
Q & A BAR 1997-2015

• SUGGESTED ANSWERS TO BAR EXAMINATION QUESTIONS •

REMEDIAL LAW

-Arranged by Topic-

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A PERSONAL NOTE FROM THE EDITOR

Dearest Fellow Bar Warriors,

All praises is due to Him who is the Source of All Knowledge and Wisdom!

I am very pleased to share with you this piece which I have been working on for the past three years. Despite the difficulty in having to re-page, proofread and re-classify the topics, two reasons compelled me into further re-updating: ONE, my first update is fraught with typographical errors; and TWO, I blame this Bar Q & A for making me pass the 2015 Bar Exam. :-) This work is, therefore, my little way of giving back and sharing such an amazing blessing.

To effectively use this work, it is recommended that the student/bar reviewee answer the questions first before reading the suggested answers. It may be that one's answer is not the same as that of the suggested answer -- one should not be disheartened. Remember, these are mere suggested answers. Further, one should also pay attention to topics frequently asked. By doing so, one can at least get an idea which topics are 'BAR-able', so to speak, and which are not. To the former, one should devote time; to the latter, familiarity will suffice.

As a piece of unsolicited advise from one who has tasted the 'anguish of defeat and the glory of the hour triumphant', no matter how much you have given up on yourself, NEVER GIVE UP ON THE MERCY OF GOD! For "verily, with each hardship comes relief".

- Atty. MSLD -

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¹ "GIVE CREDIT WHEN IT'S DUE.":

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GENERAL PRINCIPLES

Remedial Law; Concept (2006)

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

SUGGESTED ANSWER:

The concept of Remedial Law lies at the very core of procedural due process, which means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, and contemplates an opportunity to be heard before judgment is rendered (**Albert v. University Publishing, G.R. No. L-19118, January 30, 1965**). Remedial Law is that branch of law which prescribes the method of enforcing the rights or obtaining redress for their invasion (**Bustos v. Lucero, G.R. No. L-2068, October 20, 1948**; **First Lepanto Ceramics, Inc. v. CA, G.R. No. 110571, March 10, 1994**).

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

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

SUGGESTED ANSWER:

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

Remedial Law vs. Substantive Law (2006)

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

SUGGESTED ANSWER:

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

Liberal Construction; Rules of Court (1998)

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

SUGGESTED ANSWER:

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

ADDITIONAL ANSWER:

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

Family Courts Act (2001)

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

SUGGESTED ANSWER:

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

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

Judgment vs. Opinion of the Court (2006)

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

SUGGESTED ANSWER:

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

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

Judicial Autonomy & Impartiality (2003)

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

SUGGESTED ANSWER:

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

Interlocutory Order (2006)

What is an interlocutory order? (2%)

SUGGESTED ANSWER:

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

Questions of Law vs. Questions of Fact (2004)

Distinguish Questions of law from Questions of fact.

SUGGESTED ANSWER:

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

Error of Jurisdiction vs. Error of Judgment (2012)

Distinguish error of jurisdiction from error of judgment. (5%)

SUGGESTED ANSWER:

An error of judgment is one which the court may commit in the exercise of its jurisdiction. Such an error does not deprive the court of jurisdiction and is correctible only by appeal; whereas an error of jurisdiction is one which the court acts without or in excess of its jurisdiction. Such an error renders an order or judgment void or voidable and is correctible by the special civil action of certiorari. (Dela Cruz vs. Moir, 36 Phil. 213; Cochingyan vs. Claribel, 75 SCRA 361, Fortich vs. Corona, April 24, 1998, 289 SCRA 624; Artistica Ceramica, Inc. vs. Ciudad del Carmen Homeowner's Association, Inc., G.R. Nos. 167583-84, June 16, 2010).

Prejudicial Question (1999)

What is a prejudicial question? (2%)

SUGGESTED ANSWER:

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

ANOTHER ANSWER:

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

Prejudicial Question; Ejectment vs. Specific Performance (2000)

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

SUGGESTED ANSWER:

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

Prejudicial Question (2000)

CX is charged with estafa in court for failure to remit to MM sums of money collected by him (CX) for MM in payment for goods purchased from MM, by depositing the amounts in his (CX's) personal bank account. CX files a motion to suspend proceedings pending resolution of a civil case earlier filed in court by CX against MM for accounting and damages involving the amounts subject of the criminal case. As the prosecutor in the criminal case, briefly discuss your grounds in support of your opposition to the motion to suspend proceedings. (5%).

SUGGESTED ANSWER:

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

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

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

Prejudicial Question; Suspension of Criminal Action (1999)

A allegedly sold to B a parcel of land which A later also sold to X. B brought a civil action for nullification of the second

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

SUGGESTED ANSWER:

Yes. The suspension of the criminal action is in order because the defense of A in the civil action, that he never sold the property to B and that his purported signatures in the first deed of sale were forgeries, is a prejudicial question the resolution of which is determinative of his guilt or innocence. If the first sale is null and void, there would be no double sale and A would be innocent of the offense of estafa. (Ras v. Rasul, 100 SCRA 125.)

Prejudicial Question (2014)

Solomon and Faith got married in 2005. In 2010, Solomon contracted a second marriage with Hope. When Faith found out about the second marriage of Solomon and Hope, she filed a criminal case for bigamy before the Regional Trial Court (RTC) of Manila sometime in 2011.

Meanwhile, Solomon filed a petition for declaration of nullity of his first marriage with Faith in 2012, while the case for bigamy before the RTC of Manila is ongoing. Subsequently, Solomon filed a motion to suspend the proceedings in the bigamy case on the ground of prejudicial question. He asserts that the proceedings in the criminal case should be suspended because if his first marriage with Faith will be declared null and void, it will have the effect of exculpating him from the crime of bigamy. Decide. (4%)

SUGGESTED ANSWER:

The motion filed by Solomon should be denied.

The elements of prejudicial question are: (1) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action; and (2) the resolution of such issue determines whether or not the criminal action may proceed. In order for a prejudicial question to exist, the civil action must precede the filing of the criminal action. (Dreamwork Construction, Inc. v. Janiola, G.R. No. 184861, [June 30, 2009]). Since the criminal case for bigamy was filed ahead of the civil action for declaration of nullity of marriage, there is no prejudicial question.

At any rate, the outcome of the civil case for annulment has no bearing upon the determination of the guilt or innocence of the accused in the criminal case for bigamy because the accused has already committed the crime of bigamy when he contracted the second marriage without the first marriage having being declared null and void.

Otherwise stated, he who contracts marriage during the subsistence of a previously contracted marriage runs the risk of being prosecuted for bigamy.

JURISDICTION

Jurisdiction (1997)

What courts have jurisdiction over the following cases filed in Metro Manila? a) An action for specific performance or, in the alternative, for damages in the amount of P180,000.00 b) An action for a writ of injunction. c) An action for replevin of a motorcycle valued at P150,000.00. d) An action for

interpleader to determine who between the defendants is entitled to receive the amount of P190,000.00 from the plaintiff. e) A petition for the probate of a will involving an estate valued at P200,000.00.

SUGGESTED ANSWER:

(a) An action for specific performance or, in the alternative, for damages in the amount of 180,000.00 falls within the jurisdiction of Metropolitan Trial Courts in Metro Manila. Although an action for specific performance is not capable of pecuniary estimation, