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UP LAW BAR OPERATIONS COMMISSION

MERCANTILE LAW

BAR QUESTIONS & ANSWERS

(2007-2017)

*with Table of Frequently
Asked Topics in the Bar*

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I. LETTERS OF CREDIT AND TRUST RECEIPTS

1. E received goods from T for display and sale in E's store. E was to turn over to T the proceeds of any sale and return the ones unsold. To document their agreement, E executed a trust receipt in T's favor covering the goods. When E failed to turn over the proceeds from his sale of the goods or return the ones unsold despite demand, he was charged in court for estafa. E moved to dismiss on the ground that his liability is only civil. Is he correct? (2011 MCQ Questions)
 - A) No, since he committed fraud when he promised to pay for the goods and did not.
 - B) No, since his breach of the trust receipt agreement subjects him to both civil and criminal liability for estafa.
 - C) Yes, since E cannot be charged with estafa over goods covered a trust receipt.
 - D) Yes, since it was merely a consignment sale and the buyer could not pay.

SUGGESTED ANSWER: B

2. The authorized alteration of a warehouse receipt which does not change its tenor renders the warehouseman liable according to the terms of the receipt
 - A) in its original tenor if the alteration is material.
 - B) in its original tenor.
 - C) as altered if there is fraud.
 - D) as altered.

SUGGESTED ANSWER: B

3. Any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument results in the discharge of the party secondarily liable unless made with the latter's consent. This agreement refers to one which the holder made with the
 - A) principal debtor.
 - B) principal creditor.
 - C) secondary creditor.
 - D) secondary debtor.

SUGGESTED ANSWER: A

4. Upon execution of a trust receipt over goods, the party who is obliged to release such goods and who retains security interest on those goods, is called the
 - A) holder.
 - B) shipper.

- C) entrustee.
- D) entrustor.

SUGGESTED ANSWER: D

5. X, warehouseman, sent a text message to Y, to whom X had issued a warehouse receipt for Y's 500 sacks of corn, notifying him of the due date and time to settle the storage fees. The message stated also that if Y does not settle the warehouse charges within 10 days, he will advertise the goods for sale at a public auction. When Y ignored the demand, X sold 100 sacks of corn at a public auction. For X's failure to comply with the statutory requirement of written notice to satisfy his lien, the sale of the 100 sacks of corn is
- A) voidable.
 - B) rescissible.
 - C) unenforceable.
 - D) void.

SUGGESTED ANSWER: D

6. T delivers two refrigerators to the warehouse of W who then issues a negotiable receipt undertaking the delivery of the refrigerators to "T or bearer." T entrusted the receipt to B for safekeeping only. B negotiated it, however, to F who bought it in good faith and for value. Who is entitled to the delivery of the refrigerators?
- A) T, since he is the real owner of the refrigerators.
 - B) F, since he is a purchaser in good faith and for value.
 - C) B, since T entrusted the receipt to him.
 - D) W, since he has as a warehouseman a lien on the goods.

SUGGESTED ANSWER: B

7. X, creditor of Y, obtained a judgment in his favor in connection with Y's unpaid loan to him. The court's sheriff then levied on the goods that Y stored in T's warehouse, for which the latter issued a warehouse receipt. A month before the levy, however, Z bought the warehouse receipt for value. Who has a better right over the goods?
- A) T, being the warehouseman with a lien on the goods
 - B) Z, being a purchaser for value of the warehouse receipt
 - C) X, being Y's judgment creditor
 - D) Y, being the owner of the goods

SUGGESTED ANSWER: B

8. 002-38-0001 G, a grocery goods supplier, sold 100 sacks of rice to H who promised to pay once he has sold all the rice. H meantime delivered the goods to W, a warehouseman, who issued a warehouse receipt. Without the knowledge of G and W, H negotiated the receipt to P who acquired it in good faith and for value. P then claimed the goods from W, who released them. After the rice was loaded on a ship bound for Manila, G invokes his right to stop the goods in transit due to his unpaid lien. Who has a better right to the rice?
- A) P, since he has superior rights as a purchaser for value and in good faith.
 - B) P, regardless of whether or not he is a purchaser for value and in good faith.
 - C) G, since as an unpaid seller, he has the right of stoppage in transitu.
 - D) W, since it appears that the warehouse charges have not been paid

SUGGESTED ANSWER: D

A. Basic concepts

9. TRUE OR FALSE. Briefly state your answer.

“A conviction under the Trust Receipts Law shall bar a prosecution for estafa under the Revised Penal Code.” (2017 Bar Question)

SUGGESTED ANSWER:

True, because the criminal violation of the trust receipts agreement is when the entrustee does not deliver the proceeds of the sale of the goods subject of the trust receipt or fails to return the goods in case of non sale already constitutes estafa under the Revised Penal Code.

10. Maine Den, Inc. opened an irrevocable letter of credit with Fair Bank, in connection with Maine Den, Inc.'s importation of spare parts for its textile mills. The imported parts were released to Maine Den, Inc. after it executed a trust receipt in favor of Fair Bank. When Maine Den, Inc. was unable to pay its obligation under the trust receipt, Fair Bank sued Maine Den, Inc. for estafa under the Trust Receipts Law. The court, however, dismissed the suit.
- A) Was the dismissal justified? Why or why not? (2015 Bar Question)

SUGGESTED ANSWER:

The dismissal of the complaint for estafa is justified. Under recent jurisprudence, the Supreme Court held that transactions referred to in relation to trust receipts mainly involved sales and if the entruster knew even before the execution of the alleged trust receipt agreement that the goods subject of the trust receipt were never intended by the entrustee for resale or for the manufacture of items to be sold, the agreement is not a trust receipt transaction but a simple loan, notwithstanding the label. In this case, the object of the trust receipt, spare parts for textile mills, were for the use of the entrustee and never intended for sale. As such, the transaction is a simple loan (*Ng v. People of the Philippines*, 619 SCRA 291 [2010]; *Land Bank v. Perez*, 672 SCRA 117 [2012] and *Hur Ting Yang v. People of the Philippines*, 703 SCRA 606 [2013]).

- B) Does the rule "res perit domino" apply in trust receipt transactions? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

No. This is because the loss of the goods, documents or instruments which are the subject of a trust receipt pending their disposition, irrespective of whether or not it was due to the fault or negligence of the entrustee, shall not extinguish the entrustee's obligation to the entruster for the value thereof.

Also, while the entruster is made to appear as owner of the goods covered by the trust receipt, such ownership is only a legal fiction to enhance the entruster's security interest over the goods (*Section 10 of PD 115; Rosario Textile Mills Corp. v. Home Bankers Savings and Trust Company, 462 SCRA 88 [2005]*).

- 11. Delano Cruz is in default in the payment of his existing loan from BDP Bank. To extend and restructure this loan, Delano agreed to execute a trust receipt in the bank's favor covering the iron pellets Delano agreed to execute a trust receipt in the bank's favor covering the iron pellets Delano imported from China one year earlier. Delano subsequently succeeded in selling the iron pellets to a smelting plant, but the proceeds went to the payment of the separation benefits of his employees who were laid off as he reduced his operations.**

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

Would you, as bank counsel and as an officer of the court, advise the bank to proceed with its contemplated action? (2013 Bar Question)

SUGGESTED ANSWER:

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

- 12. CCC Car, Inc. obtained a loan from BBB Bank, which fund was used to import ten (10) units of Mercedes Benz S class vehicles. Upon arrival of the vehicles and before release of said vehicles to CCC Car, Inc., X and Y, the President and Treasurer, respectively, of CCC Car, Inc. signed the Trust Receipt to cover the value of the ten (10) units of Mercedes Benz S class vehicles after which, the vehicles were all delivered to the Car display room of CCC Car, Inc. Sale of the vehicles were slow, and it took a month to dispose of the ten (10) units. CCC Car, Inc. wanted to be in business and to save on various documentations required by the bank, decided that instead of turning over the proceeds of the sales, CCC Car, Inc. used the proceeds to buy another ten (10) units of BMW 3 series.**

A) Is the action of CCC Car, Inc. legally justified? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

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

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

B) Will the corporate officers of CCC Car, Inc. be held liable under the circumstances? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

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

13. ABC Company filed a Petition for Rehabilitation with the Court. An Order was issued by the Court, (1) staying enforcement of all claims, whether money or otherwise against ABC Company, its guarantors and sureties not solidarily liable with the company; and (2) prohibiting ABC Company from making payments of its liabilities, outstanding as of the date of the filing of the Petition. XYZ Company is a holder of an irrevocable Standby Letter of Credit which was previously procured by ABC Company in favor of XYZ Company to secure performance of certain obligations. In the light of the Order issued by the Court.

A) Explain the nature of Letters of Credit as a financial devise. (2012 Bar Question)

SUGGESTED ANSWER:

A letter of credit is a financial device developed as a convenient and relatively safe mode of dealing with sales of goods to satisfy the interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. The buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that the issuing bank can authorize the seller to draw drafts and engage to pay them upon the tender of required documents. Once the credit is established, the seller ships the goods to the buyer and in the process secures the required documents of title. To get paid, the seller executes and presents a draft together with the documents to the issuing bank. The issuing bank redeems the draft and pays to the seller if it finds the documents submitted conform with what the letter of credit requires. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. (*Bank of America NT & SA v. CA, et al.*, G.R. No. 105395, December 10, 1993) However, letters of credit are also used in non-sale settings where they serve to reduce the risk of non- performance. Generally, letters of credit in non-sale settings have come to be known as standby letters of credit. (*Transfield Philippines, Inc. v. Luzon Hydro Corporation, et al.*, G.R. No. 146717, November 22, 2004)

14. Tom Cruz obtained a loan of P1 Million from XYZ Bank to finance his purchase of 5,000 bags of fertilizer. He executed a trust receipt in favor of XYZ Bank over the 5,000 bags of fertilizer. Tom Cruz withdrew the 5,000 bags from the warehouse to be transported to Lucena City where his store was located. On the way, armed robbers took from Tom Cruz the 5,000 bags of fertilizer. Tom Cruz now claims that his obligation to pay the loan to XYZ Bank is extinguished because the loss was not due to his fault. Is Tom Cruz correct? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

No, Tom Cruz's obligation to pay the loan covered by the trust receipts to XYZ Bank remains, A "Trust receipt" is merely a collateral agreement which serves as security for a loan, with the Bank appearing as the

owner of the goods. The Bank cannot dispose of the goods in any manner it chooses, because it is not the true owner thereof (*Rosario Textile Miss v. Home Bankers*, G.R. No. 137232, 29 June 2005, citing *Sia v. People*, G.R. No. 30896, 28 April 1983, *Abad v. CA*, G.R. No. 42735, 22 January 1990, and *PNB v. Pineda*, G.R. No. 46658, 13 May 1991). The loss of the goods covered by the trust receipts cannot extinguish the principal obligation of the borrower to pay the bank (*Landl & Company [Phil.] v. Metropolitan Bank*, G.R. 159622, 30 July 2004).

15. **C contracted D to renovate his commercial building. D ordered construction materials from E and received delivery thereof. The following day, C went to F Bank to apply for loan to pay for the construction materials. As security for the loan, C was made to execute a trust receipt. One year later, after C failed to pay the balance of the loan, F Bank charged him with violation of the Trust Receipts Law.**

A) What is a Trust Receipt? (2007 Bar Question)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

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

After shipping the lumber, STI went to BDP, presented the shipping documents, and demanded payment of the letter of credit opened in its favor. MC, on the other hand, informed the bank of the Stay Order and instructed it to deny payment to STI because of the Stay Order. (2013)

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

- A) Grant STI's claim, Under the**
 —Independence Principle, the bank deals only with the documents and not the underlying circumstances; hence, the presentation of the letter of credit is sufficient.
- B) Deny STI's claim. The Stay Order covers all claims against the debtor and binds all its creditors. The letter of credit is a claim against the debtor that is covered by the Stay Order.**

- C) Grant STP's claim. The letter of credit is not a claim against the debtor under rehabilitation, but against the bank which has assumed a solidary obligation.
- D) Deny STP's claim. If the bank disregards the Stay Order, it may be subject to contempt by the rehabilitation court. STI should file its claim with the rehabilitation court.
- E) File an action for interpleader to resolve the parties' competing claims

SUGGESTED ANSWER:

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

17. Letters of Credit are financial devices in commercial transactions which will ensure that the seller of the goods is sure to be paid when he parts with the goods and the buyer of the goods gets control of the goods upon payment. Which statement is most accurate? (2012)
- A) The use of the Letter of Credit serves to reduce the risk of nonpayment of the purchase price in a sale transaction.
 - B) The Letters of Credit can only be used exclusively in a sales transaction.
 - C) The Letters of Credit are issued for the benefit of the seller only.
 - D) (a), (b) and (c) are all correct.

SUGGESTED ANSWER:

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

18. Letter of Credit which is used in non-sale transaction, where it serves to reduce the risk of non-performance is called - (2012)
- A) irrevocable letter of credit;
 - B) standby letter of credit;
 - C) confirmed letter of credit;
 - D) None of the above.

SUGGESTED ANSWER:

B. Standby letter of credit;

19. X secured a loan from BBB Bank to pay for the importation of some dried fruits. Upon arrival of the goods consisting of dried fruits imported by X but before delivery to him, a trust receipt was executed by X to cover the transfer of the dried fruits to his possession. The dried fruits were so saleable but instead of turning over the proceeds of the sale, X used the funds to pay for the medical expenses of his mother who was sick of cancer of the bone. Which statement is most accurate? (2012)
- A) X cannot be held criminally liable because although he did not pay the bank he used the proceeds for a good reason.
 - B) Fraud or deceit is a necessary element to hold X criminally liable for non – payment under the Trust Receipts Law.
 - C) X can be held criminally liable under the Trust Receipts Law regardless of the purpose or intention for the use of the proceeds.
 - D) X cannot be held criminally liable because the underlying obligation is one of simple loan.

SUGGESTED ANSWER:

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

20. X is the President of AAA Products Corporation. X signs all the Trust Receipts documents for certain importations of the company. In the event of failure to deliver the proceeds of the sale of the goods to the bank, which statement is most accurate?
- A) The criminal liability will not attach to X as President because of separate juridical personality.
 - B) For violation of Trust Receipts Law, the law specifically provides for the imposition of penalty upon directors I officers of the corporation.
 - C) The officer will not be held criminally accountable because he is just signing the trust receipt for and in behalf of the corporation.
 - D) The officer of the corporation will be held liable provided it is clear that the officer concerned participated in the decision not to pay.

SUGGESTED ANSWER:

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

21. PJ Corporation (PJ) obtained a loan from ABC Bank (ABC) in the amount of P10 million for the purchase of 100 pieces of ecodoors. Thereafter, a Letter of Credit was obtained by PJ against such loan. The beneficiary of the Letter of Credit is Scrap Metal Corp. (Scrap Metal) in Beijing, China. Upon arrival of 100 pieces of ecodoors, PJ executed a Trust Receipt in favor of ABC to cover for the value of the ecodoors for its release to PJ. The terms of the Trust Receipt is that any proceeds from the sale of the ecodoors will be delivered to ABC as payment. After the ecodoors were sold, PJ, instead of paying ABC, used the proceeds of the sale to order from Scrap Metal another 100 pieces of ecodoors but using another bank to issue a new Letter of Credit fully covered by such proceeds.

PJ refused to pay the proceeds of the sale of the first set of ecodoors to ABC, claiming that the ecododors that were delivered were defective. It then instructed ABC not to negotiate the Letter of Credit that was issued in favor of Scrap Metal.

- A) Explain what is a “Letter of Credit” as a financial device and a “Trust Receipt” as a security to the Letter of Credit. (2016 Bar Question)

SUGGESTED ANSWER:

A letter of credit is any arrangement however named or described whereby a bank acting upon the request of its client or on its behalf agrees to pay another against stipulated documents provided that the terms of the credit are complied with (*Section 2 of the Uniform Customs and Practices for Documentary Credit*). A trust receipt is an arrangement whereby the issuing bank (referred to as the entruster under the trust receipt) releases the imported goods to the importer (referred to as the entrustee) but that the latter in case of sale must deliver the proceeds thereof to the entruster up the extent of the amount owing to the entruster or to return the goods in case of non-sale.

ALTERNATIVE ANSWER:

Under the Code of Commerce, letters of credit are those issued by one merchant to another for the purpose of attending to a commercial transaction. The letter of credit should be issued in favor of a definite person and not to order and be limited to a fixed and specified amount, or to one or more determined amounts but within a maximum the limits of which has to be stated exactly (*Articles 567 and 568 of the Code of Commerce*).

- B) As counsel of ABC, you are asked for advice on whether or not to grant the instruction of PJ. What will be your advice? (2016 Bar Question)**

SUGGESTED ANSWER:

I will not grant the instruction of PJ. Under the independence principle, the obligation of the bank to pay the Scrap Metal Corporation is not dependent upon the fulfillment or non-fulfillment of the main contract underlying the letter of credit but conditioned only on its submission of the stipulated documents to ABC Bank.

- 22. A. A standby letter of credit was issued by ABC Bank to secure the obligation of X Company to Y Company. Under the standby letter of credit, if there is failure on the part of X Company to perform its obligation, then Y Company will submit to ABC Bank a certificate of default (in the form prescribed under the standby letter of credit) and ABC Bank will have to pay Y Company the defaulted amount. Subsequently, Y Company submitted to ABC Bank a certificate of default notwithstanding the fact that X Company was not in default. Can ABC Bank refuse to honor the certificate of default? Explain. (2015 Bar Question)**

SUGGESTED ANSWER:

No. Under the doctrine of independence in a letter of credit, the obligation of the issuing bank to pay the beneficiary is distinct and independent from the main and originating contract underlying the letter of credit. Such obligation to pay does not depend on the fulfillment or non-fulfillment of the originating contract. It arises upon tender of the stipulated documents under the letter of credit. In the present case, the tender of the certificate of default entitles Y to payment under the standby letter of credit notwithstanding the fact that X Company was not in default. This is without prejudice to the right of X Company to proceed against Y Company under the law on contracts and damages (*Insular Bank of Asia and America v. Intermediate Appellate Court* 167 SCRA 450 [1988]).

ALTERNATIVE ANSWER:

Under the fraud exception principle, the beneficiary may be enjoined from collecting on the letter of credit in case of fraudulent abuse of credit. The issuance of a certificate of default despite the fact that X company is not in default constitutes fraudulent abuse of credit (*Transfield Philippines v. Luzon Hydro Corporation*, 443 SCRA 307 [2004]).

- 23. AAA Carmakers opened an irrevocable Letter of Credit with BBB Banking Corporation with CCC Cars Corporation as beneficiary. The irrevocable Letter of Credit was opened to pay for the importation of ten (10) units of Mercedes Benz S class. Upon arrival of the cars, AAA Carmakers found out that the cars were all not in running condition and some parts were missing. As a consequence, AAA Carmakers instructed BBB Banking Corporation not to allow drawdown on the Letter of Credit. Is this legally possible? (2012)**
- A) No, because under the "Independence Principle", conditions for the drawdown on the Letters of Credit are based only on documents, like shipping documents, and not with the condition of the goods subject of the importation.**
 - B) Yes, because the acceptance by the importer of the goods subject of importation is material for the drawdown of the Letter of Credit.**
 - C) Yes, because under the "Independence Principle", the seller or the beneficiary is always assured of prompt payment if there is no breach in the contract between the seller and the buyer.**
 - D) No, because what was opened was an irrevocable letter of credit and not a confirmed letter of credit.**

SUGGESTED ANSWER:

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

24. For a fee, X deposited 1,000 sacks of corn in the warehouse owned by Y. Y is in the business of warehousing. Y issued a warehouse receipt as proof of the possession of the 1,000 sacks of corn. The warehouse receipt states as follows: "Deliver to X or bearer 1,000 sacks of corn." X wanted to use the warehouse receipt as payment of his debt in favor of Z. How can the ownership of the goods covered by the warehouse receipt be transferred? (2012)
- A) Negotiate the warehouse receipt by just delivering the warehouse receipt to Z.
 - B) Assign the warehouse receipt to Z to transfer ownership of the goods.
 - C) Negotiate the warehouse receipt by specifically indorsing it to Z.
 - D) The warehouse receipt in this case is non-negotiable.

SUGGESTED ANSWER:

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

1. Fraud exception principle

2. Doctrine of strict compliance

25.

26. At the instance of CCC Corporation, AAA Bank issued an irrevocable Letter of Credit in favor of BBB Corporation. The terms of the irrevocable Letter of Credit state that the beneficiary must present certain documents including a copy of the Bill of Lading of the importation for the bank to release the funds. BBB Corporation could not find the original copy of the Bill of Lading so it instead presented to the bank a xerox copy of the Bill of Lading. Would you advise the bank to allow the drawdown on the Letter of Credit? (2012)
- A) No, because the rule of strict compliance in commercial transactions involving letters of credit, requiring documents set as conditions for the release of the fund, has to be strictly complied with or else funds will not be released.
 - B) Yes, because an irrevocable letter of credit means that the issuing bank undertakes to release the fund anytime when claimed by the beneficiary, regardless of the kind of document presented.
 - C) Yes, because the issuing bank can always justify to CCC Corporation that xerox copies are considered as faithful reproduction of the original copies.
 - D) Yes, because the issuing bank really has no discretion to determine whether the documents presented by the beneficiary are sufficient or not.

SUGGESTED ANSWER:

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

3. Warehouseman's lien

27. **Safe Warehouse, Inc. (Safe)** issued on various dates negotiable warehouse receipts to **Peter, Paul, and Mary** covering certain goods deposited by the latter with the former. **Peter, Paul, and Mary** then negotiated and endorsed the warehouse receipts to **Cyrus, Magnus, and Charles** upon payment by the latter of valuable consideration for the warehouse receipts. **Cyrus, Magnus, and Charles** were not aware of, nor were they parties to any irregularity or infirmity affecting the title or the face of the warehouse receipts.

On due dates of the warehouse receipts, **Cyrus, Magnus, and Charles** demanded that **Safe** surrender the goods to them. **Safe** refused because its warehouseman's claim must first be paid. **Cyrus, Magnus, and Charles** refused to pay, and insisted that such claim was the liability of **Peter, Paul, and Mary**.

A) What is a warehouseman's claim? (2017 Bar Question)

SUGGESTED ANSWER:

A warehouseman's lien consist of the storage charges as well as other fees and charges as may be stipulated in the warehouse receipt.

B) Is Safe's refusal to surrender the goods to Cyrus, Magnus, and Charles legally justified? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

Yes, **Safe's** refusal to surrender the goods is justified. Under the Warehouse Receipts Law, the warehouseman may withhold delivery of the goods unless the demand to deliver is accompanied by an offer to pay the warehouseman's lien. The lien is possessory in nature. It attaches to the goods regardless of who is the owner thereof.

28. **TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.**

Under the Warehouse loses his lien upon the goods when he surrenders possession thereof. (2009 Bar Question)

SUGGESTED ANSWER:

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

29. **Alex** deposited goods for which **Billy, a warehousemen**, issued a negotiable warehouse receipt wherein the good were deliverable to **Alex or order**. **Alex** negotiated the receipt to **Caloy**. Thereafter, **Dario, a creditor**, secured judgment against **Alex** and served notice of levy over the goods on the warehouseman.

A) To whom should the warehousemen deliver the goods upon demand? (2007 Bar Question)

SUGGESTED ANSWER:

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

B) Would your answer be the same if the warehouseman issued a non-negotiable warehouse receipt? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

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

30. The warehouseman, by issuing the warehouse receipt, acknowledges that the goods are in his possession, but he can refuse to deliver the goods to the holder of the warehouse receipt covering the goods if -
- A) the warehouse receipt covering the goods is not presented.
 - B) the lien of the warehouseman is not satisfied
 - C) the said holder presents a materially altered warehouse receipt.
 - D) All of the above.

SUGGESTED ANSWER:

D. All of the above.

31. The legal remedy of the warehouseman in case of conflicting claims is to ---
- A) file an action for interpleader.
 - B) give the goods to the first one who first presented the warehouse receipt.
 - C) use his discretion as to who he believes has the prior right.
 - D) keep the goods and appropriate them to himself.

SUGGESTED ANSWER:

A. file an action for interpleader.

32. BBB Banking Corporation issued a Letter of Credit in the amount of P5Million, for the purchase of five (5) tons of corn by X. Upon arrival of the goods, the goods were delivered to the warehouse of X. Thereafter he was asked to sign a Trust Receipt covering the goods. When the goods were sold, X did not deliver the proceeds to BBB Banking Corporation, arguing that he will need the fund for the subsequent importation. Is there sufficient basis to sue for criminal action? (2012)
- A) Yes, because X's failure to turn over the proceeds to the bank is a violation of the Trust Receipt Law.
 - B) No, because the trust receipt was signed only after the delivery of the goods. When the trust receipt was signed, the ownership of the goods was already with X.
 - C) Yes, because violation of Trust Receipt Law is mala prohibita, intention is irrelevant.
 - D) No, because X has a valid reason not to deliver the proceeds to BBB Banking Corporation.

SUGGESTED ANSWER:

a. Yes, because X's failure to turn over the proceeds to the [BANK](#) is a violation of the Trust Receipt Law.

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

B. Rights and obligations of parties

1. Entruster/entrustee

33. Who is the Entrustee in a Trust Receipt arrangement? (2012)

- A) the owner of the goods;
- B) the one who holds the goods and receives the proceeds from the sale of the goods;
- C) the person to whom goods are delivered for sale and
- D) who bears the risk of the loss;
- E) the party who acquires security interest in the goods.

SUGGESTED ANSWER:

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

34. Which phrase best completes the statement - In accordance with the Trust Receipt Law, purchasers of the goods from the Entrustee will: (2012)

- A) get the goods only as a collateral;
- B) not get good title to the goods;
- C) only get security interest over the goods;
- D) get good title to the goods.

SUGGESTED ANSWER:

d. get good title to the goods.

2. Applicant/banks/beneficiary

35. X Corporation entered into a contract with PT Construction Corp. for the latter to construct and build a sugar mill with six (6) months. They agreed that in case of delay, PT Construction Corp. will pay X Corporation P100,000 for every day of delay. To ensure payment of the agreed amount of damages, PT Construction Corp. secured from Atlantic Bank a confirmed and irrevocable letter of credit which was accepted by X Corporation in due time. One week before the expiration of the six (6) month period, PT Construction Corp. requested for an extension of time to deliver claiming that the delay was due to the fault of X Corporation. A controversy as to the cause of the delay which involved the workmanship of the building ensued. The controversy remained unresolved. Despite the controversy, X Corporation presented a claim against Atlantic Bank by executing a draft against the letter of credit.

- A) Can Atlantic Bank refuse payment due to the unresolved controversy? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

No, Atlantic Bank cannot refuse payment to the unresolved controversy between the two companies. The Bank is solidarily liable to pay based on the terms and conditions of the Letter of Credit. In *FEATI Bank v. Court of Appeals*, G.R. No.94209, 30 April 1991, the Court held that an irrevocable letter of credit is independent of the contract between the buyer-applicant and the seller-beneficiary.

- B) Can X Corporation claim directly from PT Construction Corp.? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

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

C. Remedies available

II. NEGOTIABLE INSTRUMENTS LAW (Act No. 2031)

A. Requisites of negotiability

1. X issued a promissory note which states, "I promise to pay Y or order Php100,000.00 or one (1) unit Volvo Sedan." Which statement is most accurate? (2012 Bar Question)
 - A) The promissory note is negotiable because the forms of payment are clearly stated.
 - B) The promissory note is non-negotiable because the option as to which form of payment is with the maker.
 - C) The promissory note is an invalid instrument because there is more than one form of payment.
 - D) The promissory note can be negotiated by way of delivery.

SUGGESTED ANSWER:

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

2. X issued a promissory note which states "I promise to pay Y or bearer the amount of HK\$50,000 on or before December 30, 2013." Is the promissory note negotiable? (2012 Bar Question)
 - A) No, the promissory note becomes invalid because the amount is in foreign currency.
 - B) Yes, the promissory note is negotiable even though the amount is stated in foreign currency
 - C) No, the promissory note is not negotiable because the amount is in foreign currency.
 - D) Yes, the promissory note is negotiable because the Hong Kong dollar is a known foreign currency in the Philippines.

SUGGESTED ANSWER:

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

3. A promissory note which does not have the words "or order" or "or bearer" will render the promissory note non-negotiable, and therefore - (2012 Bar Question)
 - A) it will render the maker not liable;
 - B) the note can still be assigned and the maker made liable;
 - C) the holder can become holder in due course;
 - D) the promissory note can just be delivered and the maker will still be liable.

SUGGESTED ANSWER:

D. the note can still be assigned and the marker made liable

4. A writes a promissory note in favor of his creditor, B. It says: "Subject to my option, I promise to pay B Php1 Million or his order or give Php1 Million worth of cement or to authorize him to sell my house worth Php1 Million. Signed, A." Is the note negotiable? (2011 Bar Question)
 - A) No, because the exercise of the option to pay lies with A, the maker and debtor.

- B) No, because it authorizes the sale of collateral securities in case the note is not paid at maturity.
- C) Yes, because the note is really payable to B or his order, the other provisions being merely optional.
- D) Yes, because an election to require something to be done in lieu of payment of money does not affect negotiability.

SUGGESTED ANSWER: A

5. A promissory note states, on its face: "I, X, promise to pay Y the amount of Php 5,000.00 five days after completion of the on-going construction of my house. Signed, X." Is the note negotiable? (2011 Bar Question)
- A) Yes, since it is payable at a fixed period after the occurrence of a specified event.
 - B) No, since it is payable at a fixed period after the occurrence of an event which may not happen.
 - C) Yes, since it is payable at a fixed period or determinable future time.
 - D) No, since it should be payable at a fixed period before the occurrence of a specified event.

SUGGESTED ANSWER: B

6. Antonio issued the following instrument:

August 10, 2013
Makati City
P100,000.00

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

(Sgd.) Antonio Reyes

Explain each requirement of negotiability present or absent in the instrument. (8%) (2013 Bar Question)

SUGGESTED ANSWER:

The instrument contains a promise to pay and was signed by the maker, Antonio Reyes (Section 1(a) of Negotiable Instruments Law). The promise to pay is unconditional insofar as the reference to the setting of the sun in the west in the evening and its rising in the east in the morning are concerned. These are certain to happen (Section 4(c) of Negotiable Instruments Law). The promise to pay is conditional, because the money will be taken from a particular fund, BPI Account No. 1234 (Section 3 of Negotiable Instruments Law). The Instrument contains a promise to pay a sum certain in money, P100,000.00 (Section (b) of Negotiable Instruments Law). The money is payable at a determinable future time, sixty days after August 10, 2013 (Section 4(a) of Negotiable Instruments Law). The instrument is not payable to order or to bearer (Section 1(d) of Negotiable Instruments Law).

7. Indicate and explain whether the promissory note is negotiable or non- negotiable. (2012 Bar Question)
- A) I promise to pay A or bearer Php100,000.00 from my inheritance which I will get after the death of my father. (2%)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER

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

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

SUGGESTED ANSWER:

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

8. R issued a check for P1m which he used to pay S for killing his political enemy. (10%) (2007 Bar Question)

A) Can the check be considered a negotiable instrument?

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

9. Lorenzo drew a bill of exchange in the amount of P100, 000.00 payable to Barbara or order, with his wife, Diana, as drawee. At the time the bill was drawn. Diana was unaware that Barbara is Lorenzo's paramour.
10. Barbara then negotiated the bill to her sister, Elena, who paid for it for value, and who did not know who Lorenzo was. On due date, Elena presented the bill to Diana for payment, but the latter promptly dishonored the instrument because, by then, Diana had already learned of her husband's dalliance. (2009 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

11. AB Corporation drew a check for payment to XY Bank. The check was given to an officer of AB Corporation who was instructed deliver it to XY Bank. Instead, the officer intending to defraud the Corporation, filled up the check by making himself as the payee and delivered it to XY Bank for deposit to his personal account. XY Bank debited AB Corporation's account. AB Corporation came to know of the officer's fraudulent act after he absconded. AB Corporation asked XY Bank to recredit its amount. XY Bank refused.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

- 12. A document, dated July 15, 2009 that reads: —Pay to X or order the sum of 5,000.00 five days after his pet dog, Sparky, dies. Signed Y. Is a negotiable instrument. (2009 Bar Question)**

SUGGESTED ANSWER:

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

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

- 13. Paul George Pua (Pua) filed a complaint for a sum of money against the spouses Benito and Caroline James (Spouses James). In the complaint, Pua prayed that the defendants pay Pua the amount of P8,500,000.00, covered by a check. Pua asserts that defendants owed him a sum of money way back in 1988 for which the Spouses James gave him several checks. These checks, however, had all been dishonored and Pua has not been paid the amount of the loan plus the agreed interest. In 1996, the Spouses James approached Pua to get the computation of their liability including the 2% compounded interest. After bargaining to lower the amount of their liability, the Spouses James gave Pua a postdated check bearing the discounted amount of P8,500,000.00. Like the 1988 checks, the drawee bank likewise dishonored this check. To prove his allegations, Pua submitted the original copies of the 17 checks issued by Caroline in 1988 and the check issued in 1996, Manilatrust Check No. 750. The Spouses James, on the other hand, completely denied the existence of the debt asserting that they had never approached Pua to borrow money in 1988 or in 1996. They assert, instead, that Pua is simply acting at the instance of his sister, Lilian, to file a false charge against them using a check left to fund a gambling business previously operated by Lilian and Caroline. Decide. (5%) (2014 Bar Question)**

SUGGESTED ANSWER:

I will decide in favor of Pua and against the Spouses James. A check is evidence of indebtedness and proof of an obligation. It can be used in lieu of and for the same purpose as a promissory note. A check functions more than a promissory note since it is also an order addressed to a bank and partakes of a representation that the drawer has funds on deposit against which the check is drawn, sufficient to ensure payment upon its presentation. A check could prove a loan transaction. Thus, under the Negotiable Instruments Law, every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party for value. (*Pua vs. Spouses Benito and Caroline James*, G.R. 198660, October 23, 2013)

- 14. Negotiable instruments are used as substitutes for money, which means (2012 Bar Question)**
A) that they can be considered legal tender.

- B) that when negotiated, they can be used to pay indebtedness.
- C) that at all times the delivery of the instrument is equivalent to delivery of the cash.
- D) That at all times negotiation of the instruments requires proper indorsement.

SUGGESTED ANSWER:

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

15. In a negotiable instrument, when the sum is expressed both in numbers and in words and there is discrepancy between the words and the numbers - (2012 Bar Question)
- A) the sum expressed in words will prevail over the one expressed in numbers.
 - B) the sum expressed in numbers will prevail over the one expressed in words.
 - C) the instrument becomes void because of the discrepancy.
 - D) this will render the instrument invalid.

SUGGESTED ANSWER:

A. the sum expressed in words will prevail over the one expressed in numbers.

16. A promissory note which is undated is presumed to be - (2012 Bar Question)
- A) dated as of the date of issue;
 - B) dated as of the date of the first indorsement;
 - C) promissory note is invalid because there is no date;
 - D) dated on due date.

SUGGESTED ANSWER:

A. dated as of the date of issue

17. (15) B borrowed Php1 million from L and offered to him his BMW car worth Php1 Million as collateral. B then executed a promissory note that reads: "I, B, promise to pay L or bearer the amount of Php1 Million and to keep my BMW car (loan collateral) free from any other encumbrance. Signed, B." Is this note negotiable? (2011 Bar Question)
- A) Yes, since it is payable to bearer.
 - B) Yes, since it contains an unconditional promise to pay a sum certain in money.
 - C) No, since it contains a promise to do an act in addition to the payment of money.
 - D) No, since the promise to just pay a sum of money is unclear.

SUGGESTED ANSWER: C

18. P sold to M a pair of gecko (tuko) for Php50,000.00. M then issued a promissory note to P promising to pay the money within 90 days. Unknown to P and M, a law was passed a month before the sale that prohibits and declares void any agreement to sell gecko in the country. If X acquired the note in good faith and for value, may he enforce payment on it? (2011 Bar Question)
- A) No, since the law declared void the contract on which the promissory note was founded.
 - B) No, since it was not X who bought the gecko.
 - C) Yes, since he is a holder in due course of a note which is distinct from the sale of gecko.
 - D) Yes, since he is a holder in due course and P and M were not aware of the law that prohibited the sale of gecko.

SUGGESTED ANSWER: A

19. P authorized A to sign a bill of exchange in his (P's) name. The bill reads: "Pay to B or order the sum of Php1 million. Signed, A (for and in behalf of P)." The bill was drawn on P. B indorsed the bill to C, C to D, and D to E. May E treat the bill as a promissory note? (2011 Bar Question)
- A) No, because the instrument is payable to order and has been indorsed several times.
 - B) Yes, because the drawer and drawee are one and the same person.
 - C) No, because the instrument is a bill of exchange.
 - D) Yes, because A was only an agent of P.

SUGGESTED ANSWER: B

B. Forgery and material alteration

20. The signature of X was forged as drawer of a check. The check was deposited in the account of Y and when deposited was accepted by AAA Bank, the drawee bank. Subsequently, AAA Bank found out that the signature of X was actually forged. Which statement is most accurate? (2012 Bar Question)
- A) The drawee bank can recover from Y, because the check was deposited in his account.
 - B) The drawee bank can recover from X, because he is the drawer even though his signature was forged.
 - C) The drawee bank is estopped from denying the genuineness of the signature of the X, the drawer of the check.
 - D) The drawee bank can recover from Y because as endorser he warrants the genuineness of the signature.

SUGGESTED ANSWER:

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

21. D, debtor of C, wrote a promissory note payable to the order of C. C's brother, M, misrepresenting himself as C's agent, obtained the note from D, then negotiated it to N after forging C's signature. N indorsed it to E, who indorsed it to F, a holder in due course. May F recover from E? (2011 Bar Question)
- A) No, since the forgery of C's signature results in the discharge of E.
 - B) Yes, since only the forged signature is inoperative and E is bound as indorser.
 - C) No, since the signature of C, the payee, was forged.
 - D) Yes, since the signature of C is immaterial, he being the payee.

SUGGESTED ANSWER: B

22. A material alteration of an instrument without the assent of all parties liable thereon results in its avoidance, EXCEPT against a (2011 Bar Question)
- A) prior indorsee.
 - B) subsequent acceptor.
 - C) subsequent indorser.
 - D) prior acceptor.

SUGGESTED ANSWER: C

23. Due to his debt to C, D wrote a promissory note which is payable to the order of C. C's brother, M, misrepresenting himself as agent of C, obtained the note from D. M then negotiated the note to N after forging the signature of C. May N enforce the note against D? (2011 Bar Question)
- A) Yes, since D is the principal debtor.
 - B) No, since the signature of C was forged.
 - C) No, since it is C who can enforce it, the note being payable to the order of C.
 - D) Yes, since D, as maker, is primarily liable on the note.

SUGGESTED ANSWER: B

24. Forgery of bills of exchange may be subdivided into, a) forgery of an indorsement on the bill and b) forgery of the drawer's signature, which may either be with acceptance by the drawee, or (2011 Bar Question)
- A) with acceptance but the bill is paid by the drawee.
 - B) without acceptance but the bill is paid by the drawer.
 - C) without acceptance but the bill is paid by the drawee.
 - D) with acceptance but the bill is paid by the drawer.

SUGGESTED ANSWER: C

25. Can a drawee who accepts a materially altered check recover from the holder and the drawer? (2011 Bar Question)
- A) No, he cannot recover from either of them.
 - B) Yes from both of them.
 - C) Yes but only from the drawer.
 - D) Yes but only from the holder.

SUGGESTED ANSWER: A

26. A bank is bound to know its depositor's signature is an inflexible rule in determining the liability of a bank in forgery cases. (2009 Bar Question)

SUGGESTED ANSWER:

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

27. After securing a P1 million loan from B, A drew in B's favor a bill of exchange with C as drawee. The bill reads: "October 1, 2016. Pay to the order of B the sum of P1 million. To: C (drawee). Signed, A." A then delivered the bill to B who, however, lost it. It turned out that it was stolen by D, B's brother. D lost no time in forging B's signature and negotiated it to E who acquired it for value and in good faith. (2016 Bar Question)
28. May E recover on the bill from C, the drawee? Explain. (5%)

SUGGESTED ANSWER:

E cannot recover from C, the drawee. The forged endorsement of B did not result in transfer of title in favor of E as no right can be acquired under such forged endorsement.

ALTERNATIVE ANSWER:

The drawee is not liable because it did not accept the instrument. Under Section 62 of the Negotiable Instruments law, the drawee can only be liable if he accepts the instrument.

29. (26) Which of the following instruments is negotiable if all the other requirements of negotiability are met? (1%) (2014 Bar Question)
- A) A promissory note with promise to pay out of the U.S. Dollar account of the maker in XYZ Bank
 - B) A promissory note which designates the U.S. Dollar currency in which payment is to be made
 - C) A promissory note which contains in addition a promise to paint the portrait of the bearer
 - D) A promissory note made payable to the order of Jose Cruz or Josefa Cruz

SUGGESTED ANSWER:

B (a promissory note which designates the U.S. Dollar currency in which payment is to be made) or D (a promissory note made payable to the order of Jose Cruz or Josefa Cruz).

30. (Alfred issued a check for P1,000 to Benjamin, his friend, as payment for an electronic gadget. The check was drawn against Alfred's account with Good Bank. Benjamin then indorsed the check specially in favor of Cesar. However, Cesar misplaced the check. Dexter, a dorm mate of Cesar, found the check, altered its amount to P91,000 and forged Cesar's indorsement by way of a blank indorsement in favor of Felix, a known jeweler. Felix then caused the deposit of the check in his account with Solar Bank. As collecting bank, Solar Bank stamped "all previous indorsements guaranteed" on the check. Seeing such stamp of the collecting bank, Good Bank paid the amount of P91,000 on the check. (2017 Bar Question)

May Good Bank claim reimbursement from Alfred? Explain your answer. (4%)

SUGGESTED ANSWER:

Good Bank may claim reimbursement from Alfred but only for the amount of P 1,000. It cannot recover the Php 90,000 difference because payment made under a materially altered check is not payment done in accordance with the instructions of the drawer. When Good Bank did not pay according to the tenor of the instrument, then it has no right to claim reimbursement from Alfred much less the right to deduct the erroneous payment it made from Alfred's account [Metrobank v. Cablizo, 510 SCRA 259 (2006); Areza v. Express Savings Bank. G.R. No. 176697, Sept. 10, 2014)].

ALTERNATIVE ANSWER:

No. Good Bank cannot claim reimbursement from Alfred. The general rule is that in case of forgery of the indorsement of the payee of the check, the drawer cannot debit the drawer's account and the loss shall be borne by the drawee bank. The depository or collecting bank is liable to the drawee bank in case of forged endorsement (or endorsements other than the payee) because it guarantees all prior endorsements.

C. Negotiation

31. A issued a check in the amount of Php20,000 payable to B. B endorsed the check but only to the extent of Php1 0,000. Which statement is most accurate? (2012 Bar Question)
- A) The partial indorsement is not a valid indorsement, although will result in the assignment of that part.
 - B) The partial indorsement will invalidate the whole instrument.
 - C) The endorsee will be considered as a holder in due course.
 - D) The partial indorsement is valid indorsement up to the extent of the Php10,000.

SUGGESTED ANSWER:

A. The partial indorsement is not a valid indorsement, although will result in the assignment of the part.

32. M makes a promissory note that states: "I, M, promise to pay Php5,000.00 to B or bearer. Signed, M." M negotiated the note by delivery to B, B to N, and N to O. B had known that M was bankrupt when M issued the note. Who would be liable to O? (2011 Bar Question)

- A) M and N since they may be assumed to know of M's bankruptcy
- B) N, being O's immediate negotiator of a bearer note
- C) B, M, and N, being indorsers by delivery of a bearer note
- D) B, having known of M's bankruptcy

SUGGESTED ANSWER: B

33. A negotiable instrument can be indorsed by way of a restrictive indorsement, which prohibits further negotiation and constitutes the indorsee as agent of the indorser. As agent, the indorsee has the right, among others, to (2011 Bar Question)

- A) Demand payment of the instrument only.
- B) notify the drawer of the payment of the instrument.
- C) receive payment of the instrument.
- D) instruct that payment be made to the drawee.

SUGGESTED ANSWER: C

34. X is the holder of an instrument payable to him (X) or his order, with Y as maker. X then indorsed it as follows: "Subject to no recourse, pay to Z. Signed, X." When Z went to collect from Y, it turned out that Y's signature was forged. Z now sues X for collection. Will it prosper? (2011 Bar Question)

- A) Yes, because X, as a conditional indorser, warrants that the note is genuine.
- B) Yes, because X, as a qualified indorser, warrants that the note is genuine.
- C) No, because X made a qualified indorsement.
- D) No, because a qualified indorsement does not include the warranty of genuineness.

SUGGESTED ANSWER: B

35. D draws a bill of exchange that states: "One month from date, pay to B or his order Php100,000.00. Signed, D." The drawee named in the bill is E. B negotiated the bill to M, M to N, N to O, and O to P. Due to non-acceptance and after proceedings for dishonor were made, P asked O to pay, which O did. From whom may O recover? (2011 Bar Question)

- A) B, being the payee
- B) N, as indorser to O
- C) E, being the drawee
- D) D, being the drawer

SUGGESTED ANSWER: D

36. X executed a promissory note with a face value of Php50,000.00, payable to the order of Y. Y indorsed the note to Z, to whom Y owed Php30,000.00. If X has no defense at all against Y, for how much may Z collect from X? (2011 Bar Question)

- A) Php20,000.00, as he is a holder for value to the extent of the difference between Y's debt and the value of the note.
 - B) Php30,000.00, as he is a holder for value to the extent of his lien.
 - C) Php50,000.00, but with the obligation to hold Php20,000.00 for Y's benefit.
 - D) None, as Z's remedy is to run after his debtor, Y.
37. M, the maker, issued a promissory note to P, the payee which states: "I, M, promise to pay P or order the amount of Php1 Million. Signed, M." P negotiated the note by indorsement to N, then N to O also by indorsement, and O to Q, again by indorsement. But before O indorsed the note to Q, O's wife wrote the figure "2" on the note after "Php1" without O's knowledge, making it appear that the note is for Php12 Million. For how much is O liable to Q? (2011 Bar Question)
- A) Php1 Million since it is the original tenor of the note. Php1 Million since he warrants that the note is genuine and in all respects what it purports to be.
 - B) Php12 Million since he warrants his solvency and that he has a good title to the note.
 - C) Php12 Million since he warrants that the note is genuine and in all respects what it purports to be.

SUGGESTED ANSWER: C

38. As a rule under the Negotiable Instruments Law, a subsequent party may hold a prior party liable but not vice versa.
- A) Give two (2) instances where a prior party may hold a subsequent party liable. (2%) (2008 Bar Question)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

1. Holder in due course

39. X borrowed money from Y in the amount of Php1 Million and as payment, issued a check. Y then indorsed the check to his sister Z for no consideration. When Z deposited the check to her account, the check was dishonored for insufficiency of funds. (2012 Bar Question)
- A) Is Z a holder in due course? Explain your answer. (5%)

SUGGESTED ANSWER:

Z is not a holder in due course. She did not give any valuable consideration for the check. To be a holder in due course, the holder must have taken the check in good faith and for value (Sec. 52[c], Negotiable Instruments Law).

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

SUGGESTED ANSWER:

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

40. Forgery is a real defense but may only be raised against a holder not in due course. (2%) (2017 Bar Question)

SUGGESTED ANSWER:

False, because forgery, as a real defense, can be raised even against a holder in due course.

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

Is Brian a holder in due course (HIDC)? (1%) (2013 Bar Question)

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

SUGGESTED ANSWER:

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

42. A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves. An example of such a defense is - (2011 Bar Question)

- A) fraud in inducement.
- B) duress amounting to forgery.

- C) fraud in esse contractus.
- D) alteration.

SUGGESTED ANSWER: A

2. Defenses against the holder

43. P sold to M 10 grams of shabu worth Php5,000.00. As he had no money at the time of the sale, M wrote a promissory note promising to pay P or his order Php5,000. P then indorsed the note to X (who did not know about the shabu), and X to Y. Unable to collect from P, Y then sued X on the note. X set up the defense of illegality of consideration. Is he correct? (2011 Bar Question)
- A) No, since X, being a subsequent indorser, warrants that the note is valid and subsisting.
 - B) No, since X, a general indorser, warrants that the note is valid and subsisting.
 - C) Yes, since a void contract does not give rise to any right.
 - D) Yes, since the note was born of an illegal consideration which is a real defense.

SUGGESTED ANSWER: B

44. A bill of exchange has T for its drawee, U as drawer, and F as holder. When F went to T for presentment, F learned that T is only 15 years old. F wants to recover from U but the latter insists that a notice of dishonor must first be made, the instrument being a bill of exchange. Is he correct? (2011 Bar Question)
- A) Yes, since a notice of dishonor is essential to charging the drawer.
 - B) No, since T can waive the requirement of notice of dishonor.
 - C) No, since F can treat U as maker due to the minority of T, the drawee.
 - D) Yes, since in a bill of exchange, notice of dishonor is at all times required.

SUGGESTED ANSWER: C

D. Checks

45. X delivered a check issued by him and payable to the order of CASH to Y in payment for certain obligations incurred by X in favor of Y. Y then delivered the check to Z in payment for certain obligations. Which statement is most accurate? (2012 Bar Question)
- A) Z can encash the check even though Y did not indorse the check.
 - B) Z cannot encash the check for lacking in proper endorsement.
 - C) Y is the only one liable because he was the one who delivered the check to Z.
 - D) The negotiation is not valid because the check is an instrument payable to order.

SUGGESTED ANSWER:

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

46. A stale check is a check - (2012 Bar Question)

- A) a. that cannot anymore be paid although the underlying obligation still exists.
- B) that cannot anymore be paid and the underlying obligation under the check is also extinguished.
- C) that can still be negotiated or indorsed so that whoever is the holder can

D) which has not been presented for payment within a period of thirty (30) days.

SUGGESTED ANSWER:

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

47. In payment for his debt in favor of X, Y gave X a Manager's Check in the amount of Php100,000 dated May 30, 2012. Which phrase best completes the statement - A Manager's Check: (2012 Bar Question)

- A) is a check issued by a manager of a bank for his own account.**
- B) is a check issued by a manager of a bank in the name of the bank against the bank itself for the account of the bank.**
- C) is like any ordinary check that needs to be presented for payment also.**
- D) is better than a cashier's check in terms of use and effect.**

SUGGESTED ANSWER:

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

48. Which phrase best completes the statement -- A check which is payable to bearer is a bearer instrument and: (2012 Bar Question)

- A) negotiation can be made by delivery only;**
- B) negotiation must be by written indorsement;**
- C) negotiation must be by specific indorsement;**
- D) negotiation must be by indorsement and delivery.**

SUGGESTED ANSWER: A

49. A check is - (2012 Bar Question)

- A) a bill of exchange;**
- B) the same as a promissory note;**
- C) is drawn by a maker;**
- D) a non-negotiable instrument.**

SUGGESTED ANSWER:

A. a bill of exchange

50. Pancho drew a check to Bong and Gerard jointly, Bong indorsed the check and also forged Gerard's indorsement . The payor bank paid the check and charged Pancho's account for the amount of the check. Gerard received nothing from the payment. (2008 Bar Question)

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

SUGGESTED ANSWER:

Yes, Sec. 41 of the NIL provides that all payees or indorsees who are not partners must indorse jointly, unless the one indorsing has authority to endorse for the others. Since the signature of Gerard was forged,

then the endorsement by Bong was wholly inoperative. The Bank is under strict liability to pay to the order of payee. Payment under a forged endorsement is not to the drawer's order, and consequently, the drawee bank must bear the loss as against the drawer (*Associated Bank v. CA*, G.R. Nos. 107382 and 107612, 31 January 1996).

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

SUGGESTED ANSWER:

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

- 51. Marlon deposited with LYRIC Bank a money market placement of P1 million for term of 31 days. On Maturity date, one claiming to be Marlon called up the LYRIC Bank account officer and instructed him to give the manager's check representing the proceeds of the money market placement to Marlon's girlfriend Ingrid.**

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

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

Marlon thereupon sues LYRIC Bank which in turn files a third-party complaint against YAMAHA Bank. Discuss the respective rights and liabilities of the banks. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

Since the money market placement of Marlon is in the nature of a loan to Lyric Bank, and since he did not authorize the release of the money market placement to Ingrid, the obligation of Lyric Bank to him has not been paid. Lyric Bank still has the obligation to pay him.

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

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

- 52. Gaudencio, a store owner, obtained a P1-million loan from Bathala Financing Corporation (BFC). As security, Gaudencio executed a —Deed of Assignment of Receivables.¶ Assigning fifteen checks received from various customers who bought merchandise from his store. The checks were duly indorsed by Gaudencio's customers.**

The Deed of Assignment contains the ff. stipulation:

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

When the checks became due, BFC deposited them for collection, but the drawee banks dishonored all the checks for one of the ff. reasons: —account closed,¶—payment stopped,¶

—account under garnishment, —or —insufficiency of funds. BFC wrote Gaudencio notifying him of the dishonored checks, and demanding payment of the loan. Because Gaudencio did not pay, BFC filed a collection suit.

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

Are Gaudencio's defenses tenable? Explain. (5%) (2011 Bar Questions)

SUGGESTED ANSWER:

No. Gaudencio's defenses are untenable. The cause of action of BFC was really on the contract of loan, with the checks merely serving as collateral to secure the payment of the loan. By virtue of the Deed of Assignment which he signed, Gaudencio undertook to pay for the receivables if for any reason they cannot be paid by the obligors (*Velasquez v. Solidbank Corporation*, 550 SCRA 118 (2008)).

- 53. Bong bought 300 bags of rice from Ben for P300,000.00. As payment, Bong indorsed to Ben a Bank of the Philippine Islands (BPI) check issued by Baby in the amount of P300,000.00. Upon presentment for payment, the BPI check was dishonored because Baby's account from which it was drawn has been closed. To replace the dishonored check, Bong indorsed a crossed Development Bank of the Philippines (DBP) check issued also by Baby for P300,000.00. Again, the check was dishonored because of insufficient funds. Ben sued Bong and Baby on the dishonored BPI check. Bong interposed the defense that the BPI check was discharged by novation when Ben accepted the crossed DBP check as replacement for the BPI check. Bong cited Section 119 of the Negotiable Instruments Law which provides that a negotiable instrument is discharged "by any other act which will discharge a simple contract for the payment of money." Is Bong correct? (4%) (2014 Bar Question)**

SUGGESTED ANSWER:

Bong is not correct. Ben's acceptance of the DBP check, which replaced the dishonored BPI check, did not result in novation as there was no express agreement to establish that Bong was already discharged from his liability to pay Ben. There must be an express intention to novate. Moreover, Ben's acceptance of the DBP check did not result in any incompatibility, since the two checks were precisely for the purpose of paying the amount of P214,000.00, i.e., the credit obtained from the purchase of the 300 bags of rice from Ben. Indeed, there was no substantial change in the object or principal condition of the obligation of Bong as the indorser of the check to pay the amount of P214,000.00. It would appear that Ben accepted the DBP check to give Bong the chance to pay his obligation. (*Salazar vs. J.Y. Brothers Marketing Corporation*, G.R. 171998, dated October 20, 2010)

- 54. In 2006, Donald, an American temporarily residing in Cebu City, issued to Rhodora a check for \$50,000 drawn against Wells Fargo Bank with offices in San Francisco, California. Rhodora negotiated the check and delivered it to Yaasmin, a Filipina socialite who frequently travelled locally and internationally. Because of her frequent travels, Yaasmin misplaced the check. It was only 11 years later on, in 2017, when she found the check inside a diary kept in her vault in her Hollywood, California house. (2017 Bar Question)**

Discuss and explain the rights of Yaasmin on the check. (4%)

SUGGESTED ANSWER:

Yaasmin can not enforce the check against Donald and Rhodora since more than ten years had lapsed from check issuance. Action on the check is barred by the statute of limitations

ALTERNATIVE ANSWER:

This is a case of stale check, a check not presented within a reasonable time from issuance, hence, Wells Fargo will be justified in refusing to honor the check if presented for payment. What Yasmin can do is to request Donald the drawer to issue a new check to Yasmin in her capacity as the endorsee of Rhodora, the original payee. Donald, the drawer shall be discharged from liability only if the delay caused him prejudice [*Art 1249 of the Civil Code*].

55. X found a check on the street, drawn by Y against ABC Bank, with Z as payee. X forged Z's signature as an indorser, then indorsed it personally and delivered it to DEF Bank. The latter, in turn, indorsed it to ABC Bank which charged it to the Y's account. Y later sued ABC Bank but it set up the forgery as its defense. Will it prosper? (2011 Bar Question)

- A) No, since the payee's signature has been forged.
- B) No, since Y's remedy is to run after the forger, X.
- C) Yes, since forgery is only a personal defense.
- D) Yes, since ABC Bank is bound to know the signature of Y, its client.

SUGGESTED ANSWER: D

III. INSURANCE (PD 612, as amended by RA 10607)

A. Basic concepts

1. An insurance contract is an aleatory contract, which means that – (2012 Bar Question)
 - A) the insurer will pay the insured equivalent to the amount of the premium paid.
 - B) the obligation of the insurer is to pay depending upon the happening of an uncertain future event.
 - C) the insured pays a fixed premium for the duration of the policy period and the amount of the premiums paid to the insurer is not necessarily the same amount as what the insured will get upon the happening of an uncertain future event.
 - D) the obligation of the insurer is to pay depending upon the happening of an event that is certain to happen.

SUGGESTED ANSWER:

b. the obligation of the insurer is to pay depending upon the happening of an uncertain future event.

2. An Insurance Contract is a contract of adhesion, which means that in resolving ambiguities in the provision of the insurance contract, (2012 Bar Question)
 - A) the general rule is that, the insurance contract is to be interpreted strictly in accordance with what is written in the contract.
 - B) are to be construed liberally in favor of the insured and strictly against the insurer who drafted the insurance policy.
 - C) are to be construed strictly against the insured and liberally in favor of the insurer.
 - D) if there is an ambiguity in the insurance contract, this will invalidate the contract.

SUGGESTED ANSWER:

B. are to be constructed liberally in favour of the insured and strictly against the insurer who drafted the insurance policy,

3. A house and lot is covered by a real estate mortgage (REM) in favor of ZZZ Bank. The bank required that the house be insured. The owner of the policy failed to endorse nor assign the policy to the bank. However, the Deed of Real Estate Mortgage has an express provision which says that the insurance policy is also endorsed with the signing of the REM. Will this be sufficient? (2012 Bar Question)
 - A) No, insurance policy must be expressly endorsed to the bank so that the bank will have a right in the proceeds of such insurance in the event of loss.
 - B) The express provision contained in the Deed of Real Estate Mortgage to the effect that the policy is also endorsed is sufficient.
 - C) Endorsement of Insurance Policy in any form is not legally allowed.
 - D) Endorsement of the Insurance Policy must be in a formal document to be valid.

SUGGESTED ANSWER:

A. No, insurance policy must be expressly endorsed to the bank so that the bank will have a right in the proceeds of such insurance in the event of loss.

4. X insured the building she owns with two (2) insurance companies for the same amount. In case of damage, -(2012 Bar Question)
- A) X can not claim from any of the two (2) insurers because with the double insurance, the insurance coverage becomes automatically void.
 - B) the two (2) insurers will be solidarily liable to the extent of the loss.
 - C) the two (2) insurers will be proportionately liable.
 - D) X can choose who he wants to claim against.

SUGGESTED ANSWER:

D. X can choose who he wants to claim against.

5. When X insured his building, X indicated in the application that it is a residential building, but actually the building was being used as a warehouse for some hazardous materials. What is the effect on the insurance policy, if any? (2012 Bar Question)
- A) The insurance policy can be cancelled because of the change in the use.
 - B) The insurance policy will automatically be changed.
 - C) The insurance policy need not be changed.
 - D) The insurance policy is fixed regardless of the change in the use.

Recommendation in respect of MCQ:

It is recommended that examinees be given full credit for whatever answer they gave as the question is unclear. What is clear is that there was misrepresentation on the part of X when he indicated in his application that the building is residential when it was actually being used as a warehouse. The problem does not indicate that the change in the use of the house was carried out by X and that it was done without the permission of the insurer.

6. A group of Malaysians wanted to invest in the Philippines' insurance business. After negotiations, they agreed to organize "FIMA Insurance Corp." with a group of Filipino businessmen. FIMA would have a PhP50 Million paid up capital, PhP40 Million of which would come from the Filipino group. All corporate officers would be Filipinos and 8 out of its 10-member Board of Directors would be Filipinos. Can FIMA operate an insurance business in the Philippines? (2011 Bar Question)
- A) No, since an insurance company must have at least PhP75 Million paid-up capital.
 - B) Yes, since there is substantial compliance with our nationalization laws respecting paid-up capital and Filipino dominated Board of Directors.
 - C) Yes, since FIMA's paid up capital more than meets the country's nationalization laws.
 - D) No, since an insurance company should be 100% owned by Filipinos.

SUGGESTED ANSWER: A

7. In return for the 20 years of faithful service of X as a househelper to Y, the latter promised to pay PhP100,000.00 to X's heirs if he (X) dies in an accident by fire. X agreed. Is this an insurance contract? (2011 Bar Question)
- A) Yes, since all the elements of an insurance contract are present.
 - B) Yes, since X's services may be regarded as the consideration.
 - C) No, since Y actually made a conditional donation in X's favor.
 - D) No, since it is in fact an innominate contract between X and Y.

SUGGESTED ANSWER: C

8. Shipowner X, in applying for a marine insurance policy from ABC, Co., stated that his vessel usually sails middle of August and with normally 100 tons of cargo. It turned out later that the vessel departed on the first week of September and with only 10 tons of cargo. Will this avoid the policy that was issued? (2011 Bar Question)
- A) 10
 - B) 6
 - C) 7
 - D) 5

SUGGESTED ANSWER: B

1. What may be insured

2. Insurable interest

9. For both the Life Insurance and Property Insurance, the insurable interest is required to be - (2012 Bar Question)
- A) existing at the time of perfection of the contract and at the time of loss.
 - B) existing at the time of perfection and at the time of loss for property insurance but only at the time of perfection for life insurance.
 - C) existing at the time of perfection for property insurance but for life insurance both at the time of perfection and at the time of loss.
 - D) existing at the time of perfection only.

SUGGESTED ANSWER:

B. existing at the time of perfection and at the time of loss for property

10. X, Co., a partnership, is composed of A (capitalist partner), B (capitalist partner) and C (industrial partner). If you were partner A, who between B and C would you have an insurable interest on, such that you may then insure him? (2011 Bar Question)
- A) No one, as there is merely a partnership contract among A, B and C.
 - B) Both B and C, as they are your partners.
 - C) Only C, as he is an industrial partner.
 - D) Only B, as he is a capitalist partner.

