudence has held that the moment the carrier receives the cargo for transport, then its duty to exercise extraordinary diligence arises. *(Cia. Maritima v. Insurance Co. of North America, G.R. No. L-18965, October 30, 1964; Negre v. Cabahug Shipping & Co., G.R. No. L-19609, April 29, 1966)*

ALTERNATIVE ANSWER:

Star Shipping Lines can refuse to honor 555 Company's claim for the missing and damaged goods. The Bill of Lading is the document of title that legally establishes the ownership of 555 Company over said goods. 555 needs to present the Bill of Lading to legally claim said goods. *(National Union Fire Insurance of Pittsburg v. Stolt-Nielaen, G.R. No. 87958, April 26, 1990)*

Charter Party (1991)

The Saad Dev Co enters into a voyage charter with XYZ over the latter's vessel, the MV LadyLove. Before the Saad could load it, XYZ sold Lady Love to Oslob Maritime Co which decided to load it for its own account. a) May XYZ Shipping Co validly ask for the rescission of the charter party? If so, can Saad recover damages? To what extent? b) If Oslob did not load it for its own account, is it bound by the charter party? c) Explain the meaning of "owner pro hac vice of the vessel." In what kind of charter party does this obtain?

SUGGESTED ANSWER:
a) XYZ may ask for the rescission of the charter party if, as in this case, it sold the vessel before the charterer has begun to load the vessel and the purchaser loads it for his own account. Saad may recover damages to the extent of its losses (Art 689 Code of Commerce)

b) If Oslob did not load Lady Love for its own account, it would be bound by the charter party, but XYZ would have to indemnify Oslob if it was not informed of the Charter Party at the time of sale. (Art 689 Code of Commerce)

c) The term "Owner Pro Hac Vice of the Vessel," is generally understood to be the charterer of the vessel in the case of bareboat or demise charter *(Litonjua Shipping Co v National Seamen's Board GR 51910 10Aug1989)*

Charter Party (2004)
Under a charter party, XXO Trading Company shipped sugar to Coca-Cola Company through SS Negros Shipping Corp., insured by Capitol Insurance Company. The cargo arrived but with shortages. Coca-Cola demanded from Capitol Insurance Co. P500.000 in settlement for XXO Trading. The MM Regional Trial Court, where the civil suit was filed, "absolved the insurance company, declaring that under the Code of Commerce, the shipping agent is civilly liable for damages in favor of third persons due to the conduct of the carrier's captain, and the stipulation in the charter party exempting the owner from liability is not against public policy. Coca-Cola appealed. Will its appeal prosper? Reason briefly. (5%)

SUGGESTED ANSWER:
No. The appeal of Coca-Cola will not prosper. Under Article 587 of the Code of Commerce, the shipping agent is civilly liable for damages in favor of third persons due to the conduct of the carrier's captain, and the shipping agent can exempt himself therefrom only by abandoning the vessel with all his equipment and the freight he may have earned during the voyage. On the other hand, assuming there is bareboat charter, the stipulation in the charter party exempting the owner from liability is not against public policy because the public at large is not involved *(Home Insurance Co. v. American Steamship Agencies, Inc., 23 SCRA25 (1968).*

COGSA: Prescription of Claims/Actions (2004)
AA entered into a contract with BB thru CC to transport ladies' wear from Manila to France with transhipment at Taiwan. Somehow the goods were not loaded at Taiwan on time. Hence, when the goods arrived in France, they arrived "off-season" and AA was paid only for one-half the value by the buyer. AA claimed damages from the shipping company and its agent. The defense of the respondents was prescription. Considering that the ladies' wear suffered "loss of value," as claimed by AA, should the prescriptive period be one year under the Carriage of Goods by Sea Act, or ten years under the Civil Code? Explain briefly. (5%)

SUGGESTED ANSWER:
The applicable prescriptive period is ten years under the Civil Code. The one-year prescriptive period under the Carriage of Goods by Sea Act applies in cases of loss or damages to the cargo. The term "loss" as interpreted by the Supreme Court in *Mitsui O.S.K. Lines Ltd. v. Court of Appeals, 287 SCRA 366 (1998)*, contemplates a situation where no delivery at all was made by the carrier of the goods because the same had perished or gone out of commerce deteriorated or decayed while in transit. In the present case, the shipment of ladies' wear was actually delivered. The "loss of value" is not the total loss contemplated by the Carriage of Goods by Sea Act.

COGSA; Prescription of Claims (1992)
A local consignee sought to enforce judicially a claim against the carrier for loss of a shipment of drums of lubricating oil from Japan under the Carriage of Goods by Sea Act (COGSA) after the carrier had rejected its demand. The carrier pleaded in its Answer the affirmative defense of prescription under the provisions of said Act inasmuch as the suit was brought by the consignee after one (1) year from the delivery of the goods. In turn, the consignee contended that the period of prescription was suspended by the written extrajudicial demand it had made against the carrier within the one-year period, pursuant to Article 1155 of the Civil Code providing that the prescription of actions is interrupted when there is a written extrajudicial demand by the creditors. a) Has the action in fact prescribed? Why? b) If the consignee's action were predicated on misdelivery or conversion of the goods, would your answer be the same? Explain briefly.

SUGGESTED ANSWER:
a) The action taken by the local consignee has, in fact, prescribed. The period of one year under the Carriage of Goods by Sea Act (COGSA) is not interrupted by a written extrajudicial demand. The provisions of Art 1155 of the NCC merely apply to prescriptive periods provided for in said Code and not to special laws such as COGSA except when otherwise provided. *(Dole v Maritime Co 148 s 118).*

b) If the consignee's action were predicated on misdelivery or conversion of goods, the provisions of the COGSA would be inapplicable. In these cases, the NCC prescriptive periods, including Art 1155 of the NCC will apply *(Ang v Compania Maritama 133 s 600)*

COGSA; Prescription of Claims (2000)

RC imported computer motherboards from the United States and had them shipped to Manila aboard an ocean-going cargo ship owned by BC Shipping Company. When the cargo arrived at Manila seaport and delivered to RC, the crate appeared intact; but upon inspection of the contents, RC discovered that the items inside had all been badly damaged. He did not file any notice of damage or anything with anyone, least of all with BC Shipping Company. What he did was to proceed directly to your office to consult you about whether he should have given a notice of damage and how long a time he had to initiate a suit under the provisions of the Carriage of Goods by Sea Act (CA 65). What would your advice be? (2%)

SUGGESTED ANSWER:

My advice would be that RC should give notice of the damage sustained by the cargo within 3 days and that he has to file the suit to recover the damage sustained by the cargo within one year from the date of the delivery of the cargo to him.

COGSA; Prescriptive Period (1995)

What is the prescriptive period for actions involving lost or damaged cargo under the Carriage of Goods by Sea Act?

SUGGESTED ANSWER:

ONE YEAR after the delivery of the goods or the date when the goods should have been delivered (Sec 3(6), COGSA)

Doctrine of Inscrutable Fault (1995)

1. 2 vessels coming from the opposite directions collided with each other due to fault imputable to both. What are the liabilities of the two vessels with respect to the damage caused to them and their cargoes? Explain.
2. If it cannot be determined which of the two vessels was at fault resulting in the collision, which party should bear the damage caused to the vessels and the cargoes? Explain.
3. Which party should bear the damage to the vessels and the cargoes if the cause of the collision was a fortuitous event? Explain.

SUGGESTED ANSWER:

1. Each vessel must bear its own damage. Both of them were at fault. (Art 827, Code of Commerce)
2. Each of them should bear their respective damages. Since it cannot be determined as to which vessel is at fault. This is the doctrine of "inscrutable fault."
3. No party shall be held liable since the cause of the collision is fortuitous event. The carrier is not an insurer.

Doctrine of Inscrutable Fault (1997)

Explain the doctrine in Maritime accidents – Doctrine of Inscrutable Fault

SUGGESTED ANSWER:

Under the "doctrine of inscrutable fault," where fault is established but it cannot be determined which of the two vessels were at fault, both shall be deemed to have been at fault.

Doctrine of Inscrutable Fault (1998)

A severe typhoon was raging when the vessel SS Masdaam collided with MV Princes. It is conceded that the typhoon was the major cause of the collision, although there was a very strong possibility that it could have been avoided if the captain of SS Masdaam was not drunk and the captain of the MV Princes was not asleep at the time of collisions. Who should bear the damages to the vessels and their cargoes? (5%)

SUGGESTED ANSWER:

The shipowners of SS Masdaam and MV Princess shall each bear their respective loss of vessels. For the losses and damages suffered by their cargoes both shipowners are solidarily liable.

Limited Liability Rule (1994)

Toni, a copra dealer, loaded 1000 sacks of copra on board the vessel MV Tonichi (a common carrier engaged in coastwise trade owned by Ichi) for shipment from Puerto Galera to Manila. The cargo did not reach Manila because the vessel capsized and sank with all its cargo.

When Toni sued Ichi for damages based on breach of contract, the latter invoked the "limited liability rule." 1) What do you understand of the "rule" invoked by Ichi? 2) Are there exceptions to the "limited liability rule"?

SUGGESTED ANSWER:

1) By "limited liability rule" is meant that the liability of a shipowner for damages in case of loss is limited to the value of the vessel involved. His other properties cannot be reached by the parties entitled to damages.

2) Yes. When the ship owner of the vessel involved is guilty of negligence, the "limited liability rule" does not apply. In such case, the ship owner is liable to the full extent of the damages sustained by the aggrieved parties *(Mecenas v CA 180 s 83)*

Limited Liability Rule (1997)

Explain the doctrine in Maritime accidents – The Doctrine of Limited Liability

SUGGESTED ANSWER:

Under the "doctrine of limited liability" the exclusively real and hypothecary nature of maritime law operates to limit the liability of the shipowner to the value of the vessel, earned freightage and proceeds of the insurance. However, such doctrine does not apply if the shipowner and the captain are guilty of negligence.

Limited Liability Rule (1999)

Thinking that the impending typhoon was still 24 hours away, MV Pioneer left port to sail for Leyte. That was a miscalculation of the typhoon signals by both the ship-

owner and the captain as the typhoon came earlier and overtook the vessel. The vessel sank and a number of passengers disappeared with it.

Relatives of the missing passengers claimed damages against the shipowner. The shipowner set up the defense that under the doctrine of limited liability, his liability was co-extensive with his interest in the vessel. As the vessel was totally lost, his liability had also been extinguished.

. How will you advice the claimants? Discuss the doctrine of limited liability in maritime law. (3%)

. Assuming that the vessel was insured, may the claimants go after the insurance proceeds? (3%)

SUGGESTED ANSWER:

. Under the doctrine of limited liability in maritime law, the liability of the shipowner arising from the operation of a ship is confined to the vessel, equipment, and freight, or insurance, if any, so that if the shipowner abandoned the ship, equipment, and freight, his liability is extinguished. However, the doctrine of limited liability does not apply when the shipowner or captain is guilty of negligence.

. Yes. In case of a lost vessel, the claimants may go after the proceeds of the insurance covering the vessel.

Limited Liability Rule (2000)

MV Mariposa, one of five passenger ships owned by Marina Navigation Co, sank off the coast of Mindoro while en route to Iloilo City. More than 200 passengers perished in the disaster. Evidence showed that the ship captain ignored typhoon bulletins issued by Pag-asa during the 24-hour period immediately prior to the vessel's departure from Manila. The bulletins warned all types of sea crafts to avoid the typhoon's expected path near Mindoro. To make matters worse, he took more load than was allowed for the ship's rated capacity. Sued for damages by the victim's surviving relatives, Marina Nav Co contended 1) that its liability, if any, had been extinguished with the sinking of MV Mariposa; and 2) that assuming it had not been so extinguished, such liability should be limited to the loss of the cargo. Are these contentions meritorious in the context of applicable provisions of the Code of Commerce? (3%)

SUGGESTED ANSWER:

Yes. The contentions of Marina Nav Co are meritorious. The captain of MV Mariposa is guilty of negligence in ignoring the typhoon bulletins issued by PAGASA and in overloading the vessel. But only the captain of the vessel MV Mariposa is guilty of negligence. The ship owner is not. Therefore, the ship owner can invoke the doctrine of limited liability.

Limited Liability Rule; Doctrine of Inscrutable Fault (1991)

In a collision between M/T Manila, a tanker, and M/V Don Claro, an inter-island vessel, Don Claro sank and many of its passengers drowned and died. All its cargoes were lost. The collision occurred at nighttime but the sea was calm, the weather fair and visibility was good. Prior to the collision and while still 4 nautical miles apart, Don Claro already sighted Manila on its radar screen. Manila had no radar equipment. As for speed, Don Claro was twice as fast as Manila.

At the time of the collision, Manila failed to follow Rule 19 of the International Rules of the Road which requires 2 vessels meeting head on to change their course by each vessel steering to starboard (right) so that each vessel may pass on the port side (left) of the other. Manila signaled that it would turn to the port side and steered accordingly, thus resulting in the collision. Don Claro's captain was off-duty and was having a drink at the ship's bar at the time of the collision. a) Who would you hold liable for the collision? b) If Don Claro was at fault, may the heirs of the passengers who died and the owners of the cargoes recover damages from the owner of said vessel?

SUGGESTED ANSWER:

I can hold the 2 vessels liable. In the problem given, whether on the basis of the factual settings or under the doctrine of inscrutable fault, both vessels can be said to have been guilty of negligence. The liability of the 2 carriers for the death or injury of passengers and for the loss of or damage to the goods arising from the collision is solidary. Neither carrier may invoke the doctrine of last clear chance which can only be relevant, if at all, between the two vessels but not on the claims made by passengers or shippers *(Litonjua Shipping v National Seamen Board GR 51910 10Aug1989)*

SUGGESTED ANSWER:

Yes, but subject to the doctrine of limited liability. The doctrine is to the effect that the liability of the shipowners would only be to the extent of any remaining value of the vessel, proceeds of insurance, if any, and earned freightage. Given the factual settings, the shipowner himself was not guilty of negligence and, therefore, the doctrine can well apply *(Amparo de los Santos v CA 186 s 69)*

Limited Liability Rule; General Average Loss (2000)

X Shipping Company spent almost a fortune in refitting and repairing its luxury passenger vessel, the MV Marina, which plied the inter-island routes of the company from La Union in the north to Davao City in the south. The MV Marina met an untimely fate during its post-repair voyage. It sank off the coast of Zambales while en route to La Union from Manila. The investigation showed that the captain alone was negligent. There were no casualties in that disaster. Faced with a claim for the payment of the refitting and repair, X Shipping company asserted exemption from liability on the basis of the hypothecary or limited liability rule under Article 587 of the Code of Commerce. Is X Shipping Company's assertion valid? Explain (3%).

SUGGESTED ANSWER:

No. The assertion of X Shipping Company is not valid. The total destruction of the vessel does not affect the liability of the ship owner for repairs on the vessel completed before its loss.

Limited Liability Rule; General Average Loss (2000)

MV SuperFast, a passenger-cargo vessel owned by SF Shipping Company plying the inter-island routes, was on its way to Zamboanga City from the Manila port when it accidentally, and without fault or negligence of anyone on the ship, hit a huge floating object. The accident caused damage to the vessel and loss of an accompanying crated cargo of passenger PR. In order to lighten the vessel and save it from sinking and in order to avoid risk of damage to or loss of the rest of the shipped items (none of which was located on the deck), some had to be jettisoned. SF Shipping had the vessel repaired at its port of destination. SF Shipping thereafter filed a complaint demanding all the other cargo owners to share in the total repair costs incurred by the company and in the value of the lost and jettisoned cargoes. In answer to the complaint, the shippers' sole contention was that, under the Code of Commerce, each damaged party should bear its or his own damage and those that did not suffer any loss or damage were not obligated to make any contribution in favor of those who did. Is the shippers' contention valid? Explain (2%)

SUGGESTED ANSWER:

No. The shippers' contention is not valid. The owners of the cargo jettisoned, to save the vessel from sinking and to save the rest of the cargoes, are entitled to contribution. The jettisoning of said cargoes constitute general average loss which entitles the owners thereof to contribution from the owner of the vessel and also from the owners of the cargoes saved.

SF Shipping is not entitled to contribution/ reimbursement for the costs of repairs on the vessel from the shippers.

Nationalized Activities or Undertakings

Nationalized Activities or Undertakings (1993)

1) A invested P500th in a security agency on October 30, 1990. He was charged with being a dummy of his friend, a foreigner. If you were the prosecutor, what evidence can you present to prove violation of the Anti-Dummy Law? 2) Juana de la Cruz, a common law wife of a foreigner wrested the control of a television firm. At the instance of the minority group of the firm, she was charged with violation of the Anti-Dummy Law. May she be convicted by the mere fact that she is a common law wife of a foreigner? Explain.

SUGGESTED ANSWER:

1) A allows or permits the use or exploitation or enjoyment of a right, privilege or business, the exercise or enjoyment of which is expressly reserved by the Constitution or the laws to citizens of the Philippines, by the foreigner not possessing the requisites prescribed by the Constitution or the laws of the Philippines. The prosecutor should prove the above elements of the crime and also the fact that A does not have the means and resources to invest P500th in the security agency.

ALTERNATIVE ANSWER:

1) The prosecutor may establish the fact that the P500th would constitute a major investment and yet A is not even elected member of the BOD or one of the officers. Furthermore, it may also be shown that A does not even have the means to raise the amount of P500th and that the officers or majority of the directors are foreigners.

SUGGESTED ANSWER:

2) No. The mere fact of being a common law wife of a foreigner does not bring her within the ambit of the Anti-Dummy Law.

ALTERNATIVE ANSWER:

2) Yes. Being a common law wife, it can be presumed that she is the one running the business, which raises a prima facie presumption of violation of the Anti-dummy Law, (RA 6084).

Nationalized Activities or Undertakings (1994)

Celeste, a domestic corporation wholly owned by Filipino citizens, is engaged in trading and operates as general contractor. It buys and resells the products of Matilde, a domestic corporation, 90% of whose capital stock is owned by aliens. All of Matilde's goods are made in the Philippines from materials found or produced in the Philippines. On the other hand, ECQ Integrated is a 100% Filipino owned corporation and manufacturer of asbestos products. Celeste and ECQ took part in a public bidding conducted by MWSS for its asbestos pipe requirements. Celeste won the bid, having offered 13% lower than that offered by ECQ; and MWSS awarded the contract to supply its asbestos pipes to Celeste. ECQ sought to nullify the award in favor of Celeste.

1) Is Celeste barred under the Flag Law from taking part in biddings to supply the government? 2) Did Celeste and Matilde violate the Anti-Dummy Law? 3) Did Celeste and Matilde violate the Retail Trade Nationalization Law? Explain.

SUGGESTED ANSWER:

1) No. The materials offered in the bids submitted are made in the Philippines from articles produced or grown in the Philippines, and the bidder, Celeste, is a domestic entity. The Flag Law does not apply. It can be invoked only against a bidder who is not a domestic entity, or against a domestic entity who offers imported materials.

2) No, since Celeste is merely a dealer of Matilde and not an alter ego of the latter. Celeste buys and sells on its own account the products of Matilde.

3) Matilde did not violate the Retail Trade Law since it does not sell its products to consumers, but to dealers who resell them. Neither did Celeste violate the Retail Trade Law since, in the first place, it is not prohibited to

engage in retail trade. Besides, Matilde's sale of the asbestos products to Celeste, being wholesale, the transaction is not covered by the Retail Trade Law
(Asbestos Integrated v Peralta 155 S 213)

Nationalized Activities or Undertakings (1995)

Global KL Malaysia, a 100% Malaysian owned corporation, desires to build a hotel beach resort in Samal Island, Davao City, to take advantage of the increased traffic of tourists and boost the tourism industry of the Philippines.

1. Assuming that Global has US$100M to invest in a hotel beach resort in the Philippines, may it be allowed to acquire the land on which to build the resort? If so, under what terms and conditions may Global acquire the land? Discuss fully.
2. May Global be allowed to manage the hotel beach resort? Explain.
3. May Global be allowed to operate restaurants within the hotel beach resort? Explain.

SUGGESTED ANSWER:

1. Global can secure a lease on the land. As a corporation with a Malaysian nationality, Global cannot own the land.
2. Yes, Global can manage the hotel beach resort. There is no law prohibiting it from managing the resort.
3. Global may be allowed to operate restaurants within the beach resort. This is part of the operation of the resort.

Retail Trade Law (1990)

Acme Trading Co Inc, a trading company wholly owned by foreign stockholders, was persuaded by Paulo Alva, a Filipino, to invest in 20% of the outstanding shares of stock of a corporation he is forming which will engage in the department store business (the "department store corporation"). Paulo also urged Acme to invest in 40% of the outstanding shares of stock of the realty corporation he is putting up to own the land on which the department store will be built (the "realty corporation"). a) May Acme invest in the said department store

corporation? Explain your answer. b) May Acme invest in the realty corporation? Discuss. c) May the President of Acme, a foreigner, sit in the

BOD of the said department store corporation? May he be a director of the realty corporation? Discuss. d) May the Treasurer of Acme, another foreigner,

occupy the same position in the said department store corporation? May he be the treasurer of the said realty corporation? Explain.

SUGGESTED ANSWER:

a) Acme may not invest in the department store corporation since the Retail Trade Act allows, in the case of corporations, only 100% Filipino owned companies to engage in retail trade.

b) Acme may invest in the realty corporation, on the assumption that the balance of 60% of ownership of the latter corporation, is Filipino owned since the law merely requires 60% Filipino holding in land corporate ownership.

c) The Anti-dummy Law allows board representation to the extent of actual and permissible foreign investments in corporations. Accordingly, the President of Acme may no sit in the BOD of the department store corporation but can do so in the realty corporation.

d) The Treasurer of Acme may not hold that position either in the department store corporation or in the realty corporation since the Anti-Dummy Law prohibits the employment of aliens in such nationalized areas of business except those that call for highly technical qualifications.

Retail Trade Law (1991)

Is the Filipino common-law wife of a foreigner barred from engaging in the retail business?

SUGGESTED ANSWER:

A Filipino common-law wife of a foreigner is not barred from engaging in retail business. On the assumption that she acts for and in her own behalf, and absent a violation of the Anti-Dummy Law which prohibits a foreigner from being either the real proprietor or an employee of a person engaged in the retail trade, she would be violating the Retail Trade Act.

ALTERNATIVE ANSWER:

An engagement by a wife (including common-law relationships) of a foreigner in the retail trade business, raises the presumption that she has violated the Anti-Dummy Law. Hence, the wife is barred from engaging in the retail trade business.

Retail Trade Law (1992)

A Cooperative purchased from Y Co on installments a rice mill and made a down payment therefore. As security for the payment of the balance, the Cooperative executed a chattel mortgage in favor of Y Corporation. Y Co in turn assigned its rights to the chattel mortgage to Z Co a 5% foreign owned company doing business in the Philippines. The cooperative thereafter made installment payments to Z Co.

Because the Cooperative was unable to meet its obligations in full, Z Co filed against it a court suit for collection. The Coop resisted contending that Z Co was illegally engaged in the retail trade business for having sold a consumer good as opposed to a producer item. The Coop also alleged that Z had violated the Anti-Dummy Law. Is Z guilty of violating the Retail Trade Law and the Anti-Dummy Law? Why?

SUGGESTED ANSWER:

Z Co is not guilty of violating the Retail Trade Law and the Anti-Dummy Law. The term RETAIL under the Retail Trade Act requires that the seller must be habitually engaged in selling to the general public consumption goods. By consumption goods are meant "personal, family and household" purposes. A Rice Mill

does not fall under the category. Neither does it appear that Z is habitually engaged in selling to the general public that commodity. Since there is no violation of the Retail Trade Law, there would likewise by no violation of the Anti-Dummy Law.

Retail Trade Law (1993)

A foreign firm is engaged in the business of manufacturing and selling rubber products to dealers who in turn sell them to others. It also sells directly to agricultural enterprises, automotive assembly plants, public utilities which buy them in large bulk, and to its officers and employees. 1) Is there violation of the Retail Trade Law? Explain. 2) May said firm operate a canteen inside the premises of its plant exclusively for its officials and employees without violating the Retail Trade Act? Explain.

SUGGESTED ANSWER:

1) On the assumption that the foreign firm is doing business in the Philippines, the sale to the dealers of agricultural enterprises, automotive assembly plants, and public utilities is wholesale and, therefore, not in violation of the Retail Trade Act *(BF Goodrich v Reyes 121 s 363)*

2) Yes. The operation of the canteen inside the premises exclusively for its officers and employees, would amount to an input in the manufacturing process and, therefore, does not violate the Retail Trade Act.

Retail Trade Law (1996)

With a capital of P2th Maria operates a stall at a public market. She manufactures soap that she sells to the general public. Her common law husband, MaLee, who has a pending petition for naturalization, occasionally finances the purchase of goods for resale, and assists in the management of the business. Is there a violation of the Retail Trade Law? Explain.

SUGGESTED ANSWER:

No, there is no violation of the Retail Trade Law. Maria is a manufacturer who sells to the general public, through her stall in the public market, the soap which she manufactures. Inasmuch as her capital does not exceed P5th (it is only P2th) then she is considered under Sec 4a of the Retail Trade Law as not engaged in the "retail business." Inasmuch as Maria's business is not a "retail business," then the requirement in Sec 1 of the Retail Trade Law that only Philippine nationals shall engage, directly, or indirectly, in the retail business is inapplicable. For this reason, the participation of Ma Lee, Maria's common Law husband, in the management of the business would not be a violation of the Retail Trade Law in relation to the Anti-Dummy Law.

Retail Trade Law (1996)

EL Inc, a domestic corporation with foreign equity, manufactures electric generators, and sells them to the following customers: a) government offices which use the generators during brownouts to render public service, b) agricultural enterprises which utilize the generators as backup in the processing of goods, c) factories, and d) its own employees. Is EL engaged in retail trade? Explain.

SUGGESTED ANSWER:

The sale by EL of generators to government offices, agricultural enterprises and factories are outside the scope of the term "retail business" and may, therefore, be made by the said corporation. However, sales of generators by EL to its own employees constitute retail sales and are proscribed. Under the amendment to the Retail Trade Law introduced by PD 714, the term "retail business" shall not include a manufacturer (such as EL) selling to industrial and commercial users or consumers who use the products bought by them to render service to the general public (eg government offices) and/or to produce or manufacture goods which are in turn sold by them (eg agricultural enterprises and factories). *(Goodyear Tires v Reyes Sr Gr 30063, Jly 2, 83 123s273).*

Retail Trade Law; Consignment (1991)

ABC Manufacturing Inc, a company wholly owned by foreign nationals, manufactures typewriters which ABC distributes to the general public in 2 ways:

1 ABC consigns its typewriters to independent dealers who in turn sell them to the public; and,

2 Through individuals, who are not employees of ABC, and who are paid strictly on a commission basis for each sale.

Do these arrangements violate the Retail Trade Law?

SUGGESTED ANSWER:

a) The first arrangement would not be in violation of the Retail Trade Law. The law applies only when the sale is direct to the general public. A dealer buys and sells for and in his own behalf and, therefore, the sale to the general public is made by the dealer and not by the manufacturer *(Marsman & Co v First Coconut Control Co GR39841 20June1988)*

ALTERNATIVE ANSWER:

a) The first arrangement violates the Retail Trade Law because when ABC "consigned" the typewriters, the transaction was one of consignment sale. In consignment sale, an agency relationship is created so it is as if ABC sells directly to the public through its agents.

SUGGESTED ANSWER:

b) The second arrangement would be violative of the Retail Trade Law, since the sale is done through individuals being paid strictly on a commission basis. The said individuals would then be acting merely as agents of the manufacturer. Sales, therefore, made by such agents are deemed direct sales by the manufacturer.

ALTERNATIVE ANSWER:

b) The 2nd arrangement is not violative of the Retail Trade Law because typewriters are not consumption goods or goods for personal, household and family use.

Negotiable Instruments Law

Bond: Cash Bond vs. Surety Bond (2004)

Distinguish clearly cash bond from surety bond.

SUGGESTED ANSWER:

A SURETY BOND is issued by a surety or insurance company in favor of a designated beneficiary, pursuant to which such company acts as a surety to the debtor or obligor of such beneficiary. A CASH BOND is a security in the form of cash established by a guarantor or surety to secure the obligation of another.

Checks: Crossed Checks (2005)

What is a crossed check? What are the effects of crossing a check? Explain.

SUGGESTED ANSWER:

A Crossed Check under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of the bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company.

Effects of Crossed Checks

1) The check may not be encashed but only deposited in the bank. 2) The check may be negotiated only once—to one who has an account with a bank. 3) The act of crossing the check serves as a warning to

the holder that the check has been issued for a definite purpose, so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.

Checks: Crossed Checks vs. Cancelled Checks (2004)

Distinguish clearly (1) crossed checks from cancelled checks;

SUGGESTED ANSWER:

A crossed check is one with two parallel lines drawn diagonally across its face or across a corner thereof. On the other hand, a cancelled check is one marked or stamped "paid" and/or "cancelled" by or on behalf of a drawee bank to indicate payment thereof.

Checks; Crossed Check (1991)

Mr Pablo sought to borrow P200th from Mr Carlos. Carlos agreed to loan the amount in the form of a post-dated check which was crossed (i.e. 2 parallel lines diagonally drawn on the top left portion of the check). Before the due date of the check, Pablo discounted it with Noble On due date, Noble deposited the check with his bank. The check was dishonored. Noble sued Pablo. The court dismissed Noble's complaint. Was the court's decision correct?

SUGGESTED ANSWER:

The court's decision was incorrect. Pablo and Carlos, being immediate parties to the instrument, are governed by the rules of privity. Given the factual circumstances of the problem, Pablo has no valid excuse from denying liability, *(State investment House v IAC GR 72764 13July1989).* Pablo undoubtedly had benefited in the transaction. To hold otherwise would also contravene the basic rules of unjust enrichment. Even in negotiable instruments, the Civil Code and other laws of general application can still apply suppletorily.

ALTERNATIVE ANSWER:

The dismissal by the court was correct. A check whether or not post-dated or crossed, is still a negotiable instrument and unless Pablo is a general indorser, which is not expressed in the factual settings, he cannot be held liable for the dishonor of the instrument. In *State Investment House v IAC (GR 72764 13Jul1989)*, the court did not go so far as to hold that the fact of crossing would render the instrument non-negotiable.

ALTERNATIVE ANSWER:

In *State Investment House v IAC (GR 72764 13Jul1989),* the SC considered a crossed check as subjecting a subsequent holder thereof to the contractual covenants of the payor and the payee. If such were the case, then the instrument is not one which can still be said to contain an unconditional promise to pay or order a sum certain in money. In the transfer of non-negotiable credits by assignment, the transferor does not assume liability for the fault of the debtor or obligor. Accordingly the court's decision was correct.

ALTERNATIVE ANSWER:

Yes. The check is crossed. It should have forewarned Mr. Noble that it was issued for a specific purpose. Hence, Mr Noble could not be a holder in due course. He is subject to the personal defense of breach of trust/ agreement by Mr. Pablo. Such defense is available in favor of Mr Carlos against Mr Noble.

Checks; Crossed Check (1994)

Po Press issued in favor of Jose a postdated crossed check, in payment of newsprint which Jose promised to deliver. Jose sold and negotiated the check to Excel Inc. at a discount. Excel did not ask Jose the purpose of crossing the check. Since Jose failed to deliver the newsprint, Po ordered the drawee bank to stop payment on the check. Efforts of Excel to collect from Po failed. Excel wants to know from you as counsel: 1) What are the effects of crossing a check? 2) Whether as second indorser and holder of the crossed check, is it a holder in due course? 3) Whether Po's defense of lack of consideration as against Jose is also available as against Excel?

SUGGESTED ANSWER:

1) The effects of crossing a check are:

The check is for deposit only in the account of the payee

The check may be indorsed only once in favor of a person who has an account with a bank

The check is issued for a specific purpose and the person who takes it not in accordance with said purpose does not become a holder in due course and is not entitled to payment thereunder.

2) No. It is a crossed check and Excel did not take it in accordance with the purpose for which the check was issued. Failure on its part to inquire as to said purpose,

prevented Excel from becoming a holder in due course, as such failure or refusal constituted bad faith.

3) Yes. Not being a holder in due course, Excel is subject to the personal defense which Po Press can set up against Jose *(State Investment House v IAC 175 S 310)*

Checks; Crossed Check (1995)

On Oct 12, 1993, Chelsea Straights, a corp engaged in the manufacture of cigarettes, ordered from Moises 2,000 bales of tobacco. Chelsea issued to Moises two crossed checks postdated 15 Mar 94 and 15 Apr 94 in full payment therefor. On 19 Jan 94 Moises sold to Dragon Investment House at a discount the two checks drawn by Chelsea in his favor. Moises failed to deliver the bales of tobacco as agreed despite Chelsea's demand. Consequently, on 1 Mar 94 Chelsea issued a "stop payment" order on the 2 checks issued to Moises. Dragon, claiming to be a holder in due course, filed a complaint for collection against Chelsea for the value of the checks. Rule on the complaint of Dragon. Give your legal basis.

SUGGESTED ANSWER:

Dragon cannot collect from Chelsea. The instruments are crossed checks which were intended to pay for the 2,000 bales of tobacco to be delivered to Moises. It was therefore the obligation of Dragon to inquire as to the purpose of the issuance of the 2 crossed checks before causing them to be discounted. Failure on its part to make such inquiry, which resulted in its bad faith, Dragon cannot claim to be a holder in due course. Moreover, the checks were sold, not endorsed, by him to Dragon which did not become a holder in due course. Not being a holder in due course, Dragon is subject to the personal defense on the part of Chelsea concerning the breach of trust on the part of Moises Lim in not complying with his obligation to deliver the 2000 bales of tobacco.

Checks; Crossed Check (1996)

What are the effects of crossing a check?

SUGGESTED ANSWER:

The effects of crossing a check are as follows:

The check may not be encashed but only deposited in a bank;

The check may be negotiated only once to one who has an account with a bank;

The act of crossing a check serves as a warning to the holder thereof that the check has been issued for a definite purpose so that the holder must inquire if he has received the check pursuant to that purpose, otherwise he is not a holder in due course *(See Bataan Cigar and Cigarette Factory, Inc. v CA GR 93048, Mar 3, 1994; 230 s 643)*

Checks; Crossed Check (1996)

On March 1, 1996, Pentium Company ordered a computer from CD Bytes, and issued a crossed check in the amount of P30,000 post-dated Mar 31, 1996. Upon receipt of the check, CD Bytes discounted the check with Fund House.

On April 1, 1996, Pentium stopped payment of the check for failure of CD Bytes to deliver the computer. Thus, when Fund House deposited the check, the drawee bank dishonored it.

If Fund House files a complaint against Pentium and CD Bytes for the payment of the dishonored check, will the complaint prosper? Explain. **SUGGESTED ANSWER:**: The complaint filed by Fund House against Pentium will not prosper but the one against CD Bytes will. Fund House is not a holder in due course and, therefore, Pentium can raise the defense of failure of consideration against it. The check in question was issued by Pentium to pay for a computer that it ordered from CD Bytes. The computer not having been delivered, there was a failure of consideration. The check discounted with Fund House by CD Bytes is a crossed check and this should have put Fund House on inquiry. It should have ascertained the title of CD Bytes to the check or the nature of the latter's possession. Failing in this respect, Fund House is deemed guilty of gross negligence amounting to legal absence of good faith and, thus, not a holder in due course. Fund House can collect from CD Bytes as the latter was the immediate indorser of the check. *(See Bataan Cigar and Cigarette Factory v CA et al 230 s 643 GR 93048 Mar 3, 94)*

Checks; Effect; Acceptance by the drawee bank (1998)

X draws a check against his current account with the Ortigas branch of Bonifacio Bank in favor of B. Although X does not have sufficient funds, the bank honors the check when it is presented for payment. Apparently, X has conspired with the bank's bookkeeper so that his ledger card would show that he still has sufficient funds.

The bank files an action for recovery of the amount paid to B because the check presented has no sufficient funds. Decide the case (5%)

SUGGESTED ANSWER:

The bank cannot recover the amount paid to B for the check. When the bank honored the check, it became an acceptor. As acceptor, the bank became primarily and directly liable to the payee/holder B.

The recourse of the bank should be against X and its bookkeeper who conspired to make X's ledger show that he has sufficient funds.

ALTERNATIVE ANSWER:

The bank can recover from B. This is *solutio indebiti* because there is payment by the bank to B when such payment is not due. The check issued by X to B as payee had no sufficient funds.

Checks; Effects; Alterations; Prescriptive Period (1996)

William issued to Albert a check for P10,000 drawn on XM Bank. Albert altered the amount of the check to P210,000 and deposited the check to his account with ND Bank. When ND Bank presented the check for

payment through the Clearing House, XM Bank honored it. Thereafter, Albert withdrew the P210,000 and closed his account.

When the check was returned to him after a month, William discovered the alteration. XM Bank recredited P210,000 to William's current account, and sought reimbursement from ND Bank. ND Bank refused, claiming that XM Bank failed to return the altered check to it within 24 hour clearing period. Who, as between, XM Bank and ND Bank, should bear the loss? Explain.

SUGGESTED ANSWER:

ND Bank should bear the loss if XM Bank returned the altered check to ND Bank within twenty four hours after its discovery of the alteration. Under the given facts, William discovered the alteration when the altered check was returned to him after a month. It may safely be assumed that William immediately advised XM Bank of such fact and that the latter promptly notified ND Bank thereafter. Central Bank Circular No. 9, as amended, on which the decisions of the Supreme Court in *Hongkong & Shanghai Banking Corp v People's Bank & Trust Co and Republic Bank vs CA* were based was expressly cancelled and superseded by CB No 317 dated Dec 23 1970. The latter was in turn amended by CB Circular No 580, dated Sept 19, 1977. As to altered checks, the new rules provide that the drawee bank can still return them even after 4:00 pm of the next day provided it does so within 24 hours from discovery of the alteration but in no event beyond the period fixed or provided by law for filing of a legal action by the returning bank against the bank sending the same. Assuming that the relationship between the drawee bank and the collecting bank is evidenced by some written document, the prescriptive period would be 10 years. *(Campos, NIL 5th ed 454-455)*

ALTERNATIVE ANSWER:

XM Bank should bear the loss. When the drawee bank (XM Bank) failed to return the altered check to the collecting bank (ND Bank) within the 24 hour clearing period provided in Sec 4c of CB Circular 9, dated Feb 17, 1949, the latter is absolved from liability. *(See HSBC v PB&T Co GR L-28226 Sep 30 1970; 35 s 140; also Rep Bank v CA GR 42725 Apr 22, 1991 196 s 100)*

Checks; Forged Check; Effects (2006)

Discuss the legal consequences when a bank honors a forged check. (5%)

SUGGESTED ANSWER:

The legal consequences when a bank honors a forged check are as follows:

(a) **When Drawer's Signature is Forged:** Drawee-bank by accepting the check cannot set up the defense of forgery, because by accepting the instrument, the drawee bank admits the genuineness of signature of drawer *(BPI Family Bank vs. Buenaventura G.R. No. 148196, September 30, 2005; Section 23, Negotiable Instruments Law).*

Unless a forgery is attributable to the fault or negligence of the drawer himself, the remedy of the drawee-bank is against the party responsible for the forgery. Otherwise, drawee-bank bears the loss *(BPI Family Bank v. Buenaventura, G.R. No. 148196, September 30, 2005).* A drawee-bank paying on a forged check must be considered as paying out of its funds and cannot charge the amount to the drawer *(Samsung Construction Co. Phils, v. Far East Bank, G.R. No. 129015, August 13, 2004).* If the drawee-bank has charged drawer's account, the latter can recover such amount from the drawee-bank *(Associated Bank v. Court of Appeals, G.R. No. 107382, January 31, 1996; Bank of P. I. v. Case Montessori Internationale, G.R. No. 149454, May 28, 2004).*

However, the drawer may be precluded or estopped from setting up the defense of forgery as against the drawee-bank, when it is shown that the drawer himself had been guilty of gross negligence as to have facilitated the forgery (*Metropolitan Waterworks v. Court of Appeals, G.R. No. L-62943, 143 SCRA 20, July 14, 1986*).

> *(NOTA BENE: The question does not qualify the term "forged check". An answer addressing the liabilities of a drawer should be deemed sufficient. Answers addressing liabilities of parties should likewise be given full credit)*

Drawee Bank versus Collecting Bank — When the signature of the drawer is forged, as between the drawee-bank and collecting bank, the drawee-bank sustains the loss, since the collecting bank does not guarantee the signature of the drawer. The payment of the check by the drawee bank constitutes the proximate negligence since it has the duty to know the signature of its client-drawer. *(Philippine National Bank v. Court of Appeals, G.R. No. L-26001, October 29, 1968).*

(b) **Forged Payee's Signature:** When drawee-bank pays the forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. In such case, the bank becomes liable since its primary duty is to verify the authenticity of the payee's signature *(Traders Royal Bank v. Radio Philippines Network, G.R. No. 138510, October 10, 2002; Westmont Bank v. Ong, G.R. No. 132560, January 30, 2002).*

(c) **Forged Indorsement**

- Drawer's account cannot be charged, and if charged, he can recover from the drawee-bank
  (Associated Bank v. Court of Appeals, G.R. No. 107382 January 31,1996).
- Drawer has no cause of action against collecting bank, since the duty of collecting bank is only to the payee. A collecting bank is not guilty of negligence over a forged indorsement on checks for it has no way of ascertaining the authority of the endorsement and when it caused the checks to pass through the clearing house before allowing withdrawal of the proceeds thereof
  (Manila Lighter Transportation, Inc. v. Court of Appeals, G.R. No. 50373, February 15, 1990). On the other hand, a collecting bank which endorses a check bearing a forged endorsement and presents it to the drawee bank guarantees all prior endorsements including the forged endorsement itself and should be held liable

therefor *(Traders Royal Bank v. RPN, G.R. No. 138510, October 10, 2002).*

- Drawee-bank can recover from the collecting bank *(Great Eastern Life Ins. Co. v. Hongkong & Shanghai Bank, G.R. No. 18657, August 23,1922)*

because even if the indorsement on the check deposited by the bank's client is forged, collecting bank is bound by its warranties as an indorser and cannot set up defense of forgery as against drawee bank *(Associated Bank v. Court of Appeals, G.R. No. 107382, January 31, 1996).*

Checks; Liability; Drawee Bank (1995)

Mario Guzman issued to Honesto Santos a check for P50th as payment for a 2nd hand car. Without the knowledge of Mario, Honesto changed the amount to P150th which alteration could not be detected by the naked eye. Honesto deposited the altered check with Shure Bank which forwarded the same to Progressive Bank for payment. Progressive Bank without noticing the alteration paid the check, debiting P150th from the account of Mario. Honesto withdrew the amount of P15th from Shure Bank and disappeared. After receiving his bank statement, Mario discovered the alteration and demanded restitution from Progressive Bank. Discuss fully the rights and the liabilities of the parties concerned.

SUGGESTED ANSWER:

The demand of Mario for restitution of the amount of P150,000 to his account is tenable. Progressive Bank has no right to deduct said amount from Mario's account since the order of Mario is different. Moreover, Progressive Bank is liable for the negligence of its employees in not noticing the alteration which, though it cannot be detected by the naked eye, could be detected by a magnifying instrument used by tellers.

As between Progressive Bank and Shure Bank, it is the former that should bear the loss. Progressive Bank failed to notify Shure Bank that there was something wrong with the check within the clearing hour rule of 24 hours.

Checks; Material Alterations; Liability (1999)

A check for P50,000.00 was drawn against drawee bank and made payable to XYZ Marketing or order. The check was deposited with payee's account at ABC Bank which then sent the check for clearing to drawee bank. Drawee bank refused to honor the check on ground that the serial number thereof had been altered. XYZ marketing sued drawee bank.

Is it proper for the drawee bank to dishonor the check for the reason that it had been altered? Explain (2%)

In instant suit, drawee bank contended that XYZ Marketing as payee could not sue the drawee bank as there was no privity between then. Drawee theorized that there was no basis to make it liable for the check. Is this contention correct? Explain. (3%)

SUGGESTED ANSWER:

a. No. The serial number is not a material particular of the check. Its alteration does not constitute material alteration of the instrument. The serial number is not material to the negotiability of the instrument.

b. Yes. As a general rule, the drawee is not liable under the check because there is no privity of contract between XYZ Marketing, as payee, and ABC Bank as the drawee bank. However, if the action taken by the bank is an abuse of right which caused damage not only to the issuer of the check but also to the payee, the payee has a cause of action under quasi-delict.

Checks; Presentment (1994)

Gemma drew a check on September 13, 1990. The holder presented the check to the drawee bank only on March 5, 1994. The bank dishonored the check on the same date. After dishonor by the drawee bank, the holder gave a formal notice of dishonor to Gemma through a letter dated April 27, 1994. 1) What is meant by "unreasonable time" as applied to presentment? 2) Is Gemma liable to the holder?

SUGGESTED ANSWER:

1) As applied to presentment for payment, "reasonable time: is meant not more than 6 months from the date of issue. Beyond said period, it is "unreasonable time" and the check becomes stale.

2) No. Aside form the check being already stale, Gemma is also discharged form liability under the check, being a drawer and a person whose liability is secondary, this is due to the giving of the notice of dishonor beyond the period allowed by law. The giving of notice of dishonor on April 27, 1994 is more than one (1) month from March 5, 1994 when the check was dishonored. Since it is not shown that Gemma and the holder resided in the same place, the period within which to give notice of dishonor must be the same time that the notice would reach Gemma if sent by mail. (NIL Sec 103 & 104; Far East Realty Investment Inc v CA 166 S 256)

ALTERNATIVE ANSWER:

2) Gemma can still be liable under the original contract for the consideration of which the check was issued.

Checks; Presentment (2003)

A bank issues its own check. May the holder hold the bank liable thereunder if he fails to –

- prove presentment for payment, or
- present the bill to the drawee for acceptance?

Explain your answers. (4%)

SUGGESTED ANSWER:

Checks; Validity; Waiver of Bank's liability for negligence (1991)

Mr. Lim issued a check drawn against BPI Bank in favor of Mr Yu as payment of certain shares of stock which he purchased. On the same day that he issued the check to Yu, Lim ordered BPI to stop payment. Per standard banking practice, Lim was made to sign a waiver of BPI's

liability in the event that it should pay Yu through oversight or inadvertence. Despite the stop order by Lim, BPI nevertheless paid Yu upon presentation of the check. Lim sued BPI for paying against his order. Decide the case.

SUGGESTED ANSWER:

In the event that Mr. Lim, in fact, had sufficient legal reasons to issue the stop payment order, he may sue BPI for paying against his order. The waiver executed by Mr Lim did not mean that it need not exercise due diligence to protect the interest of its account holder. It is not amiss to state that the drawee, unless the instrument has earlier been accepted by it, is not bound to honor payment to the holder of the check that thereby excludes it from any liability if it were to comply with its stop payment order (Sec 61 NIL)

ALTERNATIVE ANSWER:

1991 6b) BPI would not be liable to Mr Lim. Mr Lim and BPI are governed by their own agreement. The waiver executed by Mr Lim, neither being one of future fraud or gross negligence, would be valid. The problem does not indicate the existence of fraud or gross negligence on the part of BPI so as to warrant liability on its part.

Defenses; Forgery (2004)

CX maintained a checking account with UBANK, Makati Branch. One of his checks in a stub of fifty was missing. Later, he discovered that Ms. DY forged his signature and succeeded to encash P15,000 from another branch of the bank. DY was able to encash the check when ET, a friend, guaranteed due execution, saying that she was a holder in due course. Can CX recover the money from the bank? Reason briefly. (5%)

SUGGESTED ANSWER:

Yes, CX can recover from the bank. Under Section 23 of the Negotiable Instruments Law, forgery is a real defense. The forged check is wholly inoperative in relation to CX. CX cannot be held liable thereon by anyone, not even by a holder in due course. Under a forged signature of the drawer, there is no valid instrument that would give rise to a contract which can be the basis or source of liability on the part of the drawer. The drawee bank has no right or authority to touch the drawer's funds deposited with the drawee bank.

Forgery; Liabilities; Prior & Subsequent Parties (1990)

Jose loaned Mario some money and, to evidence his indebtedness, Mario executed and delivered to Jose a promissory note payable to his order.

Jose endorsed the note to Pablo. Bert fraudulently obtained the note from Pablo and endorsed it to Julian by forging Pablo's signature. Julian endorsed the note to Camilo. a) May Camilo enforce the said promissory note against Mario and Jose? b) May Camilo go against Pablo? c) May Camilo enforce said note against Julian? d) Against whom can Julian have the right of recourse? e) May Pablo recover from either Mario or Jose?

SUGGESTED ANSWER:

a) Camilo may not enforce said promissory note against Mario and Jose. The promissory note at the time of forgery being payable to order, the signature of Pablo was essential for the instrument to pass title to subsequent parties. A forged signature was inoperative (Sec 23 NIL). Accordingly, the parties before the forgery are not juridically related to parties after the forgery to allow such enforcement.

b) Camilo may not go against Pablo, the latter not having indorsed the instrument.

c) Camilo may enforce the instrument against Julian because of his special indorsement to Camilo, thereby making him secondarily liable, both being parties after the forgery.

d) Julian, in turn, may enforce the instrument against Bert who, by his forgery, has rendered himself primarily liable.

e) Pablo preserves his right to recover from either Mario or Jose who remain parties juridically related to him. Mario is still considered primarily liable to Pablo. Pablo may, in case of dishonor, go after Jose who, by his special indorsement, is secondarily liable.

> *Note: It is possible that an answer might distinguish between blank and special indorsements of prior parties which can thereby materially alter the above suggested answers. The problem did not clearly indicate the kind of indorsements made.*

Forgery; Liabilities; Prior & Subsequent Parties (1995)

Alex issued a negotiable PN (promissory note) payable to Benito or order in payment of certain goods. Benito indorsed the PN to Celso in payment of an existing obligation. Later Alex found the goods to be defective. While in Celso's possession the PN was stolen by Dennis who forged Celso's signature and discounted it with Edgar, a money lender who did not make inquiries about the PN. Edgar indorsed the PN to Felix, a holder in due course. When Felix demanded payment of the PN from Alex the latter refused to pay. Dennis could no longer be located.

1. What are the rights of Felix, if any, against Alex, Benito, Celso and Edgar? Explain
2. Does Celso have any right against Alex, Benito and Felix? Explain.

SUGGESTED ANSWER:

1. Felix has no right to claim against Alex, Benito and Celso who are parties prior to the forgery of Celso's signature by Dennis. Parties to an instrument who are such prior to the forgery cannot be held liable by any party who became such at or subsequent to the forgery. However, Edgar, who became a party to the instrument subsequent to the forgery and who indorsed the same to Felix, can be held liable by the latter.

2. Celso has the right to collect from Alex and Benito. Celso is a party subsequent to the two. However, Celso has no right to claim against Felix who is a party subsequent to Celso (Sec 60 and 66 NIL)

Incomplete & Delivered (2004)

AX, a businessman, was preparing for a business trip abroad. As he usually did in the past, he signed several checks in blank and entrusted them to his secretary with instruction to safeguard them and fill them out only when required to pay accounts during his absence. OB, his secretary, filled out one of the checks by placing her name as the payee. She filled out the amount, endorsed and delivered the check to KC, who accepted it in good faith for payment of gems that KC sold to OB. Later, OB told AX of what she did with regrets. AX timely directed the bank to dishonor the check. Could AX be held liable to KC? Answer and reason briefly. (5%)

SUGGESTED ANSWER:

Yes. AX could be held liable to KC. This is a case of an incomplete check, which has been delivered. Under Section 14 of the Negotiable Instruments Law, KC, as a holder in due course, can enforce payment of the check as if it had been filled up strictly in accordance with the authority given by AX to OB and within a reasonable time.

Incomplete and Delivered (2005)

Brad was in desperate need of money to pay his debt to Pete, a loan shark. Pete threatened to take Brad's life if he failed to pay. Brad and Pete went to see Señorita Isobel, Brad's rich cousin, and asked her if she could sign a promissory note in his favor in the amount of P10,000.00 to pay Pete. Fearing that Pete would kill Brad, Señorita Isobel acceded to the request. She affixed her signature on a piece of paper with the assurance of Brad that he will just fill it up later. Brad then filled up the blank paper, making a promissory note for the amount of P100,000.00. He then indorsed and delivered the same to Pete, who accepted the note as payment of the debt.

What defense or defenses can Señorita Isobel set up against Pete? Explain. (3%)

SUGGESTED ANSWER:

The defense (personal defense) which Señorita Isobel can set up against Pete is that the amount of P100,000.00 is not in accordance with the authority given to her to Brad (in the presence of Pete) and that Pete was not a holder in due course for acting in bad faith when accepted the note as payment despite his knowledge that it was only 10,000.00 that was allowed by Señorita Isobel during their meeting with Brad.

Incomplete Instruments; Incomplete Delivered Instruments vs. Incomplete Undelivered Instrument (2006)

Jun was about to leave for a business trip. As his usual practice, he signed several blank checks. He instructed Ruth, his secretary, to fill them as payment for his obligations. Ruth filled one check with her name as payee, placed P30,000.00 thereon, endorsed and delivered it to Marie. She accepted the check in good faith as payment for goods she delivered to Ruth. Eventually, Ruth regretted what she did and apologized to Jun. Immediately he directed the drawee bank to dishonor the check. When Marie encashed the check, it was dishonored.

1. Is Jun liable to Marie? (5%)

SUGGESTED ANSWER:

Yes. This covers the delivery of an incomplete instrument, under Section 14 of the Negotiable Instruments Law, which provides that there was prima facie authority on the part of Ruth to fill-up any of the material particulars thereof. Having done so, and when it is first completed before it is negotiated to a holder in due course like Marie, it is valid for all purposes, and Marie may enforce it within a reasonable time, as if it had been filled up strictly in accordance with the authority given.

2. Supposing the check was stolen while in Ruth's possession and a thief filled the blank check, endorsed and delivered it to Marie in payment for the goods he purchased from her, is Jun liable to Marie if the check is dishonored? (5%)

SUGGESTED ANSWER:

No. Even though Marie is a holder in due course, this is an incomplete and undelivered instrument, covered by Section 15 of the Negotiable Instruments Law. Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person, including Jun, whose signature was placed thereon before delivery. Such defense is a real defense even against a holder in due course, available to a party like Jun whose signature appeared prior to delivery.

Indorser: Irregular Indorser vs. General Indorser (2005)

Distinguish an irregular indorser from a general indorser. (3%)

SUGGESTED ANSWER:

Irregular Indorser is not a party to the instrument but he places his signature in blank before delivery. He is not a party but he becomes one because of his signature in the instrument. Because his signature he is considered an indorser and he is liable to the parties in the instrument.

While, a General Indorser warrants that the instrument is genuine, that he has a good title to it, that all prior parties had capacity to contract; that the instrument at the time of the indorsement is valid and subsisting; and that on due presentment, the instrument will be accepted or paid or both accepted and paid according to its tenor, and that if it is dishonored, he will pay if the necessary proceedings for dishonor are made.

Negotiability (1993)

Discuss the negotiability or non-negotiability of the following notes

1) Manila, September 1, 1993

P2,500.00 I promise to pay Pedro San Juan or order the sum of P2,500.

(Sgd.) Noel Castro

2) Manila, June 3, 1993

P10,000.00 For value received, I promise to pay Sergio Dee or order the sum of P10,000.00 in five (5) installments, with the first installment payable on October 5, 1993 and the other installments on or before the fifth day of the succeeding month or thereafter.

(Sgd.) Lito Villa

SUGGESTED ANSWER:
The promissory note is negotiable as it complies with Sec 1, NIL.

- Firstly, it is in writing and signed by the maker, Noel Castro.
- Secondly, the promise is unconditional to pay a sum certain in money, that is, P2,500.00
- Thirdly, it is payable on demand as no date of maturity is specified.
- Fourth, it is payable to order.

The promissory note is negotiable. All the requirements of Sec 1 NIL are complied with. The sum to be paid is still certain despite that the sum is to be paid by installments (Sec 2b NIL)

Negotiability (2002)
Which of the following stipulations or features of a promissory note (PN) affect or do not affect its negotiability, assuming that the PN is otherwise negotiable? Indicate your answer by writing the paragraph number of the stipulation or feature of the PN as shown below and your corresponding answer, either "Affected" or "Not affected." Explain (5%).

a) The date of the PN is "February 30, 2002."
b) The PN bears interest payable on the last day of each calendar quarter at a rate equal to five percent (5%) above the then prevailing 91-day Treasury Bill rate as published at the beginning of such calendar quarter.

c) The PN gives the maker the option to make payment either in money or in quantity of palay or equivalent value.
d) The PN gives the holder the option either to require payment in money or to require the maker to serve as the bodyguard or escort of the holder for 30 days.

SUGGESTED ANSWER:
a) Paragraph 1 – negotiability is "NOT AFFECTED." The date is not one of the requirements for negotiability.

b) Paragraph 2 – negotiability is "NOT AFFECTED"

The interest is to be computed at a particular time and is determinable. It does not make the sum uncertain or the promise conditional. c) Paragraph 3 – negotiability is "AFFECTED."

Giving the maker the option renders the promise conditional d) Paragraph 4 – negotiability is "NOT AFFECTED."

Giving the option to the holder does not make the promise conditional.

Negotiability; Holder in Due Course (1992)
Perla brought a motor car payable on installments from Automotive Company for P250th. She made a down payment of P50th and executed a promissory note for the balance. The company subsequently indorsed the note to Reliable Finance Corporation which financed the purchase. The promissory note read: "For value received, I promised to pay Automotive Company or order at its office in Legaspi City, the sum of P200,000.00 with interest at twelve (12%) percent per annum, payable in equal installments of P20,000.00 monthly for ten (10) months starting October 21, 1991.

Manila September 21, 1991.

(sgd) Perla

Pay to the order of Reliable Finance Corporation.
Automotive Company

By: (Sgd) Manager

Because Perla defaulted in the payment of her installments, Reliable Finance Corporation initiated a case against her for a sum of money. Perla argued that the promissory note is merely an assignment of credit, a non-negotiable instrument open to all defenses available to the assignor and, therefore, Reliable Finance Corporation is not a holder in due course. a) Is the promissory note a mere assignment of credit or a negotiable instrument? Why? b) Is Reliable Finance Corp a holder in due course? Explain briefly.

SUGGESTED ANSWER:
a) The promissory note in the problem is a negotiable instrument, being in compliance with the provisions of Sec 1 NIL. Neither the fact that the payable sum is to be paid with interest nor that the maturities are in stated installments renders uncertain the amount payable (Sec 2 NIL)

b) Yes, Reliable Finance Corporation is a holder in due course given the factual settings. Said corporation apparently took the promissory note for value, and there are no indications that it acquired it in bad faith *(Sec 52 NIL see Salas v CA 181 s 296)*

Negotiability; Requisites (2000)

a) MP bought a used cell phone from JR. JR preferred cash but MP is a friend so JR accepted MR's promissory note for P10,000. JR thought of converting the note into cash by endorsing it to his brother KR. The promissory note is a piece of paper with the following hand-printed notation: "MP WILL PAY JR TEN THOUSAND PESOS IN PAYMENT FOR HIS CELLPHONE 1 WEEK FROM TODAY." Below this notation MP's signature with "8/1/00" next to it, indicating the date of the promissory note. When JR presented MP's note to KR, the latter said it was not a negotiable instrument under the law and so could not be a valid substitute for cash. JR took the opposite view, insisting on the note's negotiability. You are asked to referee. Which of the opposing views is correct?

b) TH is an indorsee of a promissory note that simply states: "PAY TO JUAN TAN OR ORDER 400 PESOS." The note has no date, no place of payment and no consideration mentioned. It was signed by MK and written under his letterhead specifying the address, which happens to be his residence. TH accepted the promissory note as payment for services rendered to SH, who in turn received the note from Juan Tan as payment for a prepaid cell phone card worth 450 pesos. The payee acknowledged having received the note on August 1, 2000. A Bar reviewee had told TH, who happens to be your friend, that TH is not a holder in due course under Article 52 of the Negotiable Instruments Law (Act 2031) and therefore does not enjoy the rights and protection under the statute. TH asks for our advice specifically in connection with the note being undated and not mentioning a place of payment and any consideration. What would your advice be? (2%).

SUGGESTED ANSWER:

a) KR is right. The promissory note is not negotiable. It is not issued to order or bearer. There is no word of negotiability containing therein. It is not issued in accordance with Section 1 of the Negotiable Instruments Law

b) The fact that the instrument is undated and does not mention the place of payment does not militate against its being negotiable. The date and place of payment are not material particulars required to make an instrument negotiable.

The fact that no mention is made of any consideration is not material. Consideration is presumed.

Negotiable Instrument: Ambiguous Instruments (1998)

How do you treat a negotiable instrument that is so ambiguous that there is doubt whether it is a bill or a note? (5%)

SUGGESTED ANSWER:

1. Where a negotiable instrument is so ambiguous that there is doubt whether it is a bill or a note, the holder may treat it either as a bill of exchange or a promissory note at his election.

Negotiable Instrument: Definition & Characteristics (2005)

What is a negotiable instrument? Give the characteristics of a negotiable instrument. (2%)

SUGGESTED ANSWER:

Negotiable Instrument is a written contract for the payment of money which is intended as a substitute for money and passes from one person to another as money, in such a manner as to give a holder in due course the right to hold the instrument free from defenses available to prior parties. Such instrument must comply with Sec. 1 of the Negotiable Instrument Law to be considered negotiable.

The characteristics of a negotiable instrument are;

1) Can A now bring an action in the name of the corporation to question the issuance of the shares to X without receiving any payment?

2) Can X question the right of A to sue him in behalf of the corporation on the ground that A has only one share in his name?

3) [illegible] considered as watered stock?

Negotiable Instrument: Identification (2005)

State and explain whether the following are negotiable instruments under the Negotiable Instruments Law: (5%)

1) Postal Money Order;
2) A certificate of time deposit which states "This is to certify that bearer has deposited in this bank the sum of FOUR THOUSAND PESOS (P4,000.00) only, repayable to the depositor 200 days after date."
3) Letters of credit;
4) Warehouse receipts;
5) Treasury warrants payable from a specific fund.

SUGGESTED ANSWER:

1) Postal Money Order – Non-Negotiable as it is governed by postal rules and regulation which may be inconsistent with the NIL and it can only be negotiated once.

2) A certificate of time deposit which states "This is to certify that bearer has deposited in this bank the sum of FOUR THOUSAND PESOS (P4,000.00) only, repayable to the depositor 200 days after date." – Non-Negotiable as it does not comply with the requisites of Sec. 1 of NIL

3) Letters of credit - Non-Negotiable

4) Warehouse receipts - Non-Negotiable for the same as Bill of Lading it merely represents good, not money.

5) Treasury warrants payable from a specific fund - Non-Negotiable being payable out of a particular fund.

Negotiable Instrument: Negotiable Document vs. Negotiable Instrument (2005)

Distinguish a negotiable document from a negotiable instrument. (2%)

SUGGESTED ANSWER:

Negotiable Instrument have requisites of Sec. 1 of the NIL, a holder of this instrument have right of recourse against intermediate parties who are secondarily liable, Holder in due course may have rights better than transferor, its subject is money and the Instrument itself is property of value.

On the other hand, negotiable document does not contain requisites of Sec. 1 of NIL, it has no secondary liability of intermediate parties, transferee merely steps into the shoes of the transferor, its subject are goods and the instrument is merely evidence of title; thing of value are the goods mentioned in the document.

Negotiable Instrument; Negotiability (1997)

Can a bill of exchange or a promissory note qualify as a negotiable instrument if –

a. it is not dated; or

b. the day and the month, but not the year of its maturity, is given; or

c. it is payable to "cash" or it names two alternative drawees

SUGGESTED ANSWER:

a) Yes. Date is not a material particular required by Sec 1 NIL for the negotiability of an instrument.

b) No. The time for payment is not determinable in this case. The year is not stated.

c) Yes. Sec 9d NIL makes the instrument payable to bearer because the name of the payee does not purport to be the name of any person.

d) A bill may not be addressed to two or more drawees in the alternative or in succession, to be negotiable (Sec 128 NIL). To do so makes the order conditional.

Negotiable Instruments; Bearer Instrument (1998)

Richard Clinton makes a promissory note payable to bearer and delivers the same to Aurora Page. Aurora Page, however, endorses it to X in this manner:

"Payable to X. Signed: Aurora Page."

Later, X, without endorsing the promissory note, transfers and delivers the same to Napoleon. The note is subsequently dishonored by Richard Clinton. May Napoleon proceed against Richard Clinton for the note? (5%)

SUGGESTED ANSWER:

Yes. Richard Clinton is liable to Napoleon under the promissory note. The note made by Richard Clinton is a bearer instrument. Despite special indorsement made by Aurora Page thereon, the note remained a bearer instrument and can be negotiated by mere delivery. When X delivered and transferred the note to Napoleon, the latter became a holder thereof. As such holder, Napoleon can proceed against Richard Clinton.

Negotiable Instruments; Bearer Instruments (1997)

A delivers a bearer instrument to B. B then specially indorses it to C and C later indorses it in blank to D. E steals the instrument from D and, forging the signature of D, succeeds in "negotiating" it to F who acquires the instrument in good faith and for value. a) If, for any reason, the drawee bank refuses to honor the check, can F enforce the instrument against the drawer? b) In case of the dishonor of the check by both the drawee and the drawer, can F hold any of B, C and D liable secondarily on the instrument?

SUGGESTED ANSWER:

a) Yes. The instrument was payable to bearer as it was a bearer instrument. It could be negotiated by mere delivery despite the presence of special indorsements. The forged signature is unnecessary to presume the juridical relation between or among the parties prior to the forgery and the parties after the forgery. The only party who can raise the defense of forgery against a holder in due course is the person whose signature is forged.

b) Only B and C can be held liable by F. The instrument at the time of the forgery was payable to bearer, being a bearer instrument. Moreover, the instrument was indorsed in blank by C to D. D, whose signature was forged by E cannot be held liable by F.

Negotiable Instruments; bearer instruments; liabilities of maker and indorsers (2001)

A issued a promissory note payable to B or bearer. A delivered the note to B. B indorsed the note to C. C placed the note in his drawer, which was stolen by the janitor X. X indorsed the note to D by forging C's signature. D indorsed the note to E who in turn delivered the note to F, a holder in due course, without indorsement. Discuss the individual liabilities to F of A, B and C. (5%)

SUGGESTED ANSWER:

A is liable to F. As the maker of the promissory note, A is directly or primarily liable to F, who is a holder in due course. Despite the presence of the special indorsements on the note, these do not detract from the fact that a bearer instrument, like the promissory note in question, is always negotiable by mere delivery, until it is indorsed restrictively "For Deposit Only."

B, as a general indorser, is liable to F secondarily, and warrants that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless; that at the time of his indorsement, the instrument is valid and subsisting; and that on due presentment, it shall be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor

be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay.

C is not liable to F since the latter cannot trace his title to the former. The signature of C in the supposed indorsement by him to D was forged by X. C can raise the defense of forgery since it was his signature that was forged.

ALTERNATIVE ANSWER:

As a general endorser, B is secondarily liable to F. C is liable to F since it is due to the negligence of C in placing the note in his drawer that enabled X to steal the same and forge the signature of C relative to the indorsement in favor of D. As between C and F who are both innocent parties, it is C whose negligence is the proximate cause of the loss. Hence C should suffer the loss.

Negotiable Instruments; incomplete and undelivered instruments; holder in due course (2000)

PN makes a promissory note for P5,000.00, but leaves the name of the payee in blank because he wanted to verify its correct spelling first. He mindlessly left the note on top of his desk at the end of the workday. When he returned the following morning, the note was missing. It turned up later when X presented it to PN for payment. Before X, T, who turned out to have filched the note from PN's office, had endorsed the note after inserting his own name in the blank space as the payee. PN dishonored the note, contending that he did not authorize its completion and delivery. But X said he had no participation in, or knowledge about, the pilferage and alteration of the note and therefore he enjoys the rights of a holder in due course under the Negotiable Instruments Law. Who is correct and why? (3%)

b) Can the payee in a promissory note be a "holder in due course" within the meaning of the Negotiable Instruments Law (Act 2031)? Explain your answer. (2%)

SUGGESTED ANSWER:

a) PN is right. The instrument is incomplete and undelivered. It did not create any contract that would bind PN to an obligation to pay the amount thereof.

b) A payee in a promissory note cannot be a "holder in due course" within the meaning of the Negotiable Instruments Law, because a payee is an immediate party in relation to the maker. The payee is subject to whatever defenses, real of personal, available to the maker of the promissory note.

ALTERNATIVE ANSWER:

b) A payee can be a "holder in due course." A holder is defined as the payee or indorsee of the instrument who is in possession of it. Every holder is deemed prima facie to be a holder in due course.

Negotiable Instruments; Incomplete DeliveredInstruments; Comparative Negligence (1997)

A, single proprietor of a business concern, is about to leave for a business trip and, as he so often does on these occasions, signs several checks in blank. He instructs B, his secretary, to safekeep the checks and fill them out when and as required to pay accounts during his absence. B fills out one of the checks by placing her name as payee, fills in the amount, endorses and delivers the check to C who accepts it in good faith as payment for goods sold to B. B regrets her action and tells A what she did. A directs the Bank in time to dishonor the check. When C encashes the check, it is dishonored. Can A be held liable to C?

SUGGESTED ANSWER:

Yes, A can be held liable to C, assuming that the latter gave notice of dishonor to A. This is a case of an incomplete instrument but delivered as it was entrusted to B, the secretary of A. Moreover, under the doctrine of comparative negligence, as between A and C, both innocent parties, it was the negligence of A in entrusting the check to B which is the proximate cause of the loss.

Negotiable Instruments; kinds of negotiable instrument; words of negotiability (2002)

A. Define the following: (1) a negotiable promissory note, (2) a bill of exchange and (3) a check. (3%)

B. You are Pedro Cruz. Draft the appropriate contract language for (1) your negotiable promissory note and (2) your check, each containing the essential elements of a negotiable instrument (2%)

SUGGESTED ANSWER:

A. (1) A negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or bearer.

(2) A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.
(3) A check is a bill of exchange drawn on a bank payable on demand.

B. (1) Negotiable promissory note -

"September 15, 2002

"For value received, I hereby promise to pay Juan Santos or order the sum of TEN THOUSAND PESOS (P10,000) thirty (30) days from date hereof.

(Signed) Pedro Cruz

to: Philippine National Bank
Escolta, Manila Branch"

Negotiable Instruments; Requisites (1996)

What are the requisites of a negotiable instrument?

SUGGESTED ANSWER:

The requisites of a negotiable instrument are as follows: a) It must be in writing and signed by the maker or drawer; b) It must contain an unconditional promise or order to pay a sum certain in money; c) It must be payable to order or to bearer; and d) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. (Sec 1 NIL)

Notice Dishonor (1996)

When is notice of dishonor not required to be given to the drawer?

SUGGESTED ANSWER:

Notice of dishonor is not required to be given to the drawer in any of the following cases: a) Where the drawer and drawee are the same person; b) When the drawee is a fictitious person or a person not having capacity to contract; c) When the drawer is the person to whom the instrument is presented for payment; d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; e) Where the drawer has countermanded payment (Sec 114 NIL)

Parties; Accommodation Party (1990)

To accommodate Carmen, maker of a promissory note, Jorge signed as indorser thereon, and the instrument was negotiated to Raffy, a holder for value. At the time Raffy took the instrument, he knew Jorge to be an accomodation party only. When the promissory note was not paid, and Raffy discovered that Carmen had no funds, he sued Jorge. Jorge pleads in defense the fact that he had endorsed the instrument without receiving value therefor, and the further fact that Raffy knew that at the time he took the instrument Jorge had not received any value or consideration of any kind for his indorsement. Is Jorge liable? Discuss.

SUGGESTED ANSWER:

Yes. Jorge is liable. Sec 29 of the NIL provides that an accommodation party is liable on the instrument to a holder for value, notwithstanding the holder at the time of taking said instrument knew him to be only an accommodation party. This is the nature or the essence of accommodation.

Parties; Accommodation Party (1991)

On June 1, 1990, A obtained a loan of P100th from B, payable not later than 20Dec1990. B required A to issue him a check for that amount to be dated 20Dec1990. Since he does not have any checking account, A, with the knowledge of B, requested his friend, C, President of Saad Banking Corp (Saad) to accommodate him. C agreed, he signed a check for the aforesaid amount dated 20Dec 1990, drawn against Saad's account with the ABC Commercial Banking Co. The By-laws of Saad requires that checks issued by it must be signed by the President and the Treasurer or the Vice-President. Since the Treasurer was absent, C requested the Vice-President to co-sign the check, which the latter reluctantly did. The check was delivered to B. The check was dishonored upon presentment on due date for insufficiency of funds. a) Is Saad liable on the check as an accommodation party? b) If it is not, who then, under the above facts, is/are the accommodation party?

SUGGESTED ANSWER:

a.) Saad is not liable on the check as an accommodation party. The act of the corporation in accommodating a friend of the President, is ultra vires *(Crisologo-Jose v CA GR 80599, 15Sep1989).* While it may be legally possible for the corporation, whose business is to provide financial accommodations in the ordinary course of business, such as one given by a financing company to be an accommodation party, this situation, however, is not the case in the bar problem.

b) Considering that both the President and Vice-President were signatories to the accommodation, they themselves can be subject to the liabilities of accommodation parties to the instrument in their personal capacity *(Crisologo-Jose v CA 15Sep1989)*

Parties; Accommodation Party (1996)

Nora applied for a loan of P100th with BUR Bank. By way of accommodation, Nora's sister, Vilma, executed a promissory note in favor of BUR Bank. When Nora defaulted, BUR Bank sued Vilma, despite its knowledge that Vilma received no part of the loan. May Vilma be held liable? Explain.

SUGGESTED ANSWER:

Yes, Vilma may be held liable. Vilma is an accommodation party. As such, she is liable on the instrument to a holder for value such as BUR Bank. This is true even if BUR Bank was aware at the time it took the instrument that Vilma is merely an accommodation party and received no part of the loan *(See Sec 29, NIL; Eulalio Prudencio v CA GR L-34539, Jul 14, 86 143 s 7)*

Parties; Accommodation Party (1998)

For the purpose of lending his name without receiving value therefore, Pedro makes a note for P20,000 payable to the order of X who in turn negotiates it to Y, the latter knowing that Pedro is not a party for value.

1. May Y recover from Pedro if the latter interposes the absence of consideration? (3%)
2. Supposing under the same facts, Pedro pays the said P20,000 may he recover the same amount from X? (2%)

SUGGESTED ANSWER:

1. Yes. Y can recover from Pedro. Pedro is an accommodation party. Absence of consideration is in the nature of an accommodation. Defense of absence of consideration cannot be validly interposed by accommodation party against a holder in due course.

2. If Pedro pays the said P20,000 to Y, Pedro can recover the amount from X. X is the accommodated party or the party ultimately liable for the instrument. Pedro is only an accommodation party. Otherwise, it would be unjust enrichment on the part of X if he is not to pay Pedro.

Parties; Accommodation Party (2003)
Susan Kawada borrowed P500,000 from XYZ Bank which required her, together with Rose Reyes who did not receive any amount from the bank, to execute a promissory note payable to the bank, or its order on stated maturities. The note was executed as so agreed. What kind of liability was incurred by Rose, that of an accommodation party or that of a solidary debtor? Explain. (4%)

SUGGESTED ANSWER:
(per Dondee) Rose may be held liable. Rose is an accommodation party. Absence of consideration is in the nature of an accommodation. Defense of absence of consideration cannot be validly interposed by accommodation party against a holder in due course.

Parties; Accommodation Party (2003)
Juan Sy purchased from "A" Appliance Center one generator set on installment with chattel mortgage in favor of the vendor. After getting hold of the generator set, Juan Sy immediately sold it without consent of the vendor. Juan Sy was criminally charged with estafa.

To settle the case extra judicially, Juan Sy paid the sum of P20,000 and for the balance of P5,000.00 he executed a promissory note for said amount with Ben Lopez as an accommodation party. Juan Sy failed to pay the balance. 1) What is the liability of Ben Lopez as an accommodation party? Explain. 2) What is the liability of Juan Sy?

SUGGESTED ANSWER:
1) Ben Lopez, as an accommodation party, is liable as maker to the holder up to the sum of P5,000 even if he did not receive any consideration for the promissory note. This is the nature of accommodation. But Ben Lopez can ask for reimbursement from Juan Sy, the accommodation party.

2) Juan Sy is liable to the extent of P5,000 in the hands of a holder in due course (Sec 14 NIL). If Ben Lopez paid the promissory note, Juan Sy has the obligation to reimburse Ben Lopez for the amount paid. If Juan Sy pays directly to the holder of the promissory note, or he pays Ben Lopez for the reimbursement of the payment by the latter to the holder, the instrument is discharged.

Parties; Accommodation Party (2005)
Dagul has a business arrangement with Facundo. The latter would lend money to another, through Dagul, whose name would appear in the promissory note as the lender. Dagul would then immediately indorse the note to Facundo. Is Dagul an accommodation party? Explain. (2%)
SUGGESTED ANSWER:
YES! Dagul is an accommodation party because in the case at bar, he is essentially, a person who signs as maker without receiving any consideration, signs as an accommodation party merely for the purpose of lending the credit of his name. And as an accommodation party he cannot set up lack of consideration against any holder, even as to one who is not a holder in due course.

Parties; Holder in Due Course (1993)
Larry issued a negotiable promissory note to Evelyn and authorized the latter to fill up the amount in blank with his loan account in the sum of P1,000. However, Evelyn inserted P5,000 in violation of the instruction. She negotiated the note to Julie who had knowledge of the infirmity. Julie in turn negotiated said note to Devi for value and who had no knowledge of the infirmity. 1) Can Devi enforce the note against Larry and if she can, for how much? Explain. 2) Supposing Devi endorses the note to Baby for value but who has knowledge of the infirmity, can the latter enforce the note against Larry?

SUGGESTED ANSWER:
1) Yes, Devi can enforce the negotiable promissory note against Larry in the amount of P5,000. Devi is a holder in due course and the breach of trust committed by Evelyn cannot be set up by Larry against Devi because it is a personal defense. As a holder in due course, Devi is not subject to such personal defense.

2) Yes. Baby is not a holder in due course because she has knowledge of the breach of trust committed by Evelyn against Larry which is just a personal defense. But having taken the instrument from Devi, a holder in due course, Baby has all the rights of a holder in due course. Baby did not participate in the breach of trust committed by Evelyn who filled the blank but filled up the instrument with P5,000 instead of P1,000 as instructed by Larry (Sec 58 NIL)

Parties; Holder in Due Course (1996)
What constitutes a holder in due course?
SUGGESTED ANSWER:
A holder in due course is one who has taken the instrument under the following conditions:
1 That it is complete and regular upon its face;
2 That he became holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;
3 That he took it in good faith and for value;
4 That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Sec 52, NIL)

Parties; Holder in Due Course (1996)

1996 2.2) Eva issued to Imelda a check in the amount of P50th post-dated Sep 30, 1995, as security for a diamond ring to be sold on commission. On Sep 15, 1995, Imelda negotiated the check to MT investment which paid the amount of P40th to her. Eva failed to sell the ring, so she returned it to Imelda on Sep 19, 1995. Unable to retrieve her check, Eva withdrew

her funds from the drawee bank. Thus, when MT Investment presented the check for payment, the drawee bank dishonored it. Later on, when MT Investment sued her, Eva raised the defense of absence of consideration, the check having been issued merely as security for the ring that she could not sell. Does Eva have a valid defense? Explain.

SUGGESTED ANSWER:

No. Eva does not have a valid defense. First, MT Investment is a holder in due course and, as such, holds the postdated check free from any defect of title of prior parties and from defenses available to prior parties among themselves. Eva can invoke the defense of absence of consideration against MT Investment only if the latter was privy to the purpose for which the checks were issued and, therefore, not a holder in due course. Second, it is not a ground for the discharge of the postdated check as against a holder in due course that it was issued merely as security. The only grounds for the discharge of negotiable instruments are those set forth in Sec 119 of the NIL and none of those grounds are available to Eva. The latter may not unilaterally discharge herself from her liability by the mere expediency of withdrawing her funds from the drawee bank. *(State Investments v CA GR 101163, Jan 11, 93 217s32).*

Parties; Holder in Due Course (1998)

X makes a promissory note for P10,000 payable to A, a minor, to help him buy school books. A endorses the note to B for value, who in turn endorses the note to C. C knows A is a minor. If C sues X on the note, can X set up the defenses of minority and lack of consideration? (3%)

SUGGESTED ANSWER:

Yes. C is not a holder in due course. The promissory note is not a negotiable instrument as it does not contain any word of negotiability, that is, order or bear, or words of similar meaning or import. Not being a holder in due course, C is to subject such personal defenses of minority and lack of consideration. C is a mere assignee who is subject to all defenses.

ALTERNATIVE ANSWER:

X cannot set up the defense of the minority of A. Defense of minority is available to the minor only. Such defense is not available to X.

X cannot set up the defense against C. Lack of consideration is a personal defense which is only available between immediate parties or against parties who are not holders in due course. C's knowledge that A is a minor does not prevent C from being a holder in due course. C took the promissory note from a holder for value, B.

Parties; Holder in Due Course; Indorsement in blank (2002)

A. AB issued a promissory note for P1,000 payable to CD or his order on September 15, 2002. CD indorsed the note in blank and delivered the same to EF. GH stole the note from EF and on September 14, 2002 presented it to AB for payment. When asked by AB, GH said CD gave him the note in payment for two cavans of rice. AB therefore paid GH P1,00 on the same date. On September 15, 2002, EF discovered that the note of AB was not in his possession and he went to AB. It was then that EF found out that AB had already made payment on the note. Can EF still claim payment from AB? Why? (3%)

B. As a sequel to the same facts narrated above, EF, out of pity for AB who had already paid P1,000.00 to GH, decided to forgive AB and instead go after CD who indorsed the note in blank to him. Is CD still liable to EF by virtue of the indorsement in blank? Why? (2%)

SUGGESTED ANSWER:

A. No. EF cannot claim payment from AB. EF is not a holder of the promissory note. To make the presentment for payment, it is necessary to exhibit the instrument, which EF cannot do because he is not in possession thereof.

B. No, because CD negotiated the instrument by delivery.

Place of Payment (2000)

PN is the holder of a negotiable promissory note within the meaning of the Negotiable Instruments Law (Act 2031). The note was originally issued by RP to XL as payee. XL indorsed the note to PN for goods bought by XL. The note mentions the place of payment on the specified maturity date as the office of the corporate secretary of PX Bank during banking hours. ON maturity date, RP was at the aforesaid office ready to pay the note but PN did not show up. What PN later did was to sue XL for the face value of the note, plus interest and costs. Will the suit prosper? Explain. (5%)

SUGGESTED ANSWER:

Yes. The suit will prosper as far as the face value of the note is concerned, but not with respect to the interest due subsequent to the maturity of the note and the costs of collection. RP was ready and willing to pay the note at the specified place of payment on the specified maturity date, but PN did not show up. PN lost his right to recover the interest due subsequent to the maturity of the note and the costs of collection.

Public Service Law

Certificate of public Convenience (1998)

The Batong Bakal Corporation filed with the Board of Energy an application for a Certificate of Public Convenience for the purpose of supplying electric power and lights to the factory and its employees living within the compound. The application was opposed by the Bulacan Electric Corporation contending that the Batong Bakal Corporation has not secured a franchise to operate and maintain an electric plant. Is the opposition's contention correct? (5%)

SUGGESTED ANSWER:

No. A certificate of public convenience may be granted to Batong Bakal Corporation, though not possessing a

legislative franchise, if it meets all the other requirements. There is nothing in the law nor the Constitution, which indicates that a legislative franchise is necessary or required for an entity to operate as supplier of electric power and light to its factory and its employees living within the compound.

Certificate of Public Convenience; inseparability of certificate and vessel (1992)
Antonio was granted a Certificate of Public Convenience (CPC) in 1986 to operate a ferry between Mindoro and Batangas using the motor vessel "MV Lotus." He stopped operations in 1988 due to unserviceability of the vessel. In 1989, Basilio was granted a CPC for the same route. After a few months, he discovered that Carlos was operating on his route under Antonio's CPC. Because Basilio filed a complaint for illegal operations with the Maritime Industry Authority, Antonio and Carlos jointly filed an application for sale and transfer of Antonio's CPC and substitution of the vessel "MV Lotus" with another owned by Carlos. Should Antonio's and Carlos' joint application be approved? Giver your reasons.

SUGGESTED ANSWER:
The joint application of Antonio and Carlos for the sale and transfer of Antonio's CPC and substitution of the vessel MV Lotus with another vessel owned by the transferee should not be approved. The certificate of public convenience and MV Lotus are inseparable. The unserviceability of the vessel covered by the certificate had likewise rendered ineffective the certificate itself, and the holder thereof may not legally transfer the same to another. *(Cohon v CA 188 s 719).*

Certificate of Public Convenience; Requirements (1995)
What requirements must be met before a certificate of public convenience may be granted under the Public Service Act?
SUGGESTED ANSWER:
The following are the requirements for the granting of a certificate of public convenience, to wit: a) The applicant must be a citizen of the Philippines, or
a corporation, co-partnership or association organized under the laws of the Philippines and at least 60% of the stock of paid-up capital of which must belong to citizens of the Philippines. (Sec 16a, CA 146, as amended)
b) The applicant must prove public necessity.
c) The applicant must prove that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner. (Sec 16a CA 146 as amended)
d) The applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation.

Powers of the Public Service Commission (1993)
The City of Manila passed an ordinance banning provincial buses from the city. The ordinance was challenged as invalid under the Public Service Act by X who had a certificate of public convenience to operate auto-trucks with fixed routes from certain towns in Bulacan and Rizal to Manila and within Manila. Firstly, he claimed that the ordinance was null and void because, among other things, it in effect amends his certificate of public convenience, a thing which only the Public Service Commission can do under Sec 16 (m) of the Public Service Act. Under said section, the Commission is empowered to amend, modify, or revoke a certificate of public convenience after notice and hearing. Secondly, he contended that even if the ordinance was valid, it is only the Commission which can require compliance with its provisions under Sec 17 (j) of said Act and since the implementation of the ordinance was without sanction or approval of the Commission, its enforcement was unauthorized and illegal. 1) May the reliance of X on Section 16 (m) of the Public Service Act be sustained? Explain. 2) Was X correct in his contention that under Section 17

(j) of the Public Service Act it is only the Commissioner which can require compliance with the provisions of the ordinance? Explain.
SUGGESTED ANSWER:
1) No. The power vested in the Public Service Commission under Sec 16m is subordinate to the authority of the City of Manila under Sec 18 (hh) of its revised charter to superintend, regulate or control the streets of the city of Manila. (Lagman v City of Manila 17 s 579) 2) No. The powers conferred by law upon the Public Service Commission were not designed to deny or supersede the regulatory power of local governments over motor traffic in the streets subject to their control.

(Lagman v City of Manila 17 s 579)

Public utilities (2000)
WWW Communications Inc. is an e-commerce company whose present business activity is limited to providing its clients with all types of information technology hardware. It plans to re-focus its corporate direction of gradually converting itself into a full convergence organization. Towards this objective, the company has been aggressively acquiring telecommunications businesses and broadcast media enterprises, and consolidating their corporate structures. The ultimate plan is to have only two organizations: one to own the facilities of the combined businesses and to develop and produce content materials, and another to operate the facilities and provide mass media and commercial telecommunications services. WWW Communications will be the flagship entity which will own the facilities of the conglomerate and provide content to the other new corporation which, in turn, will operate those facilities and provide the services. WWW Communications seeks your professional advice on whether or not its reorganized business activity would be considered a public utility requiring a franchise or certificate or any other form of authorization from the government. What will be your advice? Explain (5%)

SUGGESTED ANSWER:

The reorganized business activity of WWW Communications Inc. would not be considered a public utility requiring a franchise or certificate or any other form of authorization from the government. It owns the facilities, but does not operate them.

