ANSWERS TO BAR

EXAMINATION QUESTIONS

IN

REMEDIAL LAW

ARRANGED BY TOPIC
(1997 – 2006)

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FORWARD

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
July 26, 2005

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GENERAL PRINCIPLES

Bar by Prior Judgment vs. Conclusiveness of Judgment (1997)

Distinguish Bar by prior judgment from conclusiveness of judgment

SUGGESTED ANSWER:

Bar by prior-judgment is the doctrine of res judicata, which bars a second action when there is identity of parties, subject matter and cause of action. *(Sec. 49[b] of former Rule 39; Sec, 47 [b] of new Rule 39).*

Conclusiveness of judgment precludes the relitigation of a particular issue in another action between the same parties on a different cause of action. *(Sec. 49 [c] of former Rule 39; sec. 47 [c] of new Rule 39).*

Cause of action vs. Action (1997)

Distinguish Cause of action from action

SUGGESTED ANSWER:

A CAUSE OF ACTION is an act or omission of one party in violation of the legal right or rights of the other **(Maao Sugar Central vs. Barrios, 79 Phil. 606; Sec. 2 of new Rule 2),** causing damage to another.

An ACTION is an ordinary suit in a court of Justice by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong.*(Section 1 of former Rule 2).*

Civil Actions vs. Special Proceedings (1998)

Distinguish civil actions from special proceedings. [3%]

SUGGESTED ANSWER:

A CIVIL ACTION is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. *(See. 3[a], Rule 1, 1997 Rules of Civil Procedure),* while a SPECIAL PROCEEDING is a remedy by which a party seeks to establish a status, a right or a particular fact. *(Sec. 3[C]. Rule 1,1997 Rules of Civil Procedure.)*

Conciliation Proceedings; Katarungang Pambarangay vs. Pre-Trial Conference (1999)

What is the difference, if any, between the conciliation proceedings under the Katarungang Pambarangay Law and the negotiations for an amicable settlement during the pre-trial conference under the Rules of Court? (2%)

SUGGESTED ANSWER:

The difference between the conciliation proceedings under the Katarungang Pambarangay Law and the negotiations for an amicable settlement during the pre-trial conference under the Rules of Court is that in the former, lawyers are prohibited from appearing for the parties. Parties must appear in person only except minors or incompetents who may be assisted by their next of kin who are not lawyers. *(Formerly Sec. 9, P.D. No. 1508; Sec. 415, Local Government Code of 1991, R.A. 7160.)* No such prohibition exists in the pre-trial negotiations under the Rules of Court.

Family Courts Act (2001)

a) How should the records of child and family cases in the Family Courts or RTC designated by the Supreme Court to handle Family Court cases be treated and dealt with? (3%) b) Under what conditions may the identity of parties in child and family cases be divulged (2%)

SUGGESTED ANSWER:

a) The records of child and family cases in the Family Code to handle Family Court cases shall be dealt with utmost confidentiality. *(Sec. 12, Family Courts Act of 1997)*

b) The identity of parties in child and family cases shall not be divulged unless necessary and with authority of the judge. *(Id.)*

Interlocutory Order (2006)

What is an interlocutory order? (2%)

SUGGESTED ANSWER:

An interlocutory order refers to an order issued between the commencement and the end of the suit which is not a final decision of the whole controversy and leaves something more to be done on its merits **(Gallardo et al. v. People, G.R. No. 142030, April 21, 2005; Investments Inc. v. Court of Appeals, G.R. No. 60036, January 27, 1987 cited in Denso Phils, v. /AC, G.R. No. 75000, Feb. 27, 1987).**

Judgment vs. Opinion of the Court (2006)

What is the difference between a judgment and an opinion of the court? (2.5%)

SUGGESTED ANSWER:

The judgment or fallo is the final disposition of the Court which is reflected in the dispositive portion of the decision. A decision is directly prepared by a judge and signed by him, containing clearly and distinctly a statement of the facts proved and the law upon which the judgment is based **(Etoya v. Abraham Singson, Adm. Matter No. RTJ-91-758, September 26, 1994).**

An opinion of the court is the informal expression of the views of the court and cannot prevail against its final order. The opinion of the court is contained in the body of the decision that serves as a guide or enlightenment to determine the *ratio decidendi* of the decision. The opinion forms no part of the judgment even if combined in one instrument, but may be referred to for the purpose of construing the judgment **(Contreras v. Felix, G.R. No. L-477, June 30, 1947).**

Judicial Autonomy & Impartiality (2003)

In rendering a decision, should a court take into consideration the possible effect of its verdict upon the political stability and economic welfare of the nation? 4%

SUGGESTED ANSWER:

No, because a court is required to take into consideration only the legal issues and the evidence admitted in the case. The political stability and economic welfare of the nation are extraneous to the case. They can have persuasive influence but they are not the main factors that should be considered in deciding a case. A decision should be based on the law, rules of procedure, justice and equity. However, in exceptional cases the court may consider the political stability and economic welfare of the nation when these are capable of being taken into judicial notice of and are relevant to the case.

Katarungang Pambarangay; Objective (1999)

What is the object of the Katarungang Pambarangay Law? (2%)

SUGGESTED ANSWER:

The object of the Katarungang Pambarangay Law is to effect an amicable settlement of disputes among family and barangay members at the barangay level without judicial recourse and consequently help relieve the courts of docket congestion. *(Preamble of P.D. No. 1508, the former and the first Katarungang Pambarangay Law.)*

Liberal Construction; Rules of Court (1998)

How shall the Rules of Court be construed? [2%]

SUGGESTED ANSWER:

The Rules of Court should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. *(Sec. 6, Rule 1 1997 Rules of Civil Procedure.)*

ADDITIONAL ANSWER:

However, strict observance of the rules is an imperative necessity when they are considered indispensable to the prevention of needless delays and to the orderly and speedy dispatch of Judicial business. **(Alvero vs. Judge de la Rosa, 76 Phil. 428)**

Remedial Law in Phil. System of Gov't (2006)

How are remedial laws implemented in our system of government? (2%)

SUGGESTED ANSWER:

Remedial laws are implemented in our system of government through the pillars of the judicial system, including the prosecutory service, our courts of justice and quasi judicial agencies.

Remedial Law vs. Substantive Law (2006)

Distinguish between substantive law and remedial law. (2%)

SUGGESTED ANSWER:

SUBSTANTIVE LAW is that part of the law which creates, defines and regulates rights concerning life, liberty, or property, or the powers of agencies or instrumentalities for the administration of public affairs. This is distinguished from REMEDIAL LAW which prescribes the method of enforcing rights or obtaining redress for their invasion **(Bustos v. Lucero, G.R. No. L-2068, October 20, 1948).**

Remedial Law; Concept (2006)

What is the concept of remedial law? (2%)

SUGGESTED ANSWER:

The concept of Remedial Law lies at the very core of procedural due process, which means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, and contemplates an opportunity to be heard before judgment is rendered **(Albert v. University Publishing, G.R. No. L-19118, January 30, 1965).**

Remedial Law is that branch of law which prescribes the method of enforcing the rights or obtaining redress for their invasion **(Bustos v. Lucero, G.R. No. L-2068, October 20, 1948; First Lepanto Ceramics, Inc. v. CA, G.R. No. 110571, March 10, 1994).**

Rights of the Accused; Validity; HIV Test (2005)

Under Republic Act No. 8353, one may be charged with and found guilty of qualified rape if he knew on or before the commission of the crime that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim. Under Section 17(a) of Republic Act No. 8504 the court may compel the accused to submit himself to a blood test where blood samples would be extracted from his veins to determine whether he has HIV. (8%)

a) Are the rights of the accused to be presumed innocent of the crime charged, to privacy, and against self-incrimination violated by such compulsory testing? Explain.

SUGGESTED ANSWER:

No. The court may compel the accused to submit himself to a blood test to determine whether he has HIV under Sec. 17(a) of R.A. No, 8054. His rights to be presumed innocent of the crime charged, to privacy and against self-incrimination are not violated by such compulsory testing. In an action in which the physical condition of a party is in controversy, the court may order the accused to submit to a physical examination. *(Sec. 1, Rule 28, 1997 Rules of Civil Procedure)*

(Look for citation of latest case, in 2004)

b) If the result of such test shows that he is HIV positive, and the prosecution offers such result in evidence to prove the qualifying circumstance under the Information for qualified rape, should the court reject such result on the ground that it is the fruit of a poisonous tree? Explain.

SUGGESTED ANSWER:

Since the rights of the accused are not violated because the compulsory testing is authorized by the

law, the result of the testing cannot be considered to be the fruit of a poisonous tree and can be offered in evidence to prove the qualifying circumstance under the information for qualified rape under R.A. No. 8353. The fruit, of the poisonous tree doctrine refers to that rule of evidence that excludes any evidence which may have been derived or acquired from a tainted or polluted source. Such evidence is inadmissible for having emanated from spurious origins. The doctrine, however, does not apply to the results obtained pursuant to Sec. 1, Rule 28, 1997 Rules of Civil Procedure, as it does not contemplate a search within the moaning of the law. **(People v.**

Montilla, G.R. No. 123872, January 30,1998)

JURISDICTION

Jurisdiction (1997)

What courts have jurisdiction over the following cases filed in Metro Manila? a) An action for specific performance or, in the

alternative, for damages in the amount of P180,000.00 b) An action for a writ of injunction. c) An action for replevin of a motorcycle valued at

P150,000.00. d) An action for interpleader to determine who

between the defendants is entitled to receive the amount of P190,000.00 from the plaintiff. e) A petition for the probate of a will involving an

estate valued at P200,000.00.

SUGGESTED ANSWER:

(a) An action for specific performance or, in the alternative, for damages in the amount of 180,000.00 falls within the jurisdiction of Metropolitan Trial Courts in Metro Manila. Although an action for specific performance is not capable of pecuniary estimation, since the alternative demand for damages is capable of pecuniary estimation, it is within the jurisdiction of the Metropolitan Trial Courts in Metro Manila. **(Sec. 33 of BP 129 as amended by RA No. 7691:**

Cruz us. Tan, 87 Phil. 627].

(b) An action for injunction is not capable of pecuniary estimation and hence falls within the jurisdiction of the RTCs.

(c) An action for replevin of a motorcycle valued at 150,000.00 falls within the jurisdiction of the Metropolitan Trial Courts in Metro Manila **(Sec. 33 of BP 129. as amended by RA No. 7691).**

(d) An action for interpleader to determine who between the defendants is entitled to receive the amount of P190,000.00 falls within the jurisdiction of the Metropolitan Trial Courts in Metro Manila.

(Makati Dev Corp. v. Tanjuatco 27 SCRA 401)

(e) A petition for the probate of a will involving an estate valued at 200.000.00 falls within the Jurisdiction of the Metropolitan Trial Courts in Metro Manila **(Sec. 19[4] of BP 129, as amended).**

ADDITIONAL ANSWER:

(b) An application for a writ of preliminary injunction may be granted by a Municipal Court in an action of forcible entry and unlawful detainer. **(Sec.33 of BP 129; Day vs. RTC of Zamboanga, 191 SCRA610.**

Jurisdiction vs. Venue (2006)

Distinguish jurisdiction from venue? (2%)

SUGGESTED ANSWER:

JURISDICTION treats of the power of the Court to decide a case on the merits, while VENUE refers to the place where the suit may be filed. In criminal actions, however, venue is jurisdictional. Jurisdiction is a matter of substantive law; venue, of procedural law. Jurisdiction may be not be conferred by consent through waiver upon a court, but venue may be waived, except in criminal cases **(Nocum et al. v. Tan,**

G.R. No. 145022, September 23, 2005; Santos III v. Northwest Airlines, G.R. No. 101538, June 23, 1992).

Jurisdiction; CTA Division vs. CTA En Banc (2006)

Mark filed with the Bureau of Internal Revenue a complaint for refund of taxes paid, but it was not acted upon. So, he filed a similar complaint with the Court of Tax Appeals raffled to one of its Divisions. Mark's complaint was dismissed. Thus, he filed with the Court of Appeals a petition for certiorari under Rule 65. Does the Court of Appeals have jurisdiction over Mark's petition? (2.5%)

SUGGESTED ANSWER:

No. The procedure is governed by Sec. 11 of R. A. 9282. Decisions of a division of the Court of Tax Appeals must be appealed to the Court of Tax Appeals en banc. Further, the CTA now has the same rank as the Court of Appeals and is no longer considered a quasi-judicial agency. It is likewise provided in the said law that the decisions of the CTA en bane are cognizable by the Supreme Court under Rule 45 of the 1997 Rules of Civil Procedure.

Jurisdiction; Incapable of Pecuniary Estimation (2000)

A brings an action in the MTC of Manila against B for the annulment of an extrajudicial foreclosure sale of real property with an assessed value of P50,000.00 located in Laguna. The complaint alleged prematurity of the sale for the reason that the mortgage was not yet due. B timely moved to dismiss the case on the ground that the action should have been brought in the RTC of Laguna. Decide with reason. (3%)

SUGGESTED ANSWER:

The motion should be granted. The MTC of Manila has no jurisdiction because the action for the annulment of the extrajudicial foreclosure is not capable of pecuniary estimation and is therefore

under the jurisdiction of the RTCs. **(Russell v. Vestil, 304 SCRA 738,[1999]).**

However, the action for annulment is a personal action and the venue depends on the residence of either A or B. Hence, it should be brought in the RTC of the place where either of the parties resides.

Jurisdiction; Incapable of Pecuniary Estimation (2000)

A files an action in the Municipal Trial Court against B, the natural son of A's father, for the partition of a parcel of land located in Taytay, Rizal with an assessed value of P20,000.00. B moves to dismiss the action on the ground that the case should have been brought in the RTC because the action is one that is not capable of pecuniary estimation as it involves primarily a determination of hereditary rights and not merely the bare right to real property. Resolve the motion. (2%)

SUGGESTED ANSWER:

The motion should be granted. The action for partition depends on a determination of the hereditary rights of A and B, which is not capable of pecuniary estimation. Hence, even though the assessed value of the land is P20,000.00, the Municipal Trial Court has no jurisdiction. **(Russell v. Vestil, supra)**

Jurisdiction; Incapable of Pecuniary Estimation (2003)

A filed with the MTC of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of p19,000.00. B received the summons and a copy of the Complaint on 02 January 2003. On 10 January 2003, B filed a Motion to Dismiss the Complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the RTC a Petition for Certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case. 6% On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending.

(a) Was the denial of the Motion to Dismiss the Complaint correct?
(b) Resolve the Motion to Declare the Defendant in Default.

SUGGESTED ANSWER:

(a) The denial of the Motion to Dismiss the Complaint was not correct. Although the assessed value of the parcel of land involved was P19,000.00, within the jurisdiction of the MTC of Manila, the action filed by A for Specific Performance against B to compel the latter to execute a Deed of Conveyance of said parcel of land was not capable of pecuniary estimation and, therefore, the action was within the jurisdiction of RTC. **(Russel v. Vestil, 304 SCRA 738 [1999]; Copioso v. Copioso, G.R. No. 149243, October 28,2002; Cabutihan v. Landcenter Construction, 383 SCRA 353 [2002]).**

ALTERNATIVE ANSWER:

If the action affects title to or possession of real property then it is a real action and jurisdiction is determined by the assessed value of the property. It is within the jurisdiction therefore of the Metropolitan Trial Court.

SUGGESTED ANSWER:

(b) The Court could declare B in default because B did not obtain a writ of preliminary injunction or a temporary restraining order from the RTC prohibiting the judge from proceeding in the case during the pendency of the petition for certiorari.

(Sec. 7 of Rule 65; Diaz v. Diaz, 331 SCRA 302 [2002].

ALTERNATIVE ANSWER:

The Court should not declare B in default inasmuch as the jurisdiction of MTC was put in issue in the Petition For Certiorari filed with the RTC. The MTC should defer further proceedings pending the result of such petition. **(Eternal Gardens Memorial Park Corporation v. Court of Appeals, 164 SCRA 421 [1988]).**

Jurisdiction; MTC (2002)

P sued A and B in one complaint in the RTC-Manila, the cause of action against A being on an overdue promissory note for P300,000.00 and that against B being on an alleged balance of P300,000.00 on the purchase price of goods sold on credit. Does the RTC-Manila have jurisdiction over the case? Explain. (3%)

SUGGESTED ANSWER:

No, the RTC-Manila has no jurisdiction over the case. A and B could not be joined as defendants in one complaint because the right to relief against both defendants do not arise out of the same transaction or series of transactions and there is no common question of law or fact common to both. *(Rule 3, sec. 6).* Hence, separate complaints will have to be files and they would fall under the jurisdiction of the Metropolitan Trial Court. **[Flores v. Mallare-Philipps, 144 SCRA 377 (1986)].**

Jurisdiction; Office of the Solicitor General (2006)

In 1996, Congress passed Republic Act No. 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1

billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for mandamus compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of the majority? (5%)

SUGGESTED ANSWER:

Yes, the OSG may represent the COMELEC Chairman before the RTC notwithstanding that his position is contrary to that of a majority of the Commission members in the COMELEC because the OSG is an independent office; it's hands are not shackled to the cause of its client agency. The primordial concern of the OSG is to see to it that the best interest of the government is upheld **(COMELEC**

v. Quyano-Padilla, September 18, 2002).

Jurisdiction; Ombudsman Case Decisions (2006)

Does the Court of Appeals have jurisdiction to review the Decisions in criminal and administrative cases of the Ombudsman? (2.5%)

SUGGESTED ANSWER:

The Supreme Court has exclusive appellate jurisdiction over decisions of the Ombudsman in criminal cases *(Sec. 14, R.A. 6770)*. In administrative and disciplinary cases, appeals from the Ombudsman must be taken to the Court of Appeals under Rule 43

(Lanting v. Ombudsman, G.R. No. 141426, May 6, 2005; Fabian v. Desierto, G.R. No. 129742, September 16, 1998; Sec. 14, RA. 6770).

Jurisdiction; Probate (2001)

Josefa filed in the Municipal Circuit Trial Court of Alicia and Mabini, a petition for the probate of the will of her husband, Martin, who died in the Municipality of Alicia, the residence of the spouses. The probable value of the estate which consisted mainly of a house and lot was placed at P95,000.00 and in the petition for the allowance of the will, attorney's fees in the amount of P10,000.00, litigation expenses in the amount of P5,000.00 and costs were included. Pedro, the next of kin of Martin, filed an opposition to the probate of the will on the ground that the total amount included in the relief of the petition is more than P100,000.00, the maximum jurisdictional amount for municipal circuit trial courts. The court overruled the opposition and proceeded to hear the case. Was the municipal circuit trial court correct in its ruling? Why? (5%)

SUGGESTED ANSWER:

Yes, the Municipal Circuit Trial Court was correct in proceeding to hear the case. It has exclusive jurisdiction in all matters of probate, both testate and intestate, where the value of the estate does not exceed P100,000.00 (now P200,000.00). The value in this case of P95,000.00 is within its jurisdiction. In determining the jurisdictional amount, excluded are attorney's fees, litigation expenses and costs; these are considered only for determining the filing fees.
(B.P.Blg. 129, Sec. 33, as amended)

Jurisdiction; RTC (2002)

P sued A in the RTC-Manila to recover the following sums: (1) P200,000.00 on an overdue promissory note, (2) P80,000.00 on the purchase price of a computer, (3) P150,000.00 for damages to his car and
(4) P100,000.00 for attorney's fees and litigation expenses. Can A move to dismiss the case on the ground that the court has no jurisdiction over the subject matter? Explain. (2%)

SUGGESTED ANSWER:

No, because the RTC-Manila has jurisdiction over the subject matter. P may sue A in one complaint asserting as many causes of action as he may have and since all the claims are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction. *[Rule 2, sec. 5(d)]*. The aggregate amount claimed is P450,000.00, exclusive of the amount of P100,000.00 for attorney's fees and expenses of litigation. Hence, the RTC-Manila has jurisdiction.

Jurisdiction; Subdivision Homeowner (2006)

What court has jurisdiction over an action for specific performance filed by a subdivision homeowner against a subdivision developer? Choose the correct answer. Explain.

1 The Housing and Land Use Regulatory Board
2 The Securities and Exchange Commission
3 The Regional Trial Court
4 The Commercial Court or the Regional Trial Court designated by the Supreme Court to hear and decide "commercial cases."

SUGGESTED ANSWER:

An action for specific performance by a subdivision homeowner against a subdivision developer is within the jurisdiction of the Housing and Land Use Regulatory Board. Sec. 1 of P.D. 1344 provides that the HLURB has jurisdiction over cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots and condominium units against the owner, developer, dealer, broker or salesman **(Manila Bankers Life**

Insurance Corp. v. Eddy Ng Kok Wei, G.R. No. 139791, December 12, 2003; Kakilala v. Faraon, G.R. No. 143233, October 18, 2004; Sec. 1, P.D. 1344).

Katarungang Pambarangay; Lupon; Extent of Authority; (2001)

An amicable settlement was signed before a Lupon Tagapamayapa on January 3, 2001. On July 6, 2001, the prevailing party asked the Lupon to execute the amicable settlement because of the non-compliance by the other party of the terms of the agreement. The Lupon concerned refused to execute the settlement/agreement. a) Is the Lupon correct in refusing to execute the

settlement/agreement? (3%) b) What should be the course of action of the

prevailing party in such a case? (2%)

SUGGESTED ANSWER:

a) Yes, the Lupon is correct in refusing to execute the settlement/agreement because the execution sought is already beyond the period of six months from the date of the settlement within which the Lupon is authorized to execute. *(Sec. 417, Local Government Code of 1991)*

b) After the six-month period, the prevailing party should move to execute the settlement/agreement in the appropriate city or municipal trial court. (Id.)

CIVIL PROCEDURE

Actions; Cause of Action vs. Action (1999)

Distinguish action from cause of action. (2%)

SUGGESTED ANSWER:

An ACTION is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. *(Sec. 3(A), Rule)*

A CAUSE OF ACTION is the act or omission by which a party violates a right of another. *(Sec. 2, Rule 2 of the 1997 Rules)* **An action must be based on a cause of action.** *(Sec. 1, Rule 2 of the 1997 Rules)*

Actions; Cause of Action; Joinder & Splitting (1998)

Give the effects of the following:

1 Splitting a single cause of action: and (3%|

2 Non-joinder of a necessary party. [2%]

SUGGESTED ANSWER:

1. The effect of splitting a single cause of action is found in the rule as follows: If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is available as a ground for the dismissal of the others. *(Sec. 4 of Rule 2)*

2. The effect of the non-joinder of a necessary party may be stated as follows: The court may order the inclusion of an omitted necessary party if jurisdiction over his person may be obtained. The failure to comply with the order for his inclusion without justifiable cause to a waiver of the claim against such party. The court may proceed with the action but the judgment rendered shall be without prejudice to the rights of each necessary party. *(Sec. 9 of Rule 3)*

Actions; Cause of Action; Joinder of Action (1999)

a) What is the rule on joinder of causes of action? (2%)

b) A secured two loans from B? one for P500,000.00 and the other for P1,000,000.00, payable on different dates. Both have fallen due. Is B obliged to file only one complaint against A for the recovery of both loans? Explain. (2%)

SUGGESTED ANSWER:

a. The rule on JOINDER OF CAUSES OF ACTION is that a party may in one pleading assert, in the alternative or otherwise join as many causes of action as he may have against an opposing party, provided that the rule on joinder of parties is complied with;

1.] the joinder shall not include special civil actions or actions governed by special rules, but may include causes of action pertaining to different venues or jurisdictions provided one cause of action falls within the jurisdiction of a RTC and venue lies therein; and

2.] the aggregate amount claimed shall be the test of jurisdiction where the claims in all the causes of action are principally for the recovery of money. *(Sec. 5, Rule 2 of the 1997 Rules)*

b. No. Joinder is only permissive since the loans are separate loans which may be governed by the different terms and conditions. The two loans give rise to two separate causes of action and may be the basis of two separate complaints.

Actions; Cause of Action; Joinder of Action (2005)

Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are the coowners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 from Ricky which he promised to pay on or before December 1, 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property. Ricky filed a complaint against Perry and Marvin in the RTC of Pasay City for the partition of the property. He also incorporated in his complaint his action against Perry for the collection of the latter's P100,000.00 loan, plus interests and attorney's fees.

State with reasons whether it was proper for Ricky to join his causes of action in his complaint for partition against Perry and Marvin in the RTC of Pasay City. (5%)

SUGGESTED ANSWER:

It was not proper for Ricky to join his causes of action against Perry in his complaint for partition against Perry and Marvin. The causes of action may be between the same parties, Ricky and Perry, with respect to the loan but not with respect to the partition which includes Marvin. The joinder is between a partition and a sum of money, but PARTITION is a special civil action under Rule 69, which cannot be joined with other causes of action. *(See. 5[b], Rule 2,)* Also, the causes of action pertain to different venues and jurisdictions. The case for a sum of money pertains to the municipal court and cannot be filed in Pasay City because the plaintiff is from Manila while Ricky and Marvin are from Batangas
City. (Sec. 5, Rule 2,)

Actions; Cause of Action; Splitting (1999)

a) What is the rule against splitting a cause of action and its effect on the respective rights of the parties for failure to comply with the same? (2%)

b) A purchased a lot from B for Pl,500,000.00. He gave a down payment of P500,000, signed a promissory note payable thirty days after date, and as a security for the settlement of the obligation, mortgaged the same lot to B. When the note fell due and A failed to pay, B commenced suit to recover from A the balance of P1,000,000.00. After securing a favorable judgment on his claim, B brought another action against A before the same court to foreclose the mortgage. A now files a motion to dismiss the second action on the ground of bar by prior judgment. Rule on the motion. (2%)

SUGGESTED ANSWER:

a. The rule against splitting a cause of action and its effect are that if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. *(Sec. 4, Rule 2)*

b. The motion to dismiss should be granted. When B commenced suit to collect on the promissory note, he waived his right to foreclose the mortgage. B split his cause of action.

Actions; Cause of Action; Splitting (2005)

Raphael, a warehouseman, filed a complaint against V Corporation, X Corporation and Y Corporation to compel them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgment was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executory. Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of res judicata. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances and that for his failure he was barred from interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefor. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The motion to dismiss should be granted. Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances, the amounts of which were obviously determinable at the time of the filing of the complaint. They are part of Raphael's cause of action which he may not be split. Hence, when the warehouseman asks the court to ascertain who among the defendants are entitled to the goods, he also has the right to ask who should pay for the storage fees and other related expenses. The filing of the interpleader is available as a ground for dismissal of the second case. *(Sec. 4, Rule 2,)* It is akin to a compulsory counterclaim which, if not set up, shall be barred. **(Sec. 2, Rule 9, ; Arreza v. Diaz, G.R.**

No. 133113, August 30, 2001)

Actions; Cause of Actions; Motion to Dismiss; bar by prior judgment (2002)

Rolando filed a petition for declaration of the nullity of his marriage to Carmela because of the alleged psychological incapacity of the latter.

After trial, the court rendered judgment dismissing the petition on the ground that Rolando failed to prove the psychological incapacity of his wife. The judgment having become final, Rolando filed another petition, this time on the ground that his marriage to Carmela had been celebrated without a license. Is the second action barred by the judgment in the first? Why? (2%)

SUGGESTED ANSWER:

No, the second action is not barred by the judgment in the first because they are different causes of action. The first is for annulment of marriage on the ground of psychological incapacity under Article 36 of the Family Code, while the second is for declaration of nullity of the marriage in view of the absence of a basic requirement, which is a marriage license. [*Arts, 9 & 35(3), Family Code].* They are different causes of action because the evidence required to prove them are not the same. **[Pagsisihan v. Court of Appeals, 95 SCRA 540 (1980) and other cases].**

Actions; Counterclaim (2002)

The plaintiff sued the defendant in the RTC for damages allegedly caused by the latter's encroachment on the plaintiff's lot. In his answer, the defendant denied the plaintiff's claim and alleged that it was the plaintiff who in fact had encroached on his (defendant's) land. Accordingly, the defendant counterclaimed against the plaintiff for damages resulting from the alleged encroachment on his lot. The plaintiff filed an ex parte motion for extension of time to answer the defendant's counterclaim, but the court denied the motion on the ground that it should have been set for hearing. On the defendant's motion, therefore, the court declared the plaintiff in default on the counterclaim. Was the plaintiff validly declared in default? Why? (5%)

SUGGESTED ANSWER:

No, the plaintiff was not validly declared in default. A motion for extension of time to file an answer may be filed ex parte and need not be set for hearing.

[Amante vs. Sunga, 64 SCRA 192 (1975)].

ALTERNATIVE ANSWER:

The general rule is that a counterclaim must be answered within ten (10) days from service. *(Rule 11, sec. 4).* However, a counterclaim that raises issues which are deemed automatically joined by the allegations of the Complaint need not be answered.

[Gojo v. Goyala, 35 SCRA 557 (1970)].

In this case, the defendant's counterclaim is a compulsory counterclaim which arises out or is connected with the transaction and occurrence constituting the subject matter of the plaintiff's claim. It raises the same issue of who encroached on whose land. Hence, there was no need to answer the counterclaim.

Actions; Counterclaim vs. Crossclaim (1999)

a) What is a counterclaim? (2%) b) Distinguish a counterclaim from a crossclaim. (2%)

c) A, who is engaged in tile installation business, was sued by EE Industries for breach of contract for installing different marble tiles in its offices as provided in their contract. Without filing any motion to dismiss, A filed its Answer with Counterclaim theorizing that EE Industries has no legal capacity to sue because it is not a duly registered corporation. By way of counterclaim, A asked for moral and actual damages as her business depleted as a result of the withdrawal and cancellation by her clients of their contracts due to the filing of the case. The case was dismissed after the trial court found that EE Industries is not a registered corporation and therefore has no legal capacity to sue. However, it set a date for the reception of evidence on A's counterclaim. EE Industries opposed on the ground that the counterclaim could no longer be prosecuted in view of the dismissal of the main case. Is the stand of EE Industries sustainable? Explain. [2%]

SUGGESTED ANSWER:

a) A COUNTERCLAIM is any claim which a defending party may have against an opposing party. *(Sec. 6, Rule 6)*

b) A counterclaim is distinguished from a CROSSCLAIM in that a cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. A counterclaim is against an opposing party while a cross-claim is against a co-party. *(Sec. 8, Rule 6)*

c) No, because if no motion to dismiss has been filed, any of the grounds for dismissal provided in the Rules may be pleaded as an affirmative defense in the answer which may include a counterclaim. This is what A did by filing an Answer alleging the lack of legal capacity of EE Industries to sue because it is not a duly registered corporation with a counterclaim for damages. The dismissal of the complaint on this ground is without prejudice to the prosecution of the counterclaim in the same action because it is a compulsory counterclaim. *(Sec. 6 of Rule 16.)*

Actions; Cross-Claims; Third Party Claims (1997)

B and C borrowed P400,000.00 from A. The promissory note was executed by B and C in a Joint and several capacity. B, who received the money from A, gave C P200,000.00. C, in turn, loaned P100,000.00 out of the P200,000.00 he received to D. a) In an action filed by A against B and C with the RTC of Quezon City, can B file a cross-claim against C for the amount of P200,000.00? b) Can C file a third party complaint against D for the amount of P 100,000.00?

SUGGESTED ANSWER:

(a) Yes. B can file a cross-claim against C for the amount of 200,000.00 given to C. A cross-claim is a claim filed by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action or a counterclaim therein and may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted against the cross-claimant. *(Sec. 8 Rule 6)*

(b) No, C cannot file a third-party complaint against D because the loan of P100,000 has no connection with the opponent's claim. C could have loaned the money out of other funds in his possession.

ALTERNATIVE ANSWER:

Yes, C can file a third-party complaint against D because the loan of 100,000.00 was taken out of the P200,000 received from B and hence the loan seeks

contribution in respect to his opponent's claim. *(Sec. 11 of Rule 6)*

Actions; Derivative Suit vs. Class Suit (2005)

Distinguish a derivative suit from a class suit.

SUGGESTED ANSWER:

A DERIVATIVE SUIT is a suit in equity that is filed by a minority shareholder in behalf of a corporation to redress wrongs committed against it, for which the directors refuse to sue, the real party in interest being the corporation itself **(Lint v. Lim-Yu, G.IL No. 138343, February 19, 2001)**, while a CLASS SUIT is filed regarding a controversy of common or general interest in behalf of many persons so numerous that it is impracticable to join all as parties, a number which the court finds sufficiently representative who may sue or defend for the benefit of all. *(Sec. 12, Rule 3)* It is worth noting that a derivative suit is a representative suit, just like a class suit.

Actions; Filing; Civil Actions & Criminal Action (2005)

While cruising on a highway, a taxicab driven by Mans hit an electric post. As a result thereof, its passenger, Jovy, suffered serious injuries. Mans was subsequently charged before the Municipal Trial Court with reckless imprudence resulting in serious physical injuries.

Thereafter, Jovy filed a civil action against Lourdes, the owner of the taxicab, for breach of contract, and Mans for quasi-delict. Lourdes and Mans filed a motion to dismiss the civil action on the ground of litis pendentia, that is, the pendency of the civil action impliedly instituted in the criminal action for reckless imprudence resulting in serious physical injuries. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The motion to dismiss should be denied. The action for breach of contract against the taxicab owner cannot be barred by the criminal action against the taxicab driver, although the taxicab owner can be held subsidiarily liable in the criminal case, if the driver is insolvent. On the other hand, the civil action for quasi-delict against the driver is an independent civil action under Article 33 of the Civil Code and Sec. 3, Rule 111 of the Rules of Court, which can be filed separately and can proceed independently of the criminal action and regardless of the result of the latter. **(Samson v. Daway, G.R. Nos. 160054-55, July 21, 2004)**

Actions; Intervention; Requisites (2000)

What are the requisites for an intervention by a non-party in an action pending in court? (5%)

SUGGESTED ANSWER:

The requisites for intervention are:

1 Legal interest in the matter in a controversy; or

2 Legal interest in the success of either of the parties; or

1 Legal interest against both; or

2 So situated as to be adversely affected by a distribution or other disposition or property in the custody of the court or of an officer thereof.

3 Intervention will not unduly delay or prejudice the adjudication of the rights or original parties;

4 Intervenor's rights may not be fully protected in a separate proceedings.

(Acenas II v. Court of Appeals, 247 SCRA 773 [1995]; Sec. 1, Rule 19, 1997 Rules of Civil Procedure.)

Actions; Real Actions & Personal Actions (2006)

What do you mean by a) real actions; and b) personal action? (2%)

SUGGESTED ANSWER:

a. REAL ACTIONS are actions affecting title to or possession of real property or an interest therein

(Fortune Motors, Inc. v. CA, G. R. No. 76431, October 16, 1989; Rule 4, Sec. 1).

b. All other actions are PERSONAL ACTIONS *(Rule 4, Section I)* which include those arising from privity of contract.

Actions; Survives Death of the Defendant (2000)

PJ engaged the services of Atty. ST to represent him in a civil case filed by OP against him which was docketed as Civil Case No. 123. A retainership agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24,000.00 a year and to transfer the ownership of a parcel of land to Atty. ST after presentation of PJ's evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.

1 Is the death of PJ a valid ground to dismiss the money claim of Atty. ST in Civil Case No. 456? Explain. (2%)

2 Will your answer be the same with respect to the real property being claimed by Atty. ST in Civil Case No. 456? Explain (2%)

SUGGESTED ANSWER:

1 No. Under Sec. 20, Rule 3, 1997 Rules of Civil Procedure, when the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action is pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner especially provided in the Rules for prosecuting claims against the estate of a deceased person.

2 Yes, my answer is the same. An action to recover real property in any event survives the death of the defendant. (Sec. 1, Rule 87, Rules of Court). However, a favorable judgment may be enforced

in accordance with Sec. 7(b) Rule 39 (1997 Rules of Civil Procedure) against the executor or administrator or successor in interest of the deceased.

Appeals; Period of Appeal; Fresh Period Rule (2003)

Defendant X received an adverse Decision of the RTC in an ordinary civil case on 02 January 2003. He filed a Notice of Appeal on 10 January 2003. On the other hand, plaintiff A received the same Decision on 06 January 2003 and, on 19 January 2003, filed a Motion for Reconsideration of the Decision. On 13 January 2003, defendant X filed a Motion withdrawing his notice of appeal in order to file a Motion for New Trial which he attached. On 20 January 2003, the court denied A's Motion for Reconsideration and X's Motion to Withdraw Notice of Appeal. Plaintiff A received the Order denying his Motion for Reconsideration on 03 February 2003 and filed his Notice of Appeal on 05 February 2003. The court denied due course to A's Notice of Appeal on the ground that he period to appeal had already lapsed. 6%

(a) Is the court's denial of X's Motion to Withdraw Notice of Appeal proper?
(b) Is the court's denial of due course to A's appeal correct?

SUGGESTED ANSWER:

(a) No, the court's denial of X's Motion to Withdraw Notice of Appeal is not proper, because the period of appeal of X has not yet expired. From January 2, 2003 when X received a copy of the adverse decision up to January 13, 2003 when he filed his withdrawal of appeal and Motion for New Trial, only ten (10) days had elapsed and he had fifteen (15) days to do so.

(b) No, the court's denial of due course to A's appeal is not correct because the appeal was taken on time. From January 6, 2003 when A received a copy of the decision up to January 19, 2003 when he filed a Motion for Reconsideration, only twelve (12) days had elapsed. Consequently, he had three (3) days from receipt on February 3, 2003 of the Order denying his Motion for Reconsideration within which to appeal. He filed is notice of appeal on February 5, 2003, or only two (2) days later.

ALTERNATIVE ANSWER:

Since A's Motion for Reconsideration was filed on January 19, 2003 and it was denied on January 20, 2003, it was clearly not set for hearing with at least three days' notice. Therefore, the motion was pro forma and did not interrupt the period of appeal which expired on January 21, 2003 or fifteen (15) days after notice of the decision on January 6, 2003.

NOTE: To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a **FRESH PERIOD of 15 days** within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. **[Neypes et. al. vs. CA, G.R. No. 141524, September 14, 2005]**

Certiorari; Mode of Certiorari (2006)

Explain each mode of certiorari:

1. As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court. (2.5%)

SUGGESTED ANSWER:

Certiorari as a mode of appeal is governed by Rule 45 of the Rules of Court which allows appeal from judgment, final order of resolution of the Court of Appeals, Sandiganbayan, the RTC or other courts whenever authorized by law to the Supreme Court by verified petition for review raising only questions of law distinctly set forth.

2. As a special civil action from the Regional Trial Court or the Court of Appeals to the Supreme Court. (2.5%)

SUGGESTED ANSWER:

Certiorari as a Special Civil Action is governed by Rule 65 of the Rules of Court when an aggrieved party may file a verified petition against a decision, final order or resolution of a tribunal, body or board that has acted without or in excess of its jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

3. As a mode of review of the decisions of the National Labor Relations Commission and the Constitutional Commissions. (2.5%)

SUGGESTED ANSWER:

Certiorari as a mode of review of the decision of the NLRC is elevated to the Court of Appeals under Rule 65, as held in the case of **St. Martin's Funeral Home v. NLRC, G.R. No. 130866, September 16, 1998**. Certiorari as a mode of review from the Commission on Audit (COA) and COMELEC is elevated to the Supreme Court within 30 days from notice of the judgment, decision or final order or resolution sought to be reviewed, as provided for under the Rule 64 of the 1997 Rules of Civil Procedure. In the case of the Civil Service Commission (CSC), review of its judgments is through petitions for review under Sec. 5 of Rule 43 of the 1997 Rules of Civil Procedure.

Certiorari; Rule 45 vs. Rule 65 (1998)

Differentiate certiorari as an original action from certiorari as a mode of appeal. |3%]

SUGGESTED ANSWER:

Certiorari as an original action and certiorari as a mode of appeal may be distinguished as follows:

1. The first is a special civil action under Rule 65 of the Rules of Court, while the second is an appeal

to the Supreme Court from the Court of Appeals, Sandiganbayan and the RTC under Rule 45.

1 The first can be filed only on the grounds of lack or excess of jurisdiction or grave abuse of discretion tantamount to lack or excess of jurisdiction, while the second is based on the errors of law of the lower court.

2 The first should be filed within sixty (60) days from notice of the judgment, order or resolution sought to be assailed *(Sec. 4. Rule 65)*, while the second should be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. *(Sec. 2, Rule 45)*

3 The first cannot generally be availed of as a substitute for a lost appeal under Rules 40, 41, 42, 43 and 45.

4 Under the first, the lower court is impleaded as a party respondent *(Sec. 5 of Rule 65),* while under the second, the lower court is not imp leaded.

(Sec. 4 of Rule of 45)

Certiorari; Rule 45 vs. Rule 65 (2005)

May the aggrieved party file a petition for certiorari in the Supreme Court under Rule 65 of the 1997 Rules of Civil Procedure, instead of filing a petition for review on certiorari under Rule 45 thereof for the nullification of a decision of the Court of Appeals in the exercise either of its original or appellate jurisdiction? Explain.

SUGGESTED ANSWER:

To NULLIFY A DECISION of the Court of Appeals the aggrieved party should file a PETITION FOR REVIEW ON CERTIORARI in the Supreme Court under Rule 45 of the Rules of Court instead of filing a petition for certiorari under Rule 65 except under very exceptional circumstances. A long line of decisions of the Supreme Court, too numerous to mention, holds that certiorari is not a substitute for a lost appeal. It should be noted, however, when the Court of Appeals imposes the death penalty, or a lesser penalty for offenses committed on such occasion, appeal by petition for review or ordinary appeal. In cases when the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, appeal is by notice of appeal filed with the Court of Appeals.

Contempt; Death of a Party; Effect (1998)

A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. In the course of the trial, B died. However, X failed to notify the court of B's death. The court proceeded to hear the case and rendered judgment against B. After the Judgment became final, a writ of execution was issued against C, who being B's sole heir, acquired the property. Did the failure of counsel X to inform the court of B's death constitute direct contempt? (2%)

SUGGESTED ANSWER:

No. It is not direct contempt under Sec. 1 of Rule 71, but it is indirect contempt within the purview of Sec 3 of Rule 71. The lawyer can also be the subject of disciplinary action. *(Sec. 16, Rule 3)*

Default (2000)

Defendant was declared in default by the RTC (RTC). Plaintiff was allowed to present evidence in support of his complaint. Photocopies of official receipts and original copies of affidavits were presented in court, identified by plaintiff on the witness stand and marked as exhibits. Said documents were offered by plaintiff and admitted in evidence by the court on the basis of which the RTC rendered judgment in favor of the plaintiff, pursuant to the relief prayed for. Upon receipt of the judgment, defendant appeals to the Court of Appeals claiming that the judgment is not valid because the RTC based its judgment on mere photocopies and affidavits of persons not presented in court. Is the claim of defendant valid? Explain. (3%)

SUGGESTED ANSWER:

The claim of defendant is not valid because under the 1997 Rules, reception of evidence is not required. After a defendant is declared in default, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence, which may be delegated to the clerk of court. *(Sec. 3, Rule 9)*

ALTERNATIVE ANSWER:

The claim of defendant is valid, because the court received evidence which it can order in its own discretion, in which case the evidence of the plaintiff must pass the basic requirements of admissibility.

Default (2001)

Mario was declared in default but before judgment was rendered, he decided to file a motion to set aside the order of default. a) What should Mario state in his motion in order
to justify the setting aside of the order of default? (3%) b) In what form should such motion be? (2%)

SUGGESTED ANSWER:

a) In order to justify the setting aside of the order of default, Mario should state in his motion that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. *[Sec. 3(b) of Rule 9,].*

b) The motion should be under oath. (Id.)

Default; Order of Default; Effects (1999)

1 When may a party be declared in default? (2%)
2 What is the effect of an Order of Default? (2%)
3 For failure to seasonably file his Answer despite due notice, A was declared in default in a case instituted against him by B. The following day, A's mistress who is working as a clerk in the sala of the Judge before whom his case is pending, informed him of the declaration of default. On the same day, A presented a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud and he has a meritorious defense. Thereafter, he went abroad. After his return a week later, with the case still undecided, he received the order declaring him in default. The motion to set aside default was opposed by B on the ground that it was filed before A received notice of his having been declared in default, citing the rule that the motion to set aside may be made at anytime after notice but before judgment. Resolve the Motion. (2%)

SUGGESTED ANSWER:

1. A party may be declared in default when he fails to answer within the time allowed therefor, and upon motion of the claiming party with notice to the defending party, and proof of such failure.
(Sec. 3, Rule 9)

2. The effect of an Order of Default is that the court may proceed to render judgment granting the claimant such relief as his pleading may warrant unless the court in its discretion requires the claimant to submit evidence (Id.) The party in default cannot take part in the trial but shall be entitled to notice of subsequent proceedings. *(Sec. 3[A])*

3. Assuming that the motion to set aside complies with the other requirements of the rule, it should be granted. Although such a motion may be made after notice but before judgment *(Sec. 3[B] of Rule 9)*, with more reason may it be filed after discovery even before receipt of the order of default.

Default; Remedies; Party Declared in Default (1998)

What are the available remedies of a party declared In default:
1 Before the rendition of judgment; [1%]
2 After judgment but before its finality; and [2%1
3 After finality of judgment? [2%]

SUGGESTED ANSWER:

The available remedies of a party declared in default are as follows:

1. BEFORE THE RENDITION OF JUDGMENT

(a) he may file a motion under oath to set aside the order of default on the grounds of fraud, accident, mistake or excusable negligence and that he has a meritorious defense *(Sec. 3[b], Rule 9);* and if it is denied, he may move to reconsider, and if reconsideration is denied, he may file the special civil action of certiorari for grave abuse of discretion tantamount to lack or excess of the lower court's jurisdiction. *(Sec. 1, Rule 65)* or

(b) he may file a petition for certiorari if he has been illegally declared in default, e.g. during the pendency of his motion to dismiss or before the expiration of the time to answer.

(Matute vs. Court of Appeals, 26 SCRA 768; Acosta-Ofalia vs. Sundiam, 85 SCRA 412.)

2. AFTER JUDGMENT BUT BEFORE ITS FINALITY, he may file a motion for new trial on the grounds of fraud, accident, mistake, excusable negligence, or a motion for reconsideration on the ground of excessive damages, insufficient evidence or the decision or final order being contrary to law *(Sec. 2, Rule 37)*: and thereafter. If the motion is denied, appeal to available under Rules 40 or 41, whichever to applicable.

3. AFTER FINALITY OF THE JUDGMENT, there are three ways to assail the judgment, which are:

a) a petition for relief under Rule 38 on the grounds of fraud, accident, mistake or excusable negligence;
b) annulment of judgment under Rule 47 for extrinsic fraud or lack of jurisdiction; or **c)** certiorari if the judgment to void on its face or by the judicial record. **(Balangcad vs. Justices of the Court of Appeals, G.R. No. 83888. February 12, 1992, 206 8CRA 171).**

Default; Remedies; Party Declared in Default (2006)

Jojie filed with the Regional Trial Court of Laguna a complaint for damages against Joe. During the pretrial, Jojie (sic) and her (sic) counsel failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence ex parte. Thereafter, the court rendered its Decision in favor of Jojie. Joe hired Jose as his counsel. What are the remedies available to him? Explain. (5%)

SUGGESTED ANSWER:

The remedies available to a party against whom a default decision is rendered are as follows:

1. BEFORE the judgment in default becomes final and executory:

Motion for Reconsideration under Rule 37;

Motion for New Trial under Rule 37; and

Appeal under Rule 41.

2. AFTER the judgment in default becomes final and executory:

Petition for Relief under Rule 38;

Annulment of Judgment under Rule 47; and

c. Certiorari under Rule 65.

(See Talsan Enterprises, Inc. v. Baliwag Transit, Inc., G.R. No. 126258, July 8, 1999)

Default; Remedies; Substantial Compliance (2000)

For failure of K.J. to file an answer within the reglementary period, the Court, upon motion of LM, declared KJ in default. In due time, KJ filed an unverified motion to lift the order of default without an affidavit of merit attached to it. KJ however attached to the motion his answer under oath, stating in said answer his reasons for his failure to file an answer on time, as well as his defenses. Will the motion to lift the order of default prosper? Explain. (3%)

SUGGESTED ANSWER:

Yes, there is substantial compliance with the rule. Although the motion is unverified, the answer attached to the motion is verified. The answer contains what the motion to lift the order of default and the affidavit of merit should contain, which are the reasons of movant's failure to answer as well as his defenses. **(Sec. 3 [b] of Rule 9, 1997 Rules of Civil**

Procedure; Cf. Citibank, N.A. v. Court of Appeals, 304 SCRA 679, [1999]; Consul v. Consul, 17 SCRA 667, 671 [1966]; Tolentino v. Carlos, 66 Phil, 1450, 143-144 [1938], Nasser v. Court of Appeals, 191 SCRA 783 [1992]).

Demurrer to Evidence (2001)

Carlos filed a complaint against Pedro in the RTC of Ozamis City for the recovery of the ownership of a car. Pedro filed his answer within the reglementary period. After the pre-trial and actual trial, and after Carlos has completed the presentation of his evidence, Pedro moved for the dismissal of the complaint on the ground that under the facts proven and the law applicable to the case, Carlos is not entitled to the ownership of the car. The RTC granted the motion for dismissal. Carlos appealed the order of dismissal and the appellate court reversed the order of the trial court. Thereafter, Pedro filed a motion with the RTC asking the latter to allow him to present his evidence. Carlos objected to the presentation of evidence by Pedro. Should the RTC grant Pedro's motion to present his evidence? Why? (5%)

SUGGESTED ANSWER:

No. Pedro's motion should be denied. He can no longer present evidence. The Rules provide that if the motion for dismissal is granted by the trial court but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence. *(Sec. 1 of Rule 33, Rules of Civil Procedure)*

ALTERNATIVE ANSWER:

No, because when the appellate court reversed the order of the trial court it should have rendered judgment in favor of Carlos. *(Quebral v. Court of Appeals, 252 SCRA 353, 1996)*

 Demurrer to Evidence; Civil Case vs. Criminal Case (2003) Compare the effects of a denial of demurrer to evidence in a civil case with those of a denial of demurrer to evidence in a criminal case. 4%

SUGGESTED ANSWER:

In a civil case, the defendant has the right to file a demurrer to evidence without leave of court. If his demurrer is denied, he has the right to present evidence. If his demurrer is granted and on appeal by the plaintiff, the appellate court reverses the order and renders judgment for the plaintiff, the defendant loses his right to present evidence. (Rule 33).

In a criminal case, the accused has to obtain leave of court to file a demurrer to evidence. If he obtains leave of court and his demurrer to evidence is denied, he has the right to present evidence in his defense. If his demurrer to evidence is granted, he is acquitted and the prosecution cannot appeal.

If the accused does not obtain leave of court and his demurrer to evidence is denied, he waives his right to present evidence and the case is decided on the basis of the evidence for the prosecution.

The court may also dismiss the action on the ground of insufficiency of the evidence on its own initiative after giving the prosecution the opportunity to be heard. *(Sec. 23 of Rule 119)*

Discovery; Modes of Discovery (2000)

Describe briefly at least five (5) modes of discovery under the Rules of Court. (5%)

SUGGESTED ANSWER:

Five modes of discovery under the Rules of Court are:

1 DEPOSITION. By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. *(Sec. 1, Rule 23, 1997 Rules of Civil Procedure.)*

2 INTERROGATORIES TO PARTIES. Under the same conditions specified in section 1 of Rule 23, any party shall file and serve upon any adverse party written interrogatories regarding material and relevant facts to be answered by the party served. (*Sec. 1, Rule 25, 1997 Rules of Civil Procedure.)*

3 ADMISSION BY ADVERSE PARTY. At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document or of the truth of any material and relevant matter of fact.

(Sec. 1, Rule 26, 1997 Rules of Civil Procedure.)

4. PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS. Upon motion of any party showing good cause therefore, a court may order any party to produce and permit the inspection and copying or photographing of any designated documents, etc. or order any party to permit entry upon designated land or property for inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. *(Sec. 1, Rule*

27, 1997 Rule 27 Rules of Civil Procedure.)

Discovery; Modes; Subpoena Duces Tecum (1997)

In an admiralty case filed by A against Y Shipping Lines (whose principal offices are in Manila) in the RTC, Davao City, the court issued a subpoena duces tecum directing Y, the president of the shipping company, to appear and testify at the trial and to bring with him several documents.

(a) On what valid ground can Y refuse to comply with the subpoena duces tecum?

(b) How can A take the testimony of Y and present the documents as exhibits other than through the subpoena from the RTC?

SUGGESTED ANSWER:

(a) Y can refuse to comply with the subpoena duces tecum on the ground that he resides more than 50 (now 100) kilometers from the place where he is to testify, *(Sec. 9 of former Rule 23; Sec. 10 of new Rule 21).*

(b) A can take the testimony of Y and present the documents as exhibits by taking his deposition through oral examination or written interrogatories. *(Rule 24; new Rule 23)* He may also file a motion for the production or inspection of documents. *(Rule 27).*

ALTERNATIVE ANSWER:

(a) The witness can also refuse to comply with the subpoena duces tecum on the ground that the documents are not relevant and there was no tender of fees for one day's attendance and the kilometrage allowed by the rules.

Discovery; Production and Inspection of Documents (2002)

The plaintiff sued the defendant in the RTC to collect on a promissory note, the terms of which were stated in the complaint and a photocopy attached to the complaint as an annex. Before answering, the defendant filed a motion for an order directing the plaintiff to produce the original of the note so that the defendant could inspect it and verify his signature and the handwritten entries of the dates and amounts.

1 Should the judge grant the defendant's motion for production and inspection of the original of the promissory note? Why? (2%)

2 Assuming that an order for production and inspection was issued but the plaintiff failed to comply with it, how should the defendant plead to the alleged execution of the note? (3%)

SUGGESTED ANSWER:

(1) Yes, because upon motion of any party showing good cause, the court in which the action is pending may order any party to produce and permit the inspection of designated documents. *(Rule 27).* The defendant has the right to inspect and verify the original of the promissory note so that he could intelligently prepare his answer.

(2) The defendant is not required to deny under oath the genuineness and due execution of the promissory note, because of the non-compliance by the plaintiff with the order for production and inspection of the original thereof. *(Rule 8, sec. 8).*

ALTERNATIVE ANSWER:

(2) The defendant may file a motion to dismiss the complaint because of the refusal of the plaintiff to obey the order of the court for the production and inspection of the promissory note. *[Rule 29 Sec. 3(c)].*

Dismissal; Motion to Dismiss; Res Judicata (2000)

AB, as mother and in her capacity as legal guardian of her legitimate minor son, CD, brought action for support against EF, as father of CD and AB's lawfully wedded husband. EF filed his answer denying his paternity with counterclaim for damages. Subsequently, AB filed a manifestation in court that in view of the denial made by EF, it would be futile to pursue the case against EF. AB agreed to move for the dismissal of the complaint, subject to the condition that EF will withdraw his counter claim for damages. AB and EF filed a joint motion to dismiss. The court dismissed the case with prejudice. Later on, minor son CD, represented by AB, filed another complaint for support against EF. EF filed a motion to dismiss on the ground of res judicata. a) Is res judicata a valid ground for dismissal of the second complaint? Explain your answer (3%) b) What are the essential requisite of res judicata? (2%)

SUGGESTED ANSWER:

(a) No, res judicata is not a defense in an action for support even if the first case was dismissed with prejudice on a joint motion to dismiss. The plaintiff's mother agreed to the dismissal of the complaint for support in view of the defendant's answer denying his paternity with a counterclaim for damages. This was in the nature of a compromise of the right of support which is prohibited by law. **(Art, 2035, Civil Code; De Asis v. Court of Appeals, 303 SCRA 176 [1999]).**

(b) The Essential Requisites of Res Judicata are:

1 the judgment or order rendered must be final;

2 the court rendering the same must have jurisdiction of the subject matter and of the parties;

3 it must be a judgment or order on the merits; and

4. there must be between the two cases identity of parties, identity of subject matter, and identity of causes of action. **(San Diego v. Cardona, 70 Phil, 281 [1940])**

Evidence; Admissibility; Photocopies (2000)

If the photocopies of official receipts and photocopies of affidavits were attached to the position paper submitted by plaintiff in an action for unlawful detainer filed with Municipal Trial Court on which basis the court rendered judgment in favor of plaintiff? Explain. (2%)

SUGGESTED ANSWER:

The claim of defendant is valid, because although summary procedure requires merely the submission of position papers, the evidence submitted with the position paper must be admissible in evidence. *(Sec. 9 of the Revised Rule on Summary Procedure).* Photocopies of official receipts and affidavits are not admissible without proof of loss of the originals. *(Sec. 3 of Rule 130)*

Forum Shopping; Definition (2006)

What is forum shopping? (2.5%)

SUGGESTED ANSWER:

Forum shopping is the act of a party which consists of filing multiple suits, simultaneously or successively, for the purpose of obtaining a favorable judgment

(Leyson v. Office of the Ombudsman, G.R. No. 134990, April 27, 2000; Yulienco v. CA, G.R. No. 131692, June 10,1999; Chemphil Export & Import Corp. v. CA, G.R. Nos. 112438-39, December 12, 1995).

Forum Shopping; Effects; Lack of Certification (2006)

Honey filed with the Regional Trial Court, Taal, Batangas a complaint for specific performance against Bernie. For lack of certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how will you resolve the motion? (5%)

SUGGESTED ANSWER:

If I were the judge, the motion should be denied after hearing because, as expressly provided in the Rules, failure to comply with the requirement of forum shopping is not curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case, without prejudice, unless otherwise provided *(Sec. 5, Rule 7, 1997 Rules of Civil Procedure).* However, the trial court in the exercise of its sound discretion, may choose to be liberal and consider the amendment as substantial compliance

(Great Southern Maritime Services Corp. v. Acuna, G.R. No. 140189, February 28,2005; Chan v. RTC of Zamboanga del Norte, G.R. No. 149253, April 15, 2004; Uy v. Land Bank, G.R. 136100, July 24, 2000).

Gen. Principles; Questions of Law vs. Questions of Fact (2004)

Distinguish Questions of law from Questions of fact.

SUGGESTED ANSWER:

A QUESTION OF LAW is when the doubt or difference arises as to what the law is on a certain set of facts, while a QUESTION OF FACT is when the doubt or difference arises as to the truth or falsehood of alleged facts. **(Ramos v. Pepsi-Cola Bottling Co., 19 SCRA 289, [19670]).**

Judgment; Annulment of Judgment; Grounds (1998)

What are the grounds for the annulment of a judgment of the RTC (RTC)? [2%]

SUGGESTED ANSWER:

The grounds for annulment of judgment of the RTC are Extrinsic Fraud and Lack of Jurisdiction. *(Sec, 2, Rule 47, 1997 Rules of Civil Procedure.)*

Judgment; Enforcement; 5-year period (1997)

A, a resident of Dagupan City, secured a favorable judgment in an ejectment case against X, a resident of Quezon City, from the MTCof Manila. The judgment, entered on 15 June 1991, had not as yet been executed. a) In July 1996, A decided to enforce the judgment

of the MTCof Manila. What is the procedure to be followed by A in enforcing the judgment? b) With what court should A institute the proceedings?

SUGGESTED ANSWER:

(a) A can enforce the judgment by another action reviving the Judgment because it can no longer be enforced by motion as the five-year period within which a judgment may be enforced by motion has already expired. *(Sec. 6 of former and new Rule 39).*

(b) A may institute the proceedings in the RTC in accordance with the rules of venue because the enforcement of the Judgment is a personal action incapable of pecuniary estimation.

ALTERNATIVE ANSWER:

(b) A may institute the proceeding in a MTCwhich has jurisdiction over the area where the real property involved is situated. *(Sec. 1 of Rule 4).*

Judgment; Enforcement; Foreign Judgment (2005)

Under Article 1144 of the New Civil Code, an action upon a judgment must be brought within 10 years from the time the right of action accrues. Is this provision applicable to an action filed in the Philippines to enforce a foreign judgment? Explain. (10%)

ALTERNATIVE ANSWER:

Article 1144 of the Civil Code which requires that an action upon a judgment (though without distinction) must be brought within 10 years from the time the right of action accrues, does not apply to an action filed in the Philippines to enforce a foreign judgment. While we can say that where the law does not distinguish, we should not distinguish, still the law does not evidently contemplate the inclusion of

foreign judgments. A local judgment may be enforced by motion within five years and by action within the next five years. *(Rule 39)* That is not the case with respect to foreign judgments which cannot be enforced by mere motion.

ALTERNATIVE ANSWER:

Article 1144 of the Civil Code requires that an action upon a judgment (though without distinction) must be brought within 10 years from the time the right of action accrues. There seems no cogent reason to exclude foreign judgments from the operation of this rule, subject to the requirements of Rule 39, Sec. 48 of the Rules of Court which establishes certain requisites for proving the foreign judgment. Pursuant to these provisions, an action for the enforcement of the foreign judgment may be brought at any time within 10 years from the time the right of action accrues.

Judgment; Execution pending Appeal (2002)

The trial court rendered judgment ordering the defendant to pay the plaintiff moral and exemplary damages. The judgment was served on the plaintiff on October 1, 2001 and on the defendant on October 5, 2001. On October 8, 2001, the defendant filed a notice of appeal from the judgment, but the following day, October 9, 2001, the plaintiff moved for the execution of the judgment pending appeal. The trial court granted the motion upon the posting by the plaintiff of a bond to indemnify the defendant for damages it may suffer as a result of the execution. The court gave as a special reason for its order the imminent insolvency of the defendant. Is the order of execution pending appeal correct? Why? (5%)

SUGGESTED ANSWER:

No, because awards for moral and exemplary damages cannot be the subject of execution pending appeal. The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Liabilities for moral and exemplary damages, as well as the exact amounts remain uncertain and indefinite pending resolution by the Court of Appeals or Supreme Court. **[RCPI v. Lantin,**

134 SCRA 395 (1985); International School, Inc. v. Court of Appeals, 309 SCRA 474 (1999)].

ALTERNATIVE ANSWER:

Yes, because only moral and exemplary damages are awarded in the judgment and they are not dependent on other types of damages.

Moreover, the motion for execution was filed while the court had jurisdiction over the case and was in possession of the original record.

It is based on good reason which is the imminent insolvency of the defendant. (Rule 39, sec. 2)

Judgment; Interlocutory Order; Partial Summary Judgments (2004) After defendant has served and filed his answer to plaintiffs complaint for damages before the proper RTC, plaintiff served and filed a motion (with supporting affidavits) for a summary judgment in his favor upon all of his claims. Defendant served and filed his opposition (with supporting affidavits) to the motion. After due hearing, the court issued an order

> (1) stating that the court has found no genuine issue as to any material fact and thus concluded that plaintiff is entitled to judgment in his favor as a matter of law except as to the amount of damages recoverable, and (2) accordingly ordering that plaintiff shall have judgment summarily against defendant for such amount as may be found due plaintiff for damages, to be ascertained by trial on October 7, 2004, at 8:30 o'clock in the morning. May defendant properly take an appeal from said order? Or, may defendant properly challenge said order thru a special civil action for certiorari? Reason. (5%)

SUGGESTED ANSWER:

No, plaintiff may not properly take an appeal from said order because it is an interlocutory order, not a final and appealable order *(Sec. 4 of Rule 35).* It does not dispose of the action or proceeding (*Sec. 1 of Rule 39*).

PARTIAL SUMMARY JUDGMENTS are interlocutory. There is still something to be done, which is the trial for the adjudication of damages

(Province of Pangasinan v. Court of Appeals, 220 SCRA 726 [1993J; Guevarra v. Court of Appeals, 209 Phil. 241 [1983]), but the defendant may properly challenge said order thru a special civil action for certiorari. *(Sec. 1 [c] and last par. of Rule 41)*

Judgment; Judgment on the Pleadings (1999)

a) What are the grounds for judgment on the pleadings? (2%)

b) A's Answer admits the material allegations of B's Complaint. May the court *motu proprio* render judgment on the pleadings? Explain. (2%)

c) A brought an action against her husband B for annulment of their marriage on the ground of psychological incapacity, B filed his Answer to the Complaint admitting all the allegations therein contained. May A move for judgment on the pleadings? Explain. (2%)

SUGGESTED ANSWER:

a) The grounds for judgment on the pleadings are where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. *(Sec. 1, Rule 34).*

b) No, a motion must be filed by the adverse party. *(Sec. 1, Rule 34)* The court cannot *motu proprio* render judgment on the pleadings.

c) No, because even if B's answer to A's complaint for annulment of their marriage admits all the allegations therein contained, the material facts

alleged in the complaint must always be proved. *(Sec. 1 of Rule 34.)*

ANOTHER ANSWER:

c. No. The court shall order the prosecutor to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. *(Sec. 3[E], Rule 9)* Evidence must have to be presented in accordance with the requirements set down by the Supreme Court in

Republic vs. Court of Appeals and Molina (268 SCRA 198.)

Judgment; Judgment on the Pleadings (2005)

In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex "A" thereof. In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof. Is it proper for the court to render judgment without trial? Explain. (4%)

SUGGESTED ANSWER:

Defendant cannot deny the sale of the property for lack of knowledge or information sufficient to form a belief as to the truth thereof. The answer amounts to an admission. The defendant must aver or state positively how it is that he is ignorant of the facts alleged. **(Phil, Advertising Counselors, Inc. v. Revilla,**

G.R. No. L-31869, August 8, 1973; Sec. 10, Rule 8)

Moreover, the genuineness and due execution of the deed of sale can only be denied by the defendant under oath and failure to do so is also an admission of the deed. *(Sec. 8, Rule 8)* Hence, a judgment on the pleadings can be rendered by the court without need of a trial.

Judgment; Mandamus vs. Quo Warranto (2001)

Petitioner Fabian was appointed Election Registrar of the Municipality of Sevilla supposedly to replace the respondent Election Registrar Pablo who was transferred to another municipality without his consent and who refused to accept his aforesaid transfer, much less to vacate his position in Bogo town as election registrar, as in fact he continued to occupy his aforesaid position and exercise his functions thereto. Petitioner Fabian then filed a petition for mandamus against Pablo but the trial court dismissed Fabian's petition contending that quo warranto is the proper remedy. Is the court correct in its ruling? Why? (5%)

SUGGESTED ANSWER:

Yes, the court is correct in its ruling. Mandamus will not lie. This remedy applies only where petitioner's right is founded clearly in law, not when it is doubtful. Pablo was transferred without his consent which is tantamount to removal without cause, contrary to the fundamental guarantee on non-removal except for cause. Considering that Pedro continued to occupy the disputed position and exercise his functions therein, the proper remedy is quo warranto, not mandamus. **{Garces v. Court of Appeals, 259 SCRA 99 (1996)]**

ALTERNATIVE ANSWER:

Yes, the court is correct in its ruling. Mandamus lies when the respondent unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. *(Sec. 2, Rule 65).* In this case, Pablo has not unlawfully excluded Fabian from the Office of Election Registrar. The remedy of Fabian is to file an action of quo warranto in his name against Pablo for usurping the office. *(Sec. 5, Rule 66)*

Judgment; Soundness; Attachment (2002)

The plaintiff obtained a writ of preliminary attachment upon a bond of P1 million. The writ was levied on the defendant's property, but it was discharged upon the posting by the defendant of a counterbond in the same amount of P1 million. After trial, the court rendered judgment finding that the plaintiff had no cause of action against the defendant and that he had sued out the writ of attachment maliciously. Accordingly, the court dismissed the complaint and ordered the plaintiff and its surety to pay jointly to the defendant P1.5 million as actual damages, P0.5 million as moral damages and P0.5 million as exemplary damages. Evaluate the soundness of the judgment from the point of view of procedure. (5%)

SUGGESTED ANSWER:

The judgment against the surety is not sound if due notice was not given to him of the applicant for damages. *(Rule 57, sec. 20)* Moreover, the judgment against the surety cannot exceed the amount of its counterbond of P1 million.

Judgments; Enforcement; Examination of Defendant (2002)

The plaintiff, a Manila resident, sued the defendant, a resident of Malolos Bulacan, in the RTC-Manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at his Bulacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the summons, together with a copy of the complaint, on the defendant's 18year-old daughter, who was a college student. For the defendant's failure to answer the complaint within the reglementary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayed for in the complaint.

A. After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%)

SUGGESTED ANSWER:

Jurisdiction; Habeas Corpus; Custody of Minors (2005)

While Marietta was in her place of work in Makati City, her estranged husband Carlo barged into her house in Paranaque City, abducted their six-year old son, Percival, and brought the child to his hometown in Baguio City. Despite Marietta's pleas, Carlo refused to return their child. Marietta, through counsel, filed a petition for habeas corpus against Carlo in the Court of Appeals in Manila to compel him to produce their son, before the court and for her to regain custody. She alleged in the petition that despite her efforts, she could no longer locate her son.

In his comment, Carlo alleged that the petition was erroneously filed in the Court of Appeals as the same should have been filed in the Family Court in Baguio City which, under Republic Act No. 8369, has exclusive jurisdiction, over the petition. Marietta replied that under Rule 102 of the Rules of Court, as amended, the petition may be filed in the Court of Appeals and if granted, the writ of habeas corpus shall be enforceable anywhere in the Philippines. Whose contention is correct? Explain. (5%)

SUGGESTED ANSWER:

Marietta's contention is correct. The Court of Appeals has concurrent jurisdiction with the family courts and the Supreme Court in petitions for habeas corpus where the custody of minors is at issue, notwithstanding the provision in the Family Courts AH. *(R.A. No. 8369)* that family courts have exclusive jurisdiction in such cases. **(Thornton v. Thornton, G.R. No. 154598, August, 2004)**

Jurisdiction; Lack of Jurisdiction; Proper Action of the Court (2004)

Plaintiff filed a complaint for a sum of money against defendant with the MeTC-Makati, the total amount of the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, being P1,000,000. In due time, defendant filed a motion to dismiss the complaint on the ground of the MeTC's lack of jurisdiction over the subject matter. After due hearing, the MeTC (1) ruled that the court indeed lacked jurisdiction over the subject matter of the complaint; and (2) ordered that the case therefore should be forwarded to the proper RTC immediately. Was the court's ruling concerning jurisdiction correct? Was the court's order to forward the case proper? Explain briefly. (5%)

SUGGESTED ANSWER:

Yes. The MeTC did not have jurisdiction over the case because the total amount of the demand exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, was P1M. Its jurisdictional amount at this time should not exceed P400.000.00 *(Sec. 33 of B.P. Big. 129, as amended by R.A. No. 7691).*

The court's order to forward the case to the RTC is not proper. It should merely dismiss the complaint. Under Sec. 3 of Rule 16, the court may dismiss the action or claim, deny the motion or order the amendment of the pleading but not to forward the case to another court.

Parties; Death of a Party; Effect (1998)

A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. In the course of the trial, B died. However, X failed to notify the court of B's death. The court proceeded to hear the case and rendered judgment against B. After the Judgment became final, a writ of execution was issued against C, who being B's sole heir, acquired the property. If you were counsel of C, what course of action would you take? [3%]

SUGGESTED ANSWER:

As counsel of C, I would move to set aside the writ of execution and the judgment for lack of jurisdiction and lack of due process in the same court because the judgment is void. If X had notified the court of B's death, the court would have ordered the substitution of the deceased by C, the sole heir of B. *(Sec. 16 of Rule 3)* The court acquired no jurisdiction over C upon whom the trial and the judgment are not binding.

(Ferreira us. Ibarra Vda. de Gonzales, 104 Phil. 143; Vda. de la Cruz vs. Court of Appeals, 88 SCRA 695; Lawas us. Court of Appeals, 146 SCRA 173.) I could also file an action to annul the judgment for lack of jurisdiction because C, as the successor of B, was deprived of due process and should have been heard before judgment. *(Rule 47)*

ALTERNATIVE ANSWER:

While there are decisions of the Supreme Court which hold that if the lawyer failed to notify the court of his client's death, the court may proceed even without substitution of heirs and the judgment is valid and binding on the heirs of the deceased **(Florendo vs. Coloma, 129 SCRA 30.),** as counsel of C, I will assail the judgment and execution for lack of due process.

Parties; Death of a Party; Effect (1999)

What is the effect of the death of a party upon a pending action? (2%)

SUGGESTED ANSWER:

1. When the claim in a pending action is purely personal, the death of either of the parties extinguishes the claim and the action is dismissed.

1 When the claim is not purely personal and is not thereby extinguished, the party should be substituted by his heirs or his executor or administrator. *(Sec. 16, Rule 3)*

2 If the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner provided in the rules for prosecuting claims against the estate of a deceased person. *(Sec. 20,*

Rule 3)

Parties; Death of a Party; Effect (1999)

When A (buyer) failed to pay the remaining balance of the contract price after it became due and demandable, B (seller) sued him for collection before the RTC. After both parties submitted their respective evidence, A perished in a plane accident. Consequently, his heirs brought an action for the settlement of his estate and moved for the dismissal of the collection suit.

1 Will you grant the motion? Explain. (2%)

2 Will your answer be the same if A died while the case is already on appeal to the Court of Appeals? Explain. (2%)

3 In the same case, what is the effect if B died before the RTC has rendered judgment? (2%)

SUGGESTED ANSWER:

1 No, because the action will not be dismissed but shall instead be allowed to continue until entry of final judgment. (Id.)

2 No. If A died while the case was already on appeal in the Court of Appeals, the case will continue because there is no entry yet of final judgment. (Id.)

3 The effect is the same. The action will not be dismissed but will be allowed to continue until entry of final judgment. (Id.)

Parties; Third Party Claim (2000)

JK's real property is being attached by the sheriff in a civil action for damages against LM. JK claims that he is not a party to the case; that his property is not involved in said case; and that he is the sole registered owner of said property. Under the Rules of Court, what must JK do to prevent the Sheriff from attaching his property? (5%)

SUGGESTED ANSER:

If the real property has been attached, the remedy is to file a third-party claim. The third-party claimant should make an affidavit of his title to the property attached, stating the grounds of his title thereto, and serve such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party. *(Sec. 14, Rule 57)* The third-party claimant may also intervene or file a separate action to vindicate his claim to the property involved and secure the necessary reliefs, such as preliminary injunction, which will not be considered as interference with a court of coordinate jurisdiction.

(Ong v. Tating, 149 SCRA 265, [1987])

Parties; Third-Party Claim (2005)

A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B's name. C filed a third-party claim over said properties claiming that B had already transferred the same to him. A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that B had transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-party claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment. Is the ruling of the court correct? Explain. (4%)

SUGGESTED ANSWER:

NO. C has not been properly impleaded as a party defendant. He cannot be held liable for the judgment against A without a trial. In fact, since no bond was filed by B, the sheriff is liable to C for damages. C can file a separate action to enforce his third-party claim. It is in that suit that B can raise the ground of fraud against C. However, the execution may proceed where there is a finding that the claim is fraudulent.

(Tanongan v. Samson, G.R. No. 140889, May 9, 2002)

Petition for Certiorari (2000)

AB mortgaged his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from date of receipt of the Order. AB received the Order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CD but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in the same court praying that CD be directed to receive the amount tendered by him on the ground that the Order does not comply with the provisions of Section 2, Rule 68 of the Rules of Court which give AB 120 days from entry of judgment, and

not from date of receipt of the Order. The court denied his motion on the ground that the Order had already become final and can no longer be amended to conform with Section 2, Rule 68. Aggrieved, AB files a petition for certiorari against the Court and CD. Will the petition for certiorari prosper? Explain. (5%)

SUGGESTED ANSWER:

Yes. The court erred in issuing an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from receipt of the Order. The court should have rendered a judgment which is appealable. Since no appeal was taken, the judgment became final on August 25, 1999, which is the date of entry of judgment. *(Sec 2, Rule 36)* Hence, AB had up to December 24, 1999 within which to pay the amount due. *(Sec. 2, Rule 68)* The court gravely abused its discretion amounting to lack or excess of jurisdiction in denying AB's motion praying that CD be directed to receive the amount tendered.

Petition for Relief & Action for Annulment (2002)

May an order denying the probate of a will still be overturned after the period to appeal therefrom has lapsed? Why? (3%)

SUGGESTED ANSWER:

Yes, an order denying the probate of a will may be overturned after the period to appeal therefrom has lapsed. A PETITION FOR RELIEF may be filed on the grounds of fraud, accident, mistake or excusable negligence within a period of sixty (60) days after the petitioner learns of the judgment or final order and not more than six (6) months after such judgment or final order was entered **[Rule 38, secs. 1 & 3; Soriano v. Asi, 100 Phil. 785 (1957)].**

An ACTION FOR ANNULMENT may also be filed on the ground of extrinsic fraud within four (4) years from its discovery, and if based on lack of jurisdiction, before it is barred by laches or estoppel. *(Rule 47, secs. 2 & 3)*

Petition for Relief; Injunction (2002)

A default judgment was rendered by the RTC ordering D to pay P a sum of money. The judgment became final, but D filed a petition for relief and obtained a writ of preliminary injunction staying the enforcement of the judgment. After hearing, the RTC dismissed D's petition, whereupon P immediately moved for the execution of the judgment in his favor. Should P's motion be granted? Why? (3%)

SUGGESTED ANSWER:

P's immediate motion for execution of the judgment in his favor should be granted because the dismissal of D's petition for relief also dissolves the writ of preliminary injunction staying the enforcement of the judgment, even if the dismissal is not yet final. **[Golez v. Leonidas, 107 SCRA 187 (1981)].**

Pleadings; Amendment of Complaint; By Leave of Court (2003)

After an answer has been filed, can the plaintiff amend his complaint, with leave of court, by changing entirely the nature of the action? 4%

SUGGESTED ANSWER:

Yes, the present rules allow amendments substantially altering the nature of the cause of action. *(Sec. 3, Rule 10, 1977 Rules of Civil Procedure;* **Heirs of Marcelino Pagobo v. Court of Appeals, 280 SCRA 870 [1997]).**

This should only be true, however, when the substantial change or alteration in the cause of action or defense shall serve the higher interests of substantial justice and prevent delay and equally promote the laudable objective of the rules which is to secure a just, speedy and inexpensive disposition of every action and proceeding. (Valenzuela v. Court of Appeals, 363 SCRA 779 [2001]).

Pleadings; Amendment of Complaint; By Leave of Court; Prescriptive Period (2000)

X, an illegitimate child of Y, celebrated her 18th birthday on May 2, 1996. A month before her birthday, Y died. The legitimate family of Y refused to recognize X as an illegitimate child of Y. After countless efforts to convince them, X filed on April 25, 2000 an action for recognition against Z, wife of Y. After Z filed her answer on August 14, 2000, X filed a motion for leave to file an amended complaint and a motion to admit the said amended complaint impleading the three (3) legitimate children of Y. The trial court admitted the amended complaint on August 22, 2000. What is the effect of the admission of the amended complaint? Has the action of X prescribed? Explain. (5%)

SUGGESTED ANSWER:

No. The action filed on April 25, 2000 is still within the four-year prescriptive period which started to run on May 2, 1996. The amended complaint impleading the three legitimate children, though admitted on August 22, 2000 beyond the four-year prescriptive period, retroacts to the date of filing of the original complaint. Amendments impleading new defendants retroact to the date of the filing of the complaint because they do not constitute a new cause of action.

(Verzosa v. Court of Appeals, 299 SCRA 100 [1998]).
(Note: The four-year period is based on Article 285 of the Civil Code)

ALTERNATIVE ANSWER:

Under the 1997 Rules of Civil Procedure, if an additional defendant is impleaded in a later pleading, the action is commenced with regard to him on the date of the filing of such later pleading, irrespective of whether the motion for its admission, if necessary, is denied by the court. *(Sec. 5 of Rule 1).*

Consequently, the action of X has prescribed with respect to the three (3) legitimate children of Y who are indispensable parties.

ANOTHER ALTERNATIVE ANSWER:

Under Article 175 of the Family Code, the action must be brought within the lifetime of X if the action is based on a record of birth or an admission of filiation in a public document or a private handwritten instrument signed by Y. In such case, the action of X has not prescribed.

However, if the action is based on the open and continuous possession of the status of an illegitimate child, the action should have been brought during the lifetime of Y. In such case, the action of X has prescribed.

Pleadings; Amendment of Complaint; Matter of Right (2005)

On May 12, 2005, the plaintiff filed a complaint in the RTC of Quezon City for the collection of P250,000.00. The defendant filed a motion to dismiss the complaint on the ground that the court had no jurisdiction over the action since the claimed amount of P250,000.00 is within the exclusive jurisdiction of the Metropolitan Trial Court, of Quezon City. Before the court could resolve the motion, the plaintiff, without leave of court, amended his complaint to allege a new cause of action consisting in the inclusion of an additional amount of P200,000.00, thereby increasing his total claim to P450,000.000. The plaintiff thereafter filed his opposition to the motion to dismiss, claiming that the RTC had jurisdiction, over his action. Rule on the motion of the defendant with reasons. (4%)

SUGGESTED ANSWER:

The motion to dismiss should be denied. Basic is the rule that a motion to dismiss is not a responsive pleading. **Under the Rules, a pleader may amend his pleading as a matter of right before the other party has served his responsive pleading**. *(Sec. 2, Rule 10, Rules of Court)* The court, in allowing the amendment, would not be acting without jurisdiction because allowing an amendment as a matter of right does not require the exercise of discretion. The court therefore would not be "acting" and thus, could not have acted without jurisdiction. It would have been different had the amendments been made after a responsive pleading had been served. The court then would have been exercising its discretion in allowing or disallowing the amendment. It cannot do so however, because it would be then acting on an amendment of a complaint over which it has no jurisdiction. **(Soledad v. Mamangun, G.R. No. L-17983, May 30, 1963; Gumabay v. Baralin, G.R. No. L-30683, May 31, 1977; Prudence Realty v. CA, G.R. No. 110274, March 21, 1994)**

ALTERNATIVE ANSWER:

The motion to dismiss should be granted. Jurisdiction must be conferred by the contents of the original complaint. Amendments are not proper and should be denied where the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction on the court.

(Rosario v. Carandang, G.R. No. L-7076, April 28, 1955)

While a plaintiff is entitled to amend the complaint before a responsive pleading is served *(Sec. 2, Rule 10, 1997 Rules of Civil Procedure***; Remington Industrial Sales Corporation v. Court of Appeals, G.R. No. 133657, May 29, 2002***),* still, a complaint cannot be amended to confer jurisdiction on a court where there was none to begin with.

Pleadings; Amendment of Complaint; To Conform w/ Evidence (2004)

During trial, plaintiff was able to present, without objection on the part of defendant in an ejectment case, evidence showing that plaintiff served on defendant a written demand to vacate the subject property before the commencement of the suit, a matter not alleged or otherwise set forth in the pleadings on file. May the corresponding pleading still be amended to conform to the evidence? Explain. (5%)

SUGGESTED ANSWER:

Yes. The corresponding pleading may still be amended to conform to the evidence, because the written demand to vacate, made prior to the commencement of the ejectment suit, was presented by the plaintiff in evidence without objection on the part of the defendant. Even if the demand to vacate was jurisdictional, still, the amendment proposed was to conform to the evidence that was already in the record and not to confer jurisdiction on the court, which is not allowed. Failure to amend, however, does not affect the result of the trial on these issues. (Sec. 5 of Rule 10).

ALTERNATIVE ANSWER: It depends. In forcible entry, the motion may be allowed at the discretion of the court, the demand having been presented at the trial without objection on the part of the defendant. In unlawful detainer, however, the demand to vacate is jurisdictional and since the court did not acquire jurisdiction from the very beginning, the motion to conform to the evidence cannot be entertained. The amendment cannot be allowed because it will in effect confer jurisdiction when there is otherwise no jurisdiction.

Pleadings; Answer; Defense; Specific Denial (2004)

In his complaint for foreclosure of mortgage to which was duly attached a copy of the mortgage deed, plaintiff PP alleged inter alia as follows: (1) that defendant DD duly executed the mortgage deed,

copy of which is Annex "A" of the complaint and made an integral part thereof; and (2) that to prosecute his complaint, plaintiff contracted a lawyer, CC, for a fee of P50.000. In his answer, defendant alleged, inter alia, that he had no knowledge of the mortgage deed, and he also denied any liability for plaintiffs contracting with a lawyer for a fee.

Does defendant's answer as to plaintiff's allegation no. 1 as well as no. 2 sufficiently raise an issue of fact? Reason briefly. (5%)

SUGGESTED ANSWER:

As to plaintiffs allegation no. 1, defendant does not sufficiently raise an issue of fact, because he cannot allege lack of knowledge of the mortgage deed since he should have personal knowledge as to whether he signed it or not and because he did not deny under oath the genuineness and due execution of the mortgage deed, which is an actionable document. As to plaintiff's allegation no. 2, defendant did not properly deny liability as to plaintiffs contracting with a lawyer for a fee. He did not even deny for lack of knowledge. *(Sec. 10 of Rule 8).*

Pleadings; Certification Against Forum Shopping (2000)

As counsel for A, B, C and D, Atty. XY prepared a complaint for recovery of possession of a parcel of land against Z. Before filling the complaint, XY discovered that his clients were not available to sign the certification of non-forum shopping. To avoid further delays in the filing of the complaint, XY signed the certification and immediately filed the complaint in court. Is XY justified in signing the certification? Why? (5%)

SUGGESTED ANSWER:

NO, counsel cannot sign the anti-forum shopping certification because it must be executed by the "plaintiff or principal party" himself **(Sec. 5, Rule 7; Excorpizo v. University of Baguio, 306 SCRA 497, [1999])**, since the rule requires personal knowledge by the party executing the certification, UNLESS counsel gives a good reason why he is not able to secure his clients' signatures and shows that his clients will be deprived of substantial justice **(Ortiz v. Court of Appeals, 299 SCRA 708, [1998])** or unless he is authorized to sign it by his clients through a special power of attorney.

Pleadings; Counterclaim against the Counsel of the Plaintiff (2004)

PX filed a suit for damages against DY. In his answer, DY incorporated a counterclaim for damages against PX and AC, counsel for plaintiff in said suit, alleging in said counterclaim, inter alia, that AC, as such counsel, maliciously induced PX to bring the suit against DY despite AC's knowledge of its utter lack of factual and legal basis. In due time, AC filed a motion to dismiss the counterclaim as against him on the ground that he is not a proper party to the case, he being merely plaintiffs counsel. Is the counterclaim of DY compulsory or not? Should AC's motion to dismiss the counterclaim be granted or not? Reason. (5%)

SUGGESTED ANSWER:

Yes. The counterclaim of DY is compulsory because it is one which arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.*(Sec. 7 of Rule 6).*

The motion to dismiss of plaintiffs counsel should not be granted because bringing in plaintiffs counsel as a defendant in the counterclaim is authorized by the Rules. Where it is required for the grant of complete relief in the determination of the counterclaim, the court shall order the defendant's counsel to be brought in since jurisdiction over him can be obtained. **(Sec. 12 of Rule 6; Aurelio v. Court of Appeals, 196 SCRA 674 [1994]).** Here, the counterclaim was against both the plaintiff and his lawyer who allegedly maliciously induced the plaintiff to file the suit.

ALTERNATIVE ANSWER:

The counterclaim should be dismissed because it is not a compulsory counterclaim. When a lawyer files a case for a client, he should not be sued on a counterclaim in the very same case he has filed as counsel. It should be filed in a separate and distinct civil action. **(Chavez v. Sandiganbayan, 193 SCRA 282**

[1991])

Pleadings; Motions; Bill of Particulars (2003)

1 When can a bill of particulars be availed of?

2 What is the effect of non-compliance with the order of a bill of particulars? 4%

SUGGESTED ANSWER:

1 Before responding to a pleading, a party may move for a bill or particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. *(Sec. 1 of Rule 12)*

2 If the order is not complied with, the court may order the striking out of the pleading or the portions thereof to which the order was directed or make such other order as it deems just. *(Sec. 4 of Rule 12)*

Pleadings; Reply; Effect of Non-Filing of Reply (2000)

X files a complaint in the RTC for the recovery of a sum of money with damages against Y. Y files his answer denying liability under the contract of sale and praying for the dismissal of the complaint on the ground of lack of cause of action because the contract of sale was superseded by a contract of lease,

executed and signed by X and Y two weeks after the contract of sale was executed. The contract of lease was attached to the answer. X does not file a reply. What is the effect of the non-filing of a reply? Explain. (3%)

SUGGESTED ANSWER:

A reply is generally optional. If it is not filed, the new matters alleged in the answer are deemed controverted. *(Sec. 10 of Rule 6).* However, since the contract of lease attached to the answer is the basis of the defense, by not filing a reply denying under oath the genuineness and due execution of said contract, the plaintiff is deemed to have admitted the genuineness and due execution thereof. **(Secs. 7 and 8 Rule 8; Toribio v. Bidin, 132 SCRA 162 [1985]).**

Prejudicial Question; Ejectment vs. Specific Performance (2000)

BB files a complaint for ejectment in the MTCon the ground of non-payment of rentals against JJ. After two days, JJ files in the RTC a complaint against BB for specific performance to enforce the option to purchase the parcel of land subject of the ejectment case. What is the effect of JJ's action on BB's complaint? Explain. (5%)

SUGGESTED ANSWER:

There is no effect. The ejectment case involves possession de facto only. The action to enforce the option to purchase will not suspend the action of ejectment for non-payment of rentals. **(Willman Auto Supply Corp. v. Court of Appeals, 208 SCRA 108 [1992]).**

Pre-Trial; Requirements (2001)

Lilio filed a complaint in the Municipal Trial Court of Lanuza for the recovery of a sum against Juan. The latter filed his answer to the complaint serving a copy thereof on Lilio. After the filing of the answer of Juan, whose duty is it to have the case set for pre-trial? Why? (5%)

SUGGESTED ANSWER:

After the filing of the answer of Juan, the PLAINTIFF has the duty to promptly move ex parte that the case be set for pre-trial. *(Sec. 1, Rule18).* The reason is that it is the plaintiff who knows when the last pleading has been filed and it is the plaintiff who has the duty to prosecute.

ALTERNATIVE ANSWER:

In the event the plaintiff files a reply, his duty to move that the case be set for pre-trial arises after the reply has been served and filed.

Provisional Remedies (1999)

What are the provisional remedies under the rules? (2%)

SUGGESTED ANSWER:

The provisional remedies under the rules are preliminary attachment, preliminary injunction, receivership, replevin, and support pendente lite. *(Rules 57 to 61, Rules of Court).*

Provisional Remedies; Attachment (1999)

In a case, the property of an incompetent under guardianship was in custodia legis. Can it be attached? Explain. (2%)

SUGGESTED ANSWER:

Although the property of an incompetent under guardianship is in custodia legis, it may be attached as in fact it is provided that in such case, a copy of the writ of attachment shall be filed with the proper court and notice of the attachment served upon the custodian of such property. *(Sec. 7, last par., Rule 57)*

Provisional Remedies; Attachment (1999)

May damages be claimed by a party prejudiced by a wrongful attachment even if the judgment is adverse to him? Explain. (2%)

SUGGESTED ANSWER:

Yes, damages may be claimed by a party prejudiced by a wrongful attachment even if the judgment is adverse to him. This is authorized by the Rules. A claim, for damages may be made on account of improper, irregular or excessive attachment, which shall be heard with notice to the adverse party and his surety or sureties. **(Sec. 20, Rule 57; Javellana v. D. O. Plaza Enterprises Inc., 32 SCRA 281.)**

Provisional Remedies; Attachment (2001)

May a writ of preliminary attachment be issued ex-parte? Briefly state the reason(s) for your answer. (3%)

SUGGESTED ANSWER:

Yes, an order of attachment may be issued ex-parte or upon motion with notice and hearing. *(Sec. 2 of Rule 57)* The reason why the order may be issued ex parte is: that requiring notice to the adverse party and a hearing would defeat the purpose of the provisional remedy and enable the adverse party to abscond or dispose of his property before a writ of attachment issues. **(Mindanao Savings and Loan Association, Inc. v. Court of Appeals, 172 SCRA 480).**

Provisional Remedies; Attachment (2005)

Katy filed an action against Tyrone for collection of the sum of P1 Million in the RTC, with an ex-parte application for a writ of preliminary attachment. Upon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment. Apprehensive that Tyrone might withdraw his savings deposit with the bank, the sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone's house and served him the summons, with copies of the complaint containing the application for writ of preliminary attachment, Katy's affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of the summons, Tyrone filed a motion to dismiss and to

dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) the writ was improperly implemented; and (iii) said writ was improvidently issued because the obligation in question was already fully paid. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The motion to dismiss and to dissolve the writ of preliminary attachment should be denied.

(1) The fact that the writ of attachment was served ahead of the summons did not affect the jurisdiction of the court over his person. It makes the writ, unenforceable. *(Sec. 5, Rule. 57)* However, all that is needed to be done is to re-serve the writ. **(Onate v. Abrogar, GM. No. 197393, February 23, 1985)**

(2) The writ was improperly implemented. Serving a notice of garnishment, particularly before summons is served, is not proper. It should be a copy of the writ of attachment that should be served on the defendant, and a notice that the bank deposits are attached pursuant to the writ. *(Sec. 7[d], Rule 57)*

(3) The writ was improvidently issued if indeed it can be shown that the obligation was already fully paid. The writ is only ancillary to the main action. *(Sec. 13, Rule 57)* The alleged payment of the account cannot, serve as a ground for resolving the improvident issuance of the writ, because this matter delves into the merits of the case, and requires full-blown trial. Payment, however, serves as a ground for a motion to dismiss.

Provisional Remedies; Attachment vs. Garnishment (1999)

Distinguish attachment from garnishment. (2%)

SUGGESTED ANSWER:

Attachment and garnishment are distinguished from each other as follows: ATTACHMENT is a provisional remedy that effects a levy on property of a party as security for the satisfaction of any judgment that may be recovered, while GARNISHMENT is a levy on debts due the judgment obligor or defendant and other credits, including bank deposits, royalties and other personal property not capable of manual delivery under a writ of execution or a writ of attachment.

Provisional Remedies; Injunction (2001)

May a writ of preliminary injunction be issued ex-parte? Why? (3%)

SUGGESTED ANSWER:

No, a writ of preliminary injunction may not be issued ex parte. As provided in the Rules, no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. *(Sec. 5 of Rule 58)* The reason is that a preliminary injunction may cause grave and irreparable injury to the party enjoined.

Provisional Remedies; Injunction (2003)

Can a suit for injunction be aptly filed with the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front? (4%)

SUGGESTED ANSWER:

No, a suit for injunction cannot aptly be filed with the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front, which is a purely political question. *(Madarang v. Santamaria, 37 Phil. 304 [1917]).* The President of the Philippines is immune from suit.

Provisional Remedies; Injunctions; Ancillary Remedy vs. Main Action (2006)

Distinguish between injunction as an ancillary remedy and injunction as a main action. (2.5%)

SUGGESTED ANSWER:

Injunction as an ancillary remedy refers to the preliminary injunction which requires the existence of a pending principal case; while injunction as a main action refers to the principal case itself that prays for the remedy of permanently restraining the adverse party from doing or not doing the act complained of.

Provisional Remedies; Injunctions; Issuance w/out Bond (2006)

May a Regional Trial Court issue injunction without bond? (2%)

SUGGESTED ANSWER:

Yes, if the injunction that is issued is a final injunction. Generally, however, preliminary injunction cannot issue without bond unless exempted by the trial court *(Sec. 4[b] of Rule 58).*

Provisional Remedies; Injunctions; Requisites (2006)

What are the requisites for the issuance of (a) a writ of preliminary injunction; and (b) a final writ of injunction? Requisites for the issuance of a:

SUGGESTED ANSWER:

a. Writ of Preliminary Injunction *(Sec. 4, Rule 58 1997 Rules of Civil Procedure)* are —

(1) A verified complaint showing;
(2) The existence of a right in esse;
(3) Violation or threat of violation of such right;
(4) Damages or injuries sustained or that will be sustained by reason of such violation;
(5) Notice to all parties of raffle and of hearing;
(6) Hearing on the application;
(7) Filing of an appropriate bond and service thereof.

SUGGESTED ANSWER:

b. While a final writ of injunction may be rendered by judgment after trial, showing applicant to be entitled to the writ *(Sec. 9, Rule 58 1997 Rules of Civil Procedure).*

Provisional Remedies; Receivership (2001)

Joaquin filed a complaint against Jose for the foreclosure of a mortgage of a furniture factory with a large number of machinery and equipment. During the pendency of the foreclosure suit, Joaquin learned from reliable sources that Jose was quietly and gradually disposing of some of his machinery and equipment to a businessman friend who was also engaged in furniture manufacturing such that from confirmed reports Joaquin gathered, the machinery and equipment left with Jose were no longer sufficient to answer for the latter's mortgage indebtedness. In the meantime judgment was rendered by the court in favor of Joaquin but the same is not yet final.

Knowing what Jose has been doing. If you were Joaquin's lawyer, what action would you take to preserve whatever remaining machinery and equipment are left with Jose? Why? (5%)

SUGGESTED ANSWER:

To preserve whatever remaining machinery and equipment are left with Jose, Joaquin's lawyer should file a verified application for the appointment by the court of one or more receivers. The Rules provide that receivership is proper in an action by the mortgagee for the foreclosure of a mortgage when it appears that the property is in danger of being wasted or dissipated or materially injured and that its value is probably insufficient to discharge the mortgage debt.
(Sec. 1 of Rule 59).

Provisional Remedies; Replevin (1999)

What is Replevin? (2%)

SUGGESTED ANSWER:

Replevin or delivery of personal property consists in the delivery, by order of the court, of personal property by the defendant to the plaintiff, upon the filing of a bond. **(Calo v. Roldan, 76 Phil. 445 [1946])**

Provisional Remedies; Support Pendente Lite (1999)

Before the RTC, A was charged with rape of his 16year old daughter. During the pendency of the case, the daughter gave birth to a child allegedly as a consequence of the rape. Thereafter, she asked the accused to support the child, and when he refused, the former filed a petition for support pendente lite. The accused, however, insists that he cannot be made to give such support arguing that there is as yet no finding as to his guilt. Would you agree with the trial court if it denied the application for support pendente lite? Explain. (2%)

SUGGESTED ANSWER:

No. The provisional remedy of support pendente lite may be granted by the RTC in the criminal action for rape. In criminal actions where the civil liability includes support for the offspring as a consequence of the crime and the civil aspect thereof has not been waived, reserved or instituted prior to its filing, the accused may be ordered to provide support pendente lite to the child born to the offended party allegedly because of the crime. *(Sec. 6 of Rule 61.)*

Provisional Remedies; Support Pendente Lite (2001)

Modesto was accused of seduction by Virginia, a poor, unemployed young girl, who has a child by Modesto. Virginia was in dire need of pecuniary assistance to keep her child, not to say of herself, alive. The criminal case is still pending in court and although the civil liability aspect of the crime has not been waived or reserved for a separate civil action, the trial for the case was foreseen to take two long years because of the heavily clogged court calendar before the judgment may be rendered. If you were the lawyer of Virginia, what action should you take to help Virginia in the meantime especially with the problem of feeding the child? (5%)

SUGGESTED ANSWER:

To help Virginia in the meantime, her lawyer should apply for *Support Pendente Lite* as provided in the Rules. In criminal actions where the civil liability included support for the offspring as a consequence of the crime and the civil aspect thereof has not been waived or reserved for a separate civil action, the accused may be ordered to provide support pendent elite to the child born to the offended party. *(Sec. 6 of Rule 61)*

Provisional Remedies; TRO (2001)

An application for a writ of preliminary injunction with a prayer for a temporary restraining order is included in a complaint and filed in a multi-sala RTC consisting of Branches 1,2,3 and 4. Being urgent in nature, the Executive Judge, who was sitting in Branch 1, upon the filing of the aforesaid application immediately raffled the case in the presence of the judges of Branches 2,3 and 4. The case was raffled to Branch 4 and judge thereof immediately issued a temporary restraining order. Is the temporary restraining order valid? Why? (5%)

SUGGESTED ANSWER:

No. It is only the Executive Judge who can issue immediately a temporary restraining order effective only for seventy-two (72) hours from issuance. No other Judge has the right or power to issue a temporary restraining order ex parte. The Judge to whom the case is assigned will then conduct a summary hearing to determine whether the temporary restraining order shall be extended, but in no case beyond 20 days, including the original 72hour period. *(Sec. 5 of Rule 58)*

ALTERNATIVE ANSWER:

The temporary restraining order is not valid because the question does not state that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury. *(Sec. 5 of Rule 58)*

Provisional Remedies; TRO (2006)

Define a temporary restraining order (TRO). (2%)

SUGGESTED ANSWER:

A temporary restraining order is an order issued to restrain the opposite party and to maintain the status quo until a hearing for determining the propriety of granting a preliminary injunction *(Sec. 4[c] and [d], Rule 58,1997 Rules of Civil Procedure).*

Provisional Remedies; TRO vs. Status Quo Order (2006)

Differentiate a TRO from a status quo order. (2%)

SUGGESTED ANSWER:

A status quo order (SQO) is more in the nature of a cease and desist order, since it does not direct the doing or undoing of acts, as in the case of prohibitory or mandatory injunctive relief. A TRO is only good for 20 days if issued by the RTC; 60 days if issued by the CA; until further notice if issued by the SC. The SQO is without any prescriptive period and may be issued without a bond. A TRO dies a natural death after the allowable period; the SQO does not. A TRO is provisional. SQO lasts until revoked. A TRO is not extendible, but the SQO may be subject to agreement of the parties.

Provisional Remedies; TRO; CA Justice Dept. (2006)

May a justice of a Division of the Court of Appeals issue a TRO? (2%)

SUGGESTED ANSWER:

Yes, a justice of a division of the Court of Appeals may issue a TRO, as authorized under Rule 58 and by Section 5, Rule IV of the IRCA which additionally requires that the action shall be submitted on the next working day to the absent members of the division for the ratification, modification or recall **(Heirs of the late Justice Jose B.L. Reyes v. Court of Appeals, G.R. Nos. 135425-26, November 14, 2000).**

Provisional Remedies; TRO; Duration (2006)

What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? (2%)

SUGGESTED ANSWER:

In cases of extreme urgency, when the applicant will suffer grave injustice and irreparable injury, the duration of a TRO issued ex parte by an Executive Judge of a Regional Trial Court is 72 hours *(2nd par. of Sec. 5, Rule 58 1997 Rules of Civil Procedure)*. In the exercise of his regular functions over cases assigned to his sala, an Executive Judge may issue a TRO for a duration not exceeding a total of 20 days.

Reglementary Period; Supplemental Pleadings (2000)

The RTC rendered judgment against ST, copy of which was received by his counsel on February 28, 2000. On March 10, 2000, ST, through counsel, filed a motion for reconsideration of the decision with notice to the Clerk of Court submitting the motion for the consideration of the court. On March 15, 2000, realizing that the Motion lacked a notice of hearing, ST's counsel filed a supplemental pleading. Was the motion for Reconsideration filed within the reglementary period? Explain. (5%)

SUGGESTED ANSWER:

Yes, because the last day of filing a motion for reconsideration was March 15 if February had 28 days or March 16 if February had 29 days. Although the original motion for reconsideration was defective because it lacked a notice of hearing, the defect was cured on time by its filing on March 15 of a supplemental pleading, provided that motion was set for hearing and served on the adverse party at least three (3) days before the date of hearing.*(Sec. 4, Rule 15)*.

ALTERNATIVE ANSWER:

Since the supplemental pleading was not set for hearing, it did not cure the defect of the original motion.

Remedies; Appeal to SC; Appeals to CA (2002)

a) What are the modes of appeal to the Supreme Court? (2%)

b) Comment on a proposal to amend Rule 122, Section 2(b), in relation to Section 3(c), of the Revised Rules of Criminal Procedure to provide for appeal to the Court of Appeals from the decisions of the RTC in criminal cases, where the penalty imposed is reclusion perpetua or life imprisonment, subject to the right of the accused to appeal to the Supreme Court. (3%)

SUGGESTED ANSWER:

A. The modes of appeal to the Supreme Court are: (a) APPEAL BY CERTIORARI on pure questions of law under Rule 45 through a petition for review on certiorari; and (b) ORDINARY APPEAL in criminal cases through a notice of appeal from convictions imposing reclusion perpetua or life imprisonment or where a lesser penalty is involved but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense. *(Rule 122, sec. 3)* Convictions imposing the death penalty are elevated through automatic review.

B. There is no constitutional objection to providing in the Rules of Court for an appeal to the Court of Appeals from the decisions of the RTC in criminal cases where the penalty imposed is reclusion perpetua or life imprisonment subject to the right of the accused to appeal to the Supreme Court, because it does not deprive the Supreme Court of the right to exercise ultimate review of the judgments in such cases.

Remedies; Appeal; RTC to CA (1999)

When is an appeal from the RTC to the Court of Appeals deemed perfected? (2%}

XXX received a copy of the RTC decision on June 9, 1999; YYY received it on the next day, June 10, 1999. XXX filed a Notice of Appeal on June 15, 1999. The parties entered into a compromise on

June 16, 1999. On June 13, 1999, YYY, who did not appeal, filed with the RTC a motion for approval of the Compromise Agreement. XXX changed his mind and opposed the motion on the ground that the RTC has no more jurisdiction. Rule on the motion assuming that the records have not yet been forwarded to the CA. (2%)

SUGGESTED ANSWER:

An appeal from the RTC to the Court of Appeals is deemed perfected as to the appellant upon the filing of a notice of appeal in the RTC in due time or within the reglementary period of appeal. An appeal by record on appeal is deemed perfected as to the appellant with respect to the subject matter thereof upon the approval of the record on appeal filed in due time. *(Sec. 9, Rule 41)*

The contention of XXX that the RTC has no more jurisdiction over the case is not correct because at the time that the motion to approve the compromise had been filed, the period of appeal of YYY had not yet expired. Besides, even if that period had already expired, the records of the case had not yet been forwarded to the Court of Appeals. The rules provide that in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

(Sec. 9, third par., Rule 41)

The rules also provide that prior to the transmittal of the record, the court may, among others, approve compromises. *(Sec. 9, fifth par., Rule 41)* (Note: June 13, the date of the filing of the motion for approval of the Compromise Agreement, appears to be a clerical error)

Remedies; Appeal; Rule 45 vs. Rule 65 (1999)

a) Distinguish a petition for certiorari as a mode of appeal from a special civil action for certiorari. (2%)

b) May a party resort to certiorari when appeal is still available? Explain. (2%)

SUGGESTED ANSWER:

a. A PETITION FOR REVIEW ON CERTIORARI as a mode of appeal may be distinguished from a special civil action for certiorari in that the petition for certiorari as a mode of appeal is governed by Rule 45 and is filed from a judgment or final order of the RTC, the Sandiganbayan or the Court of Appeals, within fifteen (15) days from notice of the judgment appealed from or of the denial of the motion for new trial or reconsideration filed in due time on questions of law only *(Secs. 1 and 2)*; SPECIAL CIVIL ACTION FOR CERTIORARI is governed by Rule 65 and is filed to annul or modify judgments, orders or resolutions rendered or issued without or in excess of jurisdiction or with grave abuse of discretion tantamount to lack or excess of jurisdiction, when there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law, to be filed within sixty (60) days from notice of the judgment, order or resolution subject of the petition. (Secs. 1 and 4.)

ADDITIONAL ANSWER:

1) In appeal by certiorari under Rule 45, the petitioner and respondent are the original parties to the action and the lower court is not impleaded. In certiorari, under Rule 65, the lower court is impleaded.

2) In appeal by certiorari, the filing of a motion for reconsideration is not required, while in the special civil action of certiorari, such a motion is generally required.

SUGGESTED ANSWER:

b. NO, because as a general rule, certiorari is proper if there is no appeal *(Sec. 1 of Rule 65.)* However, if appeal is not a speedy and adequate remedy, certiorari may be resorted to. **(Echaus v. Court of Appeals, 199 SCRA 381.)** Certiorari is sanctioned, even if appeal is available, on the basis of a patent, capricious and whimsical exercise of discretion by a trial judge as when an appeal will not promptly relieve petitioner from the injurious effects of the disputed order

(Vasquez vs. Robilla-Alenio, 271 SCRA 67)

Remedies; Void Decision; Proper Remedy (2004)

After plaintiff in an ordinary civil action before the RTC; ZZ has completed presentation of his evidence, defendant without prior leave of court moved for dismissal of plaintiffs complaint for insufficiency of plaintiff's evidence. After due hearing of the motion and the opposition thereto, the court issued an order, reading as follows: The Court hereby grants defendant's motion to dismiss and accordingly orders the dismissal of plaintiff's complaint, with the costs taxed against him. It is so ordered." Is the order of dismissal valid? May plaintiff properly take an appeal? Reason. (5%)

SUGGESTED ANSWER:

The order or decision is void because it does not state findings of fact and of law, as required by Sec. 14, Article VIII of the Constitution and Sec. 1, Rule 36. Being void, appeal is not available. The proper remedy is certiorari under Rule 65.

ANOTHER ANSWER:

Either certiorari or ordinary appeal may be resorted to on the ground that the judgment is void. Appeal, in fact, may be the more expedient remedy.

ALTERNATIVE ANSWER:

Yes. The order of dismissal for insufficiency of the plaintiffs evidence is valid upon defendant's motion to dismiss even without prior leave of court. *(Sec. 1 of Rule 33)*. Yes, plaintiff may properly take an appeal because the dismissal of the complaint is a final and appealable order. However, if the order of dismissal is reversed

on appeal, the plaintiff is deemed to have waived his right to present evidence. (Id.)

Special Civil Action; Ejectment (1997)

On 10 January 1990, X leased the warehouse of A under a lease contract with a period of five years. On 08 June 1996, A filed an unlawful detainer case against X without a prior demand for X to vacate the premises.

(a) Can X contest his ejectment on the ground that there was no prior demand for him to vacate the premises?

(b) In case the Municipal Trial Court renders judgment in favor of A, is the judgment immediately executory?

SUGGESTED ANSWER:

(a) Yes. X can contest his ejectment on the ground that there was no prior demand to vacate the premises. (**Sec. 2 of Rule 70; Casilan vs.Tomassi l0 SCRA 261; Iesaca vs.Cuevas. 125 SCRA 335**).

(b) Yes, because the judgment of the Municipal Trial Court against the defendant X is immediately executory upon motion unless an appeal has been perfected, a supersedeas bond has been filed and the periodic deposits of current rentals. If any, as determined by the judgment will be made with the appellate court. *(Sec. 8 of former Rule 70; Sec. 19 of new Rule 70).*

ALTERNATIVE ANSWER:

(a) Yes, X can contest his ejectment on the ground that since he continued enjoying the thing leased for fifteen days after the termination of the lease on January 9, 1995 with the acquiescence of the lessor without a notice to the contrary, there was an IMPLIED NEW LEASE. *(Art. 1670. Civil Code).*

Special Civil Action; Ejectment (1998)

In an action for unlawful detainer in the Municipal Trial Court (MTC), defendant X raised in his Answer the defense that plaintiff A is not the real owner of the house subject of the suit. X filed a counterclaim against A for the collection of a debt of P80,000 plus accrued interest of P15,000 and attorney's fees of P20,000.

1. Is X's defense tenable? [3%]

2. Does the MTC have jurisdiction over the counterclaim? [2%] **SUGGESTED ANSWER:**:

1. No. X's defense is not tenable if the action is filed by a lessor against a lessee. However, if the right of possession of the plaintiff depends on his ownership then the defense is tenable.

2. The counterclaim is within the jurisdiction of the Municipal Trial Court which does not exceed P100,000, because the principal demand is P80,000, exclusive of interest and attorney's fees. *(Sec. 33, B.P. Big. 129, as amended.)* However, inasmuch as all actions of forcible entry and unlawful detainer are subject to summary procedure and since the counterclaim is only permissive, it cannot be entertained by the Municipal Court. *(Revised Rule on Summary Procedure.)*

Special Civil Action; Foreclosure (2003)

A borrowed from the Development Bank of the Philippines (DBP) the amount of P1 million secured by the titled land of his friend B who, however, did not assume personal liability for the loan. A defaulted and DBP filed an action for judicial foreclosure of the real estate mortgage impleading A and B as defendants. In due course, the court rendered judgment directing A to pay the outstanding account of P1.5 million (principal plus interest) to the bank. No appeal was taken by A on the Decision within the reglementary period. A failed to pay the judgment debt within the period specified in the decision. Consequently, the court ordered the foreclosure sale of the mortgaged land. In that foreclosure sale, the land was sold to the DBP for P1.2 million. The sale was subsequently confirmed by the court, and the confirmation of the sale was registered with the Registry of Deeds on 05 January 2002.

On 10 January 2003, the bank filed an ex-parte motion with the court for the issuance of a writ of possession to oust B from the land. It also filed a deficiency claim for P800,000.00 against A and B. the deficiency claim was opposed by A and B.

(a) Resolve the motion for the issuance of a writ of possession.

(b) Resolve the deficiency claim of the bank. 6%

SUGGESTED ANSWER:

(a) In judicial foreclosure by banks such as DBP, the mortgagor or debtor whose real property has been sold on foreclosure has the right to redeem the property sold within one year after the sale (or registration of the sale). However, the purchaser at the auction sale has the right to obtain a writ of possession after the finality of the order confirming the sale. *(Sec. 3 of Rule 68; Sec. 47 of RA 8791. The General Banking Law of 2000).* The motion for writ of possession, however, cannot be filed ex parte. There must be a notice of hearing.

(b) The deficiency claim of the bank may be enforced against the mortgage debtor A, but it cannot be enforced against B, the owner of the mortgaged property, who did not assume personal liability for the loan.

Special Civil Action; Petition for Certiorari (2002)

The defendant was declared in default in the RTC for his failure to file an answer to a complaint for a sum of money. On the basis of the plaintiff's ex parte presentation of evidence, judgment by default was rendered against the defendant. The default judgment was served on the defendant on October 1, 2001. On October 10, 2001, he files a verified motion to lift the

order of default and to set aside the judgment. In his motion, the defendant alleged that, immediately upon receipt of the summon, he saw the plaintiff and confronted him with his receipt evidencing his payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. The trial court denied the defendant's motion because it was not accompanied by an affidavit of merit. The defendant filed a special civil action for certiorari under Rule 65 challenging the denial order.

A. Is certiorari under Rule 65 the proper remedy? Why? (2%)

B. Did the trial court abuse its discretion or act without or in excess of its jurisdiction in denying the defendant's motion to lift the order of default judgment? Why? (3%)

SUGGESTED ANSWER:

A. The petition for certiorari under Rule 65 filed by the defendant is the proper remedy because appeal is not a plain, speedy and adequate remedy in the ordinary course of law. In appeal, the defendant in default can only question the decision in the light of the evidence of the plaintiff. The defendant cannot invoke the receipt to prove payment of his obligation to the plaintiff.

ALTERNATIVE ANSWER:

A. Under ordinary circumstances, the proper remedy of a party wrongly declared in default is either to appeal from the judgment by default or file a petition for relief from judgment. **[Jao, Inc. v. Court of Appeals, 251 SCRA 391 (1995)**

SUGGESTED ANSWER:

B. Yes, the trial court gravely abused its discretion or acted without or in excess of jurisdiction in denying the defendant's motion because it was not accompanied by a separate affidavit of merit. In his verified motion to lift the order of default and to set aside the judgment, the defendant alleged that immediately upon the receipt of the summons, he saw the plaintiff and confronted him with his receipt showing payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. Since the good defense of the defendant was already incorporated in the verified motion, there was not need for a separate affidavit of merit. **[Capuz**

v. Court of Appeals, 233 SCRA 471 (1994); Mago v. Court of Appeals, 303 SCRA 600 (1999)].

Special Civil Action; Quo Warranto (2001)

A group of businessmen formed an association in Cebu City calling itself Cars C. to distribute / sell cars in said city. It did not incorporate itself under the law nor did it have any government permit or license to conduct its business as such. The Solicitor General filed before a RTC in Manila a verified petition for quo warranto questioning and seeking to stop the operations of Cars Co. The latter filed a motion to dismiss the petition on the ground of improper venue claiming that its main office and operations are in Cebu City and not in Manila. Is the contention of Cars Co. correct? Why? (5%)

SUGGESTED ANSWER:

No. As expressly provided in the Rules, when the Solicitor General commences the action for quo warranto, it may be brought in a RTC in the City of Manila, as in this case, in the Court of Appeals or in the Supreme Court. *(Sec. 7 of Rule 66)*

Special Civil Actions; Mandamus (2006)

In 1996, Congress passed Republic Act No. 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for mandamus compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

Is a petition for mandamus an appropriate remedy to enforce contractual obligations? (5%)

SUGGESTED ANSWER:

No, the petition for mandamus is not an appropriate remedy because it is not available to enforce a contractual obligation. Mandamus is directed only to ministerial acts, directing or commanding a person to do a legal duty **(COMELEC v. Quijano-Padilla, G.R. No. 151992, September 18, 2002; Sec. 3, Rule 65).**

Summons

Seven years after the entry of judgment, the plaintiff filed an action for its revival. Can the defendant successfully oppose the revival of the judgment by contending that it is null and void because the RTC-Manila did not acquire jurisdiction over his person? Why? (3%)

SUGGESTED ANSWER:

The RTC-Manila should deny the motion because it is in violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and

income, outside the province or city in which such obligor resides. In this case the judgment obligor resides in Bulacan. *(Rule 39, sec.36).*

Summons (1999)

a) What is the effect of absence of summons on the judgment rendered in the case? (2%)

b) When additional defendant is impleaded in the action, is it necessary that summons be served upon him? Explain. (2%)

c) Is summons required to be served upon a defendant who was substituted for the deceased? Explain. (2%)

d) A sued XX Corporation (XXC), a corporation organized under Philippine laws, for specific performance when the latter failed to deliver T-shirts to the former as stipulated in their contract of sale. Summons was served on the corporation's cashier and director. Would you consider service of summons on either officer sufficient? Explain. (2%)

SUGGESTED ANSWER:

a) The effect of the absence of summons on a judgment would make the judgment null and void because the court would not have jurisdiction over the person of the defendant, but if the defendant voluntarily appeared before the court, his appearance is equivalent to the service of summons. *(Sec. 20, Rule 14)*

b) Yes. Summons must be served on an additional defendant impleaded in the action so that the court can acquire jurisdiction over him, unless he makes a voluntary appearance.

c) No. A defendant who was substituted for the deceased need not be served with summons because it is the court which orders him as the legal representative of the deceased to appear and substitute the deceased. *(Sec. 16 of Rule 3.)*

d) Summons on a domestic corporation through its cashier and director are not valid under the present rules. *(Sec. 11, Rule 14)* They have been removed from those who can be served with summons for a domestic corporation. Cashier was substituted by treasurer. (Id.)

Summons; Substituted Service (2004)

Summons was issued by the MM RTC and actually received on time by defendant from his wife at their residence. The sheriff earlier that day had delivered the summons to her at said residence because defendant was not home at the time. The sheriffs return or proof of service filed with the court in sum states that the summons, with attached copy of the complaint, was served on defendant at his residence thru his wife, a person of suitable age and discretion then residing therein. Defendant moved to dismiss on the ground that the court had no jurisdiction over his person as there was no valid service of summons on him because the sheriffs return or proof of service does not show that the sheriff first made a genuine attempt to serve the summons on defendant personally before serving it thru his wife. Is the motion to dismiss meritorious? What is the purpose of summons and by whom may it be served? Explain. (5%)

SUGGESTED ANSWER:

The motion to dismiss is not meritorious because the defendant actually received the summons on time from his wife. Service on the wife was sufficient. **(Boticano v. Chu, 148 SCRA 541 [1987]).** It is the duty of the court to look into the sufficiency of the service. The sheriffs negligence in not stating in his return that he first made a genuine effort to serve the summons on the defendant, should not prejudice the plaintiff. **(Mapa v. Court of Appeals, 214 SCRA 417/1992).** The purpose of the summons is to inform the defendant of the complaint filed against him and to enable the court to acquire jurisdiction over his person. It maybe served by the sheriff or his deputy or any person authorized by the court.

ALTERNATIVE ANSWER:

Yes. The motion to dismiss is meritorious. Substituted service cannot be effected unless the sheriffs return shows that he made a genuine attempt to effect personal service on the husband.

Summons; Validity of Service; Effects (2006)

Tina Guerrero filed with filed the Regional Trial Court of Binan, Laguna, a complaint for sum of money amounting to P1 Million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution of the promissory note and contending that he has fully paid his loan with interest at 12% per annum.

1. Was the summons validly served on Carlos? (2.5%)

ALTERNATIVE ANSWER:

The summons was not validly served on Carlos because it was served on his secretary and the requirements for substituted service have not been followed, such as a showing that efforts have been exerted to serve the same on Carlos and such attempt has failed despite due diligence **(Manotoc v. CA, G.R.**

No. 130974, August 16, 2006; AngPing v. CA, G.R. No. 126947, July 15, 1999).

ALTERNATIVE ANSWER:

Service of Summons on Carlos was validly served upon him if the Return will show that it was done through Substituted Service because the defendant can not be served personally within a reasonable time despite diligent efforts made to serve the summons personally. Linda, the secretary of defendant Carlos, must likewise be shown to be a competent person in charge of defendant's office where summons was served *(Sec. 7, Rule 14).*

2. If you were the judge, will you grant Tina's motion to declare Carlos in default? (2.5%)

ALTERNATIVE ANSWER:

If I were the judge, I will not grant Tina's motion to declare Carlos in default because summons was not properly served and anyway, a verified answer to the complaint had already been filed. Moreover, it is better to decide a case on the merits rather than on technicality.

ALTERNATIVE ANSWER:

Yes. If it was shown that summons was validly served, and that the motion to declare Carlos in default was duly furnished on Carlos, and after conducting a hearing on the same motion.

Venue; Improper Venue; Compulsory Counterclaim (1998)

A, a resident of Lingayen, Pangasinan sued X, a resident of San Fernando La Union in the RTC (RTC) of Quezon City for the collection of a debt of P1 million. X did not file a motion to dismiss for improper venue but filed his answer raising therein improper venue as an affirmative defense. He also filed a counterclaim for P80,000 against A for attorney's fees and expenses for litigation. X moved for a preliminary hearing on said affirmative defense. For his part, A filed a motion to dismiss the counterclaim for lack of jurisdiction.

1 Rule on the affirmative defense of improper venue. [3%]

2 Rule on the motion to dismiss the counterclaim on the ground of lack of jurisdiction over the subject matter. [2%]

SUGGESTED ANSWER:

1. There is improper venue. The case for a sum of money, which was filed in Quezon City, is a personal action. It must be filed in the residence of either the plaintiff, which is in Pangasinan, or of the defendant, which is in San Fernando, La Union. *(Sec. 2 of Rule 4)* The fact that it was not raised in a motion to dismiss does not matter because the rule that if improper venue is not raised in a motion to dismiss it is deemed waived was removed from the 1997 Rules of Civil Procedure. The new Rules provide that if no motion to dismiss has been filed, any of the grounds for dismissal may be pleaded as an affirmative defense in the answer. *(Sec. 6 of Rule 16.)*

2. The motion to dismiss on the ground of lack of jurisdiction over the subject matter should be denied. The counterclaim for attorney's fees and expenses of litigation is a compulsory counterclaim because it necessarily arose out of and is connected with the complaint. In an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount. *(Sec. 7 of Rule 6)*

Venue; Personal Actions (1997)

X, a resident of Angeles City, borrowed P300,000.00 from A, a resident of Pasay City. In the loan agreement, the parties stipulated that "the parties agree to sue and be sued in the City of Manila." a) In case of non-payment of the loan, can A file his complaint to collect the loan from X in Angeles City?

b) Suppose the parties did not stipulate in the loan agreement as to the venue, where can A file his complaint against X?

c) Suppose the parties stipulated in their loan agreement that "venue for all suits arising from this contract shall be the courts in Quezon City," can A file his complaint against X in Pasay City?

SUGGESTED ANSWER:

(a) Yes, because the stipulation in the loan agreement that "the parties agree to sue and be sued in the City of Manila" does not make Manila the "exclusive venue thereof." *(Sec, 4 of Rule 4, as amended by Circular No. 13 95: Sec. 4 of new Rule 4)* Hence, A can file his complaint in Angeles City where he resides, *(Sec, 2 of Rule 4).*

(b) If the parties did not stipulate on the venue, A can file his complaint either in Angeles City where he resides or in Pasay City where X resides, (Id).

(c) Yes, because the wording of the stipulation does not make Quezon City the exclusive venue.

(Philbanking v. Tensuan. 230 SCRA 413; Unimasters Conglomeration, Inc. v. CA. CR-119657, Feb. 7, 1997)

ALTERNATIVE ANSWER:

(c) No. If the parties stipulated that the venue "shall be in the courts in Quezon City", A cannot file his complaint in Pasay City because the use of the word "shall" makes Quezon City the exclusive venue thereof. **(Hoechst Philippines vs. Torres, 83 SCRA 297).**

CRIMINAL PROCEDURE

Acquittal; Effect (2002)

Delia sued Victor for personal injuries which she allegedly sustained when she was struck by a car driven by Victor. May the court receive in evidence, over proper and timely objection by Delia, a certified true copy of a judgment of acquittal in a criminal prosecution charging Victor with hit-and-run driving in connection with Delia's injuries? Why? (3%)

SUGGESTED ANSWER:

If the judgment of acquittal in the criminal case finds that the act or omission from which the civil liability may arise does not exist, the court may receive it in evidence over the objection by Delia. *[Rule 111, sec. 2, last paragraph].*

ALTERNATIVE ANSWER:

If the judgment of acquittal is based on reasonable doubt, the court may receive it in evidence because in such case, the civil action for damages which may be instituted requires only a preponderance of the evidence. *(Art. 29, Civil Code).*

Actions; BP22; Civil Action deemed included (2001)

Saturnino filed a criminal action against Alex for the latter's bouncing check. On the date of the hearing after the arraignment, Saturnino manifested to the court that he is reserving his right to file a separate civil action. The court allowed Saturnino to file a civil action separately and proceeded to hear the criminal case. Alex filed a motion for reconsideration contending that the civil action is deemed included in the criminal case. The court reconsidered its order and ruled that Saturnino could not file a separate action. Is the court's order granting the motion for reconsideration correct? Why? (5%)

SUGGESTED ANSWER:

Yes, the court's order granting the motion for reconsideration is correct. The Rules provide that the criminal action for violation of B.P. Blg. 22 shall be deemed to include the corresponding civil action, and that no reservation to file such civil action separately shall be allowed. *[Sec. 1(b), Rule 111, Revised Rules of Criminal Procedure]*

Actions; BP22; Demurrer to Evidence (2003)

In an action for violation of Batas Pambansa Big. 22, the court granted the accused's demurrer to evidence which he filed without leave of court. Although he was acquitted of the crime charged, he, however, was required by the court to pay the private complainant the face value of the check. The accused filed a Motion of Reconsideration regarding the order to pay the face value of the check on the following grounds: a) the demurrer to evidence applied only too the criminal aspect of the case; and b) at the very least, he was entitled to adduce controverting evidence on the civil liability. Resolve the Motion for Reconsideration. (6%)

SUGGESTED ANSWER:

(a) The Motion for Reconsideration should be denied. The ground that the demurrer to evidence applied only to the criminal aspect of the case was not correct because the criminal action for violation of Batas Pambansa Blg. 22 included the corresponding civil action. *(Sec. 1(b) of Rule 111).*

(b) The accused was not entitled to adduce controverting evidence on the civil liability, because he filed his demurrer to evidence without leave of court. *(Sec. 23 of Rule 119).*

Actions; Commencement of an Action; Double Jeopardy (2004)

SPO1 CNC filed with the MTC in Quezon City (MeTC-QC) a sworn written statement duly subscribed by him, charging RGR (an actual resident of Cebu City) with the offense of slight physical injuries allegedly inflicted on SPS (an actual resident of Quezon City). The Judge of the branch to which the case was raffled thereupon issued an order declaring that the case shall be governed by the Rule on Summary Procedure in criminal cases. Soon thereafter, the Judge ordered the dismissal of the case for the reason that it was not commenced by information, as required by said Rule.

Sometime later, based on the same facts giving rise to the slight physical injuries case, the City Prosecutor filed with the same MeTC-QC an information for attempted homicide against the same RGR. In due time, before arraignment, RGR moved to quash the information on the ground of double jeopardy and after due hearing, the Judge granted his motion. Was the dismissal of the complaint for slight physical injuries proper? Was the grant of the motion to quash the attempted homicide information correct? Reason (5%)

SUGGESTED ANSWER:

Yes, the dismissal of the complaint for slight physical injuries is proper because in Metropolitan Manila and in chartered cities, the case has to be commenced only by information. *(Sec. 11, Revised Rule on Summary Procedure).*

No, the grant of the motion to quash the attempted homicide information on the ground of double jeopardy was not correct, because there was no valid prosecution for slight physical injuries.

Actions; Discretionary Power of Fiscal (1999)

A filed with the Office of the Fiscal a Complaint for estafa against B. After the preliminary investigation, the Fiscal dismissed the Complaint for lack of merit. May the Fiscal be compelled by mandamus to file the case in court? Explain. (2%)

SUGGESTED ANSWER:

No. The public prosecutor may not be compelled by mandamus to file the case in court because the determination of probable cause is within the discretion of the prosecutor. The remedy is an appeal to the Secretary of Justice. *(Sec. 4 Rule 112.)*

Actions; Injunction (1999)

Will injunction lie to restrain the commencement of a criminal action? Explain. (2%)

SUGGESTED ANSWER:

As a general rule, injunction will not lie to restrain a criminal prosecution except:

a) To afford adequate protection to the constitutional rights of the accused; b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; c) When double jeopardy is clearly apparent; d) Where the charges are manifestly false and motivated by the lust for vengeance; e) Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.

(See cases cited in Roberts, Jr., vs. Court of Appeals, 254 SCRA 307 [1996] and Brocka v. Enrile, 192 SCRA 183 [1990].)

Arrest; Warrantless Arrest; Preliminary Investigation (2004)

AX swindled RY in the amount of P10,000 sometime in mid-2003. On the strength of the sworn statement given by RY personally to SPO1 Juan Ramos sometime in mid-2004, and without securing a warrant, the police officer arrested AX. Forthwith the police officer filed with the City Prosecutor of Manila a complaint for estafa supported by RY"s sworn statement and other documentary evidence. After due inquest, the prosecutor filed the requisite information with the MM RTC. No preliminary investigation was conducted either before or after the filing of the information and the accused at no time asked for such an investigation. However, before arraignment, the accused moved to quash the information on the ground that the prosecutor suffered from a want of authority to file the information because of his failure to conduct a preliminary investigation before filing the information, as required by the Rules of Court. Is the warrantless arrest of AX valid? Is he entitled to a preliminary investigation before the filing of the information? Explain. (5%)

SUGGESTED ANSWER:

No. The warrantless arrest is not valid because the alleged offense has not just been committed. The crime was allegedly committed one year before the arrest. *(Sec. 5 (b) of Rule 113).*

Yes, he is entitled to a preliminary investigation because he was not lawfully arrested without a warrant *(See Sec. 7 of Rule 112).* He can move for a reinvestigation.

ALTERNATIVE ANSWER:

He is not entitled to a preliminary investigation because the penalty for estafa is the sum of P10,000 does not exceed 4 years and 2 months. Under Sec. 1, second par., Rule 112, a preliminary investigation is not required. *(Note: The penalty is not stated in the question.)*

Arrest; Warrantless Arrests & Searches (1997)

A was killed by B during a quarrel over a hostess in a nightclub. Two days after the incident, and upon complaint of the widow of A, the police arrested B without a warrant of arrest and searched his house without a search warrant. a) Can the gun used by B in shooting A, which was seized during the search of the house of B, be admitted in evidence? b) Is the arrest of B legal? c) Under the circumstances, can B be convicted of homicide?

SUGGESTED ANSWER:

(a) No. The gun seized during the search of the house of B without a search warrant is not admissible in evidence. *(Secs. 2 and 3[2], Art. III of Constitution).* Moreover, the search was not an incident to a lawful arrest of a person under Sec. 12 of Rule 126.

(b) No. A warrantless arrest requires that the crime has in fact just been committed and the police arresting has personal knowledge of facts that the person to be arrested has committed it. *(Sec. 5, Rule 113).* Here, the crime has not just been committed since a period of two days had already lapsed, and the police arresting has no such personal knowledge because he was not present when the incident happened. *(Go vs. Court of Appeals. 206 SCRA 138).*

(c) Yes. The gun is not indispensable in the conviction of A because the court may rely on testimonial or other evidence.

Arrest; Warrantless Arrests & Seizures (2003)

In a buy-bust operation, the police operatives arrested the accused and seized from him a sachet of shabu and an unlicensed firearm. The accused was charged in two Informations, one for violation of the "Dangerous Drug Act", as amended, and another for illegal possession of firearms.

The accused filed an action for recovery of the firearm in another court against the police officers with an application for the issuance of a writ of replevin. He alleged in his Complaint that he was a military informer who had been issued a written authority to carry said firearm. The police officers moved to dismiss the complaint on the ground that the subject firearm was in custodia legis. The court denied the motion and instead issued the writ of replevin.

(a) Was the seizure of the firearm valid?
(b) Was the denial of the motion to dismiss proper? 6%

SUGGESTED ANSWER:

(a) Yes, the seizure of the firearm was valid because it was seized in the course of a valid arrest in a buy-bust operation. *(Sec. 12 and 13 of Rule 126)* A search warrant was not necessary. **(People v. Salazar, 266 SCRA 607 [1997]).**

(b) The denial of the motion to dismiss was not proper. The court had no authority to issue the writ of replevin whether the firearm was in custodia legis

or not. The motion to recover the firearm should be filed in the court where the criminal action is pending.

Arrest; Warrantless Arrests; Objection (2000)

FG was arrested without a warrant by policemen while he was walking in a busy street. After preliminary investigation, he was charged with rape and the corresponding information was filed in the RTC. On arraignment, he pleaded not guilty. Trial on the merits ensued. The court rendered judgment convicting him. On appeal, FG claims that the judgment is void because he was illegally arrested. If you were the Solicitor General, counsel for the People of the Philippines, how would you refute said claim? (5%)

SUGGESTED ANSWER:

Any objection to the illegality of the arrest of the accused without a warrant is deemed waived when he pleaded not guilty at the arraignment without raising the question. T is too late to complain about a warrantless arrest after trial is commenced and completed and a judgment of conviction rendered against the accused. **(People v. Cabiles, 284 SCRA 199, [1999])**

Bail (2002)

D was charged with murder, a capital offense. After arraignment, he applied for bail. The trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine whether the evidence of D's guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)

SUGGESTED ANSWER:

No, the prosecution is only required to present as much evidence as is necessary to determine whether the evidence of D's guilt is strong for purposes of bail.*(Rule 114, sec. 8).*

Bail; Appeal (1998)

In an information charging them of Murder, policemen A, B and C were convicted of Homicide. A appealed from the decision but B and C did not. B started serving his sentence but C escaped and is at large. In the Court of Appeals, A applied for bail but was denied. Finally, the Court of Appeals rendered a decision acquitting A on the ground that the evidence pointed to the NPA as the killers of the victim.

1 Was the Court of Appeal's denial of A's application for bail proper? [2%]

2 Can B and C be benefited by the decision of the Court of Appeals? [3%]

SUGGESTED ANSWER:

1, Yes, the Court of Appeals properly denied A's application for bail. The court had the discretion to do so. Although A was convicted of homicide only, since he was charged with a capital offense, on appeal he could be convicted of the capital offense. **(Obosa vs. Court of Appeals, 266 SCRA 281.)**

ALTERNATIVE ANSWER:

Under Circular No. 2-92, A is entitled to bail because he was convicted of homicide and hence the evidence of guilt of murder is not strong.

SUGGESTED ANSWER:

2. B, who did not appeal, can be benefited by the decision of the Court of Appeals which is favorable and applicable to him. *(Sec. 11 [a]. Rule 122, Rules of Criminal Procedure.)* The benefit will also apply to C even if his appeal is dismissed because of his escape.

Bail; Application; Venue (2002)

If an information was filed in the RTC-Manila charging D with homicide and he was arrested in Quezon City, in what court or courts may he apply for bail? Explain. (3%)

SUGGESTED ANSWER:

D may apply for bail in the RTC-Manila where the information was filed or in the RTC-Quezon City where he was arrested, or if no judge, thereof is available, with any metropolitan trial judge, municipal trial judge or municipal circuit trial judge therein. *(Rule 114, sec. 17).*

Bail; Forms of Bail (1999)

In what forms may bail be given? (2%)

SUGGESTED ANSWER:

Bail may be given by a corporate surety, or through a property bond, cash deposit or recognizance.

Bail; Matter of Right (1999)

When the accused is entitled as a matter of right to bail, may the Court refuse to grant him bail on the ground that there exists a high degree of probability that he will abscond or escape? Explain. (2%)

SUGGESTED ANSWER:

If bail is a matter of right, it cannot be denied on the ground that there exists a high degree of probability that the accused will abscond or escape. What the court can do is to increase the amount of the bail. One of the guidelines that the judge may use in fixing a reasonable amount of bail is the probability of the accused appearing in trial.

Bail; Matter of Right vs. Matter of Discretion (1999)

When is bail a matter of right and when is it a matter of discretion? (2%)

SUGGESTED ANSWER:

When Bail is a matter of right:

All persons in custody shall (a) before or after conviction by the metropolitan and municipal trial courts, and (b) before conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or Rule 114. *(Sec. 4, Rule 114, Rules of Court, as amended by Circular No. 12-94.)*

When bail is a matter of discretion:

Upon conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment, on application of the accused. If the penalty of imprisonment exceeds six years but not more than 20 years, bail shall be denied upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

1 That the accused is a recidivist, quasi-re-cidivist or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
2 That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;
3 That the accused committed the offense while on probation, parole, or under conditional pardon;
4 That the circumstances of the accused or his case indicate the probability of flight if released on bail; or
5 That there is undue risk that during the pendency of the appeal, the accused may commit another crime. (Sec. 1, Id.)

Bail; Matter of Right vs. Matter of Discretion (2006)

When is bail a matter of right and when is it a matter of discretion? (5%)

SUGGESTED ANSWER:

Bail is a matter of right (a) before or after conviction by the inferior courts; (b) before conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment., when the evidence of guilt is not strong *(Sec. 4, Rule 114, 2000 Rules of Criminal Procedure).*

Bail is discretionary: Upon conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment *(Sec. 5, Rule 114, 2000 Rules of Criminal Procedure).*

Bail; Witness Posting Bail (1999)

May the Court require a witness to post bail? Explain your answer. (2%)

SUGGESTED ANSWER:

Yes. The court may require a witness to post bail if he is a material witness and bail is needed to secure his appearance. The rules provide that when the court is satisfied, upon proof or oath, that a material witness will not testify when required, it may, upon motion of either party, order the witness to post bail in such sum as may be deemed proper. Upon refusal to post bail, the court shall commit him to prison until he complies or is legally discharged after his testimony is taken. *(Sec. 6, Rule 119)*

Complaint vs. Information (1999)

Distinguish a Complaint from Information. (2%)

SUGGESTED ANSWER:

In criminal procedure, a complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other peace officer charged with the enforcement of the law violated. *(Sec. 3, Rule 110, 1985 Rules of Criminal Procedure);* while an information is an accusation in writing charging a person with an offense subscribed by the prosecutor and filed with the court. *(Sec. 4, Id.)*

Demurrer to Evidence; Contract of Carriage (2004)

AX, a Makati-bound paying passenger of PBU, a public utility bus, died instantly on board the bus on account of the fatal head wounds he sustained as a result of the strong impact of the collision between the bus and a dump truck that happened while the bus was still travelling on EDSA towards Makati. The foregoing facts, among others, were duly established on evidence-in-chief by the plaintiff TY, sole heir of AX, in TY's action against the subject common carrier for breach of contract of carriage. After TY had rested his case, the common carrier filed a demurrer to evidence, contending that plaintiff's evidence is insufficient because it did not show (1) that defendant was negligent and (2) that such negligence was the proximate cause of the collision. Should the court grant or deny defendant's demurrer to evidence? Reason briefly. (5%)

SUGGESTED ANSWER:

No. The court should not grant defendant's demurrer to evidence because the case is for breach of contract of carriage. Proof that the defendant was negligent and that such negligence was the proximate cause of the collision is not required. **(Articles 1170 and 2201,**

Civil Code; (Mendoza v. Phil. Airlines, Inc., 90 Phil. 836 [1952]; Batangas Transportation Co. v. Caguimbal, 22 SCRA171 U 968]; Abeto v. PAL, 115 SCRA 489 [1982]; Aboitiz v. Court of Appeals, 129 SCRA 95 [1984]).

Demurrer to Evidence; w/o Leave of Court (1998)

Facing a charge of Murder, X filed a petition for bail. The petition was opposed by the prosecution but after hearing the court granted bail to X. On the first scheduled hearing on the merits, the prosecution manifested that it was not adducing additional evidence and that it was resting its case. X filed a demurrer to evidence without leave of court but it was denied by the court.

1. Did the court have the discretion to deny the demurrer to evidence under the circumstances mentioned above? (2%)
2. If the answer to the preceding question is in the affirmative, can X adduce evidence in his defense after the denial of his demurrer to evidence? [1%]
3. Without further proceeding and on the sole basis of the evidence of the prosecution, can the court legally convict X for Murder? (2%)

SUGGESTED ANSWER:

1. Yes. The Court had the discretion to deny the demurrer to the evidence, because although the

evidence presented by the prosecution at the hearing for bail was not strong, without any evidence for the defense, it could be sufficient for conviction.

2. No. Because he filed the demurrer to the evidence without leave. *(Sec. 15, Rule 119, Rules of Criminal Procedure.)* However, the trial court should inquire as to why the accused filed the demurrer without leave and whether his lawyer knew that the effect of filing it without leave is to waive the presentation of the evidence for the accused. **(People vs. Fores, 269 SCRA 62.)**

3. Yes. Without any evidence from the accused, the prima facie evidence of the prosecution has been converted to proof beyond reasonable doubt.

ALTERNATIVE ANSWER:

If the evidence of guilt is not strong and beyond reasonable doubt then the court cannot legally convict X for murder.

Demurrer to Evidence; w/o Leave of Court (2001)

Carlos, the accused in a theft case, filed a demurrer to evidence without leave of court. The court denied the demurrer to evidence and Carlos moved to present his evidence. The court denied Carlos' motion to present evidence and instead judgment on the basis of the evidence for the prosecution. Was the court correct in preventing Carlos from presenting his evidence and rendering judgment on the basis of the evidence for the prosecution? Why? (5%)

SUGGESTED ANSWER:

Yes, because the demurrer to the evidence was filed without leave of court. The Rules provide that when the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. *(Sec. 23 of Rule 119, Revised Rules of Criminal Procedure)*

Demurrer to Evidence; w/o Leave of Court (2004)

The information for illegal possession of firearm filed against the accused specifically alleged that he had no license or permit to possess the caliber .45 pistol mentioned therein. In its evidence-in-chief, the prosecution established the fact that the subject firearm was lawfully seized by the police from the possession of the accused, that is, while the pistol was tucked at his waist in plain view, without the accused being able to present any license or permit to possess the firearm. The prosecution on such evidence rested its case and within a period of five days therefrom, the accused filed a demurrer to evidence, in sum contending that the prosecution evidence has not established the guilt of the accused beyond reasonable doubt and so prayed that he be acquitted of the offense charged. The trial court denied the demurrer to evidence and deemed the accused as having waived his right to present evidence and submitted the case for judgment on the basis of the prosecution evidence. In due time, the court rendered judgment finding the accused guilty of the offense charged beyond reasonable doubt and accordingly imposing on him the penalty prescribed therefor. Is the judgment of the trial court valid and proper? Reason. (5%)

SUGGESTED ANSWER:

Yes. The judgment of the trial court is valid. The accused did not ask for leave to file the demurrer to evidence. He is deemed to have waived his right to present evidence. **(Sec. 23 of Rule 119; People v. Flores, 269 SCRA 62 [1997]; Bernardo v. Court of Appeals, 278 SCRA 782 [1997].** However, the judgment is not proper or is erroneous because there was no showing from the proper office like the Firearms Explosive Unit of the Philippine National Police that the accused has a permit to own or possess the firearm, which is fatal to the conviction of the accused. **(Mallari v. Court of Appeals &People,265 SCRA 456[1996]).**

Dismissal; Failure to Prosecute (2003)

When a criminal case is dismissed on *nolle prosequi*, can it later be refilled? (4%)

SUGGESTED ANSWER:

As a general rule, when a criminal case is dismissed on *nolle prosequi* before the accused is placed on trial and before he is called on to plead, this is not equivalent to an acquittal and does not bar a subsequent prosecution for the same offense. **(Galvez v. Court of Appeals, 237 SCRA 685 [1994]).**

Dismissal; Provisional Dismissal (2003)

Before the arraignment for the crime of murder, the private complainant executed an Affidavit of Desistance stating that she was not sure if the accused was the man who killed her husband. The public prosecutor filed a Motion to Quash the Information on the ground that with private complainant's desistance, he did not have evidence sufficient to convict the accused. On 02 January 2001, the court without further proceedings granted the motion and provisionally dismissed the case. The accused gave his express consent to the provisional dismissal of the case. The offended party was notified of the dismissal but she refused to give her consent.

Subsequently, the private complainant urged the public prosecutor to refile the murder charge because the accused failed to pay the consideration which he had promised for the execution of the Affidavit of Desistance. The public prosecutor obliged and refiled the murder charge against the accused on 01 February 2003, the accused filed a Motion to Quash the Information on the ground that the provisional dismissal of the case had already become permanent. (6%)

a) Was the provisional dismissal of the case proper?
b) Resolve the Motion to Quash.

SUGGESTED ANSWER:

(a) The provisional dismissal of the case was proper because the accused gave his express consent thereto and the offended party was notified. It was not necessary for the offended party to give her consent thereto. *(Sec. 8 of Rule 117).*

(b) The motion to quash the information should be denied because, while the provisional dismissal had already become permanent, the prescriptive period for filing the murder charge had not prescribed. There was no double jeopardy because the first case was dismissed before the accused had pleaded to the charge. *(Sec. 7 of Rule 117).*

Double Jeopardy (2002)

D was charged with slight physical injuries in the MTC. He pleaded not guilty and went to trial. After the prosecution had presented its evidence, the trial court set the continuation of the hearing on another date. On the date scheduled for hearing, the prosecutor failed to appear, whereupon the court, on motion of D, dismissed the case. A few minutes later, the prosecutor arrived and opposed the dismissal of the case. The court reconsidered its order and directed D to present his evidence. Before the next date of trial came, however, D moved that the last order be set aside on the ground that the reinstatement of the case had placed him twice in jeopardy. Acceding to this motion, the court again dismissed the case. The prosecutor then filed an information in the RTC, charging D with direct assault based on the same facts alleged in the information for slight physical injuries but with the added allegation that D inflicted the injuries out of resentment for what the complainant had done in the performance of his duties as chairman of the board of election inspectors. D moved to quash the second information on the ground that its filing had placed him in double jeopardy. How should D's motion to quash be resolved? (4%)

SUGGESTED ANSWER:

D's motion to quash should be granted on the ground of double jeopardy because the first offense charged is necessarily included in the second offense charged. **[Draculan v. Donato, 140 SCRA 425 (1985)].**

ALTERNATIVE ANSWER:

D's motion to quash should be denied because the two dismissals of the case against him were on his motion (hence with his express consent) and his right to a speedy trial was not violated.

Double Jeopardy; Upgrading; Original Charges (2005)

For the multiple stab wounds sustained by the victim, Noel was charged with frustrated homicide in the RTC. Upon arraignment, he entered a plea of guilty to said crime. Neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds. Because of his guilty plea, Noel was convicted of frustrated homicide and meted the corresponding penalty. When the prosecution learned of the victim's death, it filed within fifteen (15) days therefrom a motion to amend the information to upgrade the charge from frustrated homicide to consummated homicide. Noel opposed the motion claiming that the admission of the amended information would place him in double jeopardy. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The amended information to consummated homicide from frustrated homicide does not place the accused in double jeopardy. As provided in the second paragraph of *Sec. 7, Rule 117,2000 Rules of Criminal Procedure*, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information when: (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge; or (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information. Here, when the plea to frustrated homicide was made, neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.

Extradition (2004)

RP and State XX have a subsisting Extradition Treaty. Pursuant thereto RP's Secretary of Justice (SOJ) filed a Petition for Extradition before the MM RTC alleging that Juan Kwan is the subject of an arrest warrant duly issued by the proper criminal court of State XX in connection with a criminal case for tax evasion and fraud before his return to RP as a balikbayan. Petitioner prays that Juan be extradited and delivered to the proper authorities of State XX for trial, and that to prevent Juan's flight in the interim, a warrant for his immediate arrest be issued. Before the RTC could act on the petition for extradition, Juan filed before it an urgent motion, in sum praying (1) that SoJ's application for an arrest warrant be set for hearing and (2) that Juan be allowed to post bail in the event the court would issue an arrest warrant. Should the court grant or deny Juan's prayers? Reason. (5%)

SUGGESTED ANSWER:

Under the Extradition Treaty and Law, the application of the Secretary of Justice for a warrant of arrest need not be set for hearing, and Juan cannot be allowed to post bail if the court would issue a warrant of arrest. The provisions in the Rules of Court on arrest and bail are not basically applicable.

(Government of the United States of America v. Puruganan, 389 SCRA 623 [2002])

Information (2001)

The prosecution filed an information against Jose for slight physical injuries alleging the acts constituting the offense but without anymore alleging that it was committed after Jose's unlawful entry in the complainant's abode. Was the information correctly prepared by the prosecution? Why? (5%)

SUGGESTED ANSWER:

No. The aggravating circumstance of unlawful entry in the complainant's abode has to be specified in the information; otherwise, it cannot be considered as aggravating. *(Sec. 8 of Rule 110, Revised Rules of Criminal Procedure)*

ALTERNATIVE ANSWER:

The information prepared by the prosecutor is not correct because the accused should have been charged with qualified trespass to dwelling.

Information; Amendment (2001)

Amando was charged with frustrated homicide. Before he entered his plea and upon the advice of his counsel, he manifested his willingness to admit having committed the offense of serious physical injuries. The prosecution then filed an amended information for serious physical injuries against Amando. What steps or action should the prosecution take so that the amended information against Amando which downgrades the nature of the offense could be validly made? Why? (5%)

SUGGESTED ANSWER:

In order that the amended information which downgrades the nature of the offense could be validly made, the prosecution should file a motion to ask for leave of court with notice to the offended party. *(Sec.14 of Rule 110, Revised Rules of Criminal Procedure).* The new rule is for the protection of the interest of the offended party and to prevent possible abuse by the prosecution.

Information; Amendment; Double Jeopardy; Bail (2002)

A. D and E were charged with homicide in one information. Before they could be arraigned, the prosecution moved to amend the information to exclude E therefrom. Can the court grant the motion to amend? Why? (2%)

B. On the facts above stated, suppose the prosecution, instead of filing a motion to amend, moved to withdraw the information altogether and its motion was granted. Can the prosecution re-file the information although this time for murder? Explain (3%)

SUGGESTED ANSWER:

A. Yes, provided notice is given to the offended party and the court states its reasons for granting the same. *(Rule 110, sec. 14).*

B. Yes, the prosecution can re-file the information for murder in substitution of the information for homicide because no double jeopardy has as yet attached. **[Galvez v. Court of Appeals, 237 SCRA 685 (1994)].**

Information; Amendment; Supervening Events (1997)

A was accused of homicide for the killing of B. During the trial, the public prosecutor received a copy of the marriage certificate of A and B.

(a) Can the public prosecutor move for the amendment of the information to charge A with the crime of parricide?

(b) Suppose instead of moving for the amendment of the information, the public prosecutor presented in evidence the marriage certificate without objection on the part of the defense, could Abe convicted of parricide?

SUGGESTED ANSWER:

(a) No. The Information cannot be amended to change the offense charged from homicide to parricide. Firstly, the marriage is not a supervening fact arising from the act constituting the charge of homicide. *(Sec. 7[a] of Rule 117).* Secondly, after plea, amendments may be done only as to matters of form. The amendment is substantial because it will change the nature of the offense. **(Sec. 14 of Rule 110; Dionaldo us. Dacuycuy. 108 SCRA 736).**

(b) No. A can be convicted only of homicide not of parricide which is a graver offense. The accused has the constitutional rights of due process and to be informed of the nature and the cause of the accusation against him. *(Secs. 1, 14 (1) and (2} Art. III. 1987 Constitution),*

Information; Bail (2003)

After the requisite proceedings, the Provincial Prosecutor filed an Information for homicide against X. The latter, however, timely filed a Petition for Review of the Resolution of the Provincial Prosecutor with the Secretary of Justice who, in due time, issued a Resolution reversing the resolution of the Provincial Prosecutor and directing him to withdraw the Information.

Before the Provincial Prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X.

The Public Prosecutor filed a Motion to Quash the Warrant of Arrest and to Withdraw the Information, attaching to it the Resolution of the Secretary of Justice. The court denied the motion. (6%) a) Was there a legal basis for the court to deny the motion? b) If you were the counsel for the accused, what remedies, if any, would you pursue?

SUGGESTED ANSWER:

a. Yes, there is a legal basis for the court to deny the motion to quash the warrant of arrest and to withdraw the information. The court is not bound by the Resolution of the Secretary of Justice. **(Crespo v. Mogul, 151 SCRA 462 [1987]).**

b. If I were the counsel for the accused, I would surrender the accused and apply for bail because the offense is merely homicide, a non-capital offense. At the pre-trial, I would make a stipulation of facts with the prosecution which would show that no offense was committed.

Information; Motion to Quash (2000)

BC is charged with illegal possession of firearms under an Information signed by a Provincial Prosecutor. After arraignment but before pre-trial, BC found out that the Provincial Prosecutor had no authority to sign and file the information as it was the City Prosecutor who has such authority. During the pre-trial, BC moves that the case against him be dismissed on the ground that the Information is defective because the officer signing it lacked the authority to do so. The Provincial Prosecutor opposes the motion on the ground of estoppel as BC did not move to quash the Information before arraignment. If you are counsel for BC, what is your argument to refute the opposition of the Provincial Prosecutor? (5%)

SUGGESTED ANSWER:

I would argue that since the Provincial Prosecutor had no authority to file the information, the court did not acquire jurisdiction over the person of the accused and over the subject matter of the offense charged. **(Cudia v. Court of Appeals, 284 SCRA 173 [1999]).** Hence, this ground is not waived if not raised in a motion to quash and could be raised at the pretrial. *(Sec. 8, Rule 117, Rules of Court).*

Information; Motion to Quash (2005)

Rodolfo is charged with possession of unlicensed firearms in an Information filed in the RTC. It was alleged therein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and-a .32 caliber. Under Republic Act No. 8294, possession of an unlicensed .45 caliber gun is punishable by prision mayor in its minimum period and a fine of P30.000.00, while possession of an unlicensed .32 caliber gun is punishable by prision correctional in its maximum period and a fine of not less than P15,000.00. As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds should you invoke? Explain. (4%)

SUGGESTED ANSWER:

The ground for the motion to quash is that more than one offense is charged in the information. *(Sec. 3[f], Rule 117, 2000 Rules of Criminal Procedure)* Likewise, the RTC has no jurisdiction over the second offense of possession of an unlicensed .32 caliber gun, punishable by prision correctional in its maximum period and a fine of not less than P15.000.00. It is the MTC that has exclusive and original jurisdiction over all offenses punishable by imprisonment not exceeding six years. *(Sec. 2, R.A. No. 7691, amending B.P. Blg. 129)*

Information; Motion to Quash; Grounds (1998)

1 Give two (2) grounds to quash an Information.[2%]

2 If the Information is not accompanied by a certification that a preliminary investigation has been conducted. Is the Information void? [3%]

SUGGESTED ANSWER:

1. Two grounds to quash an Information are: a) That the facts charged do not constitute an offense; and

b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused.

c) That the officer who filed the information had no authority to do so; d) That it does not conform substantially to the prescribed form;

e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

f) That the criminal action or liability has been extinguished;

g) That it contains averments which, if true, would constitute a legal excuse or justification; and

h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged. *(Sec. 3, Rule 117. Rules of Criminal Procedure.)*

SUGGESTED ANSWER:

2. No. The certification which is provided in Sec. 4, Rule 112. Rules of Criminal Procedure, is not an indispensable part of the information. **(People vs. Lapura, 255 SCRA 85.)**

Judgment; Promulgation of Judgment (1997)

X, the accused in a homicide case before the RTC. Dagupan Cay, was personally notified of the promulgation of judgment in his case set for 10 December 1996. On said date. X was not present as he had to attend to the trial of another criminal case against him in Tarlac, Tarlac. The trial court denied the motion of the counsel of X to postpone the promulgation.

(a) How shall the court promulgate the judgment in the absence of the accused?

(b) Can the trial court also order the arrest of X?

SUGGESTED ANSWER:

(a) In the absence of the accused, the promulgation shall be made by recording the Judgment in the

criminal docket and a copy thereof served upon the accused or counsel. *(Sec. 6. third par., Rule 120)*

(b) No, the trial court cannot order the arrest of X if the judgment is one of acquittal and, in any event, his failure to appear was with justifiable cause since he had to attend to another criminal case against him.

Jurisdiction; Complex Crimes (2003)

In complex crimes, how is the jurisdiction of a court determined? 4%

SUGGESTED ANSWER:

In a complex crime, jurisdiction over the whole complex crime must be lodged with the trial court having jurisdiction to impose the maximum and most serious penalty imposable on an offense forming part of the complex crime. **(Cuyos v. Garcia, 160 SCRA 302 [1988]).**

Jurisdiction; Finality of a Judgment (2005)

Mariano was convicted by the RTC for raping Victoria and meted the penalty of reclusion perpetua. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under Republic Act No. 8353, his marriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the ground that it had lost jurisdiction over the case after its decision had become final and executory. (7%)

a) Is the filing of the court correct? Explain.

SUGGESTED ANSWER:

No. The court can never lose jurisdiction so long as its decision has not yet been fully implemented and satisfied. Finality of a judgment cannot operate to divest a court of its jurisdiction. The court retains an interest in seeing the proper execution and implementation of its judgments, and to that extent, may issue such orders necessary and appropriate for these purposes. **(Echegaray v. Secretary of Justice, G.R. No. 13205, January 19, 1999)**

b) What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain.

SUGGESTED ANSWER:

To secure the proper and most expeditious release of Mariano from the National Penitentiary, his counsel should file: (a) a petition for habeas corpus for the illegal confinement of Mariano (Rule 102), or (b) a motion in the court which convicted him, to nullify the execution of his sentence or the order of his commitment on the ground that a supervening development had occurred **(Melo v. People, G.R. No. L-3580, March 22, 1950)** despite the finality of the judgment.

Parties; Prosecution of Offenses (2000)

Your friend YY, an orphan, 16 years old, seeks your legal advice. She tells you that ZZ, her uncle, subjected her to acts of lasciviousness; that when she told her grandparents, they told her to just keep quiet and not to file charges against ZZ, their son. Feeling very much aggrieved, she asks you how her uncle ZZ can be made to answer for his crime. a) What would your advice be? Explain. (3%) b) Suppose the crime committed against YY by her uncle ZZ is rape, witnessed by your mutual friend XX. But this time, YY was prevailed upon by her grandparents not to file charges. XX asks you if she can initiate the complaint against ZZ. Would your answer be the same? Explain. (2%).

SUGGESTED ANSWER:

(a) I would advise the minor, an orphan of 16 years of age, to file the complaint herself independently of her grandparents, because she is not incompetent or incapable to doing so upon grounds other than her minority. *(Sec. 5, Rule 110, Rules of Criminal Procedure.)*

(b) Since rape is now classified as a Crime Against Persons under the Anti-Rape Law of 1997 *(RA 8353),* I would advise XX to initiate the complaint against ZZ.

Plea of Guilty; to a Lesser Offense (2002)

D was charged with theft of an article worth p15,000.00. Upon being arraigned, he pleaded not guilty to the offense charged. Thereafter, before trial commenced, he asked the court to allow him to change his plea of not guilty to a plea of guilt but only to estafa involving P5,000.00. Can the court allow D to change his plea? Why? (2%)

SUGGESTED ANSWER:

No, because a plea of guilty to a lesser offense may be allowed if the lesser offense is necessarily included in the offense charged. *(Rule 116, sec. 2).* Estafa involving P5,000.00 is not necessarily included in theft of an article worth P15,000.00

Prejudicial Question (1999)

What is a prejudicial question? (2%)

SUGGESTED ANSWER:

A prejudicial question is an issue involved in a civil action which is similar or intimately related to the issue raised in the criminal action, the resolution of which determines whether or not the criminal action may proceed. *(Sec. 5 of Rule 111.)*

ANOTHER ANSWER:

A prejudicial question is one based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused.

Prejudicial Question (2000)

CX is charged with estafa in court for failure to remit to MM sums of money collected by him (CX) for MM in payment for goods purchased from MM, by

depositing the amounts in his (CX's) personal bank account. CX files a motion to suspend proceedings pending resolution of a civil case earlier filed in court by CX against MM for accounting and damages involving the amounts subject of the criminal case. As the prosecutor in the criminal case, briefly discuss your grounds in support of your opposition to the motion to suspend proceedings. (5%).

SUGGESTED ANSWER:

As the prosecutor, I will argue that the motion to suspend is not in order for the following reasons:

1 The civil case filed by CX against MM for accounting and damages does not involve an issue similar to or intimately related to the issue of estafa raised in the criminal action.

2 The resolution of the issue in the civil case for accounting will not determine whether or not the criminal action for estafa may proceed. *(Sec. 5, Rule 111, Rules of Criminal Procedure.)*

Prejudicial Question; Suspension of Criminal Action (1999)

A allegedly sold to B a parcel of land which A later also sold to X. B brought a civil action for nullification of the second sale and asked that the sale made by A in his favor be declared valid. A theorized that he never sold the property to B and his purported signatures appearing in the first deed of sale were forgeries. Thereafter, an Information for estafa was filed against A based on the same double sale that was the subject of the civil action. A filed a "Motion for Suspension of Action" in the criminal case, contending that the resolution of the issue in the civil case would necessarily be determinative of his guilt or innocence. Is the suspension of the criminal action in order? Explain. (2%)

SUGGESTED ANSWER:

Yes. The suspension of the criminal action is in order because the defense of A in the civil action, that he never sold the property to B and that his purported signatures in the first deed of sale were forgeries, is a prejudicial question the resolution of which is determinative of his guilt or innocence. If the first sale is null and void, there would be no double sale and A would be innocent of the offense of estafa.

(Ras v. Rasul, 100 SCRA 125.)

Pre-Trial Agreement (2004)

Mayor TM was charged of malversation through falsification of official documents. Assisted by Atty. OP as counsel de parte during pre-trial, he signed together with Ombudsman Prosecutor TG a "Joint Stipulation of Facts and Documents," which was presented to the Sandiganbayan. Before the court could issue a pre-trial order but after some delay caused by Atty. OP, he was substituted by Atty. QR as defense counsel. Atty. QR forthwith filed a motion to withdraw the "Joint Stipulation," alleging that it is prejudicial to the accused because it contains, inter alia, the statement that the "Defense admitted all the documentary evidence of the Prosecution," thus leaving the accused little or no room to defend himself, and violating his right against self-incrimination. Should the court grant or deny QR's motion? Reason. (5%)

SUGGESTED ANSWER:

The court should deny QR's motion. If in the pretrial agreement signed by the accused and his counsel, the accused admits the documentary evidence of the prosecution, it does not violate his right against self-incrimination. His lawyer cannot file a motion to withdraw. A pre-trial order is not needed. **(Bayas v. Sandiganbayan, 391 SCRA 415(2002}).** The admission of such documentary evidence is allowed by the rule. **(Sec. 2 of Rule 118; People v. Hernandez, 260 SCRA 25 [1996]).**

Pre-Trial; Criminal Case vs. Civil Case (1997)

Give three distinctions between a pre-trial in a criminal case and a pre-trial in a civil case.

SUGGESTED ANSWER:

Three distinctions between a pre-trial in a criminal case and a pre-trial in a civil case are as follows:

1. The pre-trial in a criminal case is conducted only "where the accused and counsel agree" *(Rule 118, Sec. 1)*: while the pre-trial in a civil case is mandatory. *(Sec. 1 of former Rule 20; Sec, 1 of new Rule 18).*

2. The pre-trial in a criminal case does not consider the possibility of a compromise, which is one important aspect of the pre-trial in a civil case. *(Sec. 1 of former Rule 20; Sec. 2 of new Rule 18).*

3. In a criminal case, a pre-trial agreement is required to be reduced to writing and signed by the accused and his counsel *(See; Rule 118, Sec. 4)*; while in a civil case, the agreement may be contained in the pre-trial order. *(Sec. 4 of former Rule 20; See 7 of new Rule 78).*

Provisional Dismissal (2002)

In a prosecution for robbery against D, the prosecutor moved for the postponement of the first scheduled hearing on the ground that he had lost his records of the case. The court granted the motion but, when the new date of trial arrived, the prosecutor, alleging that he could not locate his witnesses, moved for the provisional dismissal of the case. If D's counsel does not object, may the court grant the motion of the prosecutor? Why? (3%)

SUGGESTED ANSWER:

No, because a case cannot be provisionally dismissed except upon the express consent of the accused and with notice to the offended party. *(Rule 117, sec. 8).*

Remedies; Void Judgment (2004)

AX was charged before the YY RTC with theft of jewelry valued at P20.000, punishable with

imprisonment of up to 10 years of prision mayor under the Revised Penal Code. After trial, he was convicted of the offense charged, notwithstanding that the material facts duly established during the trial showed that the offense committed was estafa, punishable by imprisonment of up to eight years of prision mayor under the said Code. No appeal having been taken therefrom, said judgment of conviction became final. Is the judgment of conviction valid? Is the said judgment reviewable thru a special civil action for certiorari? Reason. (5%)

SUGGESTED ANSWER:

Yes, the judgment of conviction for theft upon an information for theft is valid because the court had jurisdiction to render judgment. However, the judgment was grossly and blatantly erroneous. The variance between the evidence and the judgment of conviction is substantial since the evidence is one for estafa while the judgment is one for theft. The elements of the two crimes are not the same. **(Lauro Santos v. People, 181 SCRA 487)**. One offense does not necessarily include or is included in the other. *(Sec. 5 of Rule 120).*

The judgment of conviction is reviewable by certiorari even if no appeal had been taken, because the judge committed a grave abuse of discretion tantamount to lack or excess of his jurisdiction in convicting the accused of theft and in violating due process and his right to be informed of the nature and the cause of the accusation against him, which make the judgment void. With the mistake in charging the proper offense, the judge should have directed the filing of the proper information and thereafter dismissed the original information. *(Sec. 19 of Rule 119).*

Search Warrant; Motion to Quash (2005)

Police operatives of the Western Police District, Philippine National Police, applied for a search warrant in the RTC for the search of the house of Juan Santos and the seizure of an undetermined amount of shabu. The team arrived at the house of Santos but failed to find him there. Instead, the team found Roberto Co. The team conducted a search in the house of Santos in the presence of Roberto Co and barangay officials and found ten (10) grams of shabu. Roberto Co was charged in court with illegal possession of ten grams of shabu. Before his arraignment, Roberto Co filed a motion to quash the warrant on the following grounds (a) it was not the accused named in the search warrant; and (b) the warrant does not describe the article to be seized with sufficient particularity. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The motion to quash should be denied. The name of the person in the search warrant is not important. It is not even necessary that a particular person be implicated **(Mantaring v. Roman, A.M. No. RTJ-93-904, February 28, 1996),** so long as the search is conducted in the place where the search warrant will be served. Moreover, describing the shabu in an undetermined amount is sufficiently particular. **(People v. Tee, G.R.**

Nos. 140546-47, January 20, 2003)

Trial; Trial in Absentia; Automatic Review of Conviction (1998)

1. What are the requisites of a trial in absentia? [2%]
2. If an accused who was sentenced to death escapes, is there still a legal necessity for the Supreme Court to review the decision of conviction? [3%]

SUGGESTED ANSWER:

1. The requisites of trial in absentia are: (a) the accused has already been arraigned; (b) he has been duly notified of the trial; and (c) his failure to appear is unjustifiable. **(Sec. 14 [2], Article III. Constitution;**

Parada vs. Veneracion, 269 SCRA 371 [1997].)

2. Yes, there is still a legal necessity for the Supreme Court *(as of 2004 the Court of Appeals has the jurisdiction to such review)* to review the decision of conviction sentencing the accused to death, because he is entitled to an automatic review of the death sentence. **(Sees.**

3[e] and 10, Rule 122, Rules of Criminal Procedure; People vs. Espargas, 260 SCRA 539.)

Venue (1997)

Where is the proper venue for the filing of an information in the following cases? a) The theft of a car in Pasig City which was brought to Obando, Bulacan, where it was cannibalized.

b) The theft by X, a bill collector of ABC Company, with main offices in Makati City, of his collections from customers in Tagaytay City. In the contract of employment, X was detailed to the Calamba branch office, Laguna, where he was to turn in his collections.

c) The malversation of public funds by a Philippine consul detailed in the Philippine Embassy in London.

SUGGESTED ANSWER:

(a) The proper venue is in Pasig City where the theft of the car was committed, not in Obando where it was cannibalized. Theft is not a continuing offense.

(People v Mercado, 65 Phil 665).

(b) If the crime charged is theft, the venue is in Calamba where he did not turn in his collections. If the crime of X is estafa, the essential ingredients of the offense took place in Tagaytay City where he received his collections, in Calamba where he should have turned in his collections, and in Makati City where the ABC Company was based. The information may therefore be filed in Tagaytay City or Calamba or Makati which have concurrent territorial Jurisdiction. **(Catingub vs. Court of Appeals,**

121 SCRA 106).

(c) The proper court is the Sandiganbayan which has jurisdiction over crimes committed by a consul or higher official in the diplomatic service. **(Sec. 4(c). PD 1606, as amended by RA. No. 7975).** The Sandiganbayan is a national court. **(Nunez v. Sandiganbayan, 111 SCRA 433 [1982].** It has only one venue at present, which is in Metro Manila, until RA. No. 7975, providing for two other branches in Cebu and in Cagayan de Oro, is implemented.

Alternative Answers:

(b) The information may be filed either in Calamba or in Makati City, not in Tagaytay City where no offense had as yet been committed,

(c) Assuming that the Sandiganbayan has no jurisdiction, the proper venue is the first RTC in which the charge is filed *(Sec. 15(d). Rule 110).*

EVIDENCE

Admissibility (1998)

The barangay captain reported to the police that X was illegally keeping in his house in the barangay an Armalite M16 rifle. On the strength of that information, the police conducted a search of the house of X and indeed found said rifle. The police raiders seized the rifle and brought X to the police station. During the investigation, he voluntarily signed a Sworn Statement that he was possessing said rifle without license or authority to possess, and a Waiver of Right to Counsel. During the trial of X for illegal possession of firearm, the prosecution submitted in evidence the rifle. Sworn Statement and Waiver of Right to Counsel, individually rule on the admissibility in evidence of the:

1. Rifle; [2%]
2. Sworn Statement; and [2%1
3. Waiver of Right to Counsel of X. [1%]

SUGGESTED ANSWER:

1. The rifle is not admissible in evidence because it was seized without a proper search warrant. A warrantless search is not justified. There was time to secure a search warrant. ***(People us. Encinada G.R. No. 116720, October 2. 1997 and other cases)***

2. The sworn statement is not admissible in evidence because it was taken without informing him of his custodial rights and without the assistance of counsel which should be independent and competent and preferably of the choice of the accused. ***(People us. Januario, 267 SCRA 608.)***

3. The waiver of his right to counsel is not admissible because it was made without the assistance of counsel of his choice. ***(People us. Gomez, 270 SCRA 433.)***

Admissibility (2002)

Acting on a tip by an informant, police officers stopped a car being driven by D and ordered him to open the trunk. The officers found a bag containing several kilos of cocaine. They seized the car and the cocaine as evidence and placed D under arrest. Without advising him of his right to remain silent and to have the assistance of an attorney, they questioned him regarding the cocaine. In reply, D said, "I don't know anything about it. It isn't even my car." D was charged with illegal possession of cocaine, a prohibited drug. Upon motion of D, the court suppressed the use of cocaine as evidence and dismissed the charges against him. D commenced proceedings against the police for the recovery of his car. In his direct examination, D testified that he owned the car but had registered it in the name of a friend for convenience. On cross-examination, the attorney representing the police asked, "After your arrest, did you not tell the arresting officers that it wasn't your car?" If you were D's attorney, would you object to the question? Why? (5%)

SUGGESTED ANSWER:

Yes, because his admission made when he was questioned after he was placed under arrest was in violation of his constitutional right to be informed of his right to remain silent and to have competent and independent counsel of his own choice. Hence, it is inadmissible in evidence. ***[Constitution, Art. III, sec. 12; R.A. 7438 (1992), sec, 2; People v. Mahinay, 302 SCRA 455].***

ALTERNATIVE ANSWER:

Yes, because the question did not lay the predicate to justify the cross-examination question.

Admissibility (2004)

Sgt. GR of WPD arrested two NPA suspects, Max and Brix, both aged 22, in the act of robbing a grocery in Ermita. As he handcuffed them he noted a pistol tucked in Max's waist and a dagger hidden under Brix's shirt, which he promptly confiscated. At the police investigation room, Max and Brix orally waived their right to counsel and to remain silent. Then under oath, they freely answered questions asked by the police desk officer. Thereafter they signed their sworn statements before the police captain, a lawyer. Max admitted his part in the robbery, his possession of a pistol and his ownership of the packet of shabu found in his pocket. Brix admitted his role in the robbery and his possession of a dagger. But they denied being NPA hit men. In due course, proper charges were filed by the City Prosecutor against both arrestees before the MM RTC. May the written statements signed and sworn to by Max and Brix be admitted by the trial court as evidence for the prosecution? Reason. (5%)

SUGGESTED ANSWER:

No. The sworn written statements of Max and Brix may not be admitted in evidence, because they were not assisted by counsel. Even if the police captain

before whom they signed the statements was a lawyer, he was not functioning as a lawyer, nor can he be considered as an independent counsel. Waiver of the right to a lawyer must be done in writing and in the presence of independent counsel. ***(People v. Mahinay, 302 SCRA 455 11999]; People v. Espiritu, 302 SCRA 533 [1999])***.

Admissibility; Admission of Guilt; Requirements (2006)

What are the requirements in order that an admission of guilt of an accused during a custodial investigation be admitted in evidence? (2.5%)

SUGGESTED ANSWER:

1 The admission must be voluntary.

2 The admission must be in writing.

3 The admission must be made with the assistance of competent, independent counsel.

4. The admission must be express **(People v. Prinsipe, G.R. No. 135862, May 2, 2002).**

5. In case the accused waives his rights to silence and to counsel, such waiver must be in writing, executed with the assistance of competent, independent counsel.