SUGGESTED ANSWER: B

11. Ciriaco leased a commercial apartment from Supreme Building Corporation (SBC). One of the provisions of the one-year lease contract states:

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

Notwithstanding the stipulation in the contract, without the consent of SBC, Ciriaco insured the merchandise inside the leased premises against loss by fire in the amount of P500, 000 with First United Insurance Corporation (FUIC).

A day before the lease contract expired, fire broke out inside the leased premises, damaging Ciriaco's merchandise. Having learned of the insurance earlier procured by Ciriaco, SBC demanded from FUIC that the proceeds of the insurance policy be paid directly to it, as provided in the lease contract. (2009 Bar Question)

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

SUGGESTED ANSWER:

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

12. Carlo and Bianca met in the La Boracay festivities. Immediately, they fell in love with each other and got married soon after. They have been cohabiting blissfully as husband and wife, but they did not have any offspring. As the years passed by, Carlo decided to take out an insurance on Bianca's life for P1,000,000.00 with him (Carlo) as sole beneficiary, given that he did not have a steady source of income and he always depended on Bianca both emotionally and financially. During the term of the insurance, Bianca died of what appeared to be a mysterious cause so that Carlo immediately requested for an autopsy to be conducted. It was established that Bianca died of a natural cause. More than that, it was also established that Bianca was a transgender all along – a fact unknown to Carlo. Can Carlo claim the insurance benefit? (5%) (2014 Bar Question)

SUGGESTED ANSWER:

Yes, Carlo can claim the insurance benefit. He had insurable interest on Bianca's life under Section 10 [b] of the Insurance Code as the problem states that Carlo "always depended on Bianca both emotionally and financially." The insurable interest upon the life of another under the aforesaid provision need not be based on kinship or legal obligation to give support (see Alvendia, *The Law of Insurance in the Philippines*, 1968 ed., p. 42; Martin, *Commentaries and Jurisprudence on the Philippine Commercial Laws*, vol. 2, 1986 ed., p. 21). The fact that their marriage may be void is irrelevant.

13. A person is said to have an insurable interest in the subject matter insured where he has a relation or connection with, or concern in it that he will derive pecuniary benefit or advantage from its preservation. Which among the following subject matters is not considered insurable? (1%) (2014 Bar Question)
- A) A partner in a firm on its future profits
 - B) A general creditor on debtor's property
 - C) A judgment creditor on debtor's property
 - D) A mortgage creditor on debtor's mortgaged property

SUGGESTED ANSWER: B (a general creditor on debtor's property)

14. A) Novette entered into a contract for the purchase of certain office supplies. The goods were shipped. While in transit, the goods were insured by Novette. Does she have an insurable interest over the goods even before delivery of the same to her? Explain. (2%) (2015 Bar Question)

SUGGESTED ANSWER:

Yes, Novette has an insurable interest in the goods. The contract of sale was already perfected and Novette acquired interest thereon although the goods have yet to be delivered.

- B) Will an insurance policy be binding even if the premium is unpaid? What if it were partially paid? (3%)**

SUGGESTED ANSWER:

As a general rule, the insurance policy is not valid and binding unless the premium thereof has been paid. This is the cash-and-carry rule under the Insurance Code. Premium is the consideration for the undertaking of the insurer to indemnify the insured against a specified peril. There are exceptions, however, one of them is when there is an agreement allowing the insured to pay the premium in installments and partial payment has been made at the time of the loss (*Makati Tuscany Condominium Corporation v. Court of Appeals*, 215 SCRA 463 [1992]).

- 15. The newly restored Ford Mustang muscle car was just released from the car restoration shop to its owner, Seth, an avid sportsman. Given his passion for sailing, he needed to go to a round-the-world voyage with his crew on his brand-new 180-meter yacht. Hearing about his coming voyage, Sean, his bosom friend, asked Seth if he could borrow the car for his net roadshow. Sean, who had been in display the restored car of Seth in major cities of the country. Seth agreed and lent the Ford Mustang to Sean. Seth further expressly allowed Sean to use the car even for his own purposes on special occasions during his absence from the country. Seth and Sean then went together to Bayad Agad Insurance Co. (BAIC) to get separate policies for the car in their respective names. (2017 Bar Question)**

BAIC consults you as its lawyer on whether separate policies could be issued to Seth and Sean in respect of the same car.

- A) What is insurable interest? (2%)**

SUGGESTED ANSWER:

Insurable interest is that interest which a person is deemed to have in the subject matter of the insured where he has a relation or connection to it such that the person will derive pecuniary benefit or advantage from the preservation of the subject matter or will suffer pecuniary loss or damage from its destruction, termination or injury by the happening of the event insured against it (44 CJS 870).

- B) Do Seth and Sean have separate insurable interests? Explain briefly your answer. (3%)**

SUGGESTED ANSWER:

Seth and Sean have separate insurable interests. Seth's insurable interest is his legal and and/or equitable interest over the vehicle as an owner while Sean's insurable interest is the safety of the vehicle which may become the basis of liability in case of loss or damage to the vehicle [*Malayan Insurance v. Philippine First Insurance Co.*, 676 SCRA (2012)].

3. Double insurance and overinsurance

- 16. X borrowed from CCC Bank. She mortgaged her house and lot in favor of the bank. X insured her house. The bank also got the house insured. (2013 BAR)**

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

17. Terrazas de Patio Verde, a condominium building, has a value of P50 Million. The owner insured the building against fire with three (3) insurance companies for the following amounts:

Northern Insurance Corp. – P20 Million Southern Insurance Corp. – P30 Million Eastern Insurance Corp. – P50 Million (2008 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Since Eastern insured the property up 50% of the total coverage, it is liable for only 50% of the total actual loss. Eastern insurance Corp. is liable to the extent of its coverage but may recover one-half of the total

indemnity from the co-insurers in the proportion of 60% (Southern Insurance) – 40% (Northern Insurance).

18. The law on life insurance prohibits double insurance. (2%) (2017 Bar Question)

SUGGESTED ANSWER:

False. Double insurance only applies to property insurance.

19. In 2010, the Philippine National Police declared Kaddafy Benjelani —Public Enemy No. 11 because of his terrorist activities in the country that have resulted in the death of thousands of Filipino. A ransom of P15 million was placed on Kaddafy Benjelani's head.

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

Is the policy valid and binding? (1%) (2013 Bar Question)

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

SUGGESTED ANSWER"

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

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

4. Reinsurance

5. No fault, suicide, and incontestability clauses

20. The "incontestability clause" in a Life Insurance Policy means --- (2012 Bar Question)

- A) that life insurance proceeds cannot be claimed two (2) years after the death of the insured.
- B) that two (2) years after date of issuance or reinstatement of the life insurance policy, the insurer cannot anymore prove that the policy is void ab initio or rescindable by reason of fraudulent concealment or misrepresentation of the insured.
- C) that the insured can still claim from the insurance policy after two (2) years even though premium is not paid.
- D) that the insured can only claim proceeds in a life insurance policy two (2) years after death.

SUGGESTED ANSWER:

B. the two (2) years after date of issuance or reinstatement of the life insurance policy the insurer cannot anymore prove that the policy is void ab initio or rescindable by reason of fraudulent concealment or misrepresentation of the insured.

21. On May 13, 1996, PAM, Inc. obtained a P15,000,000.00 fire insurance policy from Ilocano Insurance covering its machineries and equipment effective for one (1) year or until May 14, 1997. The policy expressly stated that the insured properties were located at “Sanyo Precision Phils. Building, Phase III, Lots 4 and 6, Block 15, PEZA, Rosario, Cavite.” Before its expiration, the policy was renewed on “as is” basis for another year or until May 13, 1998. The subject properties were later transferred to Pace Factory also in PEZA. On October 12, 1997, during the effectivity of the renewed policy, a fire broke out at the Pace Factory which totally burned the insured properties.

The policy forbade the removal of the insured properties unless sanctioned by Ilocano. Condition 9(c) of the policy provides that “the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy x x x (c) if the property insured is removed to any building or place other than in that which is herein stated to be insured.” PAM claims that it has substantially complied with notifying Ilocano through its sister company, the RBC, which, in fact, referred PAM to Ilocano for the insurance coverage. Is Ilocano liable under the policy? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

Ilocano Insurance is not liable under the policy. By the clear and express condition in the renewal policy, the removal of the insured property to any building or place required the consent of Ilocano. Any transfer effected by PAM, Inc. without Ilocano’s consent (as is the case here) would free the latter from any liability. (*Malayan Insurance Company, Inc. vs. PAPCO, Ltd.*, G.R. 200784, August 7, 2013)

22. On July 3, 1993, Delia Sotero (Sotero) took out a life insurance policy from Ilocos Bankers Life Insurance Corporation (Ilocos Life) designating Creencia Aban (Aban), her niece, as her beneficiary. Ilocos Life issued Policy No. 747, with a face value of P100,000.00, in Sotero’s favor on August 30, 1993, after the requisite medical examination and payment of the premium.

On April 10, 1996, Sotero died. Aban filed a claim for the insurance proceeds on July 9, 1996. Ilocos Life conducted an investigation into the claim and came out with the following findings:

1. Sotero did not personally apply for insurance coverage, as she was illiterate.
2. Sotero was sickly since 1990.
3. Sotero did not have the financial capability to pay the premium on the policy.
4. Sotero did not sign the application for insurance.
5. Aban was the one who filed the insurance application and designated herself as the beneficiary.

For the above reasons and claiming fraud, Ilocos Life denied Aban’s claim on April 16, 1997, but refunded the premium paid on the policy. (6%) (2014 Bar Question)

- A) May Sotero validly designate her niece as beneficiary?
- B) May the incontestability period set in even in cases of fraud as alleged in this case?
- C) Is Aban entitled to claim the proceeds under the policy?

SUGGESTED ANSWER:

- A) Yes, Sotero may validly designate her niece as beneficiary. The same is not prohibited under the Insurance Code or any other law pertinent to the problem.
- B) Yes, the incontestability period applies even in cases of fraud as claimed in this problem.

Section 48 prevents a situation where the insurer knowingly continues to accept annual premium payments on life insurance, only to later on deny a claim on the policy on specious claims of fraudulent concealment and misrepresentation, such as what obtains in the instant case. Thus, instead of conducting at the first instance an investigation into the circumstances surrounding the issuance of the insurance policy which would have timely exposed the supposed flaws and irregularities attending it as it now professes, Ilocos Life appears to have turned a blind eye and opted instead to continue collecting the premiums on the policy. For nearly three years, petitioner collected the premiums and devoted the same to its own profit. It cannot now deny the claim when it is called to account. Section 48 must be applied to it with full force and effect.

- C) Yes, Aban is entitled to claim the proceeds under the policy as beneficiary for the same reasons adduced in (B) above.

B. Perfection of the insurance contract

23. Antarctica Life Assurance Corporation (ALAC) publicly offered a specially designed insurance policy covering persons between the ages of 50 to 75 who may be afflicted with serious and debilitating illnesses. Quirico applied for insurance coverage, stating that he was already 80 years old. Nonetheless, ALAC approved his application.

Quirico then requested ALAC for the issuance of a cover note while he was trying to raise funds to pay the insurance premium. ALAC granted the request. Ten days after he received the cover note, Quirico had a heart seizure and had to be hospitalized. He then filed a claim on the policy. (2009 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

The issuance of a cover note by ALAC resulted in the perfection of the contract of insurance. In that case, it is only because there is delay in the issuance of the policy that the cover notes was issued. The cover note is a receipt whereby the company agrees to insure the insured for 60 days pending the issuance of a regular policy. No separate premium is to be paid on a cover note. It is not a separate policy but is integrated in the regular policy to be subsequently issued.

24. On September 25, 2013, Danny Marcial (Danny) procured an insurance on his life with a face value of P5,000,000.00 from RN Insurance Company (RN), with his wife Tina Marcial (Tina) as sole beneficiary. On the same day, Danny issued an undated check to RN for the full amount of the premium. On October 1, 2013, RN issued the policy covering Danny's life insurance. On October 5, 2013, Danny met a tragic accident and died. Tina claimed the insurance benefit, but RN was quick to deny the claim because at the time of Danny's death, the check was not yet encashed and therefore the premium remained unpaid.

Is RN correct? Will your answer be the same if the check is dated October 15, 2013? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

To the first question (Is RN correct?)

RN Insurance is not correct. RN Insurance denied the claim of Tina because at the time of Danny's death, the check was not yet encashed and, therefore, the premium remained unpaid. Presumably, RN Insurance is relying on the second paragraph of Article 1249 of the Civil Code which states that the "delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired."

RN Insurance had the check as early as September 25, 2013 and could have encashed the check before the death of Danny on October 5, 2013. RN Insurance was at fault and Tina should not be denied the proceeds of the policy. (See the case of *Malayan Insurance Co., Inc. vs. Arnaldo, et al.*, G.R. L-67835, October 12, 1987)

To the second question (Will your answer be the same if the check is dated October 15, 2013?) My answer would not be the same if the check were dated October 15, 2013. This answer assumes that Danny was the one who dated the check and, therefore, what he issued was a postdated check. The payment of a promissory note or a postdated check at a stated maturity subsequent to the loss, assuming that there was no estoppel (e.g., written acknowledgment of the receipt of premium), is insufficient to put the insurance into effect. (Vitug, *Commercial Laws and Jurisprudence*, 2006, Vol. I, p. 250)

If it were RN Insurance who dated the check October 15, 2013, then my answer would be the same as my answer to the first question.

25. Jason is the proud owner of a newly-built house worth P5 Million. As a protection against any possible loss or damage to his house, Jason applied for a fire insurance policy thereon with Shure Insurance Corporation (Shure) on October 11, 2016 and paid the premium in cash. It took the company a week to approve Jason's application. On October 18, 2016, Shure mailed the approved policy to Jason which the latter received five (5) days later. However, Jason's house had been razed by fire which transpired a day before his receipt of the approved policy. Jason filed a written claim with Shure under the insurance policy. Shure prays for the denial of the claim on the ground that the theory of cognition applies to contracts of insurance.

Decide Jason's claim with reason (5%) (2016 Bar Question)

SUGGESTED ANSWER:

No. What governs insurance contract is the cognition theory whereby the insurance contract is perfected only from the time the applicant came to know of the acceptance of the offer by the insurer. In this case, the loss occurred a day prior to Jason's knowledge of the acceptance by Shure of Jason's application. There being no perfected insurance contract, Jason is not entitled to recover from Shure.

ALTERNATIVE ANSWER:

The insurance contract may be deemed perfected allowing Jason to recover from Shure if there is a binding note or cover receipt duly issued by Shure to Jason.

C. Rights and obligations of parties

1. Insurer

26. X, in January 30, 2009, or two (2) years before reaching the age of 65, insured his life for Php20Million. For reason unknown to his family, he took his own life two (2) days after his 65th birthday. The policy contains no excepted risk. Which statement is most accurate? (2012 Bar Question)
- A) The insurer will be liable.
 - B) The insurer will not be liable.
 - C) The state of sanity of the insured is relevant in cases of suicide in order to hold the insurer liable.
 - D) The state of sanity of the insured is irrelevant in cases of suicide in order to hold the insurer liable.

SUGGESTED ANSWER:

A. the insurer will be liable.

27. X Shipping, Co., insured its vessel MV Don Teodoro for Php100 Million with ABC Insurance, Co. through T, an agent of X Shipping. During a voyage, the vessel accidentally caught fire and suffered damages estimated at Php80 Million. T personally informed ABC Insurance that X Shipping was abandoning the ship. Later, ABC insurance denied X Shipping's claim for loss on the ground that a notice of abandonment through its agent was improper. Is ABC Insurance right? (2011 Bar Question)
- A) Yes, since X Shipping should have ratified its agent's action.
 - B) No, since T, as agent of X Shipping who procured the insurance, can also give notice of abandonment for his principal is sufficient that he was declared no longer a member of the board.
 - C) Yes, since only the agent of X Shipping relayed the fact of abandonment.
 - D) No, since in the first place, the damage was more than $\frac{3}{4}$ of the ship's value.

SUGGESTED ANSWER: B

28. Enrique obtained from Seguro Insurance Company a comprehensive motor vehicle insurance to cover his top of the line Aston martin. The policy was issued on March 31, 2010 and, on even date, Enrique paid the premium with a personal check postdated April 6, 2010.

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

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

2. Insured

29. If an insurance policy prohibits additional insurance on the property insured without the insurer's consent, such provision being valid and reasonable, a violation by the insured (2011 Bar Question)

- A) reduces the value of the policy.
- B) avoids the policy.
- C) offsets the value of the policy with the additional insurances's value.
- D) forfeits premiums already paid.

SUGGESTED ANSWER: B

30. Alfredo took out a policy to insure this commercial building fire. The broker for the insurance company agreed to give a 15-day credit within which pay the insurance premium. Upon delivery of the policy on May 15, 2006, Alfredo issued a postdated check payable on May 30, 2006. On May 28, 2006, a fire broke out and destroyed the building owned by Alfredo. (10%) (2007 Bar Question)

- A) May Alfredo recover on the insurance policy?

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

31. On May 26, 2014, Jess insured with Jack Insurance (Jack) his 2014 Toyota Corolla sedan under a comprehensive motor vehicle insurance policy for one year. On July 1, 2014, Jess' car was unlawfully taken. Hence, he immediately reported the theft to the Traffic Management Command (TMC) of the Philippine National Police (PNP), which made Jess accomplish a complaint sheet as part of its procedure. In the complaint sheet, Jess alleged that a certain Ric Silat (Silat) took possession of the subject vehicle to add accessories and improvements thereon. However, Silat failed to return the subject vehicle within the agreed 3-day period. As a result, Jess notified Jack of his claim for reimbursement of the value of the lost vehicle under the insurance policy. Jack refused to pay claiming that there is no theft as Jess gave Silat lawful possession of the car. Is Jack correct? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

Jack Insurance is not correct. Ric Silat was merely given physical possession of the car. He did not have juridical possession over the same. It is also apparent that the taking by Silat of the car of Jess is without the consent or authority of the latter. Thus, the act of Silat in depriving Jess of his car, soon after the transfer of physical possession of the same to him, constitutes theft under the insurance policy that is compensable. (*Paramount Insurance vs. Spouses Remondeula*, G.R. 173773, November 28, 2012)

32. Absolute Timber Co. (ATC) has been engaged in the logging business in Isabela. To secure one of its shipments of logs to be transported by Andok Shipping Co., ATC purchased a marine policy with an all-risk provision. Because of a strong typhoon then hitting Northern Luzon, the vessel sank and the shipment of logs was totally lost. ATC filed its claim, but the insurer denied the claim on several grounds, namely: (1) the vessel had not been seaworthy; (2) the vessel's crew had lacked sufficient training; (3) the improper loading of the logs on only one side of the vessel had led to the tilting of the ship to that side during the stormy voyage; and (4) the extremely bad weather had been a fortuitous event. (2017 Bar Question)

ATC now seeks your legal advice to know if its claim was sustainable. What is your advice? Explain your answer. (3%)

SUGGESTED ANSWER:

ATC's claim is sustainable. The all risk policy that ATC procured from the insurer insures against all causes of conceivable loss or damage except when the loss or damage was due to fraud or intentional misconduct committed by ATC (*I New World International Development v. NYK FilJapan Shipping Corporation*, G.R. 171468, Aug. 24, 2011). The grounds of denial that the insurer invoked are not due to the fraud or intentional misconduct of the insurer.

ALTERNATIVE ANSWER:

The claim of Absolute Timber Company that the extreme bad weather is a fortuitous event is not valid. The ship was not seaworthy. Its loss was not due to the perils of the sea, but perils of the ship [*Manila Steamship Company v. Abdulhaman*, 100 Phil 321, Sept. 29, 1956]. ATC's negligence also bars it from invoking the defense of force majeure.

3. Beneficiary

33. X has been a long-time household helper of Z. X's husband, Y, has also been Z's long-time driver. May Z insure the lives of both X and Y with Z as beneficiary? (2011 Bar Question)

A) Yes, since X and Y render services to Z.

- B) No, since X and Y have no pecuniary interest on the life of Z arising from their employment with him.
- C) No, since Z has no pecuniary interest in the lives of X and Y arising from their employment with him.
- D) Yes, since X and Y are Z's employees.

SUGGESTED ANSWER: C

34. X is the common law wife of Y. Y loves X so much that he took out a life insurance on his own life and made her the sole beneficiary. Y did this to ensure that X will be financially comfortable when he is gone. Upon the death of Y, - (2012 Bar Question)

- A) X as sole beneficiary under the life insurance policy on the life of Y will be entitled to the proceeds of the life insurance.
- B) despite the designation of X as the sole beneficiary, the proceeds of the life insurance will go to the estate of Y.
- C) the proceeds of the life insurance will go to the compulsory heirs of Y.
- D) the proceeds of the life insurance will be divided equally amongst X and the compulsory heirs of Y.

SUGGESTED ANSWER:

A.X as sole beneficiary under the life insurance policy on the life of Y will be entitled to the proceeds of the life insurance.

35. X, a minor, contracted an insurance on his own life. Which statement is most accurate? (2012 Bar Question)

- A) The life insurance policy is void ab initio.
- B) The life insurance is valid provided it is with the consent of the beneficiary.
- C) The life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child.
- D) The life insurance is valid provided the disposition of the proceeds will be subject to the approval of the legal guardian of the minor.

SUGGESTED ANSWER:

C. the life insurance policy is valid provided the beneficiary is his estate or his parents, or spouse or child.

36. On June 1, 2011, X mailed to Y Insurance, Co. his application for life insurance, with payment for 5 years of premium enclosed in it. On July 21, 2011, the insurance company accepted the application and mailed, on the same day, its acceptance plus the cover note. It reached X's residence on August 11, 2011. But, as it happened, on August 4, 2011, X figured in a car accident. He died a day later. May X's heirs recover on the insurance policy? (2011 Bar Question)

- A) Yes, since under the Cognition Theory, the insurance contract was perfected upon acceptance by the insurer of X's application.
- B) No, since there is no privity of contract between the insurer and X's heirs.
- C) No, since X had no knowledge of the insurer's acceptance of his application before he died.
- D) Yes, since under the Manifestation Theory, the insurance contract was perfected upon acceptance of the insurer of X's application.

SUGGESTED ANSWER: C

37. On January 1, 2000, Antonio Rivera secured a life insurance from SOS Insurance Corp. for P1 Million with Gemma Rivera, his adopted daughter, as the beneficiary. Antonio Rivera died on March 4, 2005 and in the police investigation, it was ascertained that Gemma Rivera participated as an accessory in the killing of Antonio Rivera. Can SOS Insurance Corp. avoid liability by setting up as a defense the participation of Gemma Rivera in the killing of Antonio Rivera? Discuss with reasons.(4%) (2008 Bar Question)

SUGGESTED ANSWER:

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

D. Rescission of insurance contracts

1. Concealment

38. An insured, who gains knowledge of a material fact already after the effectivity of the insurance policy, is not obliged to divulge it. The reason for this is that the test of concealment of material fact is determined. (2011 Bar Question)
- A) at the time of the issuance of the policy.
 - B) at any time before the payment of premium.
 - C) at the time of the payment of the premium.
 - D) at any time before the policy becomes effective.

SUGGESTED ANSWER: D

39. Benny applied for life insurance for Php 1.5 Million. The insurance company approved his application and issued an insurance policy effective Nov, 6, 2008. Benny named his children as his beneficiaries. On April 6, 2010, Benny died of hepatoma, a liver ailment.

The insurance company denied the children's claim for the proceeds of the insurance policy on the ground that Benny failed to disclose in his application two previous consultations with his doctors for diabetes and hypertension, and that he had been diagnosed to be suffering from hepatoma. The insurance company also rescinded the policy and refunded the premiums paid. (2013 Bar Question)

40. Was the insurance company correct? (8%)

SUGGESTED ANSWER

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

41. To secure a loan of P10 million, Mario mortgaged his building to Armando. In accordance with the loan arrangements, Mario had the building insured with First Insurance Company for P10 million, designating Armando as the beneficiary.

Armando also took an insurance of the building upon his own interest with Second Insurance Company for P5 million.

The building was totally destroyed by fire, a peril insured against under both insurance policies. It was subsequently determined that the fire had been intentionally started by Mario and that in violation of the loan agreement, he had been storing inflammable materials in the building. (2010 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

42. X insured his life for P20 million. X, plays golf and regularly exercises everyday, hence is considered in good health. He did not know, however, that his frequent headaches is really caused by his being hypertensive. In his application for a life insurance for himself, he did not put a check to the question if he is suffering from hypertension, believing that because of his active lifestyle, being hypertensive is remote possibility. While playing golf one day, X collapsed at the fairway and was declared dead on arrival at the hospital. His death certificate stated that X suffered a massive heart attack. (2016 Bar Question)

A) Will the beneficiary of X be entitled to the proceeds of the life insurance under the circumstances, despite the non-disclosure that he is hypertensive at the time of application? (2.5%)

SUGGESTED ANSWER:

No, the beneficiary of X is not entitled to the proceeds of the life insurance. The hypertension of X is a material fact that should have been disclosed to the insurer. The concealment of such material fact entitles the insurer to rescind the insurance policy.

ALTERNATIVE ANSWER:

X's beneficiary should be entitled to the proceeds of the life insurance as there was good faith on the part of the insured for the non-disclosure since the insured was not aware of his hypertension

- B) If X died in an accident instead of a heart attack, would the fact of X's failure to disclose that he is hypertensive be considered as material information? (2.5%)**

SUGGESTED ANSWER:

It is still a material information. It is settled that the insured cannot recover even though the material fact not disclosed is not the cause of the loss.

2. Misrepresentation or omissions

3. Breach of warranties

E.Loss

- 43. X is a passenger of a jeepney for hire being driven by Y. The jeepney collided with another passenger jeepney being driven by Z who was driving recklessly. As a result of the collision, X suffered injuries. Both passenger jeepneys are covered by Comprehensive Motor Vehicular Insurance Coverage. If X wants to claim under the "no fault indemnity clause", his claim will lie - (2012 Bar Question)**
- A) against the insurer of the jeepney being driven by Z who was the one at fault.
 - B) the claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger.
 - C) X has a choice against whom he wants to make his claim.
 - D) None of the above.

SUGGESTED ANSWER:

B. the claim shall lie against the insurer of the passenger jeepney driven by Y because X was his passenger.

- 44. X owned a house and lot. X insured the house. The house got burned. Then he sold the partially burnt house and the lot to Y. Which statement is most accurate? (2012 Bar Question)**
- A) X is not anymore entitled to the proceeds of the insurance policy because he already sold the partially burnt house and lot.
 - B) X is still entitled to the proceeds of the insurance policy because what is material is that at the time of the loss, X is the owner of the house and lot.
 - C) No one is entitled to the proceeds because ownership over the house and lot was already transferred.
 - D) Y will be the one entitled to the proceeds because he now owns the partially burnt house and lot.

SUGGESTED ANSWER:

B. X is still entitled to the proceeds of the insurance policy because what is material is that at the time of the loss, X is the owner of the house and lot.

- 45. T Shipping, Co. insured all of its vessels with R Insurance, Co. The insurance policies stated that the insurer shall answer for all damages due to perils of the sea. One of the insured's ship, the MV Dona Priscilla, ran aground in the Panama Canal when its engine pipes leaked and the oil seeped into the cargo compartment. The leakage was caused by the extensive mileage that the ship had**

accumulated. May the insurer be made to answer for the damage to the cargo and the ship? (2011 Bar Question)

- A) Yes, because the insurance policy covered any or all damage arising from perils of the sea.
- B) Yes, since there appears to have been no fault on the part of the shipowner and shipcaptain.
- C) No, since the proximate cause of the damage was the breach of warranty of seaworthiness of the ship.
- D) No, since the proximate cause of the damage was due to ordinary usage of the ship, and thus not due to a peril of the sea.

SUGGESTED ANSWER: D

46. T, the captain of MV Don Alan, while asleep in his cabin, dreamt of an Intensity 8 earthquake along the path of his ship. On waking up, he immediately ordered the ship to return to port. True enough, the earthquake and tsunami struck three days later and his ship was saved. Was the deviation proper? (2011 Bar Question)

- A) Yes, because the deviation was made in good faith and on a reasonable ground for believing that it was necessary to avoid a peril.
- B) No, because no reasonable ground for avoiding a peril existed at the time of the deviation.
- C) No, because T relied merely on his supposed gift of prophecy.
- D) Yes, because the deviation took place based on a reasonable belief of the captain.

SUGGESTED ANSWER: B

47. For a constructive total loss to exist in marine insurance, it is required that the person insured relinquish his interest in the thing insured. This relinquishment must be (2011 Bar Question)

- A) actual.
- B) constructive first and if it fails, then actual.
- C) either actual or constructive.
- D) constructive.

SUGGESTED ANSWER: B

48. Where the insurer was made to pay the insured for a loss covered by the insurance contract, such insurer can run after the third person who caused the loss through subrogation. What is the basis for conferring the right of subrogation to the insurer? (2011 Bar Question)

- A) Their express stipulation in the contract of insurance.
- B) The equitable assignment that results from the insurer's payment of the insured.
- C) The insured's formal assignment of his right to indemnification to the insurer.
- D) The insured's endorsement of its claim to the insurer.

SUGGESTED ANSWER: B

49. Perils of the ship, under marine insurance law, refer to loss which in the ordinary course of events results from (2011 Bar Question)

- A) natural and inevitable actions of the sea.
- B) natural and ordinary actions of the sea.
- C) unnatural and inevitable actions of the sea.
- D) unnatural and ordinary actions of the sea.

SUGGESTED ANSWER: A

50. Stable Insurance Co. (SIC) and St. Peter Manufacturing Co. (SPMC) have had a long-standing insurance relationship with each other; SPMC secures the comprehensive fire insurance on its plant and facilities from SIC. The standing business practice between them has been to allow SPMC a credit period of 90 days from the renewal of the policy with which to pay the premium.

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

SIC responded by issuing its own manager's check for the amount of the premiums SPMC had paid, and denied SPMC's claim on the ground that under the cash and carry principle governing fire insurance, no coverage existed at the time the fire occurred because the insurance premium had not been paid.

Is SPMC entitled to recover for the loss from SIC? (8%) (2013 Bar Question)

SUGGESTED ANSWER:

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

51. Paulo, the owner of an ocean-going vessel, offered to transport the logs of Constantino from Manila to Nagoya. Constantino accepted the offer, not knowing that the vessel was manned by an irresponsible crew with deep-seated resentments against Paulo, their employer.

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

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

Constantino countered that he was not the owner of the vessel and he could therefore not be responsible for conditions about which he was innocent. (2010 Bar Question)

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

SUGGESTED ANSWER:

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

52. On February 21, 2013, Barrack entered into a contract of insurance with Matino Insurance Company (Matino) involving a motor vehicle. The policy obligates Matino to pay Barrack the amount of Six Hundred Thousand Pesos (P600,000.00) in case of loss or damage to said vehicle during the period covered, which is from February 26, 2013 to February 26, 2014.

On April 16, 2013, at about 9:00 a.m., Barrack instructed his driver, JJ, to bring the motor vehicle to a nearby auto shop for tune-up. However, JJ no longer returned and despite diligent efforts to locate the said vehicle, the efforts proved futile. Resultantly, Barrack promptly notified Matino of the said loss and demanded payment of the insurance proceeds of P600,000.00. In a letter dated July 5, 2013, Matino denied the claim, reasoning as stated in the contract that “the company shall not be liable for any malicious damage caused by the insured, any member of his family or by a person in the insured’s service. Is Matino correct in denying the claim?(4%) (2014 Bar Question)

SUGGESTED ANSWER:

Matino Insurance is not correct in denying the claim. The loss of the motor vehicle is not excluded under the insurance policy as the loss was due to theft, not malicious damage. The “malicious damage” clause under the policy is not applicable but rather the “theft” clause. Thus, the provision under the policy that “the company shall not be liable for any malicious damage caused by the insured, any member of his family or by a person in the insured’s service” is not applicable. (*Alpha Insurance and Surety Co. vs. Castor*, G.R. 198174, September 2, 2003)

53. ELP Insurance, Inc. issued Marine Policy No. 888 in favor of FCL Corp. to insure the shipment of 132 bundles of electric copper cathodes against all risks. Subsequently, the cargoes were shipped on board the vessel “M/V Menchu” from Leyte to Pier 10, North Harbor, Manila.