Revocation of Certificate (1993)

1) Robert is a holder of a certificate of public convenience to operate a taxicab service in Manila and suburbs. One evening, one of his taxicab units was boarded by three robbers as they escaped after staging a hold-up. Because of said incident, the LTFRB revoked the certificate of public convenience of Robert on the ground that said operator failed to render safe, proper and adequate service as required under Sec 19a of the Public Service Act. a) Was the revocation of the certificate of public convenience of Robert justified? Explain. b) When can the Commission (Board) exercise its power to suspend or revoke certificate of public convenience?

SUGGESTED ANSWER:

1a) No. A single hold-up incident which does not link Robert's taxicab cannot be construed that he rendered a service that is unsafe, inadequate and improper *(Manzanal v Ausejo 164 s 36)*

1b) Under Sec 19a of the Public Service Act, the Commission (Board) can suspend or revoke a certificate of public convenience when the operator fails to provide a service that is safe, proper or adequate, and refuses to render any service which can be reasonably demanded and furnished.

Revocation of Certificate (1993)

Pepay, a holder of a certificate of public convenience, failed to register to the complete number of units required by her certificate. However, she tried to justify such failure by the accidents that allegedly befell her, claiming that she was so shocked and burdened by the successive accidents and misfortunes that she did not know what she was doing, she was confused and thrown off tangent momentarily, although she always had the money and financial ability to buy new trucks and repair the destroyed one. Are the reasons given by Pepay sufficient grounds to excuse her from completing units? Explain.

SUGGESTED ANSWER:

No. The reasons given by Pepay are not sufficient grounds to excuse her from completing her units. The same could be undertaken by her children or by other authorized representatives (Sec 16n Pub Serv Act; Halili v Herras 10 s 769)

Securities Regulation

Insider (2004)

Ms. OB was employed in MAS Investment Bank. WIC, a medical drug company, retained the Bank to assess whether it is desirable to make a tender offer for DOP company, a drug manufacturer. OB overheard in the course of her work the plans of WIC. By herself and thru associates, she purchased DOP stocks available at the stock exchange priced at P20 per share. When WIC's tender offer was announced, DOP stocks jumped to P30 per share. Thus OB earned a sizable profit. Is OB liable for breach and misuse of confidential or insider information gained from her employment? Is she also liable for damages to sellers or buyers with whom she traded? If so, what is the measure of such damages? Explain briefly. (5%)

SUGGESTED ANSWER:

OB is an insider (as defined in Subsection 3.8(3) of the Securities Regulation Code) since she is an employee of the Bank, the financial adviser of DOP, and this relationship gives her access to material information about the issuer (DOP) and the latter's securities (shares), which information is not generally available to the public. Accordingly, OB is guilty of insider trading under Section 27 of the Securities Regulation Code, which requires disclosure when trading in securities.

OB is also liable for damages to sellers or buyers with whom she traded. Under Subsection 63.1 of the Securities Regulation Code, the damages awarded could be an amount not exceeding triple the amount of the transaction plus actual damages. Exemplary damages may also be awarded in case of bad faith, fraud, malevolence or wantonness in the violation of the Securities Regulation Code or its implementing rules. The court is also authorized to award attorney's fees not exceeding 30% of the award.

Insider Trading (1995)

Under the Revised Securities Act, it is unlawful for an insider to sell or buy a security of the issuer if he knows a fact of special significance with respect to the issuer or the security that is not generally available, without disclosing such fact to the other party. 3.a) What does the term "insider" mean as used in the Revised Securities act? 3.b) When is a fact considered to be "of special significance" under the same Act? 3.c) What are the liabilities of a person who violates the pertinent provisions of the Revised Securities Act regarding the unfair use of inside information?

SUGGESTED ANSWER:

3a. "Insider" means 1) the issuer, 2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, 3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or 4) a person who learns such a fact from any of the foregoing insiders with knowledge that the person from whom he learns the fact is such an insider (Sec 30b, RSA)

3b. It is one which, in addition to being material, would be likely to affect the market price of a security to a significant extent on being made generally available, or one which a reasonable person would consider especially

important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability. (Sec. 30c, RSA)

3c. The person may be liable to 1) a fine of not less than P5th nor more than P500th or 2) imprisonment of not less than 7 years nor more than 21 years, 3) or both such fine and imprisonment in the discretion of the court.

If the person is a corporation, partnership, association or other juridical entity, the penalty shall be imposed upon the officers of the corporation, etc. responsible for the violation. And if such an officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence. (Sec 56 RSA)

Insider Trading; Manipulative Practices (1994)

1) Give a case where a person who is not an issuing corporation, director or officer thereof, or a person controlling, controlled by or under common control with the issuing corporation, is also considered an "insider." 2) In Securities Law, what is a "shortswing" transaction. 3) In "insider trading," what is a "fact of special significance"?

SUGGESTED ANSWER:

1) It may be a case where a person, whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or a person, who learns such a fact from any of the insiders, with knowledge that the person from whom he learns the fact, is such an insider (Sec 30, par (b) Rev Securities Act)

2) A "shortswing" is a transaction where a person buys securities and sells or disposes of the same within a period of six (6) months.

ALTERNATIVE ANSWER:

2) It is a purchase by any person for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, resulting in beneficial ownership of more than 10% of any class of shares (Sec 32 R Sec Act)

3) In "insider trading," a "fact of special significance" is, in addition to being material, such fact as would likely, on being made generally available, to affect the market price of a security to a significant extent, or which a reasonable person would consider as especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability (Sec 30 par c RSecAct)

Manipulative Practices (2001)

Suppose A is the owner of several inactive securities. To create an appearance of active trading for such securities, A connives with B by which A will offer for sale some of his securities and B will buy them at a certain fixed price, with the understanding that although there would be an apparent sale, A will retain the beneficial ownership thereof. a) Is the arrangement lawful? (3%) b) If the sale materializes, what is it called? (2%)

SUGGESTED ANSWER:

a) No. The arrangement is not lawful. It is an artificial manipulation of the price of securities. This is prohibited by the Securities Regulation Code. b) If the sale materializes, it is called a wash sale or simulated sale.

Securities Regulation Code; Purpose (1998)

What is the principal purpose of laws and regulations governing securities in the Philippines? (2%)

SUGGESTED ANSWER:

The principal purpose of laws and regulations governing securities in the Philippines is to protect the public against the nefarious practices of unscrupulous brokers and salesmen in selling securities.

Securities; Definition (1996)

Define securities

SUGGESTED ANSWER:

Stocks, bonds notes, convertible debentures, warrants or other documents that represent a share in a company or a debt owned by a company or government entity. Evidences of obligations to pay money or of rights to participate in earnings and distribution of corporate assets. Instruments giving to their legal holders rights to money or other property; they are therefore instruments which have intrinsic value and are recognized and used as such in the regular channels of commerce.

(Note: Sec 2a of the Revised Securities Act does not really define the term 'securities.')

Securities; Selling of Securities; Meaning (2002)

2002 (18) Equity Online Corporation (EOL), a New York corporation, has a securities brokerage service on the Internet after obtaining all requisite U.S. licenses and permits to do so. EOL's website (www.eonline..com), which is hosted by a server in Florida, enables Internet users to trade on-line in securities listed in the various stock exchanges in the U.S. EOL buys and sells U.S. listed securities for the accounts of its clients all over the world, who convey their buy and sell instructions to EOL through the Internet. EOL has no offices, employees or representatives outside the U.S. The website has icons for many countries, including an icon "For Filipino Traders" containing the day's prices of U.S. listed securities expressed in U.S. dollars and their Philippine peso equivalent. Grace Gonzales, a resident of Makati, is a regular customer of the website and has been purchasing and selling securities through EOL with the use of her American Express credit card. Grace has never traveled outside the Philippines. After a series of erroneous stock picks, she had incurred a net indebtedness of US$30,000. with EOL, at which time she cancelled her American Express credit card. After a

number of demand letters sent to Grace, all of them unanswered, EOL, through a Makati law firm, filed a complaint for collection against Grace with the Regional Trial Court of Makati. Grace, through her lawyer, filed a motion to dismiss on the ground that EOL (a) was doing business in the Philippines without a license and was therefore barred from bringing suit and (b) violated the Securities Regulation Code by selling or offering to sell securities within the Philippines without registering the securities with the Philippine SEC and thus came to court "with unclean hands." EOL opposed the motion to dismiss, contending that it had never established a physical presence in the Philippines, and that all of the activities related to plaintiffs trading in U.S. securities all transpired outside the Philippines. If you are the judge, decide the motion to dismiss by ruling on the respective contentions of the parties on the basis of the facts presented above. (10%)

SUGGESTED ANSWER:

The grounds of the motion to dismiss are both untenable. EOL is not doing business in the Philippines, and it did not violate the Securites Act, because it was not selling securities in the country.

The contention of EOL is correct, because it never did any business in the Philippines. All its transactions in question were consummated outside the Philippines.

Tender Offer (2002)

2002 (6)

A. What is a tender offer?

B. In what instances is a tender offer required to be made?

SUGGESTED ANSWER:

A. Tender offer is a publicly announced intention of a person acting alone or in concert with other persons to acquire equity securities of a public company. It may also be defined as a method of taking over a company by asking stockholders to sell their shares at a price higher than the current market price and on a particular date.

B. Instances where tender offer is required to be made:

a) The person intends to acquire 15% or more of the equity share of a public company pursuant to an agreement made between or among the person and one or more sellers.

b) The person intends to acquire 30% or more of the equity shares of a public company within a period of 12 months.

c) The person intends to acquire equity shares of a public company that would result in ownership of more than 50% of the said shares.

Transportation Law

Boundary System (2005)

Baldo is a driver of Yellow Cab Company under the boundary system. While cruising along the South Expressway, Baldo's cab figured in a collision, killing his passenger, Pietro. The heirs of Pietro sued Yellow Cab Company for damages, but the latter refused to pay the heirs, insisting that it is not liable because Baldo is not its employee. Resolve with reasons. (2%)

SUGGESTED ANSWER:

Yellow Cab Company shall be liable with Baldo, on a solidary basis, for the death of passenger Pietro. Baldo is an employee of Yellow Cab under the boundary system. As such, the death of passenger Pietro is breach of contract of carriage, making both the common carrier Yellow Cab and its employee, Baldo, solidarily liable. *(Hernandez v. Dolor, G.R, No. 160286, July 30, 2004)*

Carriage; Breach of Contract; Presumption of Negligence (1990)

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

SUGGESTED ANSWER:

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

Carriage; Breach of Contract; Presumption of Negligence (1997)

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

SUGGESTED ANSWER:

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

Carriage; Fortuitous Event (1995)

M. Dizon Trucking entered into a hauling contract with Fairgoods Co whereby the former bound itself to haul the latter's 2000 sacks of Soya bean meal from Manila

Port Area to Calamba, Laguna. To carry out faithfully its obligation Dizon subcontracted with Enrico Reyes the delivery of 400 sacks of the Soya bean meal. Aside from the driver, three male employees of Reyes rode on the truck with the cargo. While the truck was on its way to Laguna two strangers suddenly stopped the truck and hijacked the cargo. Investigation by the police disclosed that one of the hijackers was armed with a bladed weapon while the other was unarmed. For failure to deliver the 400 sacks, Fairgoods sued Dizon for damages. Dizon in turn set up a 3rd party complaint against Reyes which the latter registered on the ground that the loss was due to force majeure. Did the hijacking constitute force majeure to exculpate Reyes from any liability to Dizon? Discuss fully.

SUGGESTED ANSWER:

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

Carriage; Liability; Lost Baggage or Acts of Passengers (1997)

1997 (15) Antonio, a paying passenger, boarded a bus bound for Batangas City. He chose a seat at the front row, near the bus driver, and told the bus driver that he had valuable items in his hand carried bag which he then placed beside the driver's seat. Not having slept for 24 hours, he requested the driver to keep an eye on the bag should he doze off during the trip. While Antonio was asleep, another passenger took the bag away and alighted at Calamba, Laguna. Could the common carrier be held liable by Antonio for the loss?

SUGGESTED ANSWER:

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

Carriage; Prohibited & Valid Stipulations (2002)

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

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

2 a stipulation that in the event of loss, destruction or deterioration of goods on account of the defective condition of the vehicle used in the contract of carriage, the carrier's liability is limited to the value of the goods appearing in the bill of lading unless the shipper or owner declares a higher value (5%)

SUGGESTED ANSWER:

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

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

Carriage; Valuation of Damaged Cargo (1993)

A shipped thirteen pieces of luggage through LG Airlines from Teheran to Manila as evidenced by LG Air Waybill which disclosed that the actual gross weight of the luggage was 180 kg. Z did not declare an inventory of the contents or the value of the 13 pieces of luggage. After the said pieces of luggage arrived in Manila, the consignee was able to claim from the cargo broker only 12 pieces, with a total weight of 174 kg. X advised the airline of the loss of one of the 13 pieces of luggage and of the contents thereof. Efforts of the airline to trace the missing luggage were fruitless. Since the airline failed to comply with the demand of X to produce the missing luggage, X filed an action for breach of contract with damages against LG Airlines. In its answer, LG Airlines alleged that the Warsaw Convention which limits the liability of the carrier, if any, with respect to cargo to a sum of $20 per kilo or $9.07 per pound, unless a higher value is declared in advance and additional charges are paid by the passenger and the conditions of the contract as set forth in the air waybill, expressly subject the contract of the carriage of cargo to the Warsaw Convention. May the allegation of LG Airlines be sustained? Explain.

SUGGESTED ANSWER:

Yes. Unless the contents of a cargo are declared or the contents of a lost luggage are proved by the satisfactory evidence other than the self-serving declaration of one party, the contract should be enforced as it is the only reasonable basis to arrive at a just award. The passenger or shipper is bound by the terms of the passenger ticket or the waybill. *(Panama v Rapadas 209 s 67)*

Common Carrier (1996)

Define a common carrier?

SUGGESTED ANSWER:

A common carrier is a person, corporation, firm or association engaged in the business of carrying or transporting passengers or goods or both, by land, water or air for compensation, offering its services to the public (Art 1732, Civil Code)

Common Carrier; Breach of Contract; Damages (2003)

Vivian Martin was booked by PAL, which acted as a ticketing agent of Far East Airlines, for a round trip flight on the latter's aircraft, from Manila-Hongkong-Manila. The ticket was cut by an employee of PAL. The ticket showed that Vivian was scheduled to leave Manila at 5:30 p.m. on 05 January 2002 aboard Far East's Flight F007. Vivian arrived at the Ninoy Aquino International Airport an hour before the time scheduled in her ticket, but was told that Far East's Flight F007 had left at 12:10 p.m. It

turned out that the ticket was inadvertently cut and wrongly worded. PAL employees manning the airport's ground services nevertheless scheduled her to fly two hours later aboard their plane. She agreed and arrived in Hongkong safely. The aircraft used by Far East Airlines developed engine trouble, and did not make it to Hongkong but returned to Manila. Vivian sued both airlines, PAL and Far East, for damages because of her having unable to take the Far East flight. Could either or both airlines be held liable to Vivian? Why? (6%)

SUGGESTED ANSWER:

(per dondee) No, there was breach of contract and that she was accommodated well with the assistance of PAL employees to take the flight without undue delay.

Common Carrier; Defenses (2002)

Why is the defense of due diligence in the selection and supervision of an employee not available to a common carrier? (2%)

SUGGESTED ANSWER:

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

Common Carrier; Defenses; Fortuitous Events (1994)

Marites, a paying bus passenger, was hit above her left eye by a stone hurled at the bus by an unidentified bystander as the bus was speeding through the National Highway. The bus owner's personnel lost no time in bringing Marites to the provincial hospital where she was confined and treated. Marites wants to sue the bus company for damages and seeks your advice whether she can legally hold the bus company liable. What will you advise her?

SUGGESTED ANSWER:

Marites can not legally hold the bus company liable. There is no showing that any such incident previously happened so as to impose an obligation on part of the personnel of the bus company to warn the passengers and to take the necessary precaution. Such hurling of a stone constitutes fortuitous event in this case. The bus company is not an insurer. *(Pilapil v CA 180 s 346)*

Common Carrier; Defenses; Limitation of Liability (1998)

X took a plane from Manila bound for Davao via Cebu where there was a change of planes. X arrived in Davao safely but to his dismay, his two suitcases were left behind in Cebu. The airline company assured X that the suitcases would come in the next flight but they never did. X claimed P2,000 for the loss of both suitcases, but the airline was willing to pay only P500 because the airline ticket stipulated that unless a higher value was declared, any claim for loss cannot exceed P250 for each piece of luggage. X reasoned out that he did not sign the stipulation and in fact had not even read it. X did not declare a greater value despite the fact that the clerk had called his attention to the stipulation in the ticket. Decide the case (5%)

SUGGESTED ANSWER:

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

Common Carrier; Defenses; Limitation of Liability (2001)

Suppose A was riding on an airplane of a common carrier when the accident happened and A suffered serious injuries. In an action by A against the common carrier, the latter claimed that 1) there was a stipulation in the ticket issued to A absolutely exempting the carrier from liability from the passenger's death or injuries ad notices were posted by the common carrier dispensing with the extraordinary diligence of the carrier, and 2) A was given a discount on his plane fare thereby reducing the liability of the common carrier with respect to A in particular. a) Are those valid defenses? (1%) b) What are the defenses available to any common carrier to limit or exempt it from liability? (4%)

SUGGESTED ANSWER:

a) No. These are not valid defenses because they are contrary to law as they are in violation of the extraordinary diligence required of common carriers. (Article 1757, 1758 New Civil Code)

b) The defenses available to any common carrier to limit or exempt it from liability are:

1 observance of extraordinary diligence,
2 or the proximate cause of the incident is a fortuitous event or force majeure,
3 act or omission of the shipper or owner of the goods,
4 the character of the goods or defects in the packing or in the containers, and
5 order or act of competent public authority, without the common carrier being guilty of even simple negligence (Article 1734, NCC).