Admissibility; Document; Not raised in the Pleading (2004)

In a complaint for a sum of money filed before the MM RTC, plaintiff did not mention or even just hint at any demand for payment made on defendant before commencing suit. During the trial, plaintiff duly offered Exh. "A" in evidence for the stated purpose of proving the making of extrajudicial demand on defendant to pay P500.000, the subject of the suit. Exh. "A" was a letter of demand for defendant to pay said sum of money within 10 days from receipt, addressed to and served on defendant some two months before suit was begun. Without objection from defendant, the court admitted Exh. "A" in evidence. Was the court's admission of Exh. "A" in evidence erroneous or not? Reason. (5%)

SUGGESTED ANSWER:

The court's admission of Exh. "A" in evidence is not erroneous. It was admitted in evidence without objection on the part of the defendant. It should be treated as if it had been raised in the pleadings. The complaint may be amended to conform to the evidence, but if it is not so amended, it does not affect the result of the trial on this issue. *(Sec. 5 of Rule 10).*

Admissibility; Electronic Evidence (2003)

a) State the rule on the admissibility of an electronic evidence. b) When is an electronic evidence regarded as being

the equivalent of an original document under the Best Evidence Rule? 4%

SUGGESTED ANSWER:

(a) Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules. *(Sec. 1 of Rule 3, Rules of Electronic Evidence effective August 1, 2001).*

An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules. *(Sec. 2 of Rule 3, Id.).* The authenticity of any private electronic document must be proved by evidence that it had been digitally signed and other appropriate security measures have been applied. *(Sec. 2 of Rule 5, Id.).*

(b) An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately. *(Sec. 1 of Rule 4)*

Admissibility; Object or Real Evidence (1994)

At the trial of Ace for violation of the Dangerous Drugs Act, the prosecution offers in evidence a photocopy of the marked P100.00 bills used in the "buy-bust" operation. Ace objects to the introduction of the photocopy on the ground that the Best Evidence Rule prohibits the introduction of secondary evidence in lieu of the original. a) Is the photocopy real (object) evidence or documentary evidence? b) Is the photocopy admissible in evidence?

SUGGESTED ANSWER:

a) The photocopy of the marked bills is real (object) evidence not documentary evidence, because the marked bills are real evidence.

b) Yes, the photocopy is admissible in evidence, because the best evidence rule does not apply to object or real evidence.

Admissibility; Objections (1997)

What are the two kinds of objections? Explain each briefly. Given an example of each.

SUGGESTED ANSWER:

Two kinds of objections are: (1) the evidence being presented is not relevant to the issue; and (2) the evidence is incompetent or excluded by the law or the rules, *(Sec. 3, Rule 138).* An example of the first is when the prosecution offers as evidence the alleged offer of an Insurance company to pay for the damages suffered by the victim in a homicide case. *(See 1997 No. 14).*

Examples of the second are evidence obtained in violation of the Constitutional prohibition against unreasonable searches and seizures and confessions and admissions in violation of the rights of a person under custodial Investigation.

ALTERNATIVE ANSWERS:

1) Specific objections: Example: parol evidence and best evidence rule
General Objections: Example: continuing objections (Sec. 37 of Rule 132).

2) The two kinds of objections are: (1) objection to a question propounded in the course of the oral examination of the witness and (2) objection to an offer of evidence in writing. Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent otherwise, it is waived. An offer of objection in writing shall be made within three (3) days after notice of the offer, unless a different period is allowed by the court. In both instances the grounds for objection must be specified. An example of the first is when the witness is being cross-examined and the cross examination is on a matter not relevant. An example of the second is that the evidence offered is not the best evidence.

Admissibility; Offer to Marry; Circumstantial Evidence (1998)

A was accused of having raped X. Rule on the admissibility of the following pieces of evidence:

1 an offer of A to marry X; and (3%]
2 a pair of short pants allegedly left by A at the crime which the court, over the objection of A, required him to put on, and when he did, it fit him well. [2%]

SUGGESTED ANSWER:

1. A's offer to marry X is admissible in evidence as an Implied admission of guilt because rape cases are not allowed to be compromised. **(Sec. 27 of Rule 13O; People vs. Domingo, 226 SCRA 156.)**

2. The pair of short pants, which fit the accused well, is circumstantial evidence of his guilt, although standing alone it cannot be the basis of conviction. The accused cannot object to the court requiring him to put the short pants on. It is not part of his right against self-incrimination because it is a mere physical act.

Admissibility; Offer to Pay Expenses (1997)

A, while driving his car, ran over B. A visited B at the hospital and offered to pay for his hospitalization expenses. After the filing of the criminal case against A for serious physical injuries through reckless imprudence. A's insurance carrier offered to pay for the injuries and damages suffered by B. The offer was rejected because B considered the amount offered as inadequate. a) Is the offer by A to pay the hospitalization
expenses of B admissible in evidence? b) Is the offer by A's insurance carrier to pay for the
injuries and damages of B admissible in evidence?

SUGGESTED ANSWER:

(a) The offer by A to pay the hospitalization expenses of B is not admissible in evidence to prove his guilt in both the civil and criminal cases. *(Rule 130, Sec. 27, fourth par.).*

(b) No. It is irrelevant. The obligation of the insurance company is based on the contract of insurance and is not admissible in evidence against the accused because it was not offered by the accused but by the insurance company which is not his agent.

Admissibility; Private Document (2005)

May a private document be offered, and admitted in evidence both as documentary evidence and as object evidence? Explain.

SUGGESTED ANSWER:

Yes, it can be considered as both documentary and object evidence. A private document may be offered and admitted in evidence both as documentary evidence and as object evidence. A document can also be considered as an object for purposes of the case. Objects as evidence are those addressed to the senses of the court. *(Sec. 1, Rule 130, Rules of Court)* Documentary evidence consists of writings or any material containing letters, words, numbers, figures, symbols or other modes of written expressions, offered ns proof of their contents. (*Sec. 2, Rule 130, Rules of Court)* Hence, a private document may be presented as object evidence in order to 'establish certain physical evidence or characteristics that are visible on the paper and writings that comprise the document.

Admissibility; Proof of Filiation; Action of Partition (2000)

Linda and spouses Arnulfo and Regina Ceres were co-owners of a parcel of land. Linda died intestate and without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral relatives of the deceased Linda, filed an action for partition with the RTC praying for the segregation of Linda's ½ share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn, and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refused to partition on the following grounds: 1) the baptismal certificates of the parish priest are evidence only of the administration of the sacrament of baptism and they do not prove filiation of the alleged collateral relatives of the deceased; 2) entry in the family bible is hearsay; 3) the certification of the registrar on non-availability of the records of birth does not prove filiation: 4) in partition cases where filiation to the deceased is in dispute, prior and separate judicial declaration of heirship in a settlement of estate proceedings is necessary; and 5) there is need for publication as real

property is involved. As counsel for Jocelyn and her co-petitioners, argue against the objections of the spouses Ceres so as to convince the court to allow the partition. Discuss each of the five (5) arguments briefly but completely. (10%)

SUGGESTED ANSWER:

(1) The baptismal certificate can show filiation or prove pedigree. It is one of the other means allowed under the Rules of Court and special laws to show pedigree. **(Trinidad v. Court of Appeals, 289 SCRA 188 [1998]; Heirs of ILgnacio Conti v. Court of Appeals, 300 SCRA 345 [1998]).**

(2) Entries in the family bible may be received as evidence of pedigree. **(Sec. 40, Rule 130, Rules of Court).**

(3) The certification by the civil registrar of the non-availability of records is needed to justify the presentation of secondary evidence, which is the photocopy of the birth certificate of Jocelyn. **(Heirs of Ignacio Conti v. Court of Appeals, supra.)**

(4) Declaration of heirship in a settlement proceeding is not necessary. It can be made in the ordinary action for partition wherein the heirs are exercising the right pertaining to the decedent, their predecessor-in-interest, to ask for partition as co-owners (Id.)

(5) Even if real property is involved, no publication is necessary, because what is sought is the mere segregation of Linda's share in the property. *(Sec. 1 of Rule 69; Id.)*

Admissibility; Rules of Evidence (1997)

Give the reasons underlying the adoption of the following rules of evidence:

(a) Dead Man Rule

(b) Parol Evidence Rule

(c) Best Evidence Rule

(d) The rule against the admission of illegally obtained extrajudicial confession

(e) The rule against the admission of an offer of compromise in civil cases

SUGGESTED ANSWER:

The reasons behind the following rules are as follows:

(a) **DEAD MAN RULE**: if death has closed the lips of one party, the policy of the law is to close the lips of the other. **(Goni v. Court ofAppeals, L-77434. September 23, 1986, 144 SCRA 222).** This is to prevent the temptation to perjury because death has already sealed the lips of the party.

(b) **PAROL EVIDENCE RULE**: It is designed to give certainty to a transaction which has been reduced to writing, because written evidence is much more certain and accurate than that which rests on fleeting memory only. *(Francisco, Rules of Court Vol. VII, Part I. p. 154)*

(c) **BEST EVIDENCE RULE**: This Rule is adopted for the prevention of fraud and is declared to be essential to the pure administration of justice. *(Moran, Vol. 5, p. 12.)* If a party is in possession of such evidence and withholds it, the presumption naturally arises that the better evidence is withheld for fraudulent purposes. *(Francisco. Rules of Court, vol. VII. Part I, pp, 121,122)*

(d) An illegally obtained extrajudicial confession nullifies the intrinsic validity of the confession and renders it unreliable as evidence of the truth. *(Moran, vol. 5, p. 257)* it is the fruit of a poisonous tree.

(e) The reason for the rule against the admission of an offer of compromise in civil case as an admission of any liability is that parties are encouraged to enter into compromises. Courts should endeavor to persuade the litigants in a civil case to agree upon some fair compromise. *(Art. 2029, Civil Code).* During pre-trial, courts should direct the parties to consider the possibility of an amicable settlement. *(Sec. 1[a] of former Rule 20: Sec. 2 [a] of new Rule 16).*

Best Evidence Rule (1997)

When A loaned a sum of money to B. A typed a single copy of the promissory note, which they both signed A made two photo (xeroxed) copies of the promissory note, giving one copy to B and retaining the other copy. A entrusted the typewritten copy to his counsel for safekeeping. The copy with A's counsel was destroyed when the law office was burned. a) In an action to collect on the promissory note,

which is deemed to be the "original" copy for the purpose of the "Best Evidence Rule"? b) Can the photocopies in the hands of the parties be considered "duplicate original copies"? c) As counsel for A, how will you prove the loan given to A and B?

SUGGESTED ANSWER:

(a) The copy that was signed and lost is the only "original" copy for purposes of the Best Evidence Rule. *(Sec. 4 [b] of Rule 130).*

(b) No, They are not duplicate original copies because there are photocopies which were not signed (***Mahilum v. Court of Appeals, 17 SCRA 482***), They constitute secondary evidence. *(Sec. 5 of Rule 130).*

(c) The loan given by A to B may be proved by secondary evidence through the xeroxed copies of the promissory note. The rules provide that when the original document is lost or destroyed, or cannot be produced in court, the offerer, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the

testimony of witnesses in the order stated. *(Sec. 5 of Rule 130).*

Burden of Proof vs. Burden of Evidence (2004)

Distinguish Burden of proof and burden of evidence.

SUGGESTED ANSWER:

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. *(Sec. 1 of Rule 131),* while burden of evidence is the duty of a party to go forward with the evidence to overthrow prima facie evidence established against him. ***(Bautista v. Sarmiento, 138 SCRA 587 [1985]).***

Character Evidence (2002)

D was prosecuted for homicide for allegedly beating up V to death with an iron pipe.

A. May the prosecution introduce evidence that V had a good reputation for peacefulness and non-violence? Why? (2%)

B. May D introduce evidence of specific violent acts by V? Why? (3%)

SUGGESTED ANSWER:

A. The prosecution may introduce evidence of the good or even bad moral character of the victim if it tends to establish in any reasonable degree the probability or improbability of the offense charged. *[Rule 130, sec. 51 a (3)]*. In this case, the evidence is not relevant.

B. Yes, D may introduce evidence of specific violent acts by V. Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like. *(Rule 130, sec. 34).*

Confession; Affidavit of Recantation (1998)

1 If the accused on the witness stand repeats his earlier uncounseled extrajudicial confession implicating his co-accused in the crime charged, is that testimony admissible in evidence against the latter? [3%]

2 What is the probative value of a witness' Affidavit of Recantation? [2%]

SUGGESTED ANSWER:

1. Yes. The accused can testify by repeating his earlier uncounseled extrajudicial confession, because he can be subjected to cross-examination.
2. On the probative value of an affidavit of recantation, courts look with disfavor upon recantations because they can easily be secured from witnesses, usually through intimidation or for a monetary consideration, Recanted testimony is exceedingly unreliable. There is always the probability that it will be repudiated. ***(Molina vs. People. 259 SCRA 138.)***

Facts; Legislative Facts vs. Adjudicative Facts (2004)

Legislative facts and adjudicative facts.

SUGGESTED ANSWER:

Legislative facts refer to facts mentioned in a statute or in an explanatory note, while adjudicative facts are facts found in a court decision.

Hearsay Evidence (2002)

Romeo is sued for damages for injuries suffered by the plaintiff in a vehicular accident. Julieta, a witness in court, testifies that Romeo told her (Julieta) that he (Romeo) heard Antonio, a witness to the accident, give an excited account of the accident immediately after its occurrence. Is Julieta's testimony admissible against Romeo over proper and timely objection? Why? (5%)

SUGGESTED ANSWER:

No, Julieta's testimony is not admissible against Romeo, because while the excited account of Antonio, a witness to the accident, was told to Romeo, it was only Romeo who told Julieta about it, which makes it hearsay.

Hearsay Evidence vs. Opinion Evidence (2004)

Hearsay evidence and opinion evidence.

SUGGESTED ANSWER:

Hearsay evidence consists of testimony that is not based on personal knowledge of the person testifying, *(see Sec. 36, Rule 130),* while opinion evidence is expert evidence based on the personal knowledge skill, experience or training of the person testifying *(Sec. 49, Id.)* and evidence of an ordinary witness on limited matters *(Sec. 50, Id.).*

Hearsay; Exception; Dead Man Statute (2001)

Maximo filed an action against Pedro, the administrator of the estate of deceased Juan, for the recovery of a car which is part of the latter's estate. During the trial, Maximo presented witness Mariano who testified that he was present when Maximo and Juan agreed that the latter would pay a rental of P20,000.00 for the use of Maximo's car for one month after which Juan should immediately return the car to Maximo. Pedro objected to the admission of Mariano's testimony. If you were the judge, would you sustain Pedro's objection? Why? (5%)

SUGGESTED ANSWER:

No, the testimony is admissible in evidence because witness Mariano who testified as to what Maximo and Juan, the deceased person agreed upon, is not disqualified to testify on the agreement. Those disqualified are parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against the administrator or Juan's estate, upon a

claim or demand against his estate as to any matter of fact occurring before Juan's death. *(Sec. 23 of Rule 130)*

Hearsay; Exception; Dying Declaration (1998)

Requisites of Dying Declaration. [2%)

SUGGESTED ANSWER:

The requisites for the admissibility of a dying declaration are: (a) the declaration is made by the deceased under the consciousness of his impending death; (b) the deceased was at the time competent as a witness; (c) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (d) the declaration is offered in a (criminal) case wherein the declarant's death is the subject of inquiry.

(People vs. Santos, 270 SCRA 650.)

ALTERNATIVE ANSWER:

The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of Inquiry, as evidence of the cause and surrounding circumstances of such death. *(Sec. 37 of Rule 13O.)*

Hearsay; Exception; Res Gestae; Opinion of Ordinary Witness (2005)

Dencio barged into the house of Marcela, tied her to a chair and robbed her of assorted pieces of jewelry and money. Dencio then brought Candida, Marcela's maid, to a bedroom where he raped her. Marcela could hear Candida crying and pleading: "Huwag! Maawa ka sa akin!" After raping Candida, Dencio fled from the house with the loot. Candida then untied Marcela and rushed to the police station about a kilometer away and told Police Officer Roberto Maawa that Dencio had barged into the house of Marcela, tied the latter to a chair and robbed her of her jewelry and money. Candida also related to the police officer that despite her pleas, Dencio had raped her. The policeman noticed that Candida was hysterical and on the verge of collapse. Dencio was charged with robbery with rape. During the trial, Candida can no longer be located. (8%)

a) If the prosecution presents Police Officer Roberto Maawa to testify on what Candida had told him, would such testimony of the policeman be hearsay? Explain.

SUGGESTED ANSWER:

No. The testimony of the policeman is not hearsay. It is part of the res gestae. It is also an independently relevant statement. The police officer testified of his own personal knowledge, not to the truth of Candida's statement, i.e., that she told him, despite her pleas, Dencio had raped her. **(People v. Gaddi,G.R. No. 74065, February 27,1989)**

b) If the police officer will testify that he noticed Candida to be hysterical and on the verge of collapse, would such testimony be considered as opinion, hence, inadmissible? Explain.

SUGGESTED ANSWER:

No, it cannot be considered as opinion, because he was testifying on what he actually observed. The last paragraph of Sec. 50, Rule 130, Revised Rules of Evidence, expressly provides that a witness may testify on his impressions of the emotion, behavior, condition or appearance of a person.

Hearsay; Exceptions (1999)

a) Define hearsay evidence? (2%) b) What are the exceptions to the hearsay rule? (2%)

SUGGESTED ANSWER:

. Hearsay evidence may be defined as evidence that consists of testimony not coming from personal knowledge *(Sec. 36, Rule 130, Rules of Court)*. Hearsay testimony is the testimony of a witness as to what he has heard other persons say about the facts in issue.

. The exceptions to the hearsay rule are: dying declaration, declaration against interest, act or declaration about pedigree, family reputation or tradition regarding pedigree, common reputation, part of the *res gestae*, entries in the course of business, entries in official records, commercial lists and the like, learned treatises, and testimony or deposition at a former proceeding. *(37 to 47, Rule 13O, Rules of Court)*

Hearsay; Exceptions; Dying Declaration (1999)

The accused was charged with robbery and homicide. The victim suffered several stab wounds. It appears that eleven (11) hours after the crime, while the victim was being brought to the hospital in a jeep, with his brother and a policeman as companions, the victim was asked certain questions which he answered, pointing to the accused as his assailant. His answers were put down in writing, but since he was a in a critical condition, his brother and the policeman signed the statement. Is the statement admissible as a dying declaration? Explain. (2%)

SUGGESTED ANSWER:

Yes. The statement is admissible as a dying declaration if the victim subsequently died and his answers were made under the consciousness of impending death *(Sec. 37 of Rule 130)*. The fact that he did not sign the statement point to the accused as his assailant, because he was in critical condition, does not affect its admissibility as a dying declaration. A dying declaration need not be in writing **(People v. Viovicente, 286 SCRA 1)**

Hearsay; Inapplicable (2003)

X was charged with robbery. On the strength of a warrant of arrest issued by the court, X was arrested by police operatives. They seized from his person a handgun. A charge for illegal possession of firearm was also filed against him. In a press conference called by the police, X admitted that he had robbed the victim of jewelry valued at P500,000.00.

The robbery and illegal possession of firearm cases were tried jointly. The prosecution presented in evidence a newspaper clipping of the report to the reporter who was present during the press conference

stating that X admitted the robbery. It likewise presented a certification of the PNP Firearms and Explosive Office attesting that the accused had no license to carry any firearm. The certifying officer, however, was not presented as a witness. Both pieces of evidence were objected to by the defense. (6%) a) Is the newspaper clipping admissible in evidence against X? b) Is the certification of the PNP Firearm and Explosive Office without the certifying officer testifying on it admissible in evidence against X?

SUGGESTED ANSWER:

(a) Yes, the newspaper clipping is admissible in evidence against X. regardless of the truth or falsity of a statement, the hearsay rule does not apply and the statement may be shown where the fact that it is made is relevant. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such fact. **(Gotesco Investment Corporation vs. Chatto, 210 SCRA 18 [1992])**

(b) Yes, the certification is admissible in evidence against X because a written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. *(Sec. 28 of Rule 132).*

Judicial Notice; Evidence (2005)

Explain briefly whether the RTC may, *motu proprio*, take judicial notice of: (5%)

1. The street name of methamphetamine hydro-chloride is shabu.

SUGGESTED ANSWER:

The RTC may *motu proprio* take judicial notice of the street name of methamphetamine hydrochloride is shabu, considering the chemical composition of shabu. **(People v. Macasling, GM, No. 90342, May 27, 1993)**

2. Ordinances approved by municipalities under its territorial jurisdiction;

SUGGESTED ANSWER:

In the absence of statutory authority, the RTC may not take judicial notice of ordinances approved by municipalities under their territorial jurisdiction, except on appeal from the municipal trial courts, which took judicial notice of the ordinance in question. **(U.S. v. Blanco, G.R, No. 12435, November 9,1917; U.S. v. Hernandez, G.R. No. 9699, August 26, 1915)**

3. Foreign laws;

SUGGESTED ANSWER:

The RTC may not generally take judicial notice of foreign laws **(In re Estate of Johnson, G.R. No. 12767, November 16, 1918; Fluemer v. Hix, G.R. No. 32636, March 17, 1930),** which must be proved like any other matter of fact **(Sy Joe Lieng v. Sy Quia, G.R. No. 4718, March 19, 1910)** except in a few instances, the court in the exercise of its sound judicial discretion, may take notice of foreign laws when Philippine courts are evidently familiar with them, such as the Spanish Civil Code, which had taken effect in the Philippines, and other allied legislation. **(Pardo v. Republic, G.R. No. L2248 January 23, 1950; Delgado v. Republic, G.R. No. L2546, January .28, 1950)**

4. Rules and Regulations issued by quasi-judicial bodies implementing statutes;

SUGGESTED ANSWER:

The RTC may take judicial notice of Rules and Regulations issued by quasi-judicial bodies implementing statutes, because they are capable of unquestionable demonstration **(Chattamal v. Collector of Customs, G.R. No. 16347, November 3,1920)**, unless the law itself considers such rules as an integral part of the statute, in which case judicial notice becomes mandatory.

5. Rape may be committed even in public places.

SUGGESTED ANSWER:

The RTC may take judicial notice of the fact that rape may be committed even in public places. The "public setting" of the rape is not an indication of consent. **(People v. Tongson, G.R. No. 91261, February 18, 1991)**

The Supreme Court has taken judicial notice of the fact that a man overcome by perversity and beastly passion chooses neither the time, place, occasion nor victim. **(People v, Barcelona, G.R. No. 82589, October 31, 1990)**

Judicial Notice; Evidence; Foreign Law (1997)

a) Give three instances when a Philippine court can take judicial notice of a foreign law. b) How do you prove a written foreign law? c) Suppose a foreign law was pleaded as part of the defense of defendant but no evidence was presented to prove the existence of said law, what is the presumption to be taken by the court as to the wordings of said law"?

SUGGESTED ANSWER:

(a) The three instances when a Philippine court can take judicial notice of a foreign law are: (1) when the Philippine courts are evidently familiar with the foreign law *(Moran. Vol. 5, p. 34, 1980 edition);* (2) when the foreign law refers to the law of nations *(Sec. 1 of Rule 129)* and (3) when it refers to a published treatise, periodical or pamphlet on the subject of law if the court takes judicial notice of the fact that the writer thereof is recognized in his profession or calling as expert on the subject *(Sec. 46. Rule 130).*

(b) A written foreign law may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied. If the record is not kept in the Philippines, with a certificate that such officer has the custody, if the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office **(Sec. 24, Rule 132, Zalamea v. CA, 228**

SCRA 23).

(c) The presumption is that the wordings of the foreign law are the same as the local law. **(Northwest Orient Airlines v. Court of Appeals, 241 SCRA 192; Moran, Vol. 6. page 34, 1980 edition; Lim v. Collector of Customs, 36 Phil. 472)**. This is known as the PROCESSUAL PRESUMPTION.

Memorandum (1996)

X states on direct examination that he once knew the facts being asked but he cannot recall them now. When handed a written record of the facts he testifies that the facts are correctly stated, but that he has never seen the writing before. Is the writing admissible as past recollection recorded? Explain,

SUGGESTED ANSWER:

No, because for the written record to be admissible as past recollection recorded. It must have been written or recorded by X or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly written or recorded. *(Sec. 16 of Rule 132)* But in this case X has never seen the writing before.

Offer of Evidence (1997)

A trial court cannot take into consideration in deciding a case an evidence that has not been "formally offered". When are the following pieces of evidence formally offered?

(a) Testimonial evidence
(b) Documentary evidence
(c) Object evidence

SUGGESTED ANSWER:

(a) Testimonial evidence is formally offered at the time the witness is called to testify. *(Rule 132. Sec. 35, first par.).*

(b) Documentary evidence is formally offered after the presentation of the testimonial evidence. *(Rule 132, Sec. 35, second par.).*

(c) The same is true with object evidence. It is also offered after the presentation of the testimonial evidence.

Offer of Evidence; res inter alios acta (2003)

X and Y were charged with murder. Upon application of the prosecution, Y was discharged from the Information to be utilized as a state witness. The prosecutor presented Y as witness but forgot to state the purpose of his testimony much less offer it in evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds.

(a) The testimony of Y should be excluded because its purpose was not initially stated and it was not formally offered in evidence as required by Section 34, Rule 132 of the Revised Rules of Evidence; and
(b) Y's testimony is not admissible against X pursuant to the rule on "res inter alios acta". Rule on the motion for demurrer to evidence on the above grounds. (6%)

SUGGESTED ANSWER:

The demurrer to the evidence should be denied because: a) The testimony of Y should not be excluded

> because the defense counsel did not object to his testimony despite the fact that the prosecutor forgot to state its purpose or offer it in evidence. Moreover, the defense counsel thoroughly cross-examined Y and thus waived the objection.

b) The *res inter alios acta rule* does not apply because Y testified in open court and was subjected to cross examination.

Offer of Evidence; Testimonial & Documentary (1994)

What is the difference between an offer of testimonial evidence and an offer of documentary evidence?

SUGGESTED ANSWER:

An offer of testimonial evidence is made at the time the witness is called to testify, while an offer of documentary evidence is made after the presentation of a party's testimonial evidence. *(Sec. 35, Rule 132).*

Opinion Rule (1994)

At Nolan's trial for possession and use of the prohibited drug, known as "shabu:, his girlfriend Kim, testified that on a particular day, he would see Nolan very prim and proper, alert and sharp, but that three days after, he would appear haggard, tired and overly nervous at the slightest sound he would hear. Nolan objects to the admissibility of Kim's testimony on the ground that Kim merely stated her opinion without having been first qualified as expert witness. Should you, as judge, exclude the testimony of Kim?

SUGGESTED ANSWER:

No. The testimony of Kim should not be excluded. Even though Kim is not an expert witness, Kim may testify on her impressions of the emotion, behavior, condition or appearance of a person. *(Sec. 50, last par., Rule 130).*

Parol Evidence Rule (2001)

Pedro filed a complaint against Lucio for the recovery of a sum of money based on a promissory note executed by Lucio. In his complaint, Pedro alleged that although the promissory note says that it is payable within 120 days, the truth is that the note is payable immediately after 90 days but that if Pedro is willing, he may, upon request of Lucio give the latter up to 120 days to pay the note. During the hearing, Pedro testified that the truth is that the agreement between him and Lucio is for the latter to pay immediately after ninety day's time. Also, since the original note was with Lucio and the latter would not surrender to Pedro the original note which Lucio kept in a place about one day's trip from where he received the notice to produce the note and in spite of such notice to produce the same within six hours from receipt of such notice, Lucio failed to do so. Pedro presented a copy of the note which was executed at the same time as the original and with identical contents. a) Over the objection of Lucio, will Pedro be

allowed to testify as to the true agreement or contents of the promissory note? Why? (2%) b) Over the objection of Lucio, can Pedro present a copy of the promissory note and have it admitted as valid evidence in his favor? Why? (3%)

SUGGESTED ANSWER:

a) Yes, because Pedro has alleged in his complaint that the promissory note does not express the true intent and agreement of the parties. This is an exception to the parol evidence rule. *[Sec. 9(b) of Rule 130, Rules of Court]*

b) Yes, the copy in the possession of Pedro is a duplicate original and with identical contents. *[Sec. 4(b) of Rule 130]*. Moreover, the failure of Lucio to produce the original of the note is excusable because he was not given reasonable notice, as requirement under the Rules before secondary evidence may be presented. *(Sec. 6 of Rule 130, Rules of Court)*

Note: The promissory note is an actionable document and the original or a copy thereof should have been attached to the complaint. *(Sec. 7 of Rule 9, 1997 Rules of Civil Procedure).* In such a case, the genuineness and due execution of the note, if not denied under oath, would be deemed admitted. *(Sec. 8 of Rule 9, 1997 Rules of Civil Procedure)*

Preponderance vs. Substantial Evidence (2003)

Distinguish preponderance of evidence from substantial evidence. 4%

SUGGESTED ANSWER:

PREPONDERANCE OF EVIDENCE means that the evidence as a whole adduced by one side is superior to that of the other. This is applicable in civil cases. **(Sec. 1 of Rule 133; Municipality of Moncada v. Cajuigan, 21 Phil, 184 [1912])**.