Upon arrival, FCL Corp. engaged the services of CGM, Inc. for the release and withdrawal of the cargoes from the pier and the subsequent delivery to its warehouses/plants in Valenzuela City. The goods were loaded on board twelve (12) trucks owned by CGM, Inc., driven by its employed drivers and accompanied by its employed truck helpers. Of the twelve (12) trucks en route to Valenzuela City, only eleven (11) reached the destination. One (1) truck, loaded with eleven (11) bundles of copper cathodes, failed to deliver its cargo.

Because of this incident, FCL Corp. filed with ELP Insurance, Inc. a claim for insurance indemnity in the amount of P1,500,000.00. After the requisite investigation and adjustment, ELP Insurance, Inc. paid FCL Corp. the amount of P1,350,000.00 as insurance indemnity.

ELP Insurance, Inc., thereafter, filed a complaint for damages against CGM, Inc. before the Regional Trial Court (RTC), seeking reimbursement of the amount it had paid to FCL Corp. for the loss of the subject cargo. CGM, Inc. denied the claim on the basis that it is not privy to the contract entered into by and between FCL Corp. and ELP Insurance, Inc., and hence, it is not liable therefor. If you are the judge, how will you decide the case? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

I will decide the case in favor of ELP Insurance. Even if CGM, Inc. is not privy to the contract between FCL Corp. and ELP Insurance, it is still liable for the loss of the subject cargo. Article 2207 of the Civil Code states that if the plaintiff’s property has been insured and he has received indemnity from the insurance company for injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract, which in this case is CGM. Since ELP Insurance is subrogated to the rights of FCL Corp. to the extent of the amount it paid to the latter under the marine insurance contract, it has the right to seek reimbursement from CGM, Inc. for breach of contract and/or tort (*Loadmasters Customs*

Services, Inc. vs. Glodel Brokerage Corporation and R & B Insurance Corporation, G.R. No. 179446, January 10, 2011).

IV. TRANSPORTATION

A. Common carriers

1. Concept

1. X is a trader of school supplies in Calapan, Oriental Mindoro. To bring the school supplies to Calapan, it has to be transported by a vessel. Because there were so many passengers, the two (2) boxes of school supplies were loaded but the shipping company was not able to issue the Bill of Lading. So, on board, the Ship Captain issued instead a "shipping receipt" to X indicating the two (2) boxes of school supplies being part of the cargo of the vessel. Which phrase therefore, is the most accurate? (2012 Bar Question)
 - A) the owner of the vessel is not liable because no bill of lading was issued to X hence, no contract of carriage was perfected.
 - B) it is possible to have a contract of carriage of cargo even without a bill of lading, and the "shipping receipt" would be sufficient.
 - C) the only acceptable document of title is a Bill of Lading.
 - D) None of the above.

SUGGESTED ANSWER: B

2. On December 1, 2010, Kore A Corporation shipped from South Korea to LT Corporation in Manila some 300,000 sheets of high-grade special steel. The shipment was insured against all risks by NA Insurance (NA). The carrying vessel arrived at the Port of Manila on January 10, 2011. When the shipment was discharged, it was noted that 25,000 sheets were damaged and in bad order. The entire shipment was turned over to the custody of ATI, the arrastre operator, on January 21, 2011 for storage and safekeeping, pending its withdrawal by the consignee's authorized customs broker, RVM.

On January 26 and 29, 2011, the subject shipment was withdrawn by RVM from the custody of ATI. On January 29, 2011, prior to the withdrawal of the last batch of the shipment, a joint inspection of the cargo was conducted per the Request for Bad Order Survey (RBO) dated January 28, 2011. The examination report showed that 30,000 sheets of steel were damaged and in bad order.

NA Insurance paid LT Corporation the amount of P30,000,000.00 for the 30,000 sheets that were damaged, as shown in the Subrogation Receipt dated January 13, 2013. Thereafter, NA Insurance demanded reparation against ATI for the goods damaged in its custody, in the amount of P5,000,00.00. ATI refused to pay claiming that the claim was already barred by the statute of limitations. ATI alleged that the Carriage of Goods by Sea Act (COGSA) applies in this case since the goods were shipped from a foreign port to the Philippines. NA Insurance claims that the COGSA does not apply, since ATI is not a shipper or carrier. Who is correct? (5%) (2014 Bar Question)

SUGGESTED ANSWER:

NA Insurance is correct. The Carriage of Good by Sea Act (Act No. 521) applies only to carriers or ships. A "carrier", under Section 1(a) of the COGSA, "includes the owner or the charterer who enters into a contract of carriage with a shipper", while a "ship" is defined under Section 1(d) as "any vessel used for the carriage of goods by sea." The COGSA does not apply to ATI as it is neither a "carrier" nor a "ship", much less a "shipper." It is simply an arrastre operator. Moreover, the COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre

operator. (*Insurance Co. of North America vs. Asian Terminals, Inc.*, G.R. 180784, February 15, 2012; *Insurance Co. of North America vs. Phil. Ports Terminal*, G.R. L-6420, July 18, 1955)

2. Common carrier vs. private carrier

3. Diligence required

3. City Railways, Inc. (CRI) provides train service, for a fee, to commuters from Manila to Calamba, Laguna. Commuter are required to purchase tickets and then proceed to designated loading and unloading facilities to board the train. Ricardo Santos purchased a ticket for Calamba and entered the station. While waiting, he had an altercation with the security guard of CRI leading to a fistfight. Ricardo Santos fell on the railway just as a train was entering the station. Ricardo Santos was run over by the train. He died.

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

SUGGESTED ANSWER:

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

4. Are common carriers liable for injuries to passengers even if they have observed ordinary diligence and care? Explain. (2%)

SUGGESTED ANSWER:

Yes, common carriers are liable for injuries to passengers even if the carriers observed ordinary diligence and care, because the obligation imposed upon them by law is to exercise extra-ordinary diligence. Common carriers are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons with a due regard for all the circumstances (*Article 1755 of the Civil Code*).

B. Obligations and liabilities

5. Under the Public Service Act, an administrative agency has the power to approve provisionally the rates of public utilities without a hearing in case of urgent public needs. The exercise of this power is (2011 Bar Question)

- A) supervisory.
- B) absolute.
- C) discretionary.
- D) mandatory

SUGGESTED ANSWER: C

1. Vigilance over goods

6. X took Philippine Airlines Flight PR 102 to Los Angeles, USA. She had two (2) luggage checked-in and was issued two (2) baggage checks. When X reached Los Angeles one (1) of the two (2) checked in luggage could not be found. Which statement is most accurate? (2012 Bar Question)
- A) PAL is liable for the loss of the checked- in luggage under the provisions of the Warsaw Convention on Air Transport.
 - B) PAL is liable for the loss only if the baggage check expressly states that the airline shall be liable in case of loss.
 - C) PAL cannot be held liable because that is the risk that a passenger takes when she checks- in her baggage.
 - D) PAL can only be held liable if it can be proven that PAL was negligent.

SUGGESTED ANSWER:

A. PAL is liable for the loss of the checked-in-luggage under the provisions of the Warsaw Convention on Air Transport.

7. S delivered 10 boxes of cellphones to Trek Bus Liner, for transport from Manila to Ilocos Sur on the following day, for which S paid the freightage. Meanwhile, the boxes were stored in the bus liner's bodega. That night, however, a robber broke into the bodega and stole S's boxes. S sues Trek Bus Liner for contractual breach but the latter argues that S has no cause of action based on such breach since the loss occurred while the goods awaited transport. Who is correct? (2011 Bar Question)
- A) The bus liner since the goods were not lost while being transported.
 - B) S since the goods were unconditionally placed with T for transportation serving as an arm for receiving its outside orders for pizzas.
 - C) S since the freightage for the goods had been paid.
 - D) The bus liner since the loss was due to a fortuitous event.
8. The liability of a common carrier for the goods it transports begins from the time of
- A) conditional receipt.
 - B) constructive receipt.
 - C) actual receipt.
 - D) either actual or constructive receipt.

SUGGESTED ANSWER: D

9. On October 30, 2007, M/V Pacific, a Philippine registered vessel owned by Cebu Shipping Company (CSC), sank on her voyage from Hong Kong to Manila. Empire Assurance Company (Emprie) is the insurer of the lost cargoes loaded on board the vessel which were consigned to Debenhams Company. After it indemnified Debenhams, Empire as subrogee filed an action for damages against CSC. (2008 Bar Question)
- A) Assume that the vessel was seaworthy. Before departing, the vessel was advised by the Japanese Meteorological Center that it was safe to travel to its destination. But while at sea, the vessel received a report of a typhoon moving within its general path. To avoid the typhoon, the vessel changed its course. However, it was still at the fringe of the typhoon when it was repeatedly hit by huge waves, were saved three (3) who perished. Is CSC liable to empire? What principle of maritime law is applicable? Explain. (3%)

SUGGESTED ANSWER:

The common carrier incurs no liability for the loss of the cargo during a fortuitous event, because the following circumstances were present: (1) the typhoon was the cause of the cargo loss; (2) the carrier did

not contribute to the loss; and (3) the carrier exercised extraordinary diligence in order to minimize the attendant damage before, during and after the typhoon (See *Fortune Express v. CA*, Caorong. G.R. No. 119756, 18 March 1999; *Yobido v. CA*, G.R. No. 113003, 17 October 1997; *Gathalian v. Delim*, G.R. No. L-56487, 21 October 1991).

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

10. AA entered into a contract with BB for the latter to transport ladies wear from Manila to France with transshipment via Taiwan. Somehow the goods were not loaded in Taiwan on time, hence, these arrived in France —off-season. AA was only paid for one half the value by the buyer.

AA claimed damages from BB. BB invoked prescription as a defense under the Carriage of Goods by Sea Act. Considering the —loss of value of the ladies wear as claimed by AA, is BB's defense tenable? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

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

2. Safety of passengers

11. Onassis Shipping, Inc. (Onassis) operated passenger vessels and cargo trucks, and offered its services to the general public. In line with its vision and mission to protect the environment, Go-Green Asia (Go-Green), an NGO affiliated with Greenpeace, entered into a contract with Onassis

whereby Go-Green would operate with its own crew the M/V Dolphin, an ocean-going passenger vessel of Onassis.

While on its way to Palawan carrying Go-Green's invited guests who were international and local observers desirous of checking certain environmental concerns in the area, the M/V Dolphin encountered high waves and strong winds caused by a typhoon in the West Philippine Sea. The rough seas led to serious physical injuries to some of the guests. (2017 Bar Question)

Discuss the liabilities of Onassis and Go-Green to the passengers of the M/V Dolphin. Explain briefly your answer. (3%)

SUGGESTED ANSWER:

The contract that Onassis and Greenpeace entered into is a bareboat or demise charter because Greenpeace was not only given possession of the vessel but also the command and control of the navigation as a result of its authority to hire its own crew who will man the vessel. The bareboat charter effectively converts Onassis from a common carrier to a private carrier [*Federal Phoenix Assurance v. Fortune Sea Carrier, G.R. No. 188118, Nov. 23, 2015*]. Being a mere lessor and having ceased to be the owner of the vessel with respect to the navigation, Onassis has no liability to the passengers who contracted with Greenpeace. Greenpeace is the one liable to the passengers for the injuries they sustained in the course of the navigation.

C. Defenses available to a common carrier

12. The AAA Bus Company picks up passengers along EDSA. X, the conductor, while on board the bus, drew his gun and randomly shot the passengers inside. As a result, Y, a passenger, was shot and died instantly. Is AAA Bus Company liable? (2012 Bar Question)
- A) The bus company is not liable for as long as the bus company can show that when they hired X, they did the right selection process.
 - B) The bus company cannot be held liable because what X did is not part of his responsibility.
 - C) The bus company is liable because common carriers are liable for the negligence or willful act of its employees even though they acted beyond the scope of their responsibility.
 - D) The bus company is not liable because there is no way that the bus company can anticipate the act of X.

SUGGESTED ANSWER:

C. The bus company is liable because common carriers are liable for the negligence or wilful act of its employees even though they acted beyond the scope of their responsibility.

13. B, while drunk, accepted a passenger in his taxicab. B then drove the taxi recklessly, and inevitably, it crashed into an electric post, resulting in serious physical injuries to the passengers. The latter then filed a suit for tort against B's operator, A, but A raised the defense of having exercised extraordinary diligence in the safety of the passenger. Is his defense tenable? (2011 Bar Question)
- A) Yes, as a common carrier can rebut the presumption of negligence by raising such a defense.
 - B) No, as in tort actions, the proper defense is due diligence in the selection and supervision of the employee by the employer.
 - C) No, as B, the common carrier's employee, was obviously negligent due to his intoxication.
 - D) Yes, as a common carrier can invoke extraordinary diligence in the safety of passengers in tort cases.

SUGGESTED ANSWER: B

14. P, a sales girl in a flower shop at the Ayala Station of the Metro Rail Transit (MRT) bought two tokens or tickets, one for her ride to work and another for her ride home. She got to her flower shop where she usually worked from 8 a.m. to 5 p.m. At about 3 p.m., while P was attending to her duties at the flower shop, two crews of the MRT got into a fight near the flower shop, causing injuries to P in the process. Can P sue the MRT for contractual breach as she was within the MRT premises where she would shortly take her ride home? (2011 Bar Question)
- A) No, since the incident took place, not in an MRT train coach, but at the MRT station.
 - B) No, since P had no intention to board an MRT train coach when the incident occurred.
 - C) Yes, since she already had a ticket for her ride home and was in the MRT's premises at the time of the incident.
 - D) Yes, since she bought a round trip ticket and MRT had a duty while she was at its station to keep her safe for her return trip.

SUGGESTED ANSWER: B**1. Proof of negligence**

15. Fil-Asia Flight 916 was on a scheduled passenger flight from Manila when it crashed as it landed at the Cagayan de Oro airport; the pilot miscalculated the plane's approach and undershot the runway. Of the 150 people on board, ten (10) passengers died at the crash scene.

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

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

You are part of the team that the victims hired to handle the case for them as a group. In your case conference, the following questions came up: (2013 Bar Question)

- A) Explain the causes of action legally possible under the given facts against the airline and the Pilots; whom will you specifically implead in these causes of action? (5%)

SUGGESTED ANSWER:

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

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

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

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

SUGGESTED ANSWER:

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

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

[Possible alternative: See *Bataclan v Medina*, G.R. No. L-10126, October 22, 1957, which may argue that proximate cause was carrier's breach of duty to observe extraordinary diligence. Ambulance was just a consequence of the proximate cause.]

2. Due diligence in the selection and supervision of employees

3. Fortuitous event

4. Contributory negligence

5. Doctrine of last clear chance

16. A railroad tract of the Philippine National Railway (PNR) is located near a busy intersection of Puyat Avenue and Osmeña Highway. One afternoon, the intersection was heavily congested, as usual. Juan, the driver of a public utility jeepney (PUJ), drove onto the railroad tracks but could go no farther because of the heavy traffic at the intersection. After the jeepney stopped right on the railroad track, it was hit and overturned by a PNR train, resulting in the death of Kim, a passenger of the PUJ, and injuries to Juan and his other passengers. Juan, the injured passengers and Kim's family sued the PNR for damages for its negligence. It was established that the steel pole barrier before the track was broken, and that the PNR had the last clear chance of avoiding the accident. On the other hand, the PNR raised the defense that the track is for the exclusive use of the train and that motorists are aware that it is negligence *per se* to stop their vehicles on the tracks. Decide the case and explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

PNR should be held liable. PNR had the last clear chance of avoiding the injury but did not exercise the diligence expected of it under the circumstances.

ALTERNATIVE ANSWER:

Since the PUJ was guilty of contributory negligence, it should be held solidarily liable with PNR consistent with jurisprudence that the tortfeasor and the common carrier are solidarily liable in case of death or injury to passengers of the carrier.

D. Extent of liability

17. P rode a Sentinel Liner bus going to Baguio from Manila. At a stop-over in Tarlac, the bus driver, the conductor, and the passengers disembarked for lunch. P decided, however, to remain in the bus, the door of which was not locked. At this point, V, a vendor, sneaked into the bus and offered P some refreshments. When P rudely declined, V attacked him, resulting in P suffering from bruises and contusions. Does he have cause to sue Sentinel Liner? (2011 Bar Question)
- A) Yes, since the carrier's crew did nothing to protect a passenger who remained in the bus during the stop-over.
 - B) No, since the carrier's crew could not have foreseen the attack.
 - C) Yes, since the bus is liable for anything that goes wrong in the course of a trip.
 - D) No, since the attack on P took place when the bus was at a stop-over.

SUGGESTED ANSWER: A

1. Recoverable damages

18. A cargo ship of X Shipping, Co. ran aground off the coast of Cebu during a storm and lost all its cargo amounting to Php50 Million. The ship itself suffered damages estimated at Php80 Million. The cargo owners filed a suit against X Shipping but it invoked the doctrine of limited liability since its vessel suffered an Php80 Million damage, more than the collective value of all lost cargo. Is X Shipping correct? (2011 Bar Question)
- A) Yes, since under that doctrine, the value of the lost cargo and the damage to the ship can be set-off.
 - B) No, since each cargo owner has a separate and individual claim for damages.
 - C) Yes, since the extent of the ship's damage was greater than that of the value of the lost cargo.
 - D) No, since X Shipping neither incurred a total loss nor abandoned its ship.

SUGGESTED ANSWER: D

E. Stipulations limiting liability

19. Nautica Shipping Lines (Nautica) bought a second hand passenger ship from Japan. It modified the design of the bulkhead of the deck of the ship to accommodate more passengers. The ship sunk with its passengers in Tablas Strait due to heavy rains brought by the monsoon. The heirs of the passengers sued Nautica for its liability as a common carrier based on the reconfiguration of the bulkhead which may have compromised the stability of the ship. Nautica raised the defense that the monsoon is a fortuitous event and, at most, its liability is prescribed by the Limited Liability Rule. Decide the reasons. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The limited liability rule will not apply in this case because there was contributory negligence on the part of the ship owner. The reconfiguration of the bulkhead of the deck of the ship to accommodate more passengers made the vessel unseaworthy (*Philippine American General Insurance Company v. Court of Appeals*, 273 SCRA 262 [1997]).

ALTERNATIVE ANSWER:

Monsoon rain have been jurisprudentially considered as *force majeure*. It being the cause of the accident, the ship owner should not be liable. Reconfiguration of the bulk head to accommodate more passengers per

se does not amount to contributory negligence which will bar the ship owner to claim the defense of *force majeure* provided that it exercised due diligence before, during and after the incident to prevent loss or injury.

20. Wisconsin Transportation Co., Inc. (WTC) owned and operated an inter-island deluxe bus service plying the Manila-Batangas-Mindoro route. Three friends, namely: Aurelio, Jerome, and Florencio rode on the same WTC bus from Manila bound for Mindoro. Aurelio purchased a ticket for himself. Jerome, being a boyhood friend of the bus driver, was allowed a free ride by agreeing to sit during the trip on a stool placed in the aisle. Florencio, already penniless after spending all of his money on beer the night before, just stole a ride in the bus by hiding in the on-board toilet of the bus.

During the trip, the bus collided with another bus coming from the opposite direction. The three friends all suffered serious physical injuries. (2017 Bar Question)

What are WTC's liabilities, if any, in favor of Aurelio, Jerome, and Florencio? Explain your answer. (4%)

SUGGESTED ANSWER:

WTC, as a common carrier, is liable to Aurelio for breach of contract of carriage. In case of death or injury to passenger, there is a presumption of fault on the part of the common carrier unless it exercised extraordinary diligence in ensuring the safety of its passengers. WTC is also liable to Jerome for breach of contract although Jerome was carried gratuitously. However, for Jerome, a stipulation limiting the liability of WTC for negligence is valid but not for willful acts or gross negligence [*Article 1758 of the Civil Code*]. There being no contract of carriage between WTC and Florencio, WTC is not liable to Florencio for breach of contract, but WTC may be liable for a quasi-delict, if its driver was driving negligently.

F. Limitations under the Warsaw Convention

V. CORPORATION LAW (Provisions of BP 68, not affected by RA 11232)

1. The Articles of Incorporation of AAA Corporation was approved by the Securities and Exchange Commission (SEC). After the receipt of the Certificate of Approval from the SEC, AAA Corporation decided to immediately start the operation of its business despite the fact that it has no approved By-Laws. What is the legal status of the AAA Corporation?
 - A) A de jure corporation;
 - B) A de facto corporation;
 - C) A corporation by estoppel;
 - D) An unregistered corporation.

SUGGESTED ANSWER:

A. A de jure corporation

2. X, the President of ZZZ Corporation, was authorized by the Board of Directors of ZZZ Corporation to obtain a loan from YYY Bank and to sign documents in behalf of the corporation. X personally negotiated for the loan and got the loan at very low interest rates. Upon maturity of the loan, ZZZ Corporation was unable to pay. Which statement is most accurate?
 - A) Because X was personally acting in behalf of the Corporation, he can be held personally liable.
 - B) X, as President, cannot be personally held liable for the obligation of the corporation even though he signed all the loan documents, because the loan was authorized by the Board.
 - C) YYY Bank can choose as to who it wants to hold liable for the loan.
 - D) If ZZZ Corporation cannot pay, X can be held subsidiary liable.

SUGGESTED ANSWER: B

B. X, as President, cannot be personally held liable for the obligation of the corporation even though he signed all the loan documents, because the loan was authorized by the Board.

3. X owns 99% of the capital stock of SSS Corporation. X also owns 99% of TTT Corporation. SSS Corporation obtained a loan from VW Bank. On due date, SSS Corporation defaulted. TTT Corporation is financially healthy. Which statement is most accurate?
 - A) X being a controlling owner of SSS Corporation can automatically be held personally liable for the loan of SSS Corporation.
 - B) TTT Corporation, owned 99% by X, can automatically be held liable.
 - C) SSS Corporation and TTT Corporation, although both are owned by X, are two (2) distinct corporations with separate juridical personalities hence, the TTT Corporation cannot automatically be held liable for the loan of SSS Corporation.
 - D) The principle of piercing the veil of corporate fiction can be applied in this case.

SUGGESTED ANSWER:

C. SSS Corporation and TTT Corporation, although both are owned by X, are two (2) distinct corporations with the separate juridical personalities hence, the TTT Corporation cannot automatically be held liable for the loan of SSS Corporation.

4. A corporation generally can issue both par value stock and no par value stock. These are all fixed in the Articles of Incorporation of the corporation. Which of the following corporations may not be allowed to issue no par value shares?

- A) Insurance companies;
- B) Banks;
- C) Trust companies;
- D) All of the above.

SUGGESTED ANSWER:

B. Banks

5. Father X, an American priest who came from New York, registered the Diocese of Bacolod of the Roman Catholic Church which was incorporated as a corporation sole. There were years when the head of the Diocese was a Filipino, but there were more years when the heads were foreigners. Today, the head is an American again. Y donated a piece of land located in Bacolod City for use as a school. Which statement is most accurate?
- A) The Register of Deeds of Bacolod City can refuse to register and transfer the title because the present head of the corporation sole is not a Filipino.
 - B) The nationality of a corporation sole depends upon the nationality of the head at any given time.
 - C) A corporation sole, regardless of the nationality of the head, can acquire real property either by sale or donation.
 - D) A corporation sole is not legally allowed to own real property.

SUGGESTED ANSWER:

c. A corporation sole, regardless of the nationality of the head, can acquire real property either by sale or donation.

6. The number of the Board of Trustees of a non-stock, non-profit educational institution should be:
- A) five (5) only
 - B) any number for as long as it is not less than five (5) and no more than eleven (11)
 - C) any number in multiples of five (5), for as long as it is not less than five (5) and no more than fifteen (15).
 - D) not less than five (5) nor more than ten (10) in multiples of five (5).

SUGGESTED ANSWER:

C. Any number in multiples of five (5), for as long as it is not less than five (5) and no more than fifteen (15)

7. X subscribed 10,000 shares in the capital stocks of AAA Corporation. He paid 50% of the 10,000 shares. X asked the Corporate Secretary to issue him the corresponding stock certificate representing the 50% of what he already paid. The Corporate Secretary of the corporation refused.

Was the Corporate Secretary correct?

- A) The Corporate Secretary is correct because the Corporation Code provides that no certificate of stock shall be issued to a subscriber until the shares as subscribed have been fully paid.
- B) The Corporate Secretary cannot refuse because a Stock Certificate can be issued corresponding to the percentage of shares which were paid.
- C) The Corporate Secretary cannot refuse because a Certificate of Stock can be issued provided it is indicated in the Certificate the actual percentage of what has been paid.
- D) The Corporate Secretary cannot refuse because it is his legal duty to issue a stock certificate corresponding to the number of shares actually subscribed regardless of the actual payment.

SUGGESTED ANSWER:

A. The Corporate Secretary is correct because the Corporation Code provides that no certificate of stock shall be issued to a subscriber until the shares as subscribed have been fully paid.

8. XXX Corporation and YYY Corporation have agreed to be merged into one corporation. To facilitate the merger, both corporations agreed that the merger be made effective on May 31, 2012. The Securities and Exchange Commission (SEC) approved the Articles of Merger on June 30, 2012. Which statement is most accurate?
- A) The effective date of the merger is May 31, 2012, the date stipulated by the parties as the effective date.
 - B) The effective date of the merger is always the date of the approval of the Articles of Merger by the SEC.
 - C) The effective date of the merger would be the date approved by the Board of Directors and the stockholders.
 - D) The stockholders and the Board of Directors can set the effective date of the merger anytime after the approval of the SEC.

SUGGESTED ANSWER:

B. The effective date of the merger is always the date of the approval of the Articles of Merger by the SEC.

9. AAA Corporation is a wholly owned subsidiary of BBB Corporation. To support the business of AAA Corporation, BBB Corporation agreed to give its corporate guarantee to the loan of AAA Corporation. What is required so that the corporate guarantee will be valid?
- A) It only requires the approval of the Board of Directors of BBB Corporation.
 - B) The Articles of Incorporation must provide such power and be approved by the Board of Directors. (This is the correct answer based on SEC opinion. Corp Guarantee must be proved among powers.)
 - C) Providing corporate guarantee to another corporation is a necessary exercise of power of a corporation.
 - D) It would require both the approval of the Board of Directors and the stockholders on record.

SUGGESTED ANSWER:

A. It only requires the approval of the Board of Directors of BBB Corporation.

10. The capital stock of ABC Corporation is divided into common shares and preferred shares. Preferred shares are preferred as to dividends and common shares are those shares which have the regular and ordinary attributes of a share of a corporation. Which statement is most accurate?
- A) This kind of classification may not be allowed or else it will violate the Doctrine of Equality of shares.
 - B) Classifications of shares may be allowed for as long as it is clearly stated as such in the Articles of Incorporation of the Corporation.
 - C) Classifications of shares is mainly for business purpose to attract investors.
 - D) Classifications of shares may be allowed with the approval of the stockholders and the Board of Directors.

SUGGESTED ANSWER:

B. Classification of shares may be allowed for as long as it is clearly stated as such in the Articles of Incorporation of the Corporation.

11. ABC Corporation declared stock dividends to its stockholders. The stock dividends were approved by the Board of Directors of ABC Corporation. In the subsequent year however, the Board again approved the redemption of all stock dividends and to pay the shareholdings in cash. Which statement is most accurate?
- A) The redemption of the stock dividends can be validly approved by the Board without any conditions.
 - B) The redemption of stock dividends may only be allowed if there are sufficient earnings and should not be violative of the trust fund doctrine.
 - C) The redemption of the shares may be taken from the existing property and other assets of the corporation.
 - D) None of the above.

Recommendation in respect of MCQ #58:

It is recommended that examinees be given full credit for whatever answer they give as the question is vague. It does not state that stockholders representing at least two-thirds of the outstanding capital stock approved the declaration of stock dividends.

12. X sold all his shares in AAA Hotel Corporation to Y. X owns 99% of AAA Hotel Corporation. As the new owner, Y wanted a reorganization of the hotel which is to include primarily the separation of all existing employees and the hiring of new employees. Which statement is most accurate?
- A) With the change in ownership, in effect there is a new juridical entity and therefore all employees are considered separated.
 - B) Despite the change in shareholder, there is actually no change in the juridical entity and therefore existing employees can not automatically be considered separated.
 - C) Y, as the new shareholder, has the right to retain only those employees who in his judgment are qualified.
 - D) For as long as the existing employees are given their separation pay, they can be terminated.

SUGGESTED ANSWER:

B. Despite the change in shareholder, there is actually no change in the juridical entity and therefore existing employees cannot automatically be considered separated.

13. South China Airlines is a foreign airline company. South China Airlines tickets are sold in the Philippines through Philippine Airlines as their general agent. South China Airlines is not registered to do business as such with the Philippine Securities and Exchange Commission. Which statement is most accurate?
- A) Although unlicensed to do business in the Philippines, South China Airlines can sue before the Philippine Courts and can also be sued.
 - B) South China Airlines can sue but cannot be sued.
 - C) South China Airlines cannot sue and cannot be sued also.
 - D) South China Airlines can be sued in Philippine Courts but cannot sue.

SUGGESTED ANSWER:

D. South China Airlines can be sued in Philippine Courts but cannot sue.

14. So that ABC Corporation could venture into more projects, it needed to raise funds by issuing new shares to increase its capitalization. X, Y, Z, J and G are the five existing shareholders of the company. They hold 20% each. How will the additional shares be divided among the existing shareholders?
- A) The existing shareholders can subscribe to the new shares equivalent to their existing shareholdings because the Corporation Code provides that each of the existing stockholders will have preemptive rights to the extent of their existing shareholdings.

- B) The existing shareholders' preemptive rights is equivalent to the percentage that they want.
- C) Each of the existing shareholder can exercise their right of first refusal against each other.
- D) Preemptive rights and right of first refusal are one and the same.

SUGGESTED ANSWER:

A. The existing shareholders can subscribe to the new shares equivalent to their existing shareholdings because the Corporation Code provides that each of the existing stockholders will have preemptive rights to the extent of their existing shareholdings.

15. If ABC Corporation will increase its authorized capital stock, the Corporation Code requires -
- A) the approval of the majority of the Board of Directors only.
 - B) the approval of the majority of the stockholders and the Board of Directors.
 - C) the approval of 2/3 of the shareholders of the outstanding capital stock as well as the approval of the Securities and Exchange Commission.
 - D) the approval of the majority of the Board of Directors and approval of the shareholders holding 2/3 share of the outstanding capital stock.

Recommendation in respect of MCQ #62:

It is recommended that examinees be given full credit for whatever answer they gave as the question is vague. It does not state that the increase of the authorized capital stock also requires the approval of the SEC.

16. X is a minority stockholder of CCC Corporation. Y is a member of the Board of Directors of CCC Corporation and at the same time he is the President. X believes that Y is mismanaging CCC Corporation hence, as a stockholder and in behalf of the other stockholders, he wanted to sue Y. Which statement is most accurate?
- A) X can institute a derivative suit in behalf of himself as a stockholder.
 - B) A derivative suit must be instituted in behalf of the corporation.
 - C) Derivative suit is an exclusive remedy that X can institute.
 - D) Derivative suit is not the remedy in this situation.