Common Carrier; Duration of Liability (1996)

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

SUGGESTED ANSWER:

Santiago may hold GL Transit liable for breach of contract of carriage. It was the duty of the driver, when he stopped the bus, to do no act that would have the effect of increasing the peril to a passenger such as Santiago while he was attempting to board the same. When a bus is not in motion there is no necessity for a

person who wants to ride the same to signal his intention to board. A public utility bus, once it stops, is in effect making a continuous offer to bus riders. It is the duty of common carriers of passengers to stop their conveyances for a reasonable length of time in order to afford passengers an opportunity to board and enter, and they are liable for injuries suffered by boarding passengers resulting from the sudden starting up or jerking of their conveyances while they are doing so. Santiago, by stepping and standing on the platform of the bus, is already considered a passenger and is entitled to all the rights and protection pertaining to a contract of carriage.
(Dangwa Trans Co v CA 95582 Oct 7,91 202s574)

Common Carrier; Duty to Examine Baggages; Railway and Airline (1992)

Marino was a passenger on a train. Another passenger, Juancho, had taken a gallon of gasoline placed in a plastic bag into the same coach where Marino was riding. The gasoline ignited and exploded causing injury to Marino who filed a civil suit for damages against the railway company claiming that Juancho should have been subjected to inspection by its conductor. The railway company disclaimed liability resulting from the explosion contending that it was unaware of the contents of the plastic bag and invoking the right of Juancho to privacy. a) Should the railway company be held liable for damages? b) If it were an airline company involved, would your answer be the same? Explain briefly.

SUGGESTED ANSWER:

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

b) If it were an airline company, the common carrier should be made liable. In case of air carriers, it is not lawful to carry flammable materials in passenger aircrafts, and airline companies may open and investigate suspicious packages and cargoes (RA 6235)

Common Carrier; Test (1996)

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

SUGGESTED ANSWER:

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

Common Carriers; Defenses (1996)

1) AM Trucking, a small company, operates two trucks for hire on selective basis. It caters only to a few customers, and its trucks do not make regular or scheduled trips. It does not even have a certificate of public convenience. On one occasion, Reynaldo contracted AM to transport for a fee, 100 sacks of rice from Manila to Tarlac. However, AM failed to deliver the cargo, because its truck was hijacked when the driver stopped in Bulacan to visit his girlfriend.

a) May Reynaldo hold AM liable as a common carrier?
b) May AM set up the hijacking as a defense to defeat Reynaldo's claim?

SUGGESTED ANSWER:

a) Reynaldo may hold AM Trucking liable as a common carrier. The facts that AM Trucking operates only two trucks for hire on a selective basis, caters only to a few customers, does not make regular or scheduled trips, and does not have a certificate of public convenience are of no moment as

- the law does not distinguish between one whose principal business activity is the carrying of persons or goods or both and anyone who does such carrying only as an ancillary activity,
- the law avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis, and
- the law refrains from making a distinction between a carrier offering its services to the general public and one who offers services or solicits business only from a narrow segment of the general population

(Pedro de Guzman v CA L-47822 Dec 22,88 168s612)

SUGGESTED ANSWER:

b) AM Trucking may not set up the hijacking as a defense to defeat Reynaldo's claim as the facts given do not indicate that the same was attended by the use of grave or irresistible threat, violence, or force. It would appear that the truck was left unattended by its driver and was taken while he was visiting his girlfriend. (*Pedro de Guzman v CA L-47822 Dec 22,88 168 scra 612*).

Common Carriers; Liability for Loss (1991)

Alejandor Camaling of Alegria, Cebu, is engaged in buying copra, charcoal, firewood, and used bottles and in reselling them in Cebu City. He uses 2 big Isuzu trucks for the purpose; however, he has no certificate of public convenience or franchise to do business as a common carrier. On the return trips to Alegria, he loads his trucks with various merchandise of other merchants in Alegria and the neighboring municipalities of Badian and Ginatilan. He charges them freight rates much lower than the regular rates. In one of the return trips, which left Cebu City at 8:30 p.m. 1 cargo truck was loaded with several boxes of sardines, valued at P100th, belonging to one of his customers, Pedro Rabor. While passing the zigzag road between Carcar and Barili, Cebu, which is midway between Cebu City and Alegria, the truck was hijacked by 3 armed men who took all the boxes of

sardines and kidnapped the driver and his helper, releasing them in Cebu City only 2 days later.

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

SUGGESTED ANSWER:
If I were the Judge, I would hold Alejandro as having engaged as a common carrier. A person who offers his services to carry passengers or goods for a fee is a common carrier regardless of whether he has a certificate of public convenience or not, whether it is his main business or incidental to such business, whether it is scheduled or unscheduled service, and whether he offers his services to the general public or to a limited few *(De Guzman v CA GR 47822 27Dec1988)*

I will however, sustain the contention of Alejandro that he is not liable for the loss of the goods. A common carrier is not an insurer of the cargo. If it can be established that the loss, despite the exercise of extraordinary diligence, could not have been avoided, liability does not ensue against the carrier. The hijacking by 3 armed men of the truck used by Alejandro is one of such cases *(De Guzman v CA GR 47822 27Dec1988).*

Common vs. Private Carrier; Defenses (2002)
Name two (2) characteristics which differentiate a common carrier from a private carrier. (3%).
SUGGESTED ANSWER:
Two (2) characteristics that differentiate a common carrier from a private carrier are:
1 A common carrier offers its service to the public; a private carrier does not.
2 A common carrier is required to observe extraordinary diligence; a private carrier is not so required.

Kabit System (2005)
Discuss the "kabit system" in land transportation and its legal consequences. (2%)
SUGGESTED ANSWER:
The kabit system is an arrangement where a person granted a certificate of public convenience allows other persons to operate their motor vehicles under his license, for a fee or percentage of their *earnings (Lim v. Court of Appeals and Gonzalez, G.R, No. 125817, January 16, 2002, citing Baliwag Trannit v. Court of Appeals, G.R. No. 57493, January 7, 1987)* The law enjoining the kabit system aims to identify the person responsible for an accident in order to protect the riding public. The policy has no force when the public at large is neither deceived nor involved.

The law does not penalize the parties to a kabit agreement. But the kabit system is contrary to public policy and therefore void and inexistent. (Art. 1409[1], Civil Code)

Kabit System; Agent of the Registered Owner (2005)
Procopio purchased an Isuzu passenger jeepney from Enteng, a holder of a certificate of public convenience for the operation of public utility vehicle plying the Calamba-Los Baños route. While Procopio continued offering the jeepney for public transport services, he did not have the registration of the vehicle transferred in his name. Neither did he secure for himself a certificate of public convenience for its operation. Thus, per the records of the Land Transportation Franchising and Regulatory Board, Enteng remained its registered owner and operator. One day, while the jeepney was traveling southbound, it collided with a ten-wheeler truck owned by Emmanuel. The driver of the truck admitted responsibility for the accident, explaining that the truck lost its brakes.

Procopio sued Emmanuel for damages, but the latter moved to dismiss the case on the ground that Procopio is not the real party in interest since he is not the registered owner of the jeepney. Resolve the motion with reasons. (3%)
SUGGESTED ANSWER:
The motion to dismiss should be denied because Procopio, as the real owner of the jeepney, is the real party in interest. Procopio falls under the Kabit system. However, the legal restriction as regards the Kabit system does not apply in this case because the public at large is not deceived nor involved. *(Lim v. Court of Appeals, G.R. No. 125817, January 16, 2002, citing Baliwag Transit v. Court of Appeals, G.R. No. 57493, January 7, 1987)*

In any event, Procoprio is deemed to be "the agent" of the registered owner. *(First Malayan Leasing v. Court of Appeals, G.R. No. 91378, June 9,1992; and "F" Transit Co., Inc. v. NLRC, G.R. Nos, 88195-96, January 27, 1994)*

Maritime Commerce; Bareboat (2003)
For the transportation of its cargo from the Port of Manila to the Port of Kobe, Japan, Osawa & Co., chartered "bareboat" M/V Ilog of Karagatan Corporation. M/V Ilog met a sea accident resulting in the loss of the cargo and the death of some of the seamen manning the vessel. Who should bear the loss of the cargo and the death of the seamen? Why? (4%)
SUGGESTED ANSWER:
(per Dondee) Osawa and Co. shall bear the loss because under a demise or bareboat charter, the charterer (Osawa & Co.) mans the vessel with his own people and becomes, in effect, the owner for the voyage or service stipulated, subject to liability for damages caused by negligence.

Prior Operator Rule (2003)
Bayan Bus Lines had been operating satisfactorily a bus service over the route Manila to Tarlac and vice versa via the McArthur Highway. With the upgrading of the new North Expressway, Bayan Bus Lines service became

seemingly inadequate despite its efforts of improving the same. Pasok Transportation, Inc., now applies for the issuance to it by the Land Transportation Franchising and Regulatory Board of a certificate of public convenience for the same Manila-Tarlac-Manila route. Could Bayan Bus Lines, Inc., invoke the "prior operator" rules against Pasok Transportation, Inc.? Why? (6%)

SUGGESTED ANSWER:

(per Dondee) No, Bayan Bus Lines, Inc., cannot invoke the "prior operator" rules against Pasok Transportation, Inc. because such "Prior or Old Operator Rule" under the Public Service Act only applies as a policy of the law of the Public Service Commission to issue a certificate of public convenience to a second operator when prior operator is rendering sufficient, adequate and satisfactory service, and who in all things and respects is complying with the rule and regulation of the Commission. In the facts of the case at bar, Bayan Bus Lines service became seemingly inadequate despite its efforts of improving the same. Hence, in the interest of providing efficient public transport services, the use of the 'prior operator' and the 'priority of filing' rules shall is untenable n this case.

Registered Owner; Conclusive Presumption (1990)

Johnny owns a Sarao jeepney. He asked his neighbor Van if he could operate the said jeepney under Van's certificate of public convenience. Van agreed and, accordingly, Johnny registered his jeepney under Van name. On June 10, 1990, one of the passenger jeepneys operated by Van bumped Tomas. Tomas was injured and in due time, he filed a complaint for damages against Van and his driver for the injuries he suffered. The court rendered judgment in favor of Tomas and ordered Van and his driver, jointly and severally, to pay Tomas actual and moral damages, attorney's fees, and costs.

The Sheriff levied on the jeepney belonging to Johnny but registered in the name of Van. Johnny filed a 3rd party claim with the Sheriff alleging ownership of the jeepney levied upon and stating that the jeepney was registered in the name of Van merely to enable Johnny to make use of Van's certificate of public convenience. May the Sheriff proceed with the public auction of Johnny's jeepney. Discuss with reasons.

SUGGESTED ANSWER:

Yes, the Sheriff may proceed with the auction sale of Johnny's jeepney. In contemplation of law as regards the public and third persons, the vehicle is considered the property of the registered operator *(Santos v Sibug 104 S 520)*

Trans-Shipment; Bill of Lading; binding contract (1993)

JRT Inc entered into a contract with C Co of Japan to export anahaw fans valued at $23,000. As payment thereof, a letter of credit was issued to JRT by the buyer. The letter of credit required the issuance of an on-board bill of lading and prohibited the transshipment. The President of JRT then contracted a shipping agent to ship the anahaw fans through O Containers Lines, specifying the requirements of the letter of credit. However, the bill of lading issued by the shipping lines bore the notation "received for shipment" and contained an entry indicating transshipment in Hongkong. The President of JRT personally received and signed the bill of lading and despite the entries, he delivered the corresponding check in payment of the freight. The shipment was delivered at the port of discharge but the buyer refused to accept the anahaw fans because there was no on-board bill of lading, and there was transshipment since the goods were transferred in Hongkong from MV Pacific, the feeder vessel, to MV Oriental, a mother vessel. JRT argued that the same cannot be considered transshipment because both vessels belong to the same shipping company. 1) Was there transshipment? Explain 2) JRT further argued that assuming that there was transshipment, it cannot be deemed to have agreed thereto even if it signed the bill of lading containing such entry because it was made known to the shipping lines from the start that transshipment was prohibited under the letter of credit and that, therefore, it had no intention to allow transshipment of the subject cargo. Is the argument tenable? Reason.

SUGGESTED ANSWER:

1) Yes. Transshipment is the act of taking cargo out of one ship and loading it in another. It is immaterial whether or not the same person, firm, or entity owns the two vessels. (Magellan v CA 201 s 102)

2) No. JRT is bound by the terms of the bill of lading when it accepted the bill of lading with full knowledge of its contents which included transshipment in Hongkong. Acceptance under such circumstances makes the bill of lading a binding contract. (Magellan v Ca 201 s 102)

Trust Receipts Law

Trust Receipts Law; Acts & Omissions; Covered (2006)

What acts or omissions are penalized under the Trust Receipts Law? (2.5%)

SUGGESTED ANSWER:

The Trust Receipts Law (P.D. No. 115) declares the failure to turn over goods or proceeds realized from sale thereof, as a criminal offense under Art. 315(l)(b) of Revised Penal Code. The law is violated whenever the entrustee or person to whom trust receipts were issued fails to: (a) return the goods covered by the trust receipts; or (b) return the proceeds of the sale of said goods *(Metropolitan Bank v. Tonda, G.R. No. 134436, August 16, 2000).*

Is lack of intent to defraud a bar to the prosecution of these acts or omissions? (2.5%)

SUGGESTED ANSWER:

No. The Trust Receipts Law is violated whenever the entrustee fails to: (1) turn over the proceeds of the sale of the goods, or (2) return the goods covered by the trust receipts if the goods are not sold. The mere failure to account or return gives rise to the crime which is malum prohibitum. There is no requirement to prove intent to defraud (*Ching v. Secretary of Justice, G.R. No. 164317, February 6, 2006; Colinares v. Court of Appeals, G.R. No. 90828, September 5, 2000; Ong v. Court of Appeals, G.R. No. 119858, April 29, 2003).*

Trust Receipts Law; Liability for estafa (1991)

Mr. Noble, as the President of ABC Trading Inc executed a trust receipt in favor of BPI Bank to secure the importation by his company of certain goods. After release and sale of the imported goods, the proceeds from the sale were not turned over to BPI. Would BPI be justified in filing a case for estafa against Noble?

SUGGESTED ANSWER:

BPI would be justified in filing a case for estafa under PD 115 against Noble. The fact that the trust receipt was issued in favor of a bank, instead of a seller, to secure the importation of the goods did not preclude the application of the Trust Receipt Law. (PD 115) Under the law, any officer or employee of a corporation responsible for the violation of a trust receipt is subject to the penal liability thereunder *(Sia v People 166s655)*

ALTERNATIVE ANSWER:

The filing of a case for estafa under the penal provisions of the RPC would not be justified. It has been held in *Sia v People (161 s 655)* that corporate officers and directors are not criminally liable for a violation of said Code. 2 conditions are required before a corporate officer may be criminally liable for an offense committed by the corporation; viz:

1 There must be a specific provision of law mandating a corporation to act or not to act; and

2 There must be an explicit statement in the law itself that, in case of such violation by a corporation, the officers and directors thereof are to be personally and criminally liable therefore.

These conditions are not met in the penal provisions of the RPC on trust receipts.

Trust Receipts Law; Liability for Estafa (1997)

A buys goods from a foreign supplier using his credit line with a bank to pay for the goods. Upon arrival of the goods at the pier, the bank requires A to sign a trust receipt before A is allowed to take delivery of the goods. The trust receipt contains the usual language. A disposes of the goods and receives payment but does not pay the bank. The bank files a criminal action against A for violation of the Trust Receipts Law. A asserts that the trust receipt is only to secure his debt and that a criminal action cannot lie against him because that would be violative of his constitutional right against "imprisonment for nonpayment of a debt." Is he correct?

SUGGESTED ANSWER:

No. Violation of a trust receipt is criminal as it is punished as estafa under Art 315 of the RPC. There is a public policy involved which is to assure the entruster the reimbursement of the amount advanced or the balance thereof for the goods subject of the trust receipt. The execution of the trust receipt or the use thereof promotes the smooth flow of commerce as it helps the importer or buyer of the goods covered thereby.

Trusts Receipt Law (2003)

PB & Co., Inc., a manufacturer of steel and steel products, imported certain raw materials for use by it in the manufacture of its products. The importation was effected through a trust receipt arrangement with AB Banking corporation. When it applied for the issuance by AB Banking Corporation of a letter of credit, PB & Co., Inc., did not make any representation to the bank that it would be selling what it had imported. It failed to pay the bank. When demand was made upon it to account for the importation, to return the articles, or to turn-over the proceeds of the sale thereof to the bank, PB & Co., Inc., also failed. The bank sued PB & Co.'s President who was the signatory of the trust receipt for estafa. The President put up the defense that he could not be made liable because there was no deceit resulting in the violation of the trust receipt. He also submitted that there was no violation of the trust receipt because the raw materials were not sold but used by the corporation in the manufacture of its products. Would those defenses be sustainable? Why? (6%)

SUGGESTED ANSWER:

No, the defenses are not sustainable. The lack of deceit should not be sustained because the mere failure to account for the importation, or return the articles constitutes the abuse of confidence in the crime of estafa. The fact that the goods aren't sold but are used in the manufacture of its products is immaterial because a violation of the trust receipts law happened when it failed to account for the goods or return them to the Bank upon demand.