SUBSTANTIAL EVIDENCE is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This is applicable in case filed before administrative or quasi-judicial bodies. *(Sec. 5 of Rule 133)*

Privilege Communication (1998)

C is the child of the spouses H and W. H sued his wife W for judicial declaration of nullity of marriage under Article 36 of the Family Code. In the trial, the following testified over the objection of W: C, H and D, a doctor of medicine who used to treat W. Rule on W's objections which are the following:

1. H cannot testify against her because of the rule on marital privilege; [1%]
2. C cannot testify against her because of the doctrine on parental privilege; and [2%]
3. D cannot testify against her because of the doctrine of privileged communication between patient and physician. [2%]

SUGGESTED ANSWER:

1. The rule of marital privilege cannot be invoked in the annulment case under Rule 36 of the Family Code because it is a civil case filed by one against the other, *(Sec. 22 , Rule 130. Rules of Court.)*

2. The doctrine of parental privilege cannot likewise be invoked by W as against the testimony of C, their child. C may not be compelled to testify but is free to testify against her. *(Sec. 25. Rule 130. Rules of Court; Art. 215, Family Code.)*

3. D, as a doctor who used to treat W, is disqualified to testify against W over her objection as to any advice or treatment given by him or any information which he may have acquired in his professional capacity. *(Sec. 24 [c], Rule 130. Rules of Court.)*

ALTERNATIVE ANSWER:

If the doctor's testimony is pursuant to the requirement of establishing the psychological incapacity of W, and he is the expert called upon to testify for the purpose, then it should be allowed.

(Republic vs. Court of Appeals and Molina, 26S SCRA 198.)

Privilege Communication; Marital Privilege (1989)

Ody sued spouses Cesar and Baby for a sum of money and damages. At the trial, Ody called Baby as his first witness. Baby objected, joined by Cesar, on the ground that she may not be compelled to testify against her husband. Ody insisted and contended that after all, she would just be questioned about a conference they had with the barangay captain, a

matter which is not confidential in nature. The trial court ruled in favor of Ody. Was the ruling proper? Will your answer be the same if the matters to be testified on were known to Baby or acquired by her prior to her marriage to Cesar? Explain.

SUGGESTED ANSWER:

No. Under the Rules on Evidence, a wife cannot be examined for or against her husband without his consent, except in civil cases by one against the other, or in a criminal case for a crime committed by one against the other. Since the case was filed by Ody against the spouses Cesar and Baby, Baby cannot be compelled to testify for or against Cesar without his consent. **(Lezama vs. Rodriguez, 23 SCRA 1166).**

The answer would be the same if the matters to be testified on were known to Baby or acquired by her prior to her marriage to Cesar, because the marital disqualification rule may be invoked with respect to testimony on any fact. It is immaterial whether such matters were known to Baby before or after her marriage to Cesar.

Privilege Communication; Marital Privilege (2000)

Vida and Romeo are legally married. Romeo is charged to court with the crime of serious physical injuries committed against Selmo, son of Vida, stepson of Romeo. Vida witnessed the infliction of the injuries on Selmo by Romeo. The public prosecutor called Vida to the witness stand and offered her testimony as an eyewitness. Counsel for Romeo objected on the ground of the marital disqualification rule under the Rules of Court. a) Is the objection valid? (3%) b) Will your answer be the same if Vida's testimony

> is offered in a civil case for recovery of personal property filed by Selmo against Romeo? (2%)

SUGGESTED ANSWER:

(a) No. While neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, one exception is if the testimony of the spouse is in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. *(Sec, 22, Rule 130)*. The case falls under this exception because Selma is the direct descendant of the spouse Vide.

(b) No. The marital disqualification rule applies this time. The exception provided by the rules is in a civil case by one spouse against the other. The case here involves a case by Selmo for the recovery of personal property against Vida's spouse, Romeo.

Privilege Communication; Marital Privilege (2004)

XYZ, an alien, was criminally charged of promoting and facilitating child prostitution and other sexual abuses under Rep. Act No. 7610. The principal witness against him was his Filipina wife, ABC. Earlier, she had complained that XYZ's hotel was being used as a center for sex tourism and child trafficking. The defense counsel for XYZ objected to the testimony of ABC at the trial of the child prostitution case and the introduction of the affidavits she executed against her husband as a violation of espousal confidentiality and marital privilege rule. It turned out that DEF, the minor daughter of ABC by her first husband who was a Filipino, was molested by XYZ earlier. Thus, ABC had filed for legal separation from XYZ since last year. May the court admit the testimony and affidavits of the wife, ABC, against her husband, XYZ, in the criminal case involving child prostitution? Reason. (5%)

SUGGESTED ANSWER:

Yes. The court may admit the testimony and affidavits of the wife against her husband in the criminal case where it involves child prostitution of the wife's daughter. It is not covered by the marital privilege rule. One exception thereof is where the crime is committed by one against the other or the latter's direct descendants or ascendants. *(Sec. 22, Rule 130)*. A crime by the husband against the daughter is a crime against the wife and directly attacks or vitally impairs the conjugal relation. **(Ordono v. Daquigan, 62**

SCRA 270 [1975]).

Privilege Communication; Marital Privilege (2006)

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City. For unknown reasons, the house of Leticia's sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information filed with the Regional Trial Court, Pasig City. During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson. Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

ALTERNATIVE ANSWER:

No, Leticia cannot testify over the objection of her husband, not under marital privilege which is inapplicable and which can be waived, but she would be barred under Sec. 22 of Rule 130, which prohibits her from testifying and which cannot be waived

(Alvarez v. Ramirez, G.R. No. 143439, October 14, 2005).

ALTERNATIVE ANSWER:

Yes, Leticia may testify over the objection of her husband. The disqualification of a witness by reason of marriage under Sec. 22, Rule 130 of the Revised Rules of Court has its exceptions as where the marital relations are so strained that there is no more harmony to be preserved. The acts of Paul eradicate all major aspects of marital life. On the other hand, the State has an interest in punishing the guilty and

exonerating the innocent, and must have the right to offer the testimony of Leticia over the objection of her husband **(Alvarez v. Ramirez, G.R. No. 143439, October 14, 2005).**

Remedy; Lost Documents; Secondary Evidence (1992)

Ajax Power Corporation, a utility company, sued in the RTC to enforce a supposed right of way over a property owned by Simplicio. At the ensuing trial, Ajax presented its retired field auditor who testified that he know for a fact that a certain sum of money was periodically paid to Simplicio for some time as consideration for a right of way pursuant to a written contract. The original contract was not presented. Instead, a purported copy, identified by the retired field auditor as such, was formally offered as part of his testimony. Rejected by the trial court, it was finally made the subject of an offer of proof by Ajax.

Can Ajax validly claim that it had sufficiently met its burden of proving the existence of the contract establishing its right of way? Explain,

SUGGESTED ANSWER:

No. Ajax had not sufficiently met the burden of proving the existence of the written contract because. It had not laid the basis for the admission of a purported copy thereof as secondary evidence. Ajax should have first proven the execution of the original document and its loss or destruction. *(Sec. 5 of Rule 130)*

Testimony; Independent Relevant Statement (1999)

A overheard B call X a thief. In an action for defamation filed by X against B, is the testimony of A offered to prove the fact of utterance i.e., that B called X a thief, admissible in evidence? Explain. (2%)

SUGGESTED ANSWER:

Yes. The testimony of A who overheard B call X a thief is admissible in evidence as an independently relevant statement. It is offered in evidence only to prove the tenor thereof, not to prove the truth of the facts asserted therein. Independently relevant statements include statements which are on the very facts in issue or those which are circumstantial evidence thereof. The hearsay rule does not apply.

(See People vs. Gaddi, 170 SCRA 649)

Witness; Competency of the Witness vs. Credibility of the Witness (2004)

Distinguish Competency of the witness and credibility of the witness.

SUGGESTED ANSWER:

Competency of the witness refers to a witness who can perceive, and perceiving, can make known his perception to others *(Sec. 20 of Rule 130),* while credibility of the witness refers to a witness whose testimony is believable.

Witness; Examination of a Child Witness; via Live-Link TV (2005) When may the trial court order that the testimony of a child be taken by live-link television? Explain.

SUGGESTED ANSWER:

The testimony of a child may be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must of a kind which would impair the completeness or truthfulness of the testimony of the child. *(See Sec. 25, Rule on Examination of a Child Witness).*

Witness; Examination of Witnesses (1997)

a) Aside from asking a witness to explain and supplement his answer in the cross-examination, can the proponent ask in re-direct examination questions on matters not dealt with during cross-examination?

b) Aside from asking the witness on matters stated in his re-direct examination, can the opponent in his re-cross-examination ask questions on matters not dealt with during the re-direct?

c) After plaintiff has formally submitted his evidence, he realized that he had forgotten to present what he considered an important evidence. Can he recall a witness?

SUGGESTED ANSWER:

(a) Yes, on redirect examination, questions on matters not dealt with during the cross-examination may be allowed by the court in its discretion. *(Sec. 7 of Rule 132).*

(b) Yes, the opponent in his re-cross-examination may also ask questions on such other matters as may be allowed by the court in its discretion. *(Sec. 8. Rule 132).*

(c) Yes, after formally submitting his evidence, the plaintiff can recall a witness with leave of court. The court may grant or withhold leave in its discretion as the interests of justice may require. *(Sec. 9. Rule 132).*

Witness; Examination of Witnesses (2002)

Is this question on direct examination objectionable: "What happened on July 12, 1999"? Why? (2%)

SUGGESTED ANSWER:

The question is objectionable because it has no basis, unless before the question is asked the proper basis is laid.

Witness; Utilized as State Witness; Procedure (2006)

As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? (2.5%)

SUGGESTED ANSWER:

As counsel of an accused charged with homicide, the procedure that can be followed for the accused to be utilized as a state witness is to ask the Prosecutor to recommend that the accused be made a state witness.

It is the Prosecutor who must recommend and move for the acceptance of the accused as a state witness. The accused may also apply under the Witness Protection Program.

SPECIAL PROCEEDINGS

Cancellation or Correction; Entries Civil Registry (2005)

Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen. Helen wants her birth certificate corrected by changing her filiation from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino" because her parents were not married. What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

SUGGESTED ANSWER:

A petition to change the record of birth by changing the filiation from "legitimate" to "illegitimate" and petitioner's citizenship from "Chinese" to "Filipino" because her parents were not married, does not involve a simple summary correction, which could otherwise be done under the authority of R.A. No. 9048. A petition has to be filed in a proceeding under Rule 108 of the Rules of Court, which has now been interpreted to be adversarial in nature. **(Republic v. Valencia, G.R. No. L-32181, March 5, 1986)** Procedural requirements include: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which would be affected; (c) issuance of an order fixing the time and place of hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive seeks in a newspaper of general circulation. *(Rule 108, Rules of Court)*

Escheat Proceedings (2002)

Suppose the property of D was declared escheated on July 1, 1990 in escheat proceedings brought by the Solicitor General. Now, X, who claims to be an heir of D, filed an action to recover the escheated property. Is the action viable? Why? (2%)

SUGGESTED ANSWER:

No, the action is not viable. The action to recover escheated property must be filed within five years from July 1, 1990 or be forever barred. *(Rule 91, sec. 4).*

Extra-judicial Settlement of Estate (2005)

Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity? Explain. (2%)

SUGGESTED ANSWER:

If the decedent left no will and no debts, and the heirs are all of age, the parties may, without securing letters of administration, divide the estate among themselves by means of a public instrument or by stipulation in a pending action for partition and shall file a bond with the register of deeds in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned. The fact of extra-judicial settlement shall be published in a newspaper of general circulation once a week for three consecutive weeks in the province. *(Sec. 1, Rule 74, Rules of Court)*

Habeas Corpus (1993)

Roxanne, a widow, filed a petition for habeas corpus with the Court of Appeals against Major Amor who is allegedly detaining her 18-year old son Bong without authority of the law.

After Major Amor had a filed a return alleging the cause of detention of Bong, the Court of Appeals promulgated a resolution remanding the case to the RTC for a full-blown trial due to the conflicting facts presented by the parties in their pleadings. In directing the remand, the court of Appeals relied on Sec.9(1), in relation to Sec. 21 of BP 129 conferring upon said Court the authority to try and decide habeas corpus cases concurrently with the RTCs. Did the Court of Appeals act correctly in remanding the petition to the RTC? Why?

SUGGESTED ANSWER:

No, because while the CA has original jurisdiction over habeas corpus concurrent with the RTCs, it has no authority for remanding to the latter original actions filed with the former. On the contrary, the CA is specifically given the power to receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original jurisdiction.

ALTERNATIVE ANSWER:

Yes, because there is no prohibition in the law against a superior court referring a case to a lower court having concurrent jurisdiction. The Supreme Court has referred to the CA or the RTC cases falling within their concurrent jurisdiction.

Habeas Corpus (1998)

A was arrested on the strength of a warrant of arrest issued by the RTC in connection with an Information for Homicide. W, the live-in partner of A filed a petition for habeas corpus against A's jailer and police investigators with the Court of Appeals.

1. Does W have the personality to file the petition for habeas corpus? [2%]
2. Is the petition [2%] viable? [3%]

SUGGESTED ANSWER:

1. Yes. W, the live-in partner of A, has the personality to file the petition for habeas corpus because it may be filed by "some person in his behalf." *(Sec. 3. Rule 102. Rules of Court.)*

2. No. The petition is not tenable because the warrant of arrest was issued by a court which had Jurisdiction to issue it *(Sec. 4, Rule 102 Rules of Court)*

Habeas Corpus (2003)

Widow A and her two children, both girls, aged 8 and 12 years old, reside in Angeles City, Pampanga. A leaves her two daughters in their house at night because she works in a brothel as a prostitute. Realizing the danger to the morals of these two girls, B, the father of the deceased husband of A, files a petition for habeas corpus against A for the custody of the girls in the Family Court in Angeles City. In said petition, B alleges that he is entitled to the custody of the two girls because their mother is living a disgraceful life. The court issues the writ of habeas corpus. When A learns of the petition and the writ, she brings her two children to Cebu City. At the expense of B the sheriff of the said Family Court goes to Cebu City and serves the writ on A. A files her comment on the petition raising the following defenses: a) The enforcement of the writ of habeas corpus in

Cebu City is illegal; and b) B has no personality to institute the petition. 6% Resolve the petition in the light of the above defenses of A. (6%)

SUGGESTED ANSWER:

(a) The writ of habeas corpus issued by the Family Court in Angeles City may not be legally enforced in Cebu City, because the writ is enforceable only within the judicial region to which the Family Court belongs, unlike the writ granted by the Supreme Court or Court of Appeals which is enforceable anywhere in the Philippines. **(Sec. 20 of**

Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors. (A.M. No. 03-04-04-SC; see also Sec. 4 of Rule 102, Rules of Court.)

(b) B, the father of the deceased husband of A, has the personality to institute the petition for habeas corpus of the two minor girls, because the grandparent has the right of custody as against the mother A who is a prostitute. *(Sectioins 2 and 13, Id.)*

Intestate Proceedings (2002)

X filed a claim in the intestate proceedings of D. D's administrator denied liability and filed a counterclaim against X. X's claim was disallowed.

(1) Does the probate court still have jurisdiction to allow the claim of D's administrator by way of offset? Why? (2%)

(2) Suppose D's administrator did not allege any claim against X by way of offset, can D's administrator prosecute the claim in an independent proceeding/ why/ (3%)

SUGGESTED ANSWER:

(1) No, because since the claim of X was disallowed, there is no amount against which to offset the claim of D's administrator.

(2) Yes, D's administrator can prosecute the claim in an independent proceeding since the claim of X was disallowed. If X had a valid claim and D's administrator did not allege any claim against X by way of offset, his failure to do so would bar his claim forever. *(Rule 86, sec. 10).*

Intestate Proceedings; Debts of the Estate (2002)

A, B and C, the only heirs in D's intestate proceedings, submitted a project of partition to the partition, two lots were assigned to C, who immediately entered into the possession of the lots. Thereafter, C died and proceedings for the settlement of his estate were filed in the RTC-Quezon City. D's administrator then filed a motion in the probate court (RTC-Manila), praying that one of the lots assigned to C in the project of partition be turned over to him to satisfy debts corresponding to C's portion. The motion was opposed by the administrator of C's estate. How should the RTC-Manila resolve the motion of D's administrator? Explain. (3%)

SUGGESTED ANSWER:

The motion of D's administrator should be granted. The assignment of the two lots to C was premature because the debts of the estate had not been fully paid. **[Rule 90, sec. 1; Reyes v. Barreto-Datu, 19 SCRA 85 (1967)].**

Judicial Settlement of Estate (2005)

State the rule on venue in judicial settlement of estate of deceased persons. (2%)

SUGGESTED ANSWER:

If the decedent is an inhabitant of the Philippines at the time of' his death, whether a citizen or an alien, the venue shall be in the RTC in the province in which he resides at the time of his death, not in the place where he used to live. **(Jao v. Court of Appeals, G.R. No. 128314, May 29, 2002)**

If he is an inhabitant, of a foreign country, the RTC of any province or city in which he had estate shall be the venue. The court first taking cognizance of the case shall exercise jurisdiction to the exclusion of all other courts. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, the conjugal partnership shall be liquidated in the testate or intestate proceedings of either. **(Sees. 1 and 2, Rule 73, Rules of Court)**

Probate of Lost Wills (1999)

What are the requisites in order that a lost or destroyed Will may be allowed? (2%)

A's Will was allowed by the Court. No appeal was taken from its allowance. Thereafter, Y, who was interested in the estate of A, discovered that the Will was not genuine because A's signature was forged by X. A criminal action for forgery was instituted against X. May the due execution of the Will be validly questioned in such criminal action? (2%)

SUGGESTED ANSWER:

a. In order that a lost or destroyed will may be allowed, the following must be complied with:

1 the execution and validity of the same should be established;

2 the will must have been in existence at the time of the death of the testator, or shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge; and

3 its provisions are clearly and distinctly proved by at least two credible witnesses.

(Sec. 6, Rule 76 of the Rules of Court)

SUGGESTED ANSWER:

b. No. The allowance of the will from which no appeal was taken is conclusive as to its due execution. *(Sec. 1 of Rule 75.)* Due execution includes a finding that the will is genuine and not a forgery. Accordingly, the due execution of the will cannot again be questioned in a subsequent proceeding, not even in a criminal action for forgery of the will.

Probate of Will (2003)

A, a resident of Malolos, Bulacan, died leaving an estate located in Manila, worth P200,000.00. In what court, taking into consideration the nature of jurisdiction and of venue, should the probate proceeding on the estate of A be instituted? (4%)

SUGGESTED ANSWER:

The probate proceeding on the estate of A should be instituted in the Municipal Trial Court of Malolos, Bulacan which has jurisdiction, because the estate is valued at P200,000.00, and is the court of proper venue because A was a resident of Malolos at the time of his death. **(Sec. 33 of BP 129 as amended by RA 7691; Sec. 1 of Rule 73).**

Probate of Will (2005)

After Lulu's death, her heirs brought her last will to a lawyer to obtain their respective shares in the estate. The lawyer prepared a deed of partition distributing Lulu's estate in accordance with the terms of her will. Is the act of the lawyer correct? Why? (2%)

SUGGESTED ANSWER:

No. No will, shall pass either real or personal estate unless it is proved and allowed in the proper court. *(Sec. 1, Rule 75, Rules of Court)*

Probate of Will (2006)

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P 300 Million. He bequeathed P 50 Million each to his 3 sons and P 150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-inlaw. He named his best friend, Cancio Vidal, as executor of the will without bond. **Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition of probate of the latter's last will and testament? (2%)**

SUGGESTED ANSWER:

Cancio Vidal is obliged to file a petition for probate and for accepting or refusing the trust within the statutory period of 20 days under Sec. 3, Rule 75, Rules of Court.

Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court. (2%)

SUGGESTED ANSWER:

Yes, Cancio can compel Susan to produce the copy in her possession. A person having custody of the will is bound to deliver the same to the court of competent jurisdiction or to the executor, as provided in Sec. 2, Rule 75, Rules of Court.

Can the probate court appoint the widow as executor of the will? (2%)

SUGGESTED ANSWER:

Yes, the probate court can appoint the widow as executor of the will if the executor does not qualify, as when he is incompetent, refuses the trust, or fails to give bond *(Sec. 6, Rule 78, Rules of Court).*

Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)

SUGGESTED ANSWER:

No, the widow and her children cannot settle the estate extrajudicially because of the existence of the Will. No will shall pass either real or personal estate unless it is proved and allowed in the proper court *(Sec. 1, Rule 75, Rules of Court).*

Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the court? (2%)

SUGGESTED ANSWER:

No, the widow and her children cannot file a separate petition for partition pending the probate of the will. Partition is a mode of settlement of the estate *(Sec. 1, Rule 75, Rules of Court).*

Probate of Will; Mandatory Nature (2002)

What should the court do if, in the course of intestate proceedings, a will is found and it is submitted for probate? Explain. (2%)

SUGGESTED ANSWER:

If a will is found in the course of intestate proceedings and it is submitted for probate, the intestate proceedings will be suspended until the will is probated. Upon the probate of the will, the intestate proceedings will be terminated. *(Rule 82, sec. 1).*

Settlement of Estate (2001)

The rules on special proceedings ordinarily require that the estate of the deceased should be judicially administered thru an administrator or executor. What are the two exceptions to said requirements? (5%)

SUGGESTED ANSWER:

The two exceptions to the requirement are:

(a) Where the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves by means of public instrument filed in the office of the register of deeds, or should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties or the sole heir shall file simultaneously abound with the register of deeds, in an amount equivalent to the value of the personal property as certified to under oath by the parties and conditioned upon the payment of any just claim that may be filed later. The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the province once a week for three consecutive weeks. *(Sec. 1 of Rule 74, Rules of Court)*

(b) Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the RTC having jurisdiction or the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, to settle the estate. *(Sec. 2 of Rule 74, Rules of Court)*

Settlement of Estate; Administrator (1998)

A, claiming to be an illegitimate child of the deceased D, instituted an Intestate proceeding to settle the estate of the latter. He also prayed that he be appointed administrator of said estate. S, the surviving spouse, opposed the petition and A's application to be appointed the administrator on the ground that he was not the child of her deceased husband D. The court, however, appointed A as the administrator of said estate. Subsequently, S, claiming to be the sole heir of D, executed an Affidavit of Adjudication, adjudicating unto herself the entire estate of her deceased husband D. S then sold the entire estate to X. Was the appointment of A as administrator proper? [2%] Was the action of S in adjudicating the entire estate of her late husband to herself legal? [3%]

SUGGESTED ANSWER:

1. Yes, unless it is shown that the court gravely-abused its discretion in appointing the illegitimate child as administrator, instead of the spouse. While the spouse enjoys preference, it appears that the spouse has neglected to apply for letters of administration within thirty (30) days from the death of the decedent. **(Sec. 6, Rule 78, Rules of Court;**

Gaspay, Jr. vs. Court of Appeals. 238 SCRA 163.)

ALTERNATIVE ANSWER:

S, the surviving spouse, should have been appointed administratrix of the estate, in as much as she enjoys first preference in such appointment under the rules. *(Sec. 6(a) of Rule 78, Rules of Court.)*

SUGGESTED ANSWER:

2. No. An affidavit of self-adjudication is allowed only if the affiant is the sole heir of the. deceased. *(Sec. 1, Rule 74, Rules of Court).* In this case, A also claims to be an heir. Moreover, it is not legal because there is already a pending juridical proceeding for the settlement of the estate.

Venue; Special Proceedings (1997)

Give the proper venue for the following special proceedings: a) A petition to declare as escheated a parcel of land

owned by a resident of the Philippines who died intestate and without heirs or persons entitled to the property.

b) A petition for the appointment of an administrator over the land and building left by an American citizen residing in California, who had been declared an incompetent by an American court.

c) A petition for the adoption of a minor residing in Pampanga.

SUGGESTED ANSWER:

(a) The venue of the escheat proceedings of a parcel of land in this case is the place where the deceased last resided. *(Sec. 1. Rule 91, Rules of Court).*

(b) The venue for the appointment of an administrator over land and building of an American citizen residing in California, declared Incompetent

by an American Court, is the RTC of the place where his property or part thereof is situated. *(Sec. 1. Rule 92).*

(c) The venue of a petition for the adoption of a minor residing in Pampanga is the RTC of the place in which the petitioner resides. *(Sec. 1. Rule 99)*

SUMMARY PROCEDURE

Prohibited Pleadings (2004)

Charged with the offense of slight physical injuries under an information duly filed with the MeTC in Manila which in the meantime had duly issued an order declaring that the case shall be governed by the Revised Rule on Summary Procedure, the accused filed with said court a motion to quash on the sole ground that the officer who filed the information had no authority to do so. The MeTC denied the motion on the ground that it is a prohibited motion under the said Rule. The accused thereupon filed with the RTC in Manila a petition for certiorari in sum assailing and seeking the nullification of the MeTC's denial of his motion to quash. The RTC in due time issued an order denying due course to the certiorari petition on the ground that it is not allowed by the said Rule. The accused forthwith filed with said RTC a motion for reconsideration of its said order. The RTC in time denied said motion for reconsideration on the ground that the same is also a prohibited motion under the said Rule. Were the RTC's orders denying due course to the petition as well as denying the motion for reconsideration correct? Reason. (5%)

SUGGESTED ANSWER:

The RTC's orders denying due course to the petition for certiorari as well as denying the motion for reconsideration are both not correct. The petition for certiorari is a prohibited pleading under Section 19(g) of the Revised Rule on Summary Procedure and the motion for reconsideration, while it is not prohibited motion **(Lucas v. Fabros, AM No. MTJ-99-1226, January**

31, 2000, citing Joven v. Court of Appeals, 212 SCRA 700, 707-708 (1992), should be denied because the petition for certiorari is a prohibited pleading.

MISCELLANEOUS

Administrative Proceedings (2005)

Regional Director AG of the Department of Public Works and Highways was charged with violation of Section 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him in the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the Military to conduct a joint investigation of the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for a period not exceeding six months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators.

AG moved to reconsider the order on the following grounds: (a) the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case; (b) the order for his preventive suspension was premature because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and (c) he was a career executive service officer and under Presidential Decree No. 807 (Civil Service Law), his preventive suspension shall be for a maximum period of three months. Resolve with reasons the motion of respondent AG. (5%)

SUGGESTED ANSWER:

The motion should be denied for the following reasons:

1 The Office of the Special Prosecutor does not have exclusive authority to conduct a preliminary investigation of the criminal case but it participated in the investigation together with the Deputy Ombudsman for the Military who can handle cases of civilians and is not limited to the military.

2 The order of preventive suspension need not wait for the answer to the administrative complaint and the submission of countervailing evidence. *(Garcia v. Mojica, G.R. No. 13903, September 10, 1999)* In *Vasquez case, G.R. No. 110801, April 6, 1995*, the court ruled that preventive suspension pursuant to Sec. 24 of R.A. No. 6770 (Ombudsman Act of 1989), shall continue until termination of the case but shall not exceed six (6) months, except in relation to R.A. No, 3019 and P.D. No. 807. As a career executive officer, his preventive suspension under the Civil Service Law may only be for a maximum period of three months. The period of the suspension under the Anti-Graft Law shall be the same pursuant to the equal protection clause. **(Garcia v. Mojica, G.R. No. 13903, September 10, 1999; Layno v. Sandiganbayan,**

G.R. No. L-65848, May 21, 1985)

Congress; Law Expropriating Property (2006)

May Congress enact a law providing that a 5, 000 square meter lot, a part of the UST compound in Sampaloc Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenic Lacson? As compensation to UST, the City

of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. (5%)

SUGGESTED ANSWER:

Yes, Congress may enact a law expropriating property provided that it is for public use and with just compensation. In this case, the construction of a park is for public use **(See Sena v. Manila Railroad Co., G.R. No. 15915, September 7, 1921; Reyes v. NHA, GR No. 147511, March 24, 2003).** The planned compensation, however, is not legally tenable as the determination of just compensation is a judicial function. No statute, decree or executive order can mandate that the determination of just compensation by the executive or legislative departments can prevail over the court's findings **(Export Processing Zone Authority v. Dulay, G.R. No. L-59603, April 29,1987; Sees. 5 to 8 Rule 67,1997 Rules of Civil Procedure).** In addition, compensation must be paid in money **(Esteban v. Onorio, A.M. No. 00-4-166-RTC, June 29, 2001).**

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RA 3019; Mandatory Suspension (2001)

Governor Pedro Mario of Tarlac was charged with indirect bribery before the Sandiganbayan for accepting a car in exchange of the award of a series of contracts for medical supplies. The Sandiganbayan, after going over the information, found the same to be valid and ordered the suspension of Mario. The latter contested the suspension claiming that under the law (Sec. 13 of R.A. 3019) his suspension is not automatic upon the filing of the information and his suspension under Sec. 13, R.A. 3019 is in conflict with Sec. 5 of the Decentralization Act of 1967 (R.A. 5185). The Sandilganbayan overruled Mario's contention stating that Mario's suspension under the circumstances is mandatory. Is the court's ruling correct? Why?

SUGGESTED ANSWER:

Yes. Mario's suspension is mandatory, although not automatic, *(Sec. 13 of R.A. No. 3019 in relation to Sec. 5 of the Decentralization Act of 1967 (R.A. No. 5185).* It is mandatory after the determination of the validity of the information in a pre-suspension hearing. **[Segovia v. Sandiganbayan, 288 SCRA 328 (1988)].** The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with evidence or from committing further acts of malfeasance while in office.