SUGGESTED ANSWER:

B. A derivative suit must be instituted in behalf of the corporation

17. The term GGG Corporation in accordance with its Articles of Incorporation ended last January 30, 2012. The term was not extended. What will happen to the corporation?
- A) The corporation is dissolved ipso facto.
 - B) There is a need to pass a board resolution to formally dissolve the corporation.
 - C) The Board of Directors must pass a resolution for the corporation to formally go into liquidation.
 - D) The stockholders must pass a resolution to dissolve the corporation.

SUGGESTED ANSWER:

A. The corporation is dissolved ipso facto.

18. The term of one (1) year of the Board of Directors of AAA Corporation expired last February 15, 2012. No new election of the Board of Directors was called, hence, the existing members of Board continue as Directors in hold over capacity. Which statement is most accurate?
- A) This is allowed provided there is a valid and justifiable reason for not calling for an election of the new members of the Board
 - B) This is not allowed because the term of the directors must only be for one (1) year.

- C) The positions of the members of the Board of Directors will be automatically declared vacant.
- D) Acting as members of the Board of Directors in a hold over capacity must be ratified by the stockholders.

SUGGESTED ANSWER:

A. This is allowed provided there is a valid and justifiable reason for not calling for an election of the new members of the Board

19. AAA Corporation is a foreign corporation that wants to operate a representative office here in the Philippines. As required by the Corporation Code, there is a need to appoint a Resident Agent as a condition precedent to the issuance of a license to transact business in the Philippines. After two (2) years, AAA Corporation removed its Resident Agent and did not appoint anyone anymore. Which statement is the most accurate?
- A) This can be a ground for revocation or suspension of its license to do business.
- B) There is no more effect in the license because anyway at the time of registration, a resident agent was appointed.
- C) This can be a ground for suspension only.
- D) This will result in automatic revocation of its license to do business in the Philippines.

SUGGESTED ANSWER:

A. This can be a ground for revocation or suspension of its license to do business.

20. The By-laws of ABC Corporation is silent as to when a stockholder can be qualified to attend the meeting of the stockholders. The Corporate Secretary sent out the notice of the stockholders meeting two (2) days before the meeting and at that time X was not yet a stockholder. On the day of the meeting, however, X became a shareholder which was duly recorded in the stock and transfer book. Which statement is most accurate?
- A) X is a stockholder of ABC Corporation as of the time of meeting of the stockholders for the purpose of electing the members of the board.
- B) X is not qualified to elect members of the board because at the time the notice of the meeting was sent, she was not yet a stockholder.
- C) Qualifications as to who are considered as stockholders on record for purposes of being able to elect members of the board are to be determined by the By-laws alone.
- D) None of the above.

SUGGESTED ANSWER:

A. X is a stockholder of ABC Corporation as of the time of meeting of the stockholders for the purpose of election the members of the board

21. X, who is the Executive Vice President of ABC Corporation, a listed company, can be held liable or guilty of insider trading if, he -
- A) bought shares of ABC Corporation when it was planning to acquire another company to improve its asset base, the news of which increased the price of the shares in the Stock Exchange.
- B) bought shares of XYZ Corporation, a sister company of ABC Corporation when he learned that XYZ Corporation was about to also list its share in the Philippine Stock Exchange.
- C) bought shares of ZZZ Corporation when he learned that ABC Corporation would acquire ZZZ Corporation.
- D) All of the above.

SUGGESTED ANSWER:

D. All of the above.

22. The purpose of the "Tender Offer" Rule is to -

- A) ensure an even playing field for all shareholders of a company in terms of opportunity to sell their shareholdings.
- B) ensure that minority shareholders in a publicly listed company are protected in the sense that they will equally have the same opportunity as the majority shareholders in terms of selling their shares.
- C) ensure that the shareholders who would also want to sell their shareholdings will have the opportunity for a better price.
- D) All of the above.

SUGGESTED ANSWER:

D. All of the above.

23. Section 38 of The Securities Regulation Code defines an independent director as a person who must not have a relation with the corporation which would interfere with his exercise of independent judgment in carrying out the responsibilities of a director. To ensure independence therefore, he must be -

- A) nominated and elected by the entire shareholders;
- B) nominated and elected by the minority shareholders;
- C) nominated and elected by the majority shareholders;
- D) appointed by the Board.

SUGGESTED ANSWER:

C. Nominated and elected by the majority shareholders;

24. It is settled that neither par value nor book value is an accurate indicator of the fair value of a share of stock of a corporation. As to unpaid subscriptions to its shares of stock, as they are regarded as corporate assets, they should be included in the

- A) capital value.
- B) book value.
- C) par value.
- D) market value.

SUGGESTED ANSWER: B

25. In elections for the Board of Trustees of non-stock corporations, members may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. This is true -

- A) unless set aside by the members in plenary session.
- B) in every case even if the Board of Trustees resolves otherwise.
- C) unless otherwise provided in the Articles of Incorporation or in the By-laws.
- D) in every case even if the majority of the members decide otherwise during the elections.

SUGGESTED ANSWER: C

26. The rule is that the valuation of the shares of a stockholder who exercises his appraisal rights is determined as of the day prior to the date on which the vote was taken. This is true -
- A) regardless of any depreciation or appreciation in the share's fair value.
 - B) regardless of any appreciation in the share's fair value.
 - C) regardless of any depreciation in the share's fair value.
 - D) only if there is no appreciation or depreciation in the share's fair value.

SUGGESTED ANSWER: A

27. EFG Foundation, Inc., a non-profit organization, scheduled an election for its six-member Board of Trustees. X, Y and Z, who are minority members of the foundation, wish to exercise cumulative voting in order to protect their interest, although the Foundation's Articles and By-laws are silent on the matter. As to each of the three, what is the maximum number of votes that he/she can cast?
- A) 6
 - B) 9
 - C) 12
 - D) 3

SUGGESTED ANSWER: A

28. X is a director in T Corp. who was elected to a 1-year term on Feb. 1, 2010. On April 11, 2010, X resigned and was replaced by R, who assumed as director on May 17, 2010. On Nov. 21, 2010, R died. S was then elected in his place. Until which time should S serve as director?
- A) April 11, 2011.
 - B) Feb. 1, 2011.
 - C) May 17, 2011.
 - D) Nov. 21, 2011.

SUGGESTED ANSWER: B

29. X Corp., whose business purpose is to manufacture and sell vehicles, invested its funds in Y Corp., an investment firm, through a resolution of its Board of Directors. The investment grew tremendously on account of Y Corp.'s excellent business judgment. But a minority stockholder in X Corp. assails the investment as ultra vires. Is he right and, if so, what is the status of the investment?
- A) Yes, it is an ultra vires act of the corporation itself but voidable only, subject to stockholders' ratification.
 - B) Yes, it is an ultra vires act of its Board of Directors and thus void.
 - C) Yes, it is an ultra vires act of its Board of Directors but voidable only, subject to stockholders' ratification.
 - D) Yes, it is an ultra vires act of the corporation itself and, consequently, void.

SUGGESTED ANSWER: C

30. "Eagleson Refillers, Co.," a firm that sells water to the public, opposes the trade name application of "Eagleson Laundry, Co.," on the ground that such trade name tends to deceive trade circles or confuse the public with respect to the water firm's registered trade name. Will the opposition prosper?
- A) Yes, since such use is likely to deceive or confuse the public.

- B) Yes, since both companies use water in conducting their business.
- C) No, since the companies are not engaged in the same line of business.
- D) No, since the root word "Eagle" is a generic name not subject to registration.

SUGGESTED ANSWER: C

31. The Corporation Code does not sanction a contract between two or more corporations which have interlocking directors, provided there is no fraud that attends it and it is fair and reasonable under the circumstances. The interest of an interlocking director in one corporation may be either substantial or nominal. It is nominal if his interest:
- A) does not exceed 25% of the outstanding capital stock.
 - B) exceeds 25% of the outstanding capital stock.
 - C) exceeds 20% of the outstanding capital stock.
 - D) does not exceed 20% of the outstanding capital stock.

SUGGESTED ANSWER: D

32. In case of disagreement between the corporation and a withdrawing stockholder who exercises his appraisal right regarding the fair value of his shares, a three-member group shall by majority vote resolve the issue with finality. May the wife of the withdrawing stockholder be named to the threemember group?
- A) No, the wife of the withdrawing shareholder is not a disinterested person.
 - B) Yes, since she could best protect her husband's shareholdings.
 - C) Yes, since the rules do not discriminate against wives.
 - D) No, since the stockholder himself should sit in the three-member group.

SUGGESTED ANSWER: A

33. Several American doctors wanted to set up a group clinic in the Philippines so they could render modern medical services. If the clinic is to be incorporated under our laws, what is the allowed foreign equity participation in such a corporation?
- A) 40%
 - B) 0%
 - C) 60%
 - D) 70%

SUGGESTED ANSWER: B

34. The Board of Directors of XYZ Corp. unanimously passed a Resolution approving the taking of steps that in reality amounted to willful tax evasion. On discovering this, the government filed tax evasion charges against all the company's members of the board of directors. The directors invoked the defense that they have no personal liability, being mere directors of a fictional being. Are they correct?
- A) No, since as a rule only natural persons like the members of the board of directors can commit corporate crimes.
 - B) Yes, since it is the corporation that did not pay the tax and it has a personality distinct from its directors.
 - C) Yes, since the directors officially and collectively performed acts that are imputable only to the corporation.
 - D) No, since the law makes directors of the corporation solidarily liable for gross negligence and bad faith in the discharge of their duties.

SUGGESTED ANSWER: D

35. A, the proprietor of a fleet of ten taxicabs, decides to adopt, as his business name, "A Transport Co., Inc." May this be allowed?
- A) No, it would be deceptive since he is a proprietor, not a corporation.
 - B) No, since "A" is a generic name, not suitable for registration.
 - C) Yes, since his line of business is public transportation.
 - D) Yes, since such name would give his business a corporate identity.

SUGGESTED ANSWER: A

36. In a special meeting called for the purpose, 2/3 of the stockholders representing the outstanding capital stock in X. Co. authorized the company's Board of Directors to amend its By-laws. By majority vote, the Board then approved the amendment. Is this amendment valid?
- A) No since the stockholders cannot delegate their right to amend the By-laws to the Board.
 - B) Yes since the majority votes in the Board was sufficient to amend the By-laws.
 - C) No, because the voting in the Board should have been by majority of a quorum.
 - D) Yes since the votes of 2/3 of the stockholders and majority of the Board were secured.

SUGGESTED ANSWER: A

37. A law was passed disqualifying former members of Congress from sitting in the Board of Directors of government-owned or controlled corporations. Because of this, the Board of Directors of ABC Corp., a government-owned and controlled corporation, disqualified C, a former Congressman, from continuing to sit as one of its members. C objected, however, insisting that under the Corporation Code members of the board of directors of corporations may only be removed by vote of stockholders holding 2/3 of its outstanding capital stock in a regular or special meeting called for that purpose. Is C correct?
- A) Yes, since the new law cannot be applied to members of the board of directors already elected prior to its passage.
 - B) No, since the disqualification takes effect by operation of law, it
 - C) Yes, since the provisions of the Corporation Code applies as well to government-owned and controlled corporations.
 - D) No, since the board has the power to oust him even without the new law.

SUGGESTED ANSWER: B

38. The Articles of Incorporation of ABC Transport Co., a public utility, provides for ten (10) members in its Board of Directors. What is the prescribed minimum number of Filipino citizens in its Board?
- A) Php700,000.00.
 - B) Php700.00.
 - C) Php7,000.00.
 - D) Php700,100.00.

SUGGESTED ANSWER: A

39. The corporate term of a stock corporation is that which is stated in its Articles of Incorporation. It may be extended or shortened by an amendment of the Articles when approved by majority of its Board of Directors and:
- A) approved and ratified by at least 2/3 of all stockholders.
 - B) approved by at least 2/3 of the stockholders representing the outstanding capital stock.
 - C) ratified by at least 2/3 of all stockholders.
 - D) ratified by at least 2/3 of the stockholders representing the outstanding capital stock.

SUGGESTED ANSWER: D

A. General principles

1. Nationality of corporations

a. Place of incorporation test

b. Control test

40. The term capital in relation to public utilities under Sec. 11, Art. XII of the 1987 Constitution refers to the total outstanding capital stock comprising both common and non-voting preferred shares. (2%) (2017 BAR)

SUGGESTED ANSWER:

True. The term “capital” in Sec. 11 Art. XII of the Constitution does not refer to a specific class of share, as the Constitution does not distinguish between voting or nonvoting, common or preferred shares of stock. Thus, the term “capital” refers *rule* to all shares of stock that are subscribed, which constitute the “capital” of a corporation, including both common and non-voting preferred shares (*Roy v Gamboa*, G.R. No. 207246, November 22, 2016.)

c. Grandfather

41. In 2015, R Corp., a domestic company that is wholly owned by Filipinos files its opposition to the applications for Mineral Production Sharing Agreements (MPSA) of O Corp., P Corp., and Q Corp. which were pending before the Panel of Arbitrators (POA) of the Department of Environmental and Natural Resources (DENR). The three corporations wanted to undertake exploration and mining activities in the province of Isabela. The oppositor alleged that at least 60% of the capital shareholdings of the applicants are owned by B Corp., a 100% Chinese corporation, in violation of Sec. 2, Art. XII of the Constitution. The applicants countered that they are qualified corporations as defined under the Philippine Mining Act of 1995 and the Foreign Investments Act of 1991 since B Corp. holds only 40% of the capital stocks in each of them and not 60% as alleged by R Corp.

The summary of Significant Accounting policies statement of B Corp. reveals that the joint venture agreement of B Corp. with Sigma Corp. and Delta Corp. involve the O Corp., P Corp., and Q Corp. The ownership of the layered corporations and joint venture agreements show that B Corp. practically exercises control over the O, P and Q corporations contend that the control test should be applied and its MPSA applicants granted. On the other hand, R Corp. argues that the “grandfather rule” should be applied. Decide with reasons. (5%) (2016 BAR)

SUGGESTED ANSWER:

The grandfather rule should apply. The Supreme Court held in a similar case that even though on paper the capital shareholding in a mining company is 60% owned by Filipinos and 40% by foreigners, if there is a doubt as to the locus of the beneficial ownership and control, the grandfather rule should apply. Based on the facts, B Corporation, a Chinese corporation, practically exercises control over O, P and Q Corporations. Such circumstance creates a doubt as to where control and beneficial ownership reside that warrants application of the grandfather rule (*Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corp*, GR No. 195580, April 21, 2014).

2. Doctrine of separate juridical personality

42. A corporation organized under the Corporation Code commences to have corporate existence and juridical personality and is deemed incorporated: (1%) (2014 BAR)
- A) from the date the application for incorporation is filed with the Securities and Exchange Commission (SEC)
 - B) from the date the SEC issues a certificate of incorporation under its official seal
 - C) thirty (30) days after the date the application for incorporation is filed with the SEC
 - D) thirty (30) days after the date the SEC issues a certificate of incorporation under its official seal

SUGGESTED ANSWER:

B (from the date the SEC issues a certificate of incorporation under its official seal; Sec. 19, Corporation Code)

3. Doctrine of piercing the corporate veil

43. Nelson owned and controlled Sonnel Construction Company. Acting for the company, Nelson contracted the construction of a building. Without first installing a protective net atop the sidewalks adjoining the construction site, the company proceeded with the construction work. One day a heavy piece of lumber fell from the building. It smashed a taxicab which at that time had gone offroad and onto the sidewalk in order to avoid traffic. The taxicab passenger died as a result. (2008 BAR)
- A) Assume that the company had no more account and property in its name. As counsel for the heirs of the victim, whom will you sue for damages, and what theory will you adopt? (3%)

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

I would use the theory that the company cannot be held liable for damages because there was no fraud or negligence by its officers in undertaking the project for the construction of the building or the selection of a construction company. Since a contractor is not an agent of Sonnel Construction, the latter cannot be held liable for the contractor's negligence. I would also argue that piercing the veil of corporate fiction is a remedy of last resort and cannot be availed of without clear evidence showing fraud or disrespect of the separate juridical personality of the corporation. Mere control of equity has not been considered as sufficient basis for piercing the veil.

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

SUGGESTED ANSWER:

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

- 44. In an action for collection of a sum of money, the Regional Trial Court (RTC) of Makati City issued a decision finding D-Securities, Inc. liable to Rehouse Corporation for P10,000,000.00. Subsequently, the writ of execution was issued but returned unsatisfied because D-Securities had no more assets to satisfy the judgment. Rehouse moved for an Alias Writ of Execution against Fairfield Bank (FB), the parent company of D-Securities. FB opposed the motion on the grounds that it is a separate entity and that it was never made a party to the case. The RTC granted the motion and issued the Alias Writ of Execution. In its Resolution, the RTC relied on the following facts: 499,995 out of the 500,000 outstanding shares of stocks of D-Securities are owned by FB; FB had actual knowledge of the subject matter of litigation as the lawyers who represented D-Securities are also the lawyers of FB. As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied. The RTC ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon D-Securities has bestowed jurisdiction over both the parent and wholly-owned subsidiary. Is the RTC correct? (4%) (2014 BAR)**

SUGGESTED ANSWER:

The RTC is not correct. As FB is a separate entity and was never made a party to the case, the judgment sought to be enforced against D-Securities cannot be made against its parent company, FB.

Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. Neither is the existence of interlocking directors, corporate officers and shareholders enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations. It must appear that to recognize their separate entities would aid in the consummation of a wrong.

Control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case. (*Pacific Rehouse Corporation vs. CA, et al., G.R. 199687, March 24, 2014*)

B. Stock vs. non-stock corporations

C. De facto corporations and corporations by estoppel

45. Unknown to the other four proponents, Enrico (who had been given the task of attending to the Articles of Incorporation of the proposed corporation, Auto Mo, Ayos Ko) misappropriated the filing fees and never filed the Articles of Incorporation with the Securities and Exchange Commission (SEC). Instead, he prepared and presented to the proposed incorporators a falsified SEC certificate approving the Articles. Relying on the falsified SEC certificate, the latter began assuming and discharging corporate powers. Auto Mo, Ayos Ko is a_. (1%)
- A) De jure corporation
 - B) De facto corporation
 - C) Corporation by estoppels
 - D) General partnership
 - E) None of the above.

SUGGESTED ANSWER:

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

(C) Corporation by estoppels

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

(E) None of the above.

If the term "latter" refers to Enrico, the correct answer is E (Sections 20 and 21 of the Corporation Code).

D. Board of Directors and Trustees

46. X is a Filipino immigrant residing in Sacramento, California. Y is a Filipino residing in Quezon City, Philippines. Z is a resident alien residing in Makati City. GGG Corporation is a domestic corporation - 40% owned by foreigners and 60% owned by Filipinos, with T as authorized representative. CCC Corporation is a foreign corporation registered with the Philippine Securities and Exchange Commission. KKK Corporation is a domestic corporation (100%) Filipino owned. S is a Filipino, 16 years of age, and the daughter of Y.
47. What are the differences between an incorporator and a subscriber, if there are any? (2012 Bar Question)

SUGGESTED ANSWER:

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

- A) Who are qualified to become members of the board of directors of the corporation? (2012 Bar Question)

SUGGESTED ANSWER:

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

B) Who are qualified to act as Treasurer of the company? (2012 Bar Question)**SUGGESTED ANSWER:**

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

C) Who can be appointed Corporate Secretary? (2012 Bar Question)**SUGGESTED ANSWER:**

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

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

1. Basic principles**a. Doctrine of centralized management****b. Business judgment rule****2. Duties, liabilities, and responsibility for unlawful acts**

48. Pedro was 70% of the subscribed capital stock of a company which owns an office building. Paolo and Juan own the remaining stock equally between them. Paolo also owns a security agency, a janitorial company and a catering business. In behalf of the office building company, Paolo engaged his companies to render their services to the office building. Are the service contracts valid? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

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

On the other hand, if the contracts were duly approved by the Board of Directors of the office building company with Paolo duly designated as company representative, they would nevertheless be voided at the option of the company. Under Sec. 32 of the Corporation Code, (a) if Paolo as a director in the board meeting in which the contracts were approved was not necessary to constitute a quorum for such meeting; (b) Paolo's vote at such meeting was not necessary for the approval of the contracts; (c) Each of the contract are fair and reasonable under the circumstances.

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

49. A, B, C, D, E are all duly elected members of the Board of Directors of XYZ Corporation. F, the general manager, entered into a supply contract with an American firm. The contract was duly approved by the Board of Directors. However, with the knowledge and consent of F, no deliveries were made to the American firm. As a result of the non-delivery of the promised supplies, the American firm incurred damages. The American firm would like to file a suit for damages. Can the American firm sue: (2012 BAR)

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

SUGGESTED ANSWERS:

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

B) The corporation? (2%)

SUGGESTED ANSWERS:

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

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

SUGGESTED ANSWERS:

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

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

SUGGESTED ANSWERS:

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

otherwise applicable to, the corporation, and, in the case of officers, the resolutions approved by the Board of Directors.

As the directors have a personality separate from that of the corporation, they would be personally liable only if they acted wilfully and knowingly vote for or assent to a patently unlawful act of the corporation, or when they are guilty of gross negligence or bad faith in directing the affairs of the corporation, or when they acquire any personal or pecuniary interest in conflict with their duty as directors, which acts result in damages to the corporation, its stockholders or other persons, when they agree to hold themselves personally and solidarily liable with the corporation, or when they are made, by a specific provision of law, to personally answer for the corporate action. (Sec. 31, Corporation Code).

50. Pursuant to its By-Laws, Soei Corporation's Board of Directors created an Executive Committee to manage the affairs of the corporation in between board meetings. The Board of Directors appointed the following members of the Executive Committee: the President, Sarah L; the Vice-President, Jane L; and, a third member from the board, Juan Riles. On December 1, 2013, the Executive Committee, with Sarah L and Jane L present, met and decided on the following matters:
1. Purchase of a delivery van for use in the corporation's retail business;
 2. Declaration and approval of the 13th month bonus;
 3. Purchase of an office condominium unit at the Fort; and
 4. Declaration of P10.00 per share cash dividend.

Are the actions of the Executive Committee valid? (4%) (2014 BAR)

SUGGESTED ANSWER:

All the actions taken by the Executive Committee in the problem are not valid. The Executive Committee was not properly created and, therefore, its acts are invalid. Section 35 of the Corporation Code requires that at least three members of an Executive Committee be directors of the corporation. Member Jane L is not identified as a director. As the Executive Committee in the problem was not properly created it could not act at all as the minimum quorum would be three. As stated earlier, the Executive Committee lacks one qualified member.

If the Executive Committee were properly organized and a quorum were present, all the actions taken by the Executive Committee in the problem, except the declaration of P10.00 per share cash dividend, would have been valid. The distribution of cash dividends to the shareholders may not be delegated by the Board of Directors to the Executive Committee pursuant to Section 35 of the Corporation Code.

E. Powers of corporations

1. How powers are exercised

51. What vote is needed to consider every decision to be a valid corporate act? (1%) (2014 BAR)
- A) a majority of the directors present at the meeting
 - B) two-thirds of the directors present at the meeting
 - C) a majority of the directors present at the meeting at which there is a quorum
 - D) two-thirds of the directors present at the meeting at which there is a quorum

SUGGESTED ANSWER:

C (a majority of the directors present at the meeting at which there is a quorum; Sec. 25, Corporation Code)

52. B. Define: (2015)

A) Doctrine of apparent authority (2%)**SUGGESTED ANSWER:**

By the doctrine of apparent authority, the corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority and it holds him out to the public as possessing the power to do those acts (*Advance Paper Corporation v. Arma Traders Corporation*, 712 SCRA 313 [2013]).

- 53. Henry is a board director in XYZ Corporation. For being the “fiscalizer” in the Board, the majority of the board directors want him removed and his shares sold at auction, so he can no longer participate even in the stockholders’ meetings. Henry approaches you for advice on whether he can be removed as board director and stockholder even without cause. What is your advice? Explain “amotion” and the procedure in removing a director. (5%) (2016 BAR)**

SUGGESTED ANSWER:

Henry cannot be removed by his fellow directors. The power to remove belongs to the stockholders. He can only be removed by the stockholders representing at least 2/3 of the outstanding capital stock in a meeting called for that purpose. The removal may be with or without cause except that in this case, the removal has to be with cause because it is intended to deprive minority stockholders of the right of representation. Amotion is the premature ousting of a director or officer from his post in the corporation.

[NB: The committee recommends that the examinees be given outright credit for the question on amotion regardless of the answer as this concept is hardly taken up in law school. It is also requested that the examiner be liberal in checking the answers given the relative difficulty of the questions].

- 54. Dennis subscribed to 10,000 shares of XYZ Corporation with a par value of P100 per share. However, he paid only 25% of the subscription or P250,000.00 No call has been made on the unpaid subscription. (2013)**

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

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

SUGGESTED ANSWER:

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

- 55. Preferred shares cannot vote on the proposal____. (1%) (2013)**

- A) To include other corporate officers in the corporation's by-laws
- B) To issue corporate bonds
- C) To shorten the corporate term
- D) All of the above
- E) None of the above.

SUGGESTED ANSWER:

(E) None of the above.

Under letter (A), to include other corporate officers in the corporation's by-laws. This will require the amendment of the by-laws, and as such, *vires* preferred shares shall be allowed to vote.

Under letter (B), to issue corporate bonds— Such corporate bonds are construed as bonded indebtedness, then preferred shares shall be allowed to vote.

Under letter (C), to shorten the corporate term, - Under Section 6 of the Corporation Code, preferred shares shall be allowed to vote.

2. *Ultra doctrine*

56. When is there an *ultra vires* act on the part of (a) the corporation; (b) the board of directors; and (c) the corporate officers? (3%) (2009 BAR)

A) the corporation;

SUGGESTED ANSWER:

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

B) the board of directors;

SUGGESTED ANSWER:

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

C) the corporate officers

SUGGESTED ANSWER:

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

3. *Trust fund doctrine*

57. Discuss the trust fund doctrine. (5%) (2007 BAR)

SUGGESTED ANSWER:

The trust fund doctrine means that the capital stock, properties and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. Stated simply, the trust fund doctrine states that all funds received by the corporation in payment of the shares of stock shall be held in trust for

the corporate creditors and other stockholders of the corporation. Under such doctrine, no fund shall be used to buy back the issued shares of stock except only in instances specifically allowed by the Corporation Code (Boman Environmental Development Corporation v. Court of Appeals, 167 SCRA 540 [1988]).

58. Define: Trust fund doctrine (2%)

SUGGESTED ANSWER:

By the trust fund doctrine subscriptions to the capital stock of a corporation constitute a fund to which the creditors have the right to look for satisfaction of their claims. The scope of the doctrine encompasses not only the capital stock but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts (*Halley v. Printwell*, 649 SCRA 116 [2011]; *Ong v. Tin*, 401 SCRA 1 [2003]).

59. The BIR assessed ABC Corp. for deficiency income tax for taxable year 2010 in the amount of P26,731,208.00, inclusive of surcharge and penalties. (2013)

The BIR Can . (1%)

- A) Run after the directors and officers of ABC Corp. to collect the deficiency tax and their liability will be solidary.
- B) Run after the stockholders of ABC Corp. and their liability will be joint
- C) Run after the stockholders of ABC Corp. and their liability will be solidary
- D) Run after the unpaid subscriptions still due to ABC Corp., if any
- E) None of the above choices is correct.

SUGGESTED ANSWER:

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

F. Stockholders and Members

1. Doctrine of equality of shares

2. Proprietary rights

a. Right to dividends

60. Dividends on shares of stocks can only be declared out of unrestricted retained earnings of the corporation. (2009 BAR)

SUGGESTED ANSWER:

True. Dividends on shares of stock of a corporation, whether cash dividend or stock dividend, can be validly declared only out of unrestricted retained earnings (Sec. 43, Corporation Code). It cannot be declared out of the capital. Otherwise, such declaration of dividend will violate the trust fund doctrine.

61. On September 15, 2007, XYZ Corporation issued to Paterno eight hundred preferred shares with the ff. terms:

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

1. The right to receive a quarterly dividend of One per Centum cumulative and participating;
2. These shares may be redeemed, by drawing of lots, at any time after two years from date of issue, at the option of the Corporation; xxx

Today, Paterno sues XYZ Corporation for specific performance, for the payment of dividends on, and to compel the redemption of, the preferred shares, under the terms and conditions provided in the stock certificates. Will the suit prosper? Explain. (3%) (2009 BAR)

SUGGESTED ANSWER:

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

62. Ace Cruz subscribed to 100,000 shares of stock of JP Development Corporation, which has a par value of P1 per share. He paid P25,000 and promised to pay the balance before December 31, 2008. JP Development Corporation declared a cash dividend on October 15, 2008, payable on December 1, 2008 (2008 BAR)

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

SUGGESTED ANSWER:

Ace Cruz is entitled to be paid each cash dividends to the entire 100,000 shares subscribed, and not only to the paid-up portion thereof. The legal character of being a “stockholder,” and therefore the entitlement to all the rights of a stockholder, are determined from the time of “subscription” and not from payment of the subscription.

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

63.

- A) DEF Corporation has retained surplus profits in excess of 100% of its paid-in capital stock. However, it is unable to declare dividends, because it had entered into a loan agreement with a certain creditor wherein the declaration of dividends is not allowed without the consent of such creditor. If DEF Corporation cannot obtain this consent, will it be justified in not declaring dividends to its stockholders? Explain. (3%) (2015 BAR)

SUGGESTED ANSWER:

Yes. Stock corporations are prohibited from retaining surplus profits in excess of 100% of their paid-in capital stock except among others, when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without the consent of the creditor and such consent has not been secured (*Section 43 of the Corporation Code*).

- B) What is "watered stock" and what is the legal consequence of the issuance of such stock? (3%)

SUGGESTED ANSWER:

Watered stocks are stocks issued for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value. Any director or officer of a corporation consenting to the issuance of watered stocks or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary shall be solidarily liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same (*Section 65 of the Corporation Code*).

64. ABC Corp, issued redeemable shares, Under the terms of the issuance, the shares shall be redeemed at the end of 10 years from date of issuance, at par value plus a premium of 10% (2013)

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

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

SUGGESTED ANSWER:

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

b. Right to inspect

65. What is a stock and transfer book? (1%) (2009 BAR)

SUGGESTED ANSWER:

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

66. Sid used to be the majority stockholder and President of Excellent Corporation (Excellent). When Meridian Co., Inc. (Meridian), a local conglomerate, took over control and ownership of Excellent, it brought along its team of officers. Sid thus became a minority stockholder and a minority member of the Board of Directors.
67. Excellent, being the leading beverage manufacturer in the country, became the monopoly when Meridian's own beverage business was merged with Excellent's, thereby making Excellent virtually the only beverage manufacturer in the country.

Left out and ignored by the management, Sid became a fiscalizer of sorts, questioning during the Board meetings the direction being pursued by Excellent's officers.

Ultimately, Sid demanded the inspection of the books and other corporate records of Excellent. The management refused to comply, saying that his right as a minority stockholder has been much reduced.