Usury Law

Usury Law (199)

Borrower obtained a loan from a money lending enterprise for which he issued a promissory note undertaking to pay at the end of a period of 30 days the principal plus interest at the rate 5.5% per month plus 2% per annum as service charge.

On maturity of the loan, borrower failed to pay the principal debt as well as the stipulated interest and service charge. Hence, he was sued.

1 How would you dispose of the issues raised by the borrower?

2 That the stipulated interest rate is excessive and unconscionable? (3%)

3 Is the interest rate usurious? (3%)

Recommendation: Since the subject matter of these two (2) questions is not included within the scope of the Bar Questions in Mercantile Law, it is suggested that whatever answer is given by the examinee, or the lack of answer should be given full credit. If the examinee gives a good answer, he should be given additional credit.

SUGGESTED ANSWER:

a. The rate of interest of 5.5% per month is excessive and unconscionable.

b. The interest cannot be considered usurious. The Usury Law has been suspended in its application, and the interest rates are made "floating."

Warehouse Receipts Law

Bill of Lading (1998)

1. What do you understand by a "bill of lading?" (2%)
2. Explain the two-fold character of a "bill of lading." (3%)

SUGGESTED ANSWER:

1. A bill of lading may be defined as a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named therein or on his order.
2. A bill of lading has a two-fold character, namely, a) it is a receipt of the goods to be transported; and b) it constitutes a contract of carriage of the goods.

Delivery of Goods; Requisites (1998)

Luzon Warehousing Co received from Pedro 200 cavans of rice for deposit in its warehouse for which a negotiable receipt was issued. While the goods were stored in said warehouse, Cicero obtained a judgment against Pedro for the recover of a sum of money. The sheriff proceeded to levy upon the goods on a writ of execution and directed the warehouseman to deliver the goods. Is the warehouseman under obligation to comply with the sheriffs order? (5%)

SUGGESTED ANSWER:

No. There was a valid negotiable receipt as there was a valid delivery of 200 cavans of rice for deposit. In such case, the warehouseman (LWC) is not obliged to deliver the 200 cavans of rice deposited to any person, except to the one who can comply with sec 8 of the Warehouse Receipts Law, namely:

1 surrender the receipt of which he is a holder;
2 willing to sign a receipt for the delivery of the goods; and
3 pays the warehouseman's liens that is, his fees and advances, if any.

The sheriff cannot comply with these requisites especially the first, as he is not the holder of the receipt.

Delivery of the Goods (1991)

When is a warehouseman bound to deliver the goods, upon a demand made either by the holder of a receipt for the goods or by the depositor?

SUGGESTED ANSWER:

The warehouseman is bound to deliver the goods upon demand made either by the holder of the receipt for the goods or by the depositor if the demand is accompanied by

1 an offer to satisfy the warehouseman's lien,
2 an offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation thereof,
3. and readiness and willingness to sign when the goods are delivered if so requested by the warehouseman (Sec 8 Warehouse Receipts Law).

Garnishment or Attachment of Goods (1999)

A Warehouse Company received for safekeeping 1000 bags of rice from a merchant. To evidence the transaction, the Warehouse Company issued a receipt expressly providing that the goods be delivered to the order of said merchant. A month after, a creditor obtained judgment against the said merchant for a sum of money. The sheriff proceeded to levy on the rice and directed the Warehouse Company to deliver to him the deposited rice.

What advice will you give the Warehouse Company? Explain (2%)

Assuming that a week prior to the levy, the receipt was sold to a rice mill on the basis of which it filed a claim with the sheriff. Would the rice mill have better rights to the rice than the creditor? Explain your answer. (2%)

SUGGESTED ANSWER:

The 1000 bags of rice were delivered to the Warehouse Company by a merchant, and a negotiable receipt was issued therefor. The rice cannot thereafter, while in the possession of the Warehouse Company, be attached by garnishment or otherwise, or be levied upon under an execution unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The Warehouse Company cannot be compelled to deliver the actual possession of the rice until the receipt is surrendered to it or impounded by the court.

Yes. The rice mill, as a holder for value of the receipt, has a better right to the rice than the creditor. It is the rice mill that can surrender the receipt which is in its possession and can comply with the other requirements which will oblige the warehouseman to deliver the rice, namely, to sign a receipt for the delivery of the rice, and to pay the warehouseman's liens and fees and other charges.

Negotiable Documents of Title (1992)

For a cargo of machinery shipped from abroad to a sugar central in Dumaguete, Negros Oriental, the Bill of Lading (B/L) stipulated "to shipper's order," with notice of arrival to be addressed to the Central. The cargo arrived at its destination and was released to the Central without surrender of the B/L on the basis of the latter's undertaking to hold the carrier free and harmless from any liability.

Subsequently, a Bank to whom the central was indebted, claimed the cargo and presented the original of the B/L stating that the Central had failed to settle its obligations with the Bank.

Was there misdelivery by the carrier to the sugar central considering the non-surrender of the B/L? Why?

SUGGESTED ANSWER:

There was no misdelivery by the carrier since the cargo was considered consigned to the Sugar central per the "Shipper's Order" (Eastern Shipping Lines v CA 190 s 512)

ALTERNATIVE ANSWER:

There was misdelivery. The B/L was a negotiable document of title because it was to the "Shipper's Order." Hence, the common carrier should have delivered the cargo to the Central only upon surrender of the B/L. The non-surrender of the B/L will make it liable to holders in due course.

Ownership of Goods Stored (1992)

To guarantee the payment of a loan obtained from a bank, Raul pledged 500 bales of tobacco deposited in a warehouse to said bank and endorsed in blank the warehouse receipt. Before Raul could pay for the loan, the tobacco disappeared from the warehouse. Who should bear the loss – the pledgor or the bank? Why?

SUGGESTED ANSWER:

The pledgor should bear the loss. In the pledge of a warehouse receipt the ownership of the goods remain with depositor or his transferee. Any contract or real security, among them a pledge, does not amount to or result in an assumption of risk of loss by the creditor. The Warehouse Receipts Law did not deviate from this rule.

Right to the Goods (2005)

Jojo deposited several cartons of goods with SN Warehouse Corporation. The corresponding warehouse receipt was issued to the order of Jojo. He endorsed the warehouse receipt to EJ who paid the value of the goods deposited. Before EJ could withdraw the goods, Melchor informed SN Warehouse Corporation that the goods belonged to him and were taken by Jojo without his consent. Melchor wants to get the goods, but EJ also wants to withdraw the same. (5%)

- Who has a better right to the goods? Why?

SUGGESTED ANSWER:

EJ has a better right to the goods, being covered by a negotiable document of title, namely the warehouse receipts issued to the "order of Jojo." Under the Sales provisions of the Civil Code on negotiable documents of title, and under the provisions of the Warehouse Receipts Law, when goods deposited with the bailee are covered by a negotiable document of title, the endorsement and delivery of the document transfers ownership of the goods to the transferee. By operation of law, the transferee obtains the direct obligation of the bailee to hold the goods in his name." (Art. 1513, Civil Code; Section 41, Warehouse Receipts Law) Since EJ is the holder of the warehouse receipt, he has the better right to the goods. SN Warehouse is obliged to hold the goods in his name.

- If SN Warehouse Corporation is uncertain as to who is entitled to the property, what is the proper recourse of the corporation? Explain.

SUGGESTED ANSWER:

SN Warehouse can file an INTERPLEADER to compel EJ and Melchor to litigate against each other for the ownership of the goods. Sec. 17 of the Warehouse Receipts Law states, "If more than one person claims the title or possession of the goods, the warehouse may, either as a defense to an action brought against him for non-delivery of the goods or as an original suit, whichever is appropriate, require all known claimants to interplead."

Unpaid Seller; Negotiation of the Receipt (1993)

A purchased from S 150 cavans of palay on credit. A deposited the palay in W's warehouse. W issued to A a negotiable warehouse receipt in the name of A. Thereafter, A negotiated the receipt to B who purchased the said receipt for value and in good faith. 1) Who has a better right to the deposit, S, the unpaid vendor or b, the purchaser of the receipt for value and in good faith? Why? 2) When can the warehouseman be obliged to deliver the palay to A?

SUGGESTED ANSWER:

1) B has a better right than S. The right of the unpaid seller, S, to the goods was defeated by the act of A in endorsing the receipt to B.

2) The warehouseman can be obliged to deliver the palay to A if B negotiates back the receipt to A. In that case, A becomes a holder again of the receipt, and A can comply with Sec 8 of the Warehouse Receipts Law.

Validity of stipulations excusing warehouseman from negligence (2000)

S stored hardware materials in the bonded warehouse of W, a licensed warehouseman under the General Bonded Warehouse Law (Act 3893 as amended). W issued the corresponding warehouse receipt in the form he ordinarily uses for such purpose in the course of his business. All the essential terms required under Section 2 of the Warehouse Receipts Law (Act 2137 as amended) are embodied in the form. In addition, the receipt issued to S contains a stipulation that W would not be responsible for the loss of all or any portion of the hardware materials covered by the receipt even if such loss is caused by the negligence of W or his representatives or employees. S endorsed and negotiated the warehouse receipt to B, who demanded delivery of the goods. W could not deliver because the goods were nowhere to be found in his warehouse. He claims he is not liable because of the free-from-liability clause stipulated in the receipt. Do you agree with W's contention? Explain. (5%)

SUGGESTED ANSWER:

No. I do not agree with the contention of W. The stipulation that W would not be responsible for the loss of all or any portion of the hardware materials covered by the receipt even if such loss is caused by the negligence of W or his representative or employees is void. The law requires that a warehouseman should exercise due diligence in the care and custody of the things deposited in his warehouse.

Miscellaneous

Energy Regulatory Commission: Jurisdiction & Power (2004)

CG, acustomer, sued MERALCO in the MM Regional Trial Court to disclose the basis of the computation of the purchased power adjustment (PPA). The trial court ruled it had no jurisdiction over the case because, as contended by the defendant, the customer not only demanded a breakdown of MERALCO's bill with respect to PPA but questioned as well the imposition of the PPA, a matter to be decided by the Board of Energy, the regulatory agency which should also have jurisdiction over the instant suit. Is the trial court's ruling correct or not? Reason briefly. (5%)

SUGGESTED ANSWER:

The trial court's ruling is correct. As held in Manila Electric Company v. Court of Appeals, 271SCRA 417 (1997), the Board of Energy had the power to regulate and fix power rates to be charged by franchised electric utilities like MERALCO. In fact pursuant to Executive Order No. 478 (April 17, 1998), this power has been transferred to the Energy Regulatory Board (now the Energy Regulatory Commission). Under Section 43(u) of the Electric Power Industry Reform Act of 2001, the Energy Regulatory Commission has original and exclusive jurisdiction over all cases contesting power rates.

Four ACID Problems of Philippine Judiciary (2006)

In several policy addresses extensively covered by media since his appointment on December 21, 2005, Chief Justice Artemio V. Panganiban vowed to leave a judiciary characterized by "four Ins" and to focus in solving the "four ACID" problems that corrode the administration of justice in our country. Explain this "four Ins" and "four ACID" problems.

SUGGESTED ANSWER:

Upon assuming his office, Chief Justice Panganiban vowed to lead a judiciary characterized by the "four Ins:" Integrity, Independence, Industry and Intelligence; one that is morally courageous to resist influence, interference, indifference and insolence. He envisions a judiciary that is impervious to the plague of undue influence brought about by kinship, relationship, friendship and fellowship. He calls on the judiciary to battle the "Four ACID" problems corroding our justice system: (1) limited access to justice by the poor; (2) corruption; (3) incompetence; and (4) delay in the delivery of quality judgments. The judicial department should discharge its functions with transparency, accountability and dignity.

(NOTA BENE: It is respectfully suggested that all Bar Candidates receive a 2.5% bonus for the above question regardless of the answer)

2. The Chief Justice also said that the judiciary must "safeguard the liberty" and "nurture the prosperity" of our people. Explain this philosophy. Cite Decisions of the Supreme Court implementing each of these twin beacons of the Chief Justice. (2.5%)

SUGGESTED ANSWER:

The Chief Justice's philosophy "Safeguarding Liberty, Nurturing Prosperity" embodies the Supreme Court's approach in decision-making in the exercise of its constitutional power of judicial review which provides: In cases involving liberty, the scales of justice should weight heavily against government and in favor of the poor, the oppressed, the marginalized, the dispossessed and the weak; and that laws and action that restrict fundamental rights come to the court "with a heavy presumption against their constitutional validity. On the other hand, as a general rule, the Supreme Court must adopt a deferential or respectful attitude towards actions taken by the governmental agencies that have primary responsibility for the economic development of the country; and only when an act has been clearly made or executed with grave abuse of discretion does the Court get involved in policy issues.

Decisions implementing the "safeguarding of liberty" include those involving the constitutionality of Presidential Proclamation No. 1017 *(David v. Arroyo, G.R. No. 171390, May 3, 2006); the validity of Calibrated Pre-emptive Response (CPR) and B.P. Big. 880 or the Public Assembly Act (Bayan v. Ermita, G.R. No. 169848, April 25, 2006); and the legality of Executive Order No. 464 and the President's exercise of Executive Privilege (Senate of the Philippines v. Ermita, G.R. No. 169777, April 20, 2006).*

On the other hand, cases that relate to "nurturing the prosperity" of the people include the question the constitutionality of the Mining Law *(La Bugal-B'Laan v. Ramos, G.R. No. 127882, Dec. 1, 2004*) and the WTO Agreement (*Tanada v. Angara, G.R. 118295, May 2,1997*).

Government Deregulation vs. Privatization of an Industry (2004)

What is the difference between government deregulation and the privatization of an industry? Explain briefly. (2%)

SUGGESTED ANSWER:

Government deregulation is the relaxation or removal of regulatory constraints on firms or individuals, with a view to promoting competition and market-oriented approaches toward pricing, output, entry, and other related economic decisions.

Privatization of an industry refers to the transfer of ownership and control by the government of assets, firms and operations in an industry to private investors.

Political Law; WTO (1999)

Government plans to impose an additional duty on imported sugar on top of the current tariff rate. The intent is to ensure that the landed cost of sugar shall not be lower than P800 per bag. This is the price at which locally produced sugar would be sold in order to enable sugar producers to realize reasonable profits. Without

this additional duty, the current low price of sugar in the world market will surely pull the domestic price to levels lower than the cost to producer domestic sugar – a situation that could spell the demise of the Phil sugar industry. a) Discuss the validity of this proposal to impose an additional levy on imported sugar (3%) b) Would the proposal be consistent with the tenets of the World Trade Organization (WTO)? (3%)

> Recommendation: Since the subject matter of these two (2) questions is not included within the scope of the Bar Questions in Mercantile Law, it is suggested that whatever answer is given by the examinee, or the lack of answer should be given full credit. If the examinee gives a good answer, he should be given additional credit.

SUGGESTED ANSWER:

a) The proposal to impose an additional duty on imported sugar on top of the current tariff rate is valid, not being prohibited by the Constitution. It would enable producers to realize reasonable profits, and would allow the sugar industry of the country to survive.

b) No. The proposal would not be consistent with the tenets of the WTO which call for the liberalization of trade. However, such proposal may be acceptable within the allowable period under the WTO for adjustment of the local industry

Power of the State: Regulating of Domestic Trade (2004)

In its exercise of police power and business regulation, the legislature of LVM State passed a law prohibiting aliens from engaging in domestic timber trade. Violators including dummies would, after proper trial, be fined and imprisoned or deported. Mrs. BC, a citizen of LVM but married to ZC, an alien merchant of PNG, filed suit to invalidate the law or exempt from its coverage their timber business.

She contended that the law is, inter alia, gravely oppressive and discriminatory. It violated the Universal Declaration of Human Rights (UDHR) passed in 1948 by the United Nations, of which LVM is a member, she said, as well as the reciprocity provisions of the World Trade Organization (WTO) Agreement of 1994, of which PNG and LVM are parties. Aside from denying them equal protection, according to BC, the law will also deprive her family their livelihood without due process nor just compensation. Assuming that the legal system of LVM is similar to ours, would Mrs. BC's contention be tenable or not? Reason briefly. (5%)

SUGGESTED ANSWER:

Mrs. BC's contention is not tenable. First, the UDHR does not purport to limit the right of states (like LVM) to regulate domestic trade. Second, the WTO Agreement involves international trade between states or governments, not domestic trade in timber or other commodities. Third, nationality is an accepted norm for making classifications that do not run counter to the equal protection of law clause of the Constitution. Fourth, there is no impairment of due process here because violators of the law will be punished only after "proper trial." Fifth, the issue of "just compensation" does not arise, because the property of Mrs. BC is not being expropriated. On the contrary, as a citizen of LVM, Mrs. BC is freely allowed to engage in domestic timber trade in LVM.

Tariff and Customs Code: Violation of Customs Laws (2004)

The Collector of Customs ordered the seizure and forfeiture of new electronic appliances shipped by TON Corp. from Hongkong for violation of customs laws because they were falsely declared as used office equipment and then undervalued for purposes of customs duties. TON filed a complaint before the MM Regional Trial Court for replevin, alleging that the Customs officials erred in the classification and valuation of its shipment, as well as in the issuance of the warrant of seizure. The Collector moved to dismiss the suit for lack of jurisdiction on the part of the trial court. Should the Collector's motion be granted or denied? Reason briefly. (5%)

SUGGESTED ANSWER:

The Collector's motion should be granted. Under Section 602(g) of the Tariff and Customs Code, the Bureau of Customs has exclusive original jurisdiction over seizure and forfeiture cases under the tariff and customs laws.

> NOTE: (This question is outside the coverage of the Bar Examinations. It is therefore recommended that whatever answer made by the candidate should be given full credit.)