State under what conditions may Sid properly assert his right to inspect the books and other corporate records of Excellent. Explain your answer. (3%) (2017 BAR)

SUGGESTED ANSWER:

Sid may properly assert his right to inspect the books and other corporate records of Excellent under the following conditions:

- (1) the purpose of his inspection is legitimate and germane to his interest as a stockholder
- (2) The right should be exercised during reasonable hours on business day
- (3) He has not improperly used any information secured in previous examination [*Section 74 of the Corporation Code; Terelay Investment v. Yulo, GR No. 160924, (2015)*].

c. Pre-emptive right

d. Right of first refusal

3. Intra-corporate disputes

a. Concept

68. DC is a unit owner of Medici Condominium located in Pasig City. On September 7, 2011, Medici Condominium Corp. (Medici) demanded from DC payment for alleged unpaid association dues and assessments amounting to P195,000.00. DC disputed the claim, saying that he paid all dues as shown by the fact that he was previously elected as Director and President of Medici. Medici, on the other hand, claimed that DC's obligation was a carry-over of his obligations to the condominium developer, Medici Construction Corporation. Consequently, DC was prevented from exercising his right to vote and be voted for during the 2011 election of Medici's Board of Directors. This prompted DC to file a complaint for damages before the Special Commercial Court of Pasig City. Medici filed a motion to dismiss on the ground that the court has no jurisdiction

over the intra-corporate dispute which the Housing and Land Use Regulatory Board (HLURB) has exclusive jurisdiction over. Is Medici correct? (4%) (2014 BAR)

SUGGESTED ANSWER:

Medici is correct. Using the relationship test and the nature of the controversy test, it is indubitable that the controversy involves intra-corporate issues. The facts of the problem indicate that there was a dispute as to the liability of DC for condominium dues, as well as the right of DC to “to vote and be voted for during the 2011 election of Medici’s Board of Directors”. Accordingly, jurisdiction is with the Special Commercial Court of Pasig City, not with the Housing and Land Use Regulatory Board (*Medical Plaza Makati Condominium Corp. vs. Cullen*, G.R. 181416, November 11, 2013)

- 69. Barn filed an action to enjoin SN Company's Board of Directors from selling a parcel of land registered in the corporation's name, to compel the corporation to recognize Barn as a stockholder with 50 shares, to allow him to inspect the corporate books, and to claim damages against the corporation and its officers. Subsequently, the corporation and the individual defendants moved to dismiss the complaint since the corporation's certificate of registration was revoked by the SEC during the pendency of Barn's case on the ground of non-compliance with reportorial requirements. The special commercial court granted the motion and reasoned that only an action for liquidation of assets can be maintained when a corporation has been dissolved and Barn cannot seek reliefs which in effect lead to the continuation of the corporation's business. The court also ruled that it lost jurisdiction over the intra-corporate controversy upon the dissolution of the corporation. (2015 BAR)**

A) Was the court correct? (3%)

SUGGESTED ANSWER:

The court is not correct. An action to be recognized as a stockholder and to inspect corporate documents is an intra-corporate dispute which does not constitute a continuation of business. The dissolution of the corporation simply prohibits it from continuing its business. Moreover, under Section 145 of the Corporation Code, no right or remedy in favor of or against any corporation, its stockholders, members, directors and officers shall be removed or impaired by the subsequent dissolution of the corporation.

The dissolution does not terminate existing causes of action which arose because of the corporate ties of the parties. The cause of action involving an intra-corporate controversy remains and must be filed as an intra-corporate dispute despite the subsequent dissolution of the corporation (*Aguirre v. FQB +7, Inc.*, 688 SCRA 242 [2013]).

B) Four years later, SN Company files an action against Barn to recover corporate assets allegedly held by the latter for liquidation. Will this action prosper? (3 %)

SUGGESTED ANSWER:

The action cannot prosper because the corporation has no more legal capacity to sue after three years from its dissolution (*Alabang Development Corporation v. Alabang Hills Village Association*, 724 SCRA 321 [2014]).

b. Individual vs. representative vs. derivative suits

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

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

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

Rule on the issues raised. (8%) (2013 BAR)

SUGGESTED ANSWER:

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

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

71. **Atlantis Realty Corporation (ARC), a local firm engaged in real estate development, plans to sell one of its prime assets—a three-hectare land valued at about P100-million. For this purpose, the board of directors of ARC unanimously passed a resolution approving the sale of the property for P75-million to Shangrila Real Estate Ventures (SREV) a rival realty firm. The resolution also called for a special stockholders meeting at which the proposed sale would be up for ratification.**

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

- A) Can Atty. Edric, who owns only one share in the company, initiate a derivative suit? Why or why not? (2%) (2009 BAR)**

SUGGESTED ANSWER

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

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

SUGGESTED ANSWER:

Yes, such suit would constitute an intra-corporate dispute as it is a suit initiated by a stockholder against other stockholders who are officers and directors of the same corporation (P.D. No. 902-A, Sec. 5(b)).

Such suit should be filed in the Regional Trial Court designated by the Supreme Court as a corporate or commercial court.

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

SUGGESTED ANSWER:

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

72. A, B, C, D, and E were members of the 2003-2004 Board of Directors of FLP Corporation. At the election for the 2004-2005 Board of Directors, not one of them was elected. They filed in court a derivative suit on behalf of FLP Corporation against the newly-elected members of the Board of Directors. They questioned the validity of the election as it was allegedly marred by lack of quorum, and prayed for the nullification of the said election. The 2004-2005 Board of Directors moved to dismiss the complaint because the derivative suit is not proper. Decide. (4%) (2014 BAR)

SUGGESTED ANSWER:

The position taken by the 2004-2005 Board of Directors is correct. The derivative suit is not proper. The members of the 2003-2004 Board of Directors of FLP Corporation are the injured parties, not FLP Corporation, as their rights to vote and to be voted upon were directly affected by the election of the new set of directors. (*Legaspi Towers 300, Inc., et al. vs. Muer, et al.*, G.R. 170783, June 18, 2012)

73. Royal Links Golf Club obtained a loan from a bank which is secured by a mortgage on a titled lot where holes 1, 2, 3 and 4 are located. The bank informed the Board of Directors (Board that if the arrearages are not paid within thirty (30) days, it will extra-judicially foreclose the mortgage. The Board decided to offer to the members 200 proprietary membership shares, which are treasury shares, at the price of P175,000.00 per share even when the current market value is P200,000.00.

In behalf and for the benefit of the corporation, Peter, a stockholder, filed a derivative suit against the members of the Board for breach of trust for selling the shares at P25,000.00, lower than its market value, and asked for the nullification of the sales and the removal of the board members. Peter claims the Club incurred a loss of P5 million. The Board represented the defense that in its honest belief any delay in the payment of the arrearages will be prejudicial to the club as the mortgage on its assets will be foreclosed and the sale at the lower price is the best solution to the problem. Decide the suit and explain. (5%) (2016 BAR)

SUGGESTED ANSWER:

The derivative suit will not prosper, because while it was filed by a stockholder on behalf of the corporation the complaint did not allege the other elements of derivative suit namely; a) exhaustion of intra-corporate remedies available under the articles of incorporation, by-laws and rules and regulations governing the corporation to obtain the relief the stockholder desires; b) it is not a nuisance suit; and c) appraisal right is not available (*Ching v. Subic Bay Golf and Country Club*, G.R. No. 174353, September 10, 2014).

ALTERNATIVE ANSWER:

The derivative suit will not prosper, because there was no wrongful act on the part of the board of directors. In accordance with the business judgment rule since the board of directors passed the resolution in good faith to prevent the foreclosure on the mortgage on the assets of the corporation, the court cannot review the decision of the board of directors even if the selling price is less than the market value of the shares (*Montelibano v. Bacolod Murcia Milling Company*, G.R. No. L-15092, May 18, 1962).

G.Foreign Corporations

1. What constitutes “doing business”

74. A foreign company has been exporting goods to a Philippine company for several years now. When the Philippine company failed to pay the latest exportation, the foreign company sued to collect in the Philippines. The Philippine company interposed the defense that the foreign company was doing business in the Philippines without a license; hence, could not sue before a Philippine court. Is this defense tenable? Explain your answer. (3%) (2015 BAR)

SUGGESTED ANSWER:

The defense is not tenable. The mere act of exporting from one's own country, without doing any specific commercial act within the territory of the importing country can not be deemed as doing business in the importing country. Thus, the foreign company may sue in the Philippines despite lack of license to do business in the Philippines (*B. Van Zuiden Bros Ltd. v. GTVL Manufacturing Industries* 523 SCRA 233 [2007]).

75. A foreign company has a distributor in the Philippines. The latter acts in his own name and account. Will this distributorship be considered as doing business by the foreign company in the Philippines? (3%) (2015)

SUGGESTED ANSWER:

The appointment of a distributor in the Philippines is not sufficient to constitute doing business unless it is under the full control of the foreign corporation. If the distributor is an independent entity doing business for its own name and account, the latter cannot be considered as doing business (*Steel Case v. Design International Selection*, 670 SCRA 64 [2012]).

76. ABC Corporation was organized in Malaysia but has a branch in the Philippines. It is entirely owned by Filipino citizens. Can you consider ABC Corporation a Philippine national? (2%)

SUGGESTED ANSWER:

Yes it is a considered a Philippine national as long as it is registered as doing business in the Philippines under the Corporation Code (*Section 1 of RA 7042, as amended by Section 1 of RA 8179*).

2. Personality to sue and suability

H. Mergers and Consolidations

1. Concept

77. In 2015, Total Bank (Total) proposed to sell to Royal Bank (Royal) its banking business for P10 billion consisting of specified assets and liabilities. The parties reached an eventual agreement, which they termed as “Purchase and Assumption (P % A) Agreement,” in which Royal would acquire Total's specified assets and liabilities, excluding contingent claims, with the further stipulation that it should be approved by the *Bangko Sentral ng Pilipinas* (BSP). BSP imposed the condition that Total should place in escrow P1 Billion to cover for contingent claims against it. Total complied. After securing the approval of the BSP, the two bank signed the agreement. BSP thereafter issued a circular advising all banks and non-bank intermediaries that effective

January 1, 2016, “the banking activities of Total Bank and Royal Bank have been consolidated and the latter has carried out their operations since then.” (2016 BAR)

A) Was there a merger and consolidation of the two banks in point of the Corporation Code? Explain. (2.5%)

SUGGESTED ANSWER:

There was no merger or consolidation of the two banks from the viewpoint of the Corporation Code. The Supreme Court ruled in *Bank of Commerce v. Radio Philippine Network, Inc.* (GR No. 195615, April 21, 2014) that there can be no merger if the requirements and procedure for merger were not observed and no certificate of merger was issued by the SEC.

B) What is meant by a *de facto* merger? Discuss (2.5%)

SUGGESTED ANSWER:

De facto merger means that a corporation called the Acquiring Corporation acquired the assets and liabilities of another corporation in exchange for equivalent value of shares of stock of the Acquiring Corporation.

2. Effects and limitations

VI. SECURITIES REGULATION CODE (RA 8799)

1. "Securities" issued to the public are required by law to be registered with - (2012 Bar Question)
 - A) the Bangko Sentral ng Pilipinas;
 - B) the Philippine Stock Exchange;
 - C) the Securities and Exchange Commission;
 - D) the Securities and Exchange Commission and the Philippine Stock Exchange.

SUGGESTED ANSWER:

C. The Securities and Exchange Commission

2. The government agency granted with the power of supervision and examination over banks and non- bank financial institutions performing quasi-banking functions, to ensure that the conduct of its business is on a sound financial basis that will provide continued solvency and liquidity is - (2012 Bar Question)
 - A) The Philippine Deposit Insurance Corporation;
 - B) The Bangko Sentral ng Pilipinas;
 - C) The Anti-Money Laundering Council;
 - D) The Securities and Exchange Commission.

SUGGESTED ANSWER:

B. The Bangko Sentral ng Pilipinas

3. Section 38 of The Securities Regulation Code defines an independent director as a person who must not have a relation with the corporation which would interfere with his exercise of independent judgment in carrying out the responsibilities of a director. To ensure independence therefore, he must be - (2012 Bar Question)
 - A) nominated and elected by the entire shareholders;
 - B) nominated and elected by the minority shareholders;
 - C) nominated and elected by the majority shareholders;
 - D) appointed by the Board.

SUGGESTED ANSWER:

c. Nominated and elected by the majority shareholders;

4. X maintains a savings deposit in the amount of Php·1 Million with ABC Bank Corporation. X also has obtained a loan from ABC Bank Corporation in the amount of Php1 Million. In case of default, ABC Bank can set-off the loan from the savings account being maintained by X with ABC Bank.

ABC Corp. is engaged in the pawnshop business involving cellphones, laptops and other gadgets of value. In order to expand its business and attract investors, it offered to any person who invests at least P100,000.00 a "promissory Note" where it obligated itself to pay the holder a 50% return on investment within one month. Due to the attractive offer, many individuals invested in the company but not one of them was able to realize any profit after one month.

Has ABC Corp. violated any law with its scheme? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Yes, ABC Corporation violated the provisions of the Securities Regulation Code that prohibits sale of securities to the public, like promissory notes, without a registration statement filed with and approved by the Securities and Exchange Commission.

A. Registration requirement; exemptions

5. What are the so-called exempt securities under the Securities Regulation Code? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

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

1. Those issued or guaranteed by the government of the Philippines or any of its political subdivisions or agencies;
2. Those issued or guaranteed by the government of any foreign country with which the Philippines has diplomatic relation, or any other state on the basis of reciprocity, although the SEC may require compliance with the form and content of disclosures;
3. Those issued by the receiver or by the trustee in a bankruptcy duly approved by the proper adjudicatory board;
4. Those involving the sale or transfer which is bylaw, under the regulation of the OIC, HLURB, BIR; and
5. Those issued by banks, except its own shares.

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

6. Philippine Palaces Realty (PPR) had been representing itself as a registered broker of securities, duly authorized by the Securities and Exchange Commission (SEC). On October 6, 1996, PPR sold to spouses Leon and Carina one timeshare of Palacio del Boracay for US \$7, 500.00. However, its Registration Statement became effective only on Feb. 11, 1998 after the SEC issued a resolution declaring that PPR was authorized to sell securities, including timeshares.

On March 30, 1998, Leon and Carina wrote PPR rescinding their purchase agreement and demanding the refund of the amount they paid because the Palacio Del Boracay timeshare was sold to them by PPR without the requisite license or authority from the SEC. PPR contended that the grant of the SEC authority had the effect of ratifying the purchase agreement (with Leon and Carina) of Oct. 6, 1996. (2009 Bar Question)

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

SUGGESTED ANSWER:

The contention of PPR is not correct. It is settled that no securities shall be sold or offered for sale or distribution in the Philippines without a registration duly filed and approved by the Commission. Corporate registration is one of the requirements under Sec. 8 of R.A. No. 8799 (Securities Regulation Code). *Palacio Del Boracay Realty Corporation v. Lao*, 544 SCRA 254 (2008).

ALTERNATIVE ANSWER:

No. Such contention is not correct. Sale or offer to sell securities which are not exempt securities or which do not arise out of exempt transactions, and, therefore, requiring registration, is unlawful as such act is violative of the Securities Regulation Cod. Subsequent grant of authority by the SEC does not retroact to past sales or offers to sell.

7. **Andante Really, a marketing company that promotes and facilitates sales of real property through leverage marketing, solicits investors who are required to be a Business Center Owner (BCO) by paying an enrollment fee of S250. The BCO is then entitled to recruit two other investors who pay S250 each. The BCO receives S90 from the S250 paid by each of his recruits and is credited a certain amount for payments made by investors through the initial efforts of his Business Center. Once the accumulated amount reaches S5, 000, the same is used as down payment for the real property chosen by the BCO. (2010 Bar Question)**

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

The failure to follow the procedure has criminal consequences (i.e., upon conviction, a fine 50,000 to 5 million pesos and / or imprisonment of 7 to 21 years). It carries also civil liabilities in that the purchaser can recover from the seller (i) the consideration paid with interest thereon, less the amount of any income received on the purchased securities, upon the tender of such securities, or (ii) damages if the purchaser no longer owns such securities (Sections 57 and 73, Securities Regulation Code). Furthermore, the Securities and Exchange Commission (SEC) may issue a cease and desist order (Subsection 64.1, Securities Regulation Code).

8. **Able Corporation sold securities to 21 non-qualified buyers during a 15 month period, without registering the securities with the Securities and Exchange Commission. Did Able Corporation violate the Securities Regulation Code? Explain. (2%) (2015 Bar Question)**

SUGGESTED ANSWER:

Yes, because under the SRC securities shall not be sold or offered to be sold to the public within the Philippines unless the securities are registered with and approved by the Securities and Exchange

Commission. Public means 20 or more investors. The fact that the securities were sold during a 15 month period is immaterial.

However, the sale of securities to less than 20 investors if done during a 12 month period is an exempt transaction under the Securities Regulation Code.

9. Securities issued by the Philippine government are "exempt securities" and, therefore, need not be registered with the Securities and Exchange Commission prior to their sale or offering to the public in the Philippines. What is the rationale behind this exemption? (2%)

SUGGESTED ANSWER:

The rationale for the exemption is that the public is amply protected even without the registration of the securities to be issued by the government since the government is presumed to be always solvent.

10. Why is the Securities Regulation Code called a "truth in securities law"? (2%)

SUGGESTED ANSWER:

The Securities Regulation Code is called a "truth in securities law" because it requires the issuer to make full and fair disclosure of information about securities being sold or offered to be sold within the Philippines and penalizes manipulative and fraudulent acts, devices and schemes.

B. Prohibitions on fraud, manipulation, and insider trading

11. ABC Corp. is engaged in the pawnshop business involving cellphones, laptops and other gadgets of value. In order to expand its business and attract investors, it offered to any person who invests at least P100,000.00 a "promissory Note" where it obligated itself to pay the holder a 50% return on investment within one month. Due to the attractive offer, many individuals invested in the company but not one of them was able to realize any profit after one month.

Has ABC Corp. violated any law with its scheme? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Yes, ABC Corporation violated the provisions of the Securities Regulation Code that prohibits sale of securities to the public, like promissory notes, without a registration statement filed with and approved by the Securities and Exchange Commission.

- (1) Under the Securities Regulation Code, what is the margin Trading Rule? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

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

1. 65 percent of the current market price of the security, or
2. 100 percent of the lowest market price of the security during the preceding 36 calendar months, but not more than 75 percent of the current market price (Section 48, Securities Regulation Code).

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

12. You are a member of the legal staff of a law firm doing corporate and securities work for Coco Products Inc., a company with unique products derived from coconuts and whose shares are traded in the Philippine Stock Exchange. A partner in the law firm, Atty. Buenexito, to whom you report, is the Corporate Secretary of Coco Products. You have long been investing in Coco Products stocks even before you become a lawyer.

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

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

Would you sell the shares to raise the needed funds for your mother's hospitalization? (2011 Bar Question)

Take into account legal (5%) and ethical (3%) considerations. (8%)

SUGGESTED ANSWER

The sale of the shares does not constitute insider trading. Although Atty. Buenexito, as corporate secretary of Coco Products, Inc., was an insider, it did not obtain the information regarding the planned corporate rehabilitation by a communication from him. He just accidentally gave the wrong file (Section 3.8 of Securities Regulation Code). It would be unethical to sell the shares. Rule 1.01 of the Code of Professional Responsibility provide, "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

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

13. Grand Gas Corporation, a publicly listed company, discovered after extensive drilling a rich deposit of natural gas along the coast of Antique. For five (5%) months, the company did not disclose the discovery so that it could quietly and cheaply acquire neighboring land and secure mining rights to the land. Between the discovery and its disclosure of the information to the Securities and Exchange Commission, all the directors and key officers of the company bought shares in the company at very low prices. After the disclosure, the price of the shares went up. The directors and officers sold their shares at huge profits, (2008 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

The employees are liable for violation of the prohibition against insider trading. They fall within the definition of “insider”. Subsection 3.8 of the Securities Regulation Code defines an insider as “a person whose relationship or former relationship to Issuer gives or gave him access to a fact of special significance about Issuer or the security that is not generally available.”

14. What is insider trading? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

Insider trading is the buying or selling by securities by an insider while in the possession of a material non-public information.

C. Protection of investors

1. Tender offer rule

15. The purpose of the "Tender Offer" Rule is to - (2012 Bar Question)
- A) ensure an even playing field for all shareholders of a company in terms of opportunity to sell their shareholdings.
 - B) ensure that minority shareholders in a publicly listed company are protected in the sense that they will equally have the same opportunity as the majority shareholders in terms of selling their shares.
 - C) ensure that the shareholders who would also want to sell their shareholdings will have the opportunity for a better price.
 - D) All of the above.

SUGGESTED ANSWER:

D. All of the above.

16. Union Mines, Inc. has total assets of P60 Million with 210 stockholders holding at least 100 shares each.

The company has two principal stockholders, ABC which owns 60% of the shares of stock, and XYZ; which owns 17%. ABC in turns is owned to the extent of 21.13% by Acme, Inc.; 29.69% by Golden Boy Inc.; 9% by XYZ; and the rest by individual stockholders.

None of the parties is a publicly-listed company.

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

Is the proposal acquisition by XYZ subject to the mandatory tender offer rule? Why or why not? What is tender offer and when is it mandatory? (5%) (2011 Bar Question)

SUGGESTED ANSWER

Yes, the proposed acquisition is subject to mandatory tender offer rule. A tender offer is publicly announced intention by a person to acquire shares of a public company. A tender offer is meant to protect minority stockholders against any scheme that dilutes the share value of their investments and gives them the chance to exit the company under the same terms offered to the majority stockholders. Under the Securities Regulations Code, a mandatory tender offer is required (i) when at least 35% of the outstanding shares of a public company is to be acquired in one transaction or a series of transaction during 12-month period, or (ii) even if any acquisition is less than 35% threshold but the result thereof is the ownership of more than 51% of the total outstanding shares of a public company. The mandatory offer rule also applies to share acquisition meeting the threshold, which is done at the level of the holding or Parent Corporation controlling a public company (*Cemco Holding, Inc. v. National Life Insurance Company of the Philippines, Inc.* 529 SCRA 355 [2007]).

In this case, Union Mines is clearly a public company, since it has total assets of P60 million pesos with 210 stockholders holding at least 100 shares each. XYZ's acquisition of shares of Acme, Inc. and Golden Boy, Inc., taken separately, does not reach 35% threshold. If taken collectively, the two acquisitions total only 50%. However, when the acquisitions are added to XYZ's existing shares in Union Mines, they meet the more- than -51% thresholds for mandatory tender offer.

17. **C Corp. is the direct holder of 10% of the shareholdings in U Corp., a non-listed (not public) firm, which in turn owns 62% of the shareholdings in H Corp., a publicly listed company. The other principal stockholder in H Corp. is C Corp. which owns 18% of its shares. Meanwhile, the majority stocks in U Corp. are owned by B Corp. and V Corp. at 22% and 30% respectively. B Corp. and V Corp. later sold their respective shares in U Corp. to C Corp., thereby resulting in the increase of C Corp's. interest in U Corp., whether direct or indirect, to more than 50%. (2016 Bar Question)**

A) Explain the Tender Offer Rule under the Securities Regulation Code. (2.5%)

SUGGESTED ANSWER:

A Tender Offer means a publicly announced intention by a person acting alone or in concert with other persons to acquire the outstanding equity securities of a public company or outstanding equity securities of an associate or related company of such public company which controls said public company (*Section 19.1.8 of the SRC Implementing Rules and Regulations*).

B) Does the Tender Offer Rule apply in this case where there has been an indirect acquisition of the shareholdings in H Corp. by C Corp? Discuss. (2.5%)

Yes, the mandatory tender offer is still applicable even if the acquisition, direct or indirect, is less than 35% when the purchase would result in direct or indirect ownership of over 50% of the total outstanding equity securities of a public company (*Cemco Holdings v. National Life Insurance Company of the Philippines, GR No. 171815, August 7, 2007*).

2. Rules on proxy solicitation**3. Disclosure rule**

VII. BANKING

1. May a publicly listed universal bank own 100% of the voting stocks in another universal bank and in a commercial bank? (2011 Bar Question)
 - A) Yes, if with the permission of the Bangko Sentral ng Pilipinas.
 - B) No, since it has no power to invest in equities.
 - C) Yes, as there is no prohibition on it.
 - D) No, since under the law, the 100% ownership on voting stocks must be in either bank only.

SUGGESTED ANSWER: D

2. X, a private individual, maintains a dollar deposit with ABC Bank. X is suspected to be the leader of a Kidnap for Ransom Gang and he is suspected of depositing all ransom money in said deposit account which are all in US Dollars. The police want to open said account to know if there are really deposits in big amounts. Which statement is most accurate? (2012 Bar Question)
 - A) The same rules under Secrecy of Bank Deposit Act will apply.
 - B) An approval from the Monetary Board is necessary to open the account.
 - C) Because the deposit is in US Dollars, it is covered by the Foreign Currency Deposit Act which allows disclosure only upon the written permission of the depositor.
 - D) Approval from the Court is necessary to order disclosure of the account.

SUGGESTED ANSWER:

- a. The same rules under Secrecy of Bank deposit Act will apply.
3. X is being charged for violation of Anti-Graft and Corrupt Practices because he is suspected of having accumulated unexplained wealth. X maintains deposit accounts with ABC Bank. The Ombudsman filed criminal cases against X before the Sandiganbayan. Can the Court issue subpoenas against ABC Bank to produce all documents pertaining to all the deposit accounts of X? (2012 Bar Question)
 - A) Yes, because there is already a pending case and provided the subpoena must be specific as to which account.
 - B) Yes, it is enough that the specific bank is identified.
 - C) No, because the issuance of the subpoena has no real legal basis.
 - D) Even without a subpoena, information about the deposit accounts of X can be submitted to the Sandiganbayan because it will be used in a pending case.

SUGGESTED ANSWER:

- A. Yes, because there is already a pending case and provided the subpoena must be specific as to which account.
4. A. Nadine has a checking account with Fair & Square Bank. One day, she lost her checkbook and the finder was able to forge her signature and encash the forged check. Will Nadine be able to recover the amount debited from her checking account from Fair & Square Bank? Justify your answer. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

Yes, Nadine should be able to recover the amount debited from her checking account from Fair and Square Bank. The Bank is supposed to know the signature of its clients. The Bank was thus negligent in not detecting the forgery of Nadine's signature and paying the check. Under the circumstances, there was no negligence on the part of Nadine which would preclude her from invoking forgery (*Philippine National Bank v. Quimpo*, 158 SCRA 582 [1988]).

5. Is a manager's check as good as cash? Why or why not? (2%)

SUGGESTED ANSWER:

Yes, the Supreme Court held in various decisions that a manager's check is good as cash. A manager's check is a check drawn by the bank against itself. It is deemed pre-accepted by the bank from the moment of issuance. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay. By issuing it, the bank in effect commits its total resources, integrity and honor behind the check (*Tan v. Court of Appeals*, 239 SCRA 310 [1989]; *International Corporate Bank v. Gueco*, 351 SCRA 516 [2001]; *Metrobank and Trust Company v. Chiok*, GR No. 172652, November 26, 2014).

ALTERNATIVE ANSWER:

Manager's check is not legal tender because under Article 1249 of the Civil Code, checks do not produce the effect of payment until encashed or through the fault of the creditor, their value has been impaired. Moreover, under the Central Bank Act, the debtor cannot compel the creditor to accept checks in payment of a debt whether public or private (*Article 60 of RA 7653*).

6. When can you treat a bill of exchange as a promissory note? (3%)

SUGGESTED ANSWER:

A bill of exchange may be treated as a promissory note in the following instances.

1. The drawee is a fictitious person or a person not having the capacity to contract;
2. The drawer and the drawee are one and the same person.
3. Where the instrument is so ambiguous that there is a doubt as to whether the instrument is a bill or a note, the holder may treat it either as a bill or note, at the option of the holder (*Sections 130 and 17 of the Negotiable Instruments Law*).

A. The New Central Bank Act (RA 7653, as amended by RA 11211)

7. How do you characterize the legal relationship between a commercial bank and its safety deposit box client? (2010 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

- 8. Is a stipulation in the contract for the use of a safety deposit box relieving the bank of liability in connection with the use thereof valid? (2010 Bar Question)**

SUGGESTED ANSWER:

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

- 9. Differentiate "bank deposits" from "deposit substitutes." (2010 Bar Question)**

SUGGESTED ANSWER:

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

- 10. Why are banks required to maintain reserves against their deposits and deposit substitutes? State one of three purposes for these reserves. (2010 Bar Question)**

SUGGESTED ANSWER:

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

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

**It is to enable the banks to answer any withdrawal;
To help Government to finance its operation;
To help the Government control money supply.**

Name at least five predicate crimes to money laundering. (2007 Bar Question)

SUGGESTED ANSWER:

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

1. Kidnapping for ransom under Article 267 of Act No.3815, otherwise known as the Revised Penal Code, as amended;
2. Sections 3,4,5,7,8 and 9 of Article Two of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;
3. Section 3 paragraphs B,C,E,G,H and I of Republic Act No. 3019, as amended; otherwise known as the Anti-graft and Corrupt Practices Act;
4. Plunder under Republic Act No. 7080, as amended;
5. Robbery and extortion under Articles 294,295,296,299,300,301 and 302 of the Revised Penal Code, as amended;
6. Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;
7. Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;

8. Qualified theft under Article 310 of the Revised Penal Code, as amended;
9. Swindling under Article 315 of the Revised Penal Code, as amended;
10. Smuggling under Republic Act Nos. 455 and 1937;
11. Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;
12. Hijacking and other violations under Republic Act No 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorist against non-combatant persons and similar targets;
13. Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the securities Regulation Code of 2000;
14. Felonies or offenses of a similar nature those are punishable under the penal laws of other countries. (Sec 3, Anti-Money Laundering Act of 2001).

1. Handling of banks in distress

a. Conservatorship

b. Closure

12. Maharlikang Pilipino Banking Corporation (MPBC) operates several branches of Maharlikang Pilipino Rural Bank in Eastern Visayas. Almost all the branch managers are close relatives of the members of the Board of Directors of the corporation. Many undeserving relatives of the branch managers were granted loans. In time, the branches could not settle their obligations to depositors and creditors.

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

- A) May the Monetary Board order the closure of the MPBC rural banks relying only on the SED Report, without need of an examination? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

c. Receivership

13. A bank can be placed under receivership when, if allowed to continue in business, its depositors or creditors would incur - (2011 Bar Question)

- A) probable losses
- B) inevitable losses
- C) possible losses
- D) a slight chance of losses

SUGGESTED ANSWER: A

14. Due to growing financial difficulties, Z Bank was unable to finish construction of its 21-storey building on a prime lot located in Makati City. Inevitably, the Bangko Sentral ordered the closure of Z Bank and consequently placed it under receivership. In a bid to save the bank's property investment, the President of Z Bank entered into a financing agreement with a group of investors for the completion of the construction of the 21-storey building in exchange for a ten-year lease and the exclusive option to purchase the building.

- A) Is the act of the President valid? Why or why not? (2007 Bar Question)

SUGGESTED ANSWER:

No, the bank president's act is not valid. He had no authority to enter into the financing agreement. Z Bank was ordered closed and placed under receivership. Control over the properties of Z Bank passed to the receiver. The appointment of a receiver operates to suspend the authority of the bank and its officers over the bank's assets and properties, such authority being reposed in the receiver (Abacus Real Estate Development Center, Inc. v. Manila Banking Corporation, 455 SCRA 97 (2005)).

- B) Will a suit to enforce the exclusive right of the investors to purchase the property prosper? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

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

15. TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences.

xxx

- e. A bank under receivership can still grant new loans and accept new deposits. (2009 Bar Question)

SUGGESTED ANSWER:

False. During the receivership, the assets and properties of the corporation are being gathered for conversion into cash in preparation for distribution to creditors. Granting new loans and accepting new

deposits would constitute doing business for the bank in the ordinary course of business which is contrary to the purpose and nature of a receivership proceeding.

16. Why is the Bangko Sentral ng Pilipinas considered a lender of last resort? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

It is considered the lender of last resort because it lends to banks and similar institutions under financial distress when they have no other means to raise funds.

17. Distinguish a conservator from a receiver of a bank. (2%)

SUGGESTED ANSWER:

A conservator is appointed if a bank or quasi-bank is in a state of continuing inability or unwillingness to maintain a condition of liquidity deemed adequate to protect the interest of creditors and depositors. The conservator shall take charge of the assets and liabilities of the bank and exercise management and exercise other powers to restore the bank's viability. The conservatorship shall not exceed one year.

A receiver is appointed generally if the realizable value of the bank's assets as determined by BSP is less than its liabilities. The receiver shall take charge of the assets and liabilities of the institution and administer the same for the benefit of its creditors. The receiver shall determine within 90 days whether the bank can be rehabilitated, otherwise, he shall recommend the closure of the institution.

d. Liquidation

B. Secrecy of bank deposits (RA 1405, as amended, and RA 6426, as amended)

18. The Bank Secrecy Law (RA 1405) prohibits disclosing any information about deposit records of an individual without court order except - (2012 Bar Question)

- A) in an examination to determine gross estate of a decedent.
- B) in an investigation for violation of Anti-Graft and Corrupt Practices.
- C) in an investigation by the Ombudsman.
- D) in an impeachment proceeding.

SUGGESTED ANSWER:

- a. In an examination to determine gross estate of a decedent.

19. X, a government official, has a number of bank accounts in T Bank containing millions of pesos. He also opened several trust accounts in the same bank which specifically covered the placement and/or investment of funds. X was later charged with graft and corruption before the Sandiganbayan (SB) by the Ombudsman. The Special Prosecutor filed a motion praying for a court order authorizing it to look into the savings and trust accounts of X in T Bank. X opposed the motion arguing that the trust accounts are not "deposits" under the Law on Secrecy of Bank Deposits (Rep. Act No. 1405). Is the contention of X correct? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The contention of X is not correct. Deposits in the context of the Secrecy of Philippine currency deposits include deposits of whatever nature and kind. They include funds deposited in the bank giving rise to

creditor-debtor relationship, as well as funds invested in the bank like trust accounts (*Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, November 30, 2006).

1. Prohibited acts

20. **TRUE or FALSE.** Answer **TRUE** if the statement is true, or **FALSE** if the statement is false. Explain your answer in not more than two (2) sentences.

xxx

b. If the Ombudsman is convinced that there is a violation of law after investigating a complaint alleging illicit bank deposits of public officer, the Ombudsman may order the bank concerned to allow in camera inspection of bank records and documents. (2009 Bar Question)

SUGGESTED ANSWER:

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

21. **TRUE or FALSE.** Answer **TRUE** if the statement is true, or **FALSE** if the statement is false. Explain your answer in not more than two (2) sentences.

xxx

a. A loan agreement which provides that the debtor shall pay interest at the rate determined by the bank's branch manager violates the disclosure requirement of the Truth in Lending Act. (2009 Bar Question)

SUGGESTED ANSWER:

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

22. Raymond invested his money in securities issued by the Philippine government, through his bank. Subsequently, the Bureau of Internal Revenue asked his bank to disclose his investments. His bank refused the request for disclosure on the ground that the investments are confidential under the Secrecy of Bank Deposits Law (Republic Act No. 1405, as amended). Is the bank's refusal justified? Defend your answer. (2%) (2015 Bar Question)

SUGGESTED ANSWER:

It is justified. Under RA 1405, investment in bonds issued by the Philippine government are also absolutely confidential and may not be examined, inquired or looked into by any person, government official, bureau or office save for the exceptions provided by law. None of the exceptions apply in the present case.

2. Exceptions from coverage

23. From his first term in 2007, Congressman Abner has been endorsing his pork barrel allocations to Twin Rivers in exchange for a commission of 40% of the face value of the allocation. Twin Rivers is a non-governmental organization whose supporting papers, after audit, were found by the

Commission on Audit to be fictitious. Other than to prepare and submit falsified papers to support the encashment of the pork barrel checks, Twin Rivers does not appear to have done anything on the endorsed projects and Congressman Abner likewise does not appear to have bothered to monitor the progress of the project he endorsed. The congressmen converted most of the commissions he generated into US dollars, and deposited these in a foreign currency account with Banco de Plata (BDP).

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

As counsel for BDP, would you advise the bank to comply with the order? (2013 Bar Question)

SUGGESTED ANSWER:

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

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

3. Garnishment of deposits, including foreign deposits

24. First Bank received an order of garnishment over a client's peso and dollar deposits in First Bank. Should First Bank comply with that order? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

First Bank should comply with the order of garnishment over a client's peso deposits because there is nothing in RA 1405 that places bank deposits beyond the reach of judgment creditor. And the disclosure of information on bank deposits pursuant to the writ of garnishment is only incidental to the execution process (*PCIB v. Court of Appeals* 193 SCRA 452 [1991]).

The dollar deposits, however, are exempt from garnishment or court order under the Foreign Currency Act (RA 6426). Thus, the bank should not comply with this part of the garnishment.

C. General Banking Law of 2000 (RA 8791)

25. XXX Bank Corporation and ZZZ Corporation were merged into XX ZZ Bank Corporation. So as not to create any unnecessary conflict, all the former directors of both banks wanted to be appointed /elected as members of the Board of Directors of the merged bank. Each bank used to have eleven (11) members of the board. The maximum number of directors of the merged bank is - (2012 Bar Question)
- A) 15;
 - B) 22;
 - C) 21;

D) 11.

SUGGESTED ANSWER:

B. 21

26. Briefly describe the following types of banks:

A) universal bank

SUGGESTED ANSWER:

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

B) commercial bank

SUGGESTED ANSWER:

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

C) thrift bank

SUGGESTED ANSWER:

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

D) rural bank

SUGGESTED ANSWER:

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

E) cooperative bank

SUGGESTED ANSWER:

A cooperative bank is organized under the Cooperative Code to provide financial and credit services to cooperatives. It may perform any or all the services offered by a rural bank, including the operation of a

Foreign Currency Deposit Unit subject to certain conditions (Section 100, Rep. Act No.6938, "The Cooperative Code of the Philippines").

27. A Bank may acquire real property (2013) (1%)
- A) By purchase at a public sale of properties levied to satisfy tax delinquencies
 - B) By purchase from a real estate corporation in the ordinary course of the bank's business
 - C) Through dacion en pago in satisfaction of a debt in favor of the bank
 - D) In exchange for the purchase of shares of stocks of the bank
 - E) All of the above.
 - F) None of the above.

SUGGESTED ANSWER:

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

1. Nature of bank funds and bank deposits

28. XYZ Corporation is engaged in lending funds to small vendors in various public markets. To fund the lending, XYZ Corporation raised funds through borrowings from friends and investors. Which statement is most accurate? (2012 Bar Question)
- A) XYZ Corporation is a bank.
 - B) XYZ Corporation is a quasi- bank.
 - C) XYZ Corporation is an Investment Company.
 - D) XYZ is none of the above.

SUGGESTED ANSWER:

b. XYZ Corporation is quasi-bank.

29. X maintains a savings deposit in the amount of Php 1 Million with ABC Bank Corporation. X also has obtained a loan from ABC Bank Corporation in the amount of Php1 Million. In case of default, (2012 Bar Question)
- A) ABC Bank can set-off the loan from the savings account being maintained by X with ABC Bank.
 - B) Set-off is not possible because legal compensation is not allowed in banking transaction.
 - C) Deposit accounts are usually earmarked for specific purpose hence offsetting is not legally possible.
 - D) Off-setting is not possible because the obligation of X is a "simple loan".

SUGGESTED ANSWER:

A. ABC Bank can set-off the loan from the savings account being maintained by X with ABC bank.

30. On December 4, 2003, RED Corporation executed a real estate mortgage in favor of BLUE Bank. RED Corporation defaulted in the payment of its loan. Consequently, on June 4, 2004, BLUE Bank extra judicially foreclosed the property. Being the highest bidder in the auction sale conducted, the Bank was issued a Certificate of Sale which was registered on August 4, 2004.

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

SUGGESTED ANSWER:

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

- 31. Industry Bank, which has a net worth of P1 Billion, extended a loan to Celestial Properties Inc. amounting to P270 Million. The loan was secured by a mortgage over a vast commercial lot in the Fort Bonifacio Global City, appraised at P350 Million. After audit, the Banko Sentral ng Pilipinas gave notice that the loan to Celestial Properties exceeded the single borrower's limit of 25% of the bank's net worth under a recent BSP Circular. In light of other previous similar violations of the credit limit requirement, the BSP advised Industry Bank to reduce the amount of the loan to Celestial Properties under pain of severe sanctions. When Industry Bank informed Celestial Properties that it intended to reduce the loan by P50 Million, Celestial Properties countered that the bank should first release a part of the collateral worth P50 Million. Industry Bank rejected the counter-proposal, and referred the matter to you as counsel. How would you advise Industry Bank to proceed, with its best interests in mind? (2008 Bar Question)**

SUGGESTED ANSWER:

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

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

- 32. A. A commercial bank wants to acquire shares in a cement manufacturing company. Do you think it can do that? Why or why not? (2%) (2015 Bar Question)**

SUGGESTED ANSWER:

A commercial bank cannot acquire shares in a cement manufacturing company because a commercial bank can only invest in the equity of allied undertakings, meaning, undertakings related to banking (*Section 30 of RA 8791*).

- 33. A court found the interest charged by a bank as excessive and unconscionable and struck down the contractual stipulation on interest. If you were the judge, what would you impose as the applicable interest rate? State your legal basis. (2%)**

SUGGESTED ANSWER:

I will impose legal rate of interest which is currently set at 6% per annum.

- 34. What is the single borrower's limit? (2%)**

SUGGESTED ANSWER:

Under the single borrower's limit, the total amount of loans, credit accommodations and guarantee that the bank may extend to any person shall not exceed 25% of the bank's net worth. While the law sets the ceiling at 20% of the bank's net worth, it also empowers the BSP to modify the ceiling. The current SBL as set by BSP is 25% of the Bank's net worth.

2. Diligence required of banks

3. Prohibited transactions by bank directors and officers

35. ABC Holdings Company, a Hong Kong company, owns 10% of XYZ Bank. Because of the peace and order situation in the Philippines, ABC Holding Company wanted to sell its shareholdings in XYZ Bank. Unfortunately, nobody is interested to buy a 10% shareholdings in a bank. The board of directors of XYZ Bank thought that it would be a good idea to buy back the shares owned by ABC Holding Company. Which statement is most accurate? (2012 Bar Question)
- A) Buying back the shares by XYZ Bank is absolutely not allowed.
 - B) Buying back the shares may be allowed provided it is with the approval of the Monetary Board and disposed of within six (6) months.
 - C) Buying back the shares may be allowed provided such shares 'will be disposed of within ten (10) years.
 - D) Buying back the shares may be done anytime provided the Board of Directors will approve the same.

SUGGESTED ANSWER:

b. Buying back the shares may be allowed provided it is with the approval of the Monetary Board and disposed of within six (6) months.

36. All senior officers of ABC Bank are entitled to obtain a housing loan. X is an Executive Vice President for Operations of ABC Bank. She obtained a housing loan with the ABC Bank. Which statement is most accurate? (2012 Bar Question)
- A) The housing loan of X requires a guarantor from somebody who is not connected with the bank.
 - B) The housing loan of X requires the approval of the Board of Directors of the bank.
 - C) The housing loan of X, being a benefit for employees, does not require (a) but will require (b).
 - D) The housing loan of X, being a benefit for employees, will not require (a) and (b).

SUGGESTED ANSWER:

D. The housing loan of X, being a benefit for employees, will not require (a) and (b).

37. Company X issues a Bank A Check No. 12345 in the amount of P500,000.00 payable to the Bureau of Internal Revenue (BIR) for the company's taxes for the third quarter of 1997. The check was deposited with Bank B, the collecting bank with which the BIR has an account. The check was subsequently cleared and the amount of P500,000.00 was deducted from the company's balance. Thereafter, Company X was notified by the BIR of its non-payment of its unpaid taxes despite the P500,000.00 debit from its account. This prompted the company to seek assistance from the proper authorities to investigate on the matter.

The results of the investigation disclosed that unknown then to Company X, its chief accountant Bonifacio Santos is part of a syndicate that devised a scheme to siphon its funds. It was discovered that though deposited, the check was never paid to the BIR but was passed on by Santos to Winston Reyes, Bank B's branch manager and Santos' co-conspirator. Instead of bringing the check to the clearing house, Reyes replaced Check No. 12345 with a worthless check bearing the

same amount, and tempered documents to cover his tracks. No amount was then credited to the BIR. Meanwhile, check No. 12345 was subsequently cleared and the amount therein credited into the account of fictitious persons, to be later withdrawn by Santos and Reyes.

Company X then sued Bank B for the amount of P500,000.00 representing the amount deducted from its account. Bank B interposed the defense that Company X was guilty of contributory negligence since its confidential employee Santos was an integral part of the scheme to divert the proceeds of Check No. 12345. Is Company X entitled to reimbursement from Bank B, the collecting bank? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Yes Company X is entitled to reimbursement from the collecting bank. In a similar case, the Supreme Court ruled that the drawer could recover the amount deducted from its account because it failed to ensure that the check be paid to the designated payee while the collecting bank should share ½ of the loss because its branch manager conspired in the fraud (*Philippine Commercial International Bank v. Court of Appeals*, 350 SCRA 446 [2001]).

38. Samito is the President and a Director of Lucky Bank (Lucky), a commercial bank holding its main office in Makati. His brother, Othello, owned a big fishing business based in Malabon. Othello applied for a loan of P50 million with Lucky. Othello followed the ordinary banking procedures in all the stages of the processing of his application. When required, he made the necessary arrangements to guarantee the loan. Thus, in addition to the real estate mortgage, Othello executed a joint and solidary suretyship, issued postdated checks, and submitted all other requirements prescribed by Lucky.

When the loan application was about to be approved and the proceeds released, BG Company, a keen competitor of Othello in the fishing industry, wrote to the Board of Directors and the management of Lucky questioning the loan on the ground of conflict of interest due to Samito and Othello being brothers, citing the legal restriction against bank exposure of directors, officers, stockholders or their related interests. (DOSRI). (2017 Bar Question)

- A) What are the three restrictions imposed by law on DOSRI transactions? (4%)

SUGGESTED ANSWER:

The restrictions are as follows:

1. The Transactions must be approved by at least majority of the entire board excluding the director concerned;
2. The required approval shall be entered upon the records of the bank and copy of such entry shall be submitted to the BSP;
3. Unless the loan is non-risk, the loan must not exceed the book value of the paid up shares of the borrowing DOSRI and the amount of unencumbered deposits. (Section 36 of RA 8791).

- B) Is BG Company's opposition based on conflict of interest and violation of the restrictions on DOSRI transactions legally and factually correct? Explain your answer. (4%)

SUGGESTED ANSWER:

BG Company's opposition based on conflict of interest and violation of the restrictions on DOSRI transactions are not legally and factually correct. The "related interest" referred to under DOSRI extends only to the spouse of any Director, Officer or Stockholder, his ascendants and descendants up to the first

degree of affinity or consanguinity. Brothers are second degree relatives and as such, cannot be considered DOSRI accounts.

[Note: It is recommended that the examinees be given outright credit for this question regardless of the answer because the question is answerable based on the Manual of Banking regulations, which are not included in the syllabus].

D. Philippine Deposit Insurance Corporation Act (RA 3591, as amended)

1. Maximum deposit insurance coverage

39.

40. X is a depositor of AAA Bank. She has three (3) deposit accounts all under her name. One, in checking account, one in saving account and another one in time deposit account. Each account has a balance of Php250,000. AAA Bank became insolvent. Philippine Deposit Insurance Corporation closed the Bank. X therefore is unable to withdraw from all of the accounts. She then filed her claims with the Philippine Deposit Insurance Corporation. Which statement is most accurate? (2012 Bar Question)
- A) X can claim a total of Php500,000 for all the three (3) accounts.
 - B) X can only claim from one (1) account of Php250,000.
 - C) X can claim a total of Php750,000 from all the three (3) accounts.
 - D) X cannot claim anything from any of the deposit accounts.

SUGGESTED ANSWER:

A. X can claim a total of Php 500,000 for all the three (3) accounts.

2. Meaning of insured deposit

41. When OCCIDENTAL Bank folded up due to insolvency, Manuel had the following separate deposits in his name: P200,000 in savings deposit; P250,000 in time deposit; P50,000 in current account; P1 million in a trust account and P3 million in money market placement. Under the Philippine Deposit Insurance Corporation Act, how much could Manuel recover? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

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

3. Splitting of deposits

VIII. INTELLECTUAL PROPERTY CODE (RA 8293)

1. In intellectual property cases, fraudulent intent is not an element of the cause of action except in cases involving: (1%) (2014 Bar Question)

- A) trademark infringement
- B) copyright infringement
- C) patent infringement
- D) unfair competition

SUGGESTED ANSWER:

D (unfair competition)

2. Differentiate trademark, copyright and patent from each other. (6%) (2015 Bar Question)

SUGGESTED ANSWER:

1. As to definition :
 - a. Trademark is any visible sign capable of distinguishing goods
 - b. Copyright is an incorporeal right granted by statute to the author or creator of original literary and artistic works whereby he is invested for a limited period of time with the right carry out, authorize and prevent the reproduction, distribution, transformation, rental, public performance and other forms of communication of his work to the public.
 - c. Patent is any technical solution of any problem in any field of human activity which is new, requires an inventive step and industrially applicable.
2. As to object
 - a. The object of trademark are goods
 - b. The object of copyright are original literary and artistic works
 - c. The object of patent is invention
3. As to term
 - a. The term of trademark is ten years
 - b. The term of copyright is generally 50 years
 - c. The term of patent is 20 years from application
4. As to how acquired
 - a. Trademark is acquired through registration and use
 - b. Copyright is acquired from the moment of creation
 - c. Patent is acquired through application with the IPO

3. A. What is the doctrine of equivalents? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

Under the doctrine of equivalents, infringement of patent occurs when a device appropriates a prior invention by incorporating its innovative concept and albeit with some modifications and changes which performs the same function in substantially the same way to achieve the same result (*Godines v. Court of Appeals*, 226 SCRA 338 [1993])

4. In what ways would a case for infringement of trademark be different from a case for unfair competition? (3%)

SUGGESTED ANSWER:

1. In infringement of trademark, prior registration of the trademark is a prerequisite to the action whereas in unfair competition trademark registration is not necessary.
 2. Trademark infringement is the unauthorized use of the registered trademark while unfair competition is the passing off one's goods as those of another.
 3. In infringement of trademark, fraudulent intent is unnecessary whereas in unfair competition fraudulent intent is essential (*Delmonte Corporation v. Court of Appeals*, 181 SCRA 410 [1990]).
5. **MS Brewery Corporation (MS) is a manufacturer and distributor of the popular beer "MS Lite." It faces stiff competition from BA Brewery Corporation (BA) whose sales of its own beer product, "BA Lighter," has soared to new heights. Meanwhile, sales of the "MS Lite" decreased considerably. The distribution and marketing personnel of MS later discovered that BA has stored thousands of empty bottles of "MS Lite" manufactured by MS in one of its warehouses. MS filed a suit for unfair competition against BA before the Regional Trial Court (RTC). Finding a connection between the dwindling sales of MS and the increased sales of BA, the RTC rules that BA resorted to acts of unfair competition to the detriment of MS. Is the RTC correct? Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

The RTC is not correct. Hoarding, or the act of accumulating empty bottles to impede circulation of the bottled product, does not amount to unfair competition. BA did not fraudulently "pass off" its product as that of MS Lite. There was no representation or misrepresentation on the part of BA that would confuse or tend to confuse its goods with those of MS Lite (*Coca Cola Bottlers Philippines v. GOMEZ*, GR No. 154491, November 14, 2008).

A. Patents

6. **Dr. Nobel discovered a new method of treating Alzheimer's involving a special method of diagnosing the disease, treating it with a new medicine that has been discovered after long experimentation and field testing, and novel mental isometric exercises. He comes to you for advice on how he can have his discoveries protected. Can he legally protect his new method of diagnosis, the new medicine, and the new method of treatment? If no, why? If yes, how? (4%) (2010 Bar Question)**

SUGGESTED ANSWER:

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

7. **For years, Y has been engaged in the parallel importation of famous brands, including shoes carrying the foreign brand MAGIC. Exclusive distributor X demands that Y cease importation because of his appointment as exclusive distributor of MAGIC shoes in the Philippines.**

Y counters that the trademark MAGIC is not registered with the Intellectual Property Office as a trademark and therefore no one has the right to prevent its parallel importation. (2010 Bar Question)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

1. Patentable vs. non-patentable inventions**2. Ownership of a patent**

9. X works as a research computer engineer with the Institute of Computer Technology, a government agency. When not busy with his work, but during office hours, he developed a software program for law firms that will allow efficient monitoring of the cases, which software program is not at all related to his work. Assuming the program is patentable, who has the right over the patent? (2012 Bar Question)
- A) X;
 - B) Institute of Computer Technology;
 - C) Neither X nor the Institute of Computer Technology can claim patent right over the invention;
 - D) X and the employer of X will jointly have the rights over the patent.

SUGGESTED ANSWER:

a. X

3. Grounds for cancellation of a patent**4. Remedy of the true and actual inventor****5. Rights conferred by a patent****6. Limitations on patent rights**

10. Super Biology Corporation (Super Biology) invented and patented a miracle medicine for the cure of AIDS. Being the sole manufacturer, Super Biology sold the medicine at an exorbitant price.

Because of the sudden prevalence of AIDS cases in Metro Manila and other urban areas, the Department of Health (DOH) asked Super Biology for a license to produce and sell the AIDS medicine to the public at a substantially lower price. Super Biology, citing the huge costs and expenses incurred for research and development, refused. (2017 Bar Question)

Assuming you are asked your opinion as the legal consultant of DOH, discuss how you will resolve the matter. (4%)

SUGGESTED ANSWER:

DOH may file a petition for compulsory license with the Director of Legal Affairs of the Intellectual Property Office to exploit the patented medicine even without the agreement of the patent owner on the ground of public interest, in particular, health (*Section 193 of RA 8293, as amended*). Once granted, the DOH may then produce and sell the AIDS medicines for a cheaper price subject to payment of reasonable royalties to Super Biology.

7. Patent infringement

11. X invented a device which, through the use of noise, can recharge a cellphone battery. He applied for and was granted a patent on his device, effective within the Philippines. As it turns out, a year before the grant of X's patent, Y, also an inventor, invented a similar device which he used in his cellphone business in Manila. But X files an injunctive suit against Y to stop him from using the device on the ground of patent infringement. Will the suit prosper? (2011 Bar Question)

- A) No, since the correct remedy for X is a civil action for damages.
- B) No, since Y is a prior user in good faith.
- C) Yes, since X is the first to register his device for patent registration.
- D) Yes, since Y unwittingly used X's patented invention.

SUGGESTED ANSWER: C

B. Trademarks

12. Can an article of commerce serve as a trademark and at the same time enjoy patent and copyright protection? Explain and give an example. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

It is entirely possible for an article of commerce to bear a registered trademark, be protected by a patent and have most, or some part of it copyrighted. A book is a good example. The name of the publisher or the colophon used in the book may be registered trademarks, the ink used in producing the book may be covered by a patent, and the text and design of the book may be covered by copyrighted.

1. Marks vs. collective marks vs. trade names

2. Acquisition of ownership

a. Concept of actual use

13. CHEN, Inc., a Taiwanese company, is a manufacturer of tires with the mark Light Year. From 2009 to 2014, Clark Enterprises, a Philippine registered corporation, imported tires from CHEN, Inc. under several sales contracts and sold them here in the Philippines. In 2015, CHEN, Inc. filed a trademark application with the Intellectual Property Office (IPO) for the mark Light Year to be used for tires. The IPO issued CHEN, Inc. a certificate of registration (COR) for said mark. Clark Enterprises sought the cancellation of the COR and claimed it had a better right to register the mark Light Year. CHEN, Inc. asserted that it was the owner of the mark and Clark Enterprises was a mere distributor. Clark Enterprises argued that there was no evidence on record that the tires it imported from CHEN, Inc. bore the mark Light Year and Clark Enterprises was able to prove that it was the first to use the mark here in the Philippines. Decide the case. (4%) (2015 Bar Question)

SUGGESTED ANSWER:

While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of trademark. Such ownership of the trademark confers the right to register the trademark. Since Chen owns the trademark as evidenced by its actual and continuous use prior to the Clark Enterprises, then it is the one entitled to the registration of the trademark. The fact that Clark was the first one to use the mark here in the Philippines will not matter. Chen's prior actual use of the trademark even in another country bars Clark from applying for the registration of the same trademark.

Also, a mere distributor does not own the trademark to the goods he distributes and his right over the trademark cannot prevail over the owner (*E.Y. Industrial Sales v. Shien Dar Electricity and Machinery*, 634 SCRA 363 [2010]; *Ecole de Cuisine Manille v. Renand Cointreau*, 697 SCRA 345 [2013]).

b. Effect of registration

14. Compulsory Licensing of Inventions which are duly patented may be dispensed with or will be allowed exploitation even without agreement of the patent owner under certain circumstances, like national emergency, for reason of public interest, like national security, etc. The person who can grant such authority is - (2012 Bar Question)
- A) the Director General of the Intellectual Property Office;
 - B) the Director of Legal Affairs of the Intellectual Property Office;
 - C) the owner of the Patent right;
 - D) any agent of the owner of the Patent right.

SUGGESTED ANSWER:

B. the Director of Legal Affairs of the Intellectual Property Office;

15. ABC Appliances Corporation (ABC) is a domestic corporation engaged in the production and sale of televisions and other appliances. YYY Engineers, a Taiwanese company, is the manufacturer of television and other appliances from whom ABC actually purchases appliances. From 2000, when ABC started doing business with YYY, it has been using the mark "TTubes" in

the Philippines for the television units that were bought from YYY. In 2015, YYY filed a trademark application for “TTubes”. Later, ABC also filed its application. Both claim the right over the trademark “TTubes” for television products. YYY relies on the principle of “first to file” while ABC involves the “doctrine of prior use” (2016 Bar Question)

- A) Does the fact that YYY filed its application ahead of ABC mean that YYY has the prior right over the trademark? Explain briefly. (2.5%)

SUGGESTED ANSWER:

No. Since YYY is not the owner of the trademark, it has no right to apply for registration. Registration of trademark, by itself, is not a mode of acquiring ownership. It is the ownership of a trademark that confers the right to register the same (*Birkenstock Orthopaedia GMBH v. Philippine Shoe Expo Marketing Corporation*, GR No. 194307, November 20, 2013).

- B) Does the prior registration also mean a conclusive assumption that YYY Engineers is in fact the owner of the trademark “TTubes” Briefly explain your answer. (2.5%)

SUGGESTED ANSWER:

No. Registration merely creates a *prima facie* presumption of the validity of the registration of the registrant’s ownership of the trademark and the exclusive right to the use thereof. The presumption of ownership accorded to a registrant is rebuttable and must yield to evidence to the contrary.

3. Non-registrable marks

16. Jinggy went to Kluwer University (KU) in Germany for his doctorate degree (Ph.D.). He completed his degree with the highest honors in the shortest time. When he came back, he decided to set-up his own graduate school in his hometown in Zamboanga. After seeking free legal advice from his high-flying lawyer-friends, he learned that the Philippines follows the territoriality principle in trademark law, i.e., trademark rights are acquired through valid registration in accordance with the law. Forthwith, Jinggy named his school the Kluwer Graduate School of Business of Mindanao and immediately secured registration with the Bureau of Trademarks. KU did not like the unauthorized use of its name by its top alumnus no less. KU sought your help. What advice can you give KU? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

I can advise KU to file a petition to cancel the registration of the name “Kluwer” Graduate School of Business of Mindanao” (“KGSBM”) with the Bureau of Trademarks.

Jinggy registered the trademark in bad faith. He came to know of the trademark because he went to Kluwer University in Germany for his doctorate degree. KU is the owner of the name “Kluwer” and has the sole right to register the same. Foreign marks that are not registered are still accorded protection against infringement and/or unfair competition under the Paris Convention for the Protection of Industrial Property.

The petition could also be based on the fact, if it were proven by KU, that “Kluwer” is a well-known mark and entitled to protection as KU and KGSBM belong to the same class of services, KU must also prove that a competent authority of the Philippines has designated “Kluwer” to be well known internationally and in the Philippines.

Finally, the petition could also be based on the fact, if it were proven by KU, that “Kluwer” is a trade name that KU has adopted and used before its use and registration by Jinggy. (*Ecole de Cuisine Manille [Cordon Bleu of the Philippines], Inc. vs. Renaud Cointreau & Cie and Le Cordon Bleu Int'l., B.V.*, G.R. 185830, June 5, 2013)

4. Well-known marks

5. Priority right

6. Rights conferred by registration

7. Cancellation of registration

8. Trademark infringement

17. T is the registered trademark owner of "CROCOS" which he uses on his ready-to- wear clothes. Banking on the popularity of T's trade mark, B came up with his own "CROCOS" mark, which he then used for his "CROCOS" burgers. T now sues B for trademark infringement but B argues that his product is a burger, hence, there is no infringement. Is B correct? (2011 Bar Question)

- A) No, since the owner of a well- known mark registered in the Philippines has rights that extends even to dissimilar kinds of goods.
- B) Yes, since the right of the owner of a well-known mark registered in the Philippines does not extend to goods which are not of the same kind.
- C) Yes, as B was in bad faith in coming up with his own "CROCOS" mark.
- D) No, since unlike T, he did not register his own "CROCOS" mark for his product.

SUGGESTED ANSWER: A

18. The "test of dominancy" in the Law on Trademarks, is a way to determine whether there exists an infringement of a trademark by - (2012 Bar Question)

- A) determining if the use of the mark has been dominant in the market.
- B) focusing on the similarity of the prevalent features of the competing marks which might create confusion.
- C) looking at the mark whether they are similar in size, form or color.
- D) looking at the mark whether there is one specific feature that is dominant.

SUGGESTED ANSWER:

B. Focusing on the similarity of the prevalent features of the competing marks which might create confusion.

19. Skechers Corporation sued Inter-Pacific for trademark infringement, claiming that Inter-Pacific used Skechers' registered "S" logo mark on Inter-Pacific's shoe products without its consent. Skechers has registered the trademark "SKECHERS" and the trademark "S" (with an oval design) with the Intellectual Property Office (IPO).

In its complaint, Skechers points out the following similarities: the color scheme of the blue, white and gray utilized by Skechers. Even the design and "wave-like" pattern of the mid-sole and outer sole of Inter- Pacific's shoes are very similar to Skechers' shoes, if not exact patterns thereof. On the side of Inter-Pacific's shoes, near the upper part, appears the stylized "S" placed in the exact

location as that of the stylized “S” the Skechers shoes. On top of the “tongue” of both shoes, appears the stylized “S” in practically the same location and size.

In its defense, Inter-Pacific claims that under the Holistic Test, the following dissimilarities are present: the mark “S” found in Strong shoes is not enclosed in an “oval design”; the word “Strong” is conspicuously placed at the backside and insoles; the hang tags labels attached to the shoes bear the word “Strong” for Inter-Pacific and “Skechers U.S.A.” for Skechers; and, Strong shoes are modestly priced compared to the costs of Skechers shoes.

Under the foregoing circumstances, which is the proper test to be applied – Holistic or Dominancy Test? Decide. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

The dominance test is the proper test to apply. Thus, the appropriation and use of the letter “S” by Inter-Pacific on its rubber shoes constitutes an infringement of the trademark of Skechers.

The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity.

Applying the Dominancy Test to the problem, we find that the use of the stylized “S” by Inter-Pacific in its Strong rubber shoes infringes on the mark already registered by Skechers with the IPO. The dominant feature of the trademark is the stylized “S,” which catches the eye of the purchaser. Thus, even if Inter-Pacific did not use an oval design, the mere fact that it used the same stylized “S”, the same being the dominant feature of the trademark of Skechers, already constitutes infringement under the Dominancy Test. (*Skechers, U.S.A., Inc. vs. Inter Pacific Industrial Trading Corp., et al.*, G.R. 164321, November 30, 2006 [decision reconsidering and setting aside the original decision in the case])

20. X’s “MINI-ME” burgers are bestsellers in the country. Its “MINI-ME” Logo, which bears the color blue, is a registered mark and has been so since the year 2010. Y, a competitor of X, has her own burger which she named “ME-TOO” and here logo thereon is printed in bluish-green. When X sued Y for trademark infringement, the trial court ruled in favor of the plaintiff by applying the Holistic Test. The court held that Y infringed on X’s mark since the dissimilarities between the two marks are too trifling and frivolous such that Y’s “ME-TOO,” “when compared to X’s “MINI-ME,” will likely cause confusion among consumers.

Is the application of the Holistic Test correct? (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The application of the Holistic Test is not correct. In cases involving burger products, the Supreme Court has consistently applied the dominance test. Under the dominance test, the focus is on the dominant feature of the competing trademarks. Big Mak has been held to be confusingly similar with Big Mac and so with McDo and Mcjoyboth under the dominance test. Accordingly, MINI-ME trademark is confusingly similar with the ME-TOO mark (*McDonald’s Corporation v. LC Big Mak Burger, Inc.*, GR No. 143993, August 18, 2004).

C. Copyrights

21. X came up with a new way of presenting a telephone directory in a mobile phone, which he dubbed as the “iTel” and which uses lesser time for locating names and telephone numbers. May X have his “iTel” copyrighted in his name? (2011 Bar Question)

- A) No, because it is a mere system or method.
- B) Yes, because it is an original creation.
- C) Yes, because it entailed the application of X's intellect.
- D) No, because it did not entail any application of X's intellect.

SUGGESTED ANSWER: A

22. Ruby is a fine arts student in a university. He stays in a boarding house with Bernie as his roommate. During his free time, Rudy would paint and leave his finished works lying around the boarding house. One day, Rudy saw one of his works – an abstract painting entitled Manila Traffic Jam – on display at the university cafeteria. The cafeteria operator said he purchased the painting from Bernie who represented himself as its painter and owner

Rudy and the cafeteria operator immediately confronted Bernie. While admitting that he did not do the painting, Bernie claimed ownership of its copyright since he had already registered it in his name with the National Library as provided in the Intellectual Property Code. (2013 Bar Question)

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

SUGGESTED ANSWER.

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

1. Copyrightable works

23. Under the Intellectual Property Code, lectures, sermons, addresses or dissertations prepared for oral delivery, whether or not reduced in writing or other material forms, are regarded as (2011 Bar Question)
- A) non-original works.
 - B) original works.
 - C) derivative works.
 - D) not subject to protection.

SUGGESTED ANSWER: B

24. Eloise, an accomplished writer, was hired by Petong to write a bimonthly newspaper column for *Diario de Manila*, a newly-established newspaper of which Petong was the editor-in-chief. Eloise was to be paid P1,000 for each column that was published. In the course of two months, Eloise submitted three columns which, after some slight editing, were printed in the newspaper. However, *Diario de Manila* proved unprofitable and closed only after two months. Due to the minimal amounts involved, Eloise chose not to pursue any claim for payment from the newspaper, which was owned by New Media Enterprises.

Three years later, Eloise was planning to publish an anthology of her works, and wanted to include the three columns that appeared in the *Diario de Manila* in her anthology. She asks for your legal advice: (2008 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

Under the IPC, the copyright or economic rights to the columns she authored pertains only to Eloise. She can invoke the right to either “authorize or prevent” reproduction of the work, including the public distribution of the original and each copy of the work “by sale or other forms of transfer of ownership.” Since this would be the effect of including her column in the anthology.

25. In 1999, Mocha warrn, an American musician, had a bit rap single called *Warm Warm Honey* which he himself composed and performed. The single was produced by a California record company, *Galactic Records*. Many notice that some passages from *Warm Warm Honey* sounded eerily similar to parts of *Under Hassle*, a 1978 hit song by the British rock and *Majesty*. A copyright infringement suit was filed in the United States against Mocha Warm by *Majesty*. It was later settled out of court, with *Majesty* receiving attribution as co- author of *Warm Warm Honey* as well as a share in the royalties.

By 2002, Mocha Warm was nearing bankruptcy and he sold his economic rights over *Warm Warm Honey* to *Galactic Records* for \$10,000.

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

Prior to the release of *Astig!*. Mocha Warm learns of the remixed *Warm Warm Honey* and demands that he be publicly identified as the author of the remixed song is all the CD covers and publicity releases of *Planet Films*. (2008 Bar Question)

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

SUGGESTED ANSWER:

The parties entitled to be credited as authors of the remixed Warm Warm Honey are Mocha Warm, Majesty, DJ Chef Jean and John Blake, for the segments that was the product of their respective intellectual efforts. In the case of Mocha Warm and Majesty, who are the attributed co-authors, and in spite of the sale of the economic right to Galactic Records, they retain their moral rights to the copyrighted rap, which include the right to demand attribution to them of the authorship (Sec. 193, IPC). Which respect to DJ Chef Jean, in spite of his death, and although he was commissioned by Planet Films for the remix, the rule is that the person who so commissioned work shall have ownership of the work, but copyright thereto shall remain with creator, unless there is a written stipulation to the contrary.

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

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

SUGGESTED ANSWER:

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

2. Non-copyrightable works

26. News reports are not copyrightable. (2%) (2017 Bar Question)

SUGGESTED ANSWER:

True. Under *Section 175 of the Intellectual Property Code (R.A. 8293, June 6, 1997)* “news of the day and other miscellaneous facts having the character of mere items of press information” are “unprotected subject matter”, therefore, not copyrightable.

3. Rights conferred by copyright

27. Apart from economic rights, the author of a copyright also has moral rights which he may transfer by way of assignment. The term of these moral rights shall last - (2011 Bar Question)

- A) during the author's lifetime and for 50 years after his death.
- B) forever.
- C) 50 years from the time the author created his work.
- D) during the author's lifetime.

SUGGESTED ANSWER: A

4. Ownership of a copyright

28. T, an associate attorney in XYZ Law Office, wrote a newspaper publisher a letter disputing a columnist's claim about an incident in the attorney's family. T used the law firm's letterhead and its computer in preparing the letter. T also requested the firm's messenger to deliver the letter to the publisher. Who owns the copyright to the letter? (2011 Bar Question)

- A) T, since he is the original creator of the contents of the letter.

- B) Both T and the publisher, one wrote the letter to the other who has possession of it.
- C) The law office since T was an employee and he wrote it on the firm's letterhead.
- D) The publisher to whom the letter was sent.

SUGGESTED ANSWER: A

5. Limitations on copyright

6. Doctrine of fair use

29. The Fair Use Doctrine allows others to utilize copyrighted works under certain conditions. The factors to consider whether use is fair or not would be the purpose and character of the use, nature of the copyrighted work, amount and substantiality of the portions used, and what else? (2012 Bar Question)
- A) effect of the use upon the creator of the work.
 - B) effect of the use upon the potential market of the work.
 - C) effect of the use upon the public in general.
 - D) effect of the use upon the class in which the creator belongs.

SUGGESTED ANSWER:

B. effect of the use upon the potential market of the work.

7. Copyright infringement

30. X, an amateur astronomer, stumbled upon what appeared to be a massive volcanic eruption in Jupiter while peering at the planet through his telescope. The following week, X, without notes, presented a lecture on his findings before the Association of Astronomers of the Philippines. To his dismay, he later read an article in a science journal written by Y, a professional astronomer, repeating exactly what X discovered without any attribution to him. Has Y infringed on X's copyright, if any? (2011 Bar Question)
- A) No, since X did not reduce his lecture in writing or other material form.
 - B) Yes, since the lecture is considered X's original work.
 - C) No, since no protection extends to any discovery, even if expressed, explained, illustrated, or embodied in a work.
 - D) Yes, since Y's article failed to make any attribution to X.

SUGGESTED ANSWER: C

31. X's painting of Madonna and Child was used by her mother to print some personalized gift wrapper. As part of her mother's efforts to raise funds for Bantay Bata, the mother of X sold the wrapper to friends. Y, an entrepreneur, liked the painting in the wrapper and made many copies and sold the same through National Bookstore. Which statement is most accurate? (2012 Bar Question)
- A) Y can use the painting for his use because this is not a copyrightable material.
 - B) X can sue Y for infringement because artistic works are protected from moment of creation.
 - C) Works of art need to be copyrighted also to get protection under the law.
 - D) Y can use the drawing even though not copyrighted because it is already a public property having been published already.

SUGGESTED ANSWER:

B. X can sue Y for infringement because artistic works are protected from moment of creation.

32. Diana and Piolo are famous personalities in showbusiness who kept their love affair secret. They use a special instant messaging service which allows them to see one another's typing on their own screen as each letter key is pressed. When Greg, the controller of the service facility, found out their identities, he kept a copy of all the messages Diana and Piolo sent each other and published them. Is Greg liable for copyright infringement? Reason briefly. (5%) (2007 Bar Question)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER

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

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

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

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

33. The *Denicola Test* in intellectual property law states that if design elements of an article reflect a merger of aesthetic and functional considerations, the artistic aspects of the work cannot be conceptually separable from the utilitarian aspects; thus, the article cannot be copyrighted. (2009 Bar Question)

SUGGESTED ANSWER:

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

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

34. While vacationing in Boracay, Valentino surreptitiously took photographs of his girlfriend Monaliza in her skimpy bikini. Two weeks later, her photographs appeared in the Internet and in a national celebrity magazine.

Monaliza found out that Valentino had sold the photographs to the magazine, adding insult to injury, uploaded them to his personal blog on the Internet. (2010 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

- 35. After disposing of his last opponent in only two rounds in Las Vegas, the renowned Filipino boxer Sonny Bachao arrived at the Ninoy Aquino International Airport met by thousands of hero-worshipping fans and hundreds of media photographers. The following day, a colored photograph of Sonny wearing a black polo shirt embroidered with the 2-inch Lacoste Crocodile logo appeared on the front page of every Philippine newspaper. Lacoste International, the French firm that manufactures lacoste apparel and owns the Lacoste trademark, decided to cash in on the universal popularity of the boxing icon. It reprinted the photographs, with the permission of the newspaper publishers, and went on a world-wide blitz of print commercials in which Sonny is shown wearing a Lacoste shirt alongside the phrase —Sonny Bachao just loves Lacoste.**

When Sonny sees the Lacoste advertisements, he hires you as lawyer and asks you to sue Lacoste International before a Philippine court. Will these actions prosper? Explain. (2009 Bar Question)

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

Sonny Bachao cannot sue for infringement of copyright for the unauthorized use of the photographs showing him wearing a Lacoste shirt. The copyright to the photographs belong to the newspapers which published them inasmuch as the photographs were the result of the performance of the regular duties of the photographers (Subsection 173.3 (b), Intellectual Property Code (IPC)). Moreover, the newspaper publishers authorized the reproduction of the photographs (Section 177, Intellectual Property Code).

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

36. KK is from Bangkok, Thailand. She studies medicine in the Pontifical University of Santo Tomas (UST). She learned that the same foreign books prescribed in UST are 40-50% cheaper in Bangkok. So she ordered 50 copies of each book for herself and her classmates and sold the books at 20% less than the price in the Philippines. XX, the exclusive licensed publisher of the books in the Philippines, sued KK for copyright infringement. Decide. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

KK is liable for infringement of copyright. XX, as exclusive licensed publisher, is entitled, within the scope of the license, to all the rights and remedies that the licensor has with respect to the copyright (Sec.180, Intellectual Property Code, as amended by Republic Act No. 10372).

The importation by KK of 50 copies of each foreign book prescribed in UST and selling them locally at 20% less than their respective prices in the Philippines is subject to the doctrine of fair use set out in Section 185.1 of the Intellectual Property Code. The factors to be considered in determining whether the use made of a work is fair use shall include:

- A) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- B) The nature of the copyrighted work;
- C) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- D) The effect of the use upon the potential market for or value of the copyrighted work.

Applying the above-listed factors to the problem, KK's importation of the books and their sale locally clearly show the unfairness of her use of the books, particularly the adverse effect of her price discounting on the business of XX.

37. **Virtucio was a composer of Ilocano songs who has been quite popular in the Ilocos Region. Pascuala is a professor of music in a local university with special focus on indigenous music. When she heard the musical works of Virtucio, she purchased a CD of his works. She copied the CD and sent the second copy to her Music class with instructions for the class to listen to the CD and analyze the works of Virtucio. (2017 Bar Question)**

Did Pascuala thereby infringe Virtucio's copyright? Explain your answer. (4%)

SUGGESTED ANSWER:

Pascuala did not infringe on the rights of Virtucio. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including limited number of copies for classroom use, scholarship, research and similar purposes is not an infringement of copyright (*Section 185 of RA 8293, as amended*). In this case, Virtucio's reproduction of the limited number of CD was for classroom use and educational purposes thus negating copyright infringement.

IX. ANTI-MONEY LAUNDERING ACT (RA 9160, as amended)

A. Covered institutions and their obligations

38. Under the Anti-Money Laundering Law, a covered institution is required to maintain a system of verifying the true identity of their clients as well as persons purporting to act on behalf of

- A) those doing business with such clients.
- B) unknown principals.
- C) the covered institution.
- D) such clients.

SUGGESTED ANSWER: D

39. The Anti-Money Laundering Law is a law that seeks to prevent money laundering activities by providing for more transparency in the Philippine Financial System, hence the following institutions are covered by the law, except: (2012 MCQ Question)

- A. Bank and any financial institutions;
- B. pawnshops;
- C. casino operators;
- D. All of the above.

SUGGESTED ANSWER:

c. casino operators

B. Covered and suspicious transactions

40. For purposes of determining violation of the provisions of Anti- Money Laundering Law, a transaction is considered as a "Suspicious Transaction" with "Covered Institutions" regardless of the amount involved, where which the following circumstances exist/s?

- A) the amount involved is not commensurate with the client's business or financial capacity;
- B) there is no underlying legal or trade obligation, purpose or economic justification;
- C) client is not properly identified;
- D) All of the above.

SUGGESTED ANSWER:

E. all of the above

41. What is the distinction between a "covered transaction report" and a "suspicious transaction report"? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

A covered transaction report involves transaction/s in cash or other equivalent monetary instrument involving a total amount in excess of P500,000 within one banking day while suspicious transaction report

involves transactions with covered institutions regardless of the amounts involved made under any of the suspicious circumstances enumerated by law.

42. Does the Anti-Money Laundering Council have the authority to freeze deposits? Explain. (2%)

SUGGESTED ANSWER:

No. The authority to freeze deposits is lodged with and based upon the order of the Court of Appeals (*Section 10 of RA 9160 as amended*).

C. Safe harbor provision

D. When is money laundering committed (including predicate crimes)

43. Which of the following is an exception to the secrecy of bank deposits which are in Philippine Pesos, but NOT an exception to the secrecy of foreign currency deposits?

- A) Upon Bangko Sentral ng Pilipinas (SSP) inquiry into or examination of deposits or investments with any bank, when the inquiry or examination is made in the course of the SSP's periodic special examination of said bank to ensure compliance with the Anti-Money Laundering Act (AMLA);
- B) Upon Philippine Deposit Insurance Corporation (PDIC) and SSP inquiry into and examination of deposit accounts in case there is a finding of unsafe or unsound banking practice;
- C) Upon inquiry in cases of impeachment;
- D) Upon inquiry by the Commissioner of Internal Revenue in the event a taxpayer files an application to compromise his tax liabilities on the ground of financial incapacity.

SUGGESTED ANSWER:

c. Upon inquiry in cases of impeachment.

44. Flora, a frequent traveller, found a purse concealed between the cushions of a large sofa inside the VIP lounge in NAIA while she was waiting for her flight to be called. Inside the purse was a very valuable diamond-studded necklace. She decided not to turn over the purse to the airport management, and instead to keep it. On her return from her travels, she had a dependable jeweller appraise the necklace, and the latter told her that the necklace was easily worth at least P5 million in the open market. To test the appraisal, she pawned the necklace for P2 million. She then deposited the entire amount in her checking account with Metro Bank. Promptly, Metro Bank reported the transaction to the Anti-Money Laundering Council (AMLC). (2017 Bar Question)

Given that her appropriation was theft, may Flora be successfully prosecuted for money laundering? Explain briefly your answer. (4%)

SUGGESTED ANSWER:

Flora may not be prosecuted for money laundering. Money laundering is a crime whereby the proceeds of an unlawful activity are transacted making it appear that they originated from legitimate sources. One of the ways of committing money laundering is if a person knows the cash relates to unlawful activity and transaction. Under the rules implementing the Anti-Money Laundering Law, however, only qualified theft

(not simple theft) is considered an unlawful activity. In the case presented, the theft committed by Flora did not become qualified because it was not committed with grave abuse of discretion .

E. Authority to inquire into bank deposits

45. Prosperous Bank is a domestic bank with head office in Makati. It handles the banking requirements of thousands of clients.

The AMLC initiated a discreet investigation of the financial transactions of Lorenzo, a suspected drug trafficker based in Naga City. The intelligence group of the AMLC, in coordination with the counterpart group from the PDEA and the NBI, gathered ample evidence establishing Lorenzo's unlawful drug activities. The AMLC had probable cause that his deposits and investments in various banks, including Prosperous Bank, were related to money laundering.

Accordingly, the AMLC now transmits to Prosperous Bank a formal demand to allow its agent to examine the banking transactions of Lorenzo, but Prosperous Bank refuses the demand. (2017 Bar Question)

Is Prosperous Bank's refusal justified? Explain your answer. (4%)

SUGGESTED ANSWER:

Prosperous Bank's refusal is not justified. Notwithstanding the provisions of RA 1405, RA 6426 and RA 8791, the AMLC may inquire into or examine any particular deposit or investment with any bank or non-bank financial institution if there is a probable cause that the deposits are related to unlawful activity under the Anti-money laundering law, as in this case. Bank inquiry order from the court is not necessary since the predicate crime is violation of the Dangerous Drugs Law (*Section 11 of RA 9160, as amended*).

F. Freezing and forfeiture

46. Under the Anti-Money Laundering Act, a depositor's bank account may be frozen. (1%) (2013)

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

SUGGESTED ANSWER:

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

X. ELECTRONIC COMMERCE ACT (RA 8792)

- A. Legal recognition of electronic data messages, documents, and signatures**
- B. Presumption relating to electronic signatures**
- C. Admissibility and evidential weight of electronic data message or electronic document**
- D. Obligation of confidentiality**

XI. DATA PRIVACY ACT (RA 10173)

- A. Personal vs. sensitive personal information**
- B. Scope**
- C. Processing of personal information**
- D. Rights of data subject**

XII. FINANCIAL REHABILITATION, INSOLVENCY, LIQUIDATION and SUSPENSION OF PAYMENTS (RA 10142, FR Rules [A.M. No. 12-12-11-SC], and FLSP Rules [A.M. No.15-04-06-SC])

A. Basic concepts

1. Rehabilitation

- 1. Can be distressed corporation file a petition for corporation rehabilitation after the dismissal of its earlier petition for insolvency? Why? (2%) (2012 Bar Question)**

SUGGESTED ANSWER:

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

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

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

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

SUGGESTED ANSWER:

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

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

3. Explain the key phrase —equality is equity‖ in corporate rehabilitation proceedings. (2%)

SUGGESTED ANSWER:

The principle of “equality in equity” means that when a corporation is placed under the control of a court-appointed rehabilitation receiver, then “all the creditors should stand on equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership” (Sobrejuanite v. ASB Dev. Corp., G.R. No. 165675, 30 September 2005; Ruby Industrial v. Lim, G.R. Nos. 124185-87, 20 January 1998).

2. Insolvent

3. Liquidation

4. Suspension of payments

4. Hortencio owned a modest grocery business in Laguna. Because of the economic downturn, he incurred huge financial liabilities. he remained afloat only because of the properties inherited from his parents who had both come from landed families in Laguna. His main creditor was Puresilver Company (Puresilver), the principal supplier of the merchandise sold in his store. To secure his credit with Puresilver, he executed a real estate mortgage with a dragnet clause involving his family’s assets worth several millions of pesos.

Nonetheless, Hortencio, while generally in the black, now faces a situation where he is unable to pay his liabilities as they fall due in the ordinary course of business. What will you advise him to do to resolve his dire financial condition? Explain your answer. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

If Hortencio is doing business as a registered sole proprietorship, he can file a petition for rehabilitation. Under FRIA, a sole proprietorship can now file a petition for rehabilitation. The remedy may be availed of in case of actual or technical insolvency. In the petition, he can pray for the issuance of a commencement order which includes a stay order. The stay order, once issued, has the effect of enjoining the enforcement of claims against Hortencio.

If Hortencio is not registered as a sole proprietorship, he can file a petition for suspension of payments in the city or province in which he has resided for six months prior to the filing of the petition, a remedy available to an individual debtor who has more assets than liabilities but foresees the impossibility of paying his debts when they respectively fall due [Section 94, FRIA].

5. Wyatt, an internet entrepreneur, engaged in a sideline business of creating computer programs for selected clients on a per project basis and for servicing basic computer problems of his friends and family members. His main job was being an IT consultant at Futorex Co., a local computer company.

Because of his ill-advised investments in the stock market and the fraud perpetrated against him by his trusted confidante, Wyatt was already drowning in debt, that is, he had far more liabilities than his entire assets. (2017 Bar Question)

What legal recourse remained available to Wyatt? Explain your answer. (5%)

ANSWER:

If Wyatt is registered as sole proprietorship, he may file a petition for rehabilitation or voluntary liquidation. Under FRIA, an insolvent debtor may file a petition for rehabilitation even if the assets are less than liabilities. The petition should include a rehabilitation plan and nominee for rehabilitation receiver. He can also file a petition for voluntary liquidation since his liabilities exceed his assets. The objective of liquidation is to get a discharge, maximize recovery of assets and effect equitable distribution of such assets based on the rules on concurrence and preference of credit.

If he is not registered as a sole proprietorship, he may only file a petition for voluntary liquidation since his assets are less than liabilities (*Section 103 of FRIA*). Petition for suspension of payments is not available as a remedy to an individual debtor not registered as a sole proprietorship.

B. Modes of rehabilitation**1. Court-supervised rehabilitation****a. Voluntary vs. involuntary**

6. Under the Financial Rehabilitation and Insolvency Act (FRIA), the filing of a petition for voluntary rehabilitation must be approved by: (1%) (2014 Bar Question)
- A) a majority vote of the Board of Directors and authorized by the vote of the stockholders representing at least a majority of the outstanding capital stock
 - B) (B) a majority vote of the Board of Directors and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock
 - C) (C) two-thirds vote of the Board of Directors and authorized by the vote of the stockholders representing at least a majority of the outstanding capital stock
 - D) (D) two-thirds vote of the Board of Directors and authorized by the vote of the stockholders representing at least two-thirds of the outstanding capital stock.

b. Commencement order (including stay order)

7. ABC Company filed a Petition for Rehabilitation with the Court. An Order was issued by the Court, (1) staying enforcement of all claims, whether money or otherwise against ABC Company, its guarantors and sureties not solidarily liable with the company; and (2) prohibiting ABC Company from making payments of its liabilities, outstanding as of the date of the filing of the Petition. XYZ Company is a holder of an irrevocable Standby Letter of Credit which was previously procured by ABC Company in favor of XYZ Company to secure performance of certain obligations. In the light of the Order issued by the Court. (2012 Bar Question)
- A) Can XYZ Company still be able to draw on their irrevocable Standby Letter of Credit when due? Explain your answer. (5%)

SUGGESTED ANSWER:

Yes, As an exception to a Stay or Suspension Order included in a Commencement Order issued pursuant to Section 16(q) of the FRIA, Section 18(c) if the said law provides that a Stay or Suspension Order shall not apply “to the enforcement of claims against sureties and other persons solidarily liable with the debtor, and third party or accommodation mortgagors as well as issuers of letters of credit x xx.” Similarly, assuming that it has not been superseded by the FRIA, Section 7(b) of the Supreme Court Rules of Procedure on Corporate Rehabilitation (2008) provides that a stay order shall not cover claims against

letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations. This was the basis of the decision in the case of Metropolitan Waterworks and Sewerage System v. Hon. Reynaldo B. Daway, et al. (G.R. No. 160732, June 21, 2004).

8. **PA Assurance (PA) was incorporated in 1980 to engage in the sale of pre-need educational plans. It sold open-ended educational plans which guaranteed the payment of tuition and other fees to planholders irrespective of the cost at the time of availment. It also engaged in the sale of fixed value plans which guaranteed the payment of a pre-determined amount to planholders. In 1982, PA was among the country's top corporations. However, it subsequently suffered financial difficulties.**

On September 8, 2005, PA filed a Petition for Corporate Rehabilitation before the Regional Trial Court (RTC) of Makati City. On October 17, 2005, ten (10) plan holders filed an Opposition and Motion to Exclude Planholders from Stay Order on the ground that planholders are not creditors as they (planholders) have a trust relationship with PA. Are the planholders correct? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

The planholders are not correct. Section 6 of the Supreme Court Interim Rules of Procedure on Corporate Rehabilitation of 2000 (which was amended and replaced by the Rules of Procedure on Corporate Rehabilitation of 2009) do not provide that a claim arising from a pre-need contract is an exception to the power of the trial court to stay enforcement of all claims if the court finds the petition for rehabilitation to be sufficient in form and substance. (*Abrera, et al. vs. Barza, et al.*, G.R. 171681, September 11, 2009)

9. **DMP Corporation (DMP) obtained a loan of P20 million from National Bank (NB) secured by a real estate mortgage over a 63,380-square-meter land situated in Cabanatuan City. Due to the Asian Economic Crisis, DMP experienced liquidity problems disenableing it from paying its loan on time. For that reason, NB sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on June 30, 2003. On September 4, 2003, the mortgaged property was sold at public auction, which was eventually awarded to NB as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of NB.**

On October 21, 2003, DMP filed a Petition for Rehabilitation before the Regional Trial Court (RTC). Pursuant to this, a Stay Order was issued by the RTC on October 27, 2003.

On the other hand, NB caused the recording of the Sheriff's Certificate of Sale on December 3, 2003 with the Register of Deeds of Cabanatuan City. NB executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of DMP. Consequently, the Register of Deeds cancelled DMP's title and issued a new title in the name of NB on December 10, 2003.

NB also filed on March 17, 2004 an Ex-Parte Petition for Issuance of Writ of Possession before the RTC of Cabanatuan City. After hearing, the RTC issued on September 6, 2004 an Order directing the Issuance of the Writ of Possession, which was issued on October 4, 2004.

DMP claims that all subsequent actions pertaining to the Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court. Is DMP correct? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

DMP is not correct. Since the foreclosure of DMP's mortgage and the issuance of the certificate of sale in NB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of

the Stay Order were not affected by the Stay Order. Thus, after the redemption period expired without DMP redeeming the foreclosed property, NB becomes the absolute owner of the property and it was within its right to ask for the consolidation of title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property. (*Equitable PCI Bank, Inc. vs. DNG Realty and Development Corporation*, G.R. 168672, August 8, 2010)

10. Data Realty, Inc. (DRI) was engaged in realty development. The family of Matteo owned 100% of the capital stock of DRI. Matteo was also the President and Chairman of the Board of Directors. Other members of Matteo's family held the major positions in DRI. Because of a nasty takeover fight with D&E Realty Co., Inc. (D&E), another realty developer, for the control of a smaller realty company with vast landholdings, DRI and D&E engaged in an expensive litigation that eventually led to a money judgment being rendered in favor of D&E.

Meantime, DRI, facing inability to pay its liabilities as they fall due but still holding substantial assets, filed a petition for voluntary rehabilitation. Trying to beat the consequences of rehabilitation proceedings, D&E moved in the trial court for the issuance of a writ of execution. The trial court also happened to be the rehabilitation court. The writ of execution was issued.

Serving the writ of execution, Metro, the court sheriff who had just passed his Credit Transactions subject in law school, garnished Matteo's bank accounts, and levied his real properties, including his house and lot in Makati. (2017 Bar Question)

Are the garnishment and levy of Matteo's assets lawful and proper? Explain your answer. (4%)

SUGGESTED ANSWER:

The garnishment and levy of Matteo's assets are not valid, because Matteo is not covered by the rehabilitation proceedings or any stay order that the rehabilitation court may issue. It is DRI, with a legal personality separate and distinct from Matteo, which filed the petition for rehabilitation and would have been entitled to the effects of any commencement order (and stay order) that the court may issue. The commencement order would have the effect of setting aside any seizure of property or attempt to enforce a claim against the debtor.

It would have been different if Matteo acted as a surety and the court issues a commencement order with stay order, the effects of which are retroactive to the filing of the petition. In which event, the garnishment of his deposits and level of assets would have been valid.

ALTERNATIVE ANSWER:

On the assumption that DRI's legal personality may be pierced to make it one and the same with Matteo, the garnishment of deposits and levy of assets are lawful and proper because the court has not issued yet a commencement order prior to the garnishment and levy.

11. Procopio, a Director and the CEO of Parisian Hotel Co., Inc. (Parisian), was charged along with other company officials with several counts of *estafa* in connection with the non-remittance of SSS premiums the company had collected from its employees. During the pendency of the cases, Parisian filed a petition for rehabilitation. The court, finding the petition to be sufficient in form and substance, issued a commencement order together with a stay or suspension order.

Citing the commencement order, Procopio and the other officers facing the criminal charges moved to suspend the proceedings in the *estafa* cases. (2017 Bar Question)

- A) What is a commencement order, and what is the effect of its issuance? Explain your answer. (4%)

SUGGESTED ANSWER:

A commencement order is an order issued by the Rehabilitation Court if the petition for rehabilitation filed by the financially distressed debtor or by its creditor is sufficient in form and substance. The rehabilitation proceedings are commenced upon issuance by the rehabilitation court of a commencement order. The stay order which is included in the commencement order shall suspend all actions or proceedings for the enforcement of claims against the debtor [Section 16 of FRLA].

B) Suppose you are the trial judge, will you grant the motion to suspend of Procopio, et al.? Explain your answer. (4%)

SUGGESTED ANSWER:

(b) Under Section 18 of FRLA, the stay order does not include criminal action against the individual debtor, or owner, partner, director or officer of the debtor.

c. Rehabilitation receiver and management committee**d. Determination of claims****e. Rehabilitation plan****1. Concept of feasibility****2. Material financial commitments****3. Liquidation analysis****f. Creditor approval and confirmation****g. Failure of rehabilitation****2. Pre-negotiated rehabilitation****a. How initiated****b. Period and effect of approval****3. Out-of-Court or Informal Restructuring Agreement or Rehabilitation Plan****a. Minimum requirements****b. Standstill period****c. Cram down effect****C. Liquidation**

1. Voluntary liquidation vs. involuntary liquidation vs. conversion

2. Procedure

- a. Liquidation order; effects

3. Determination of claims

D. Suspension of Payments; Suspension of Payment Order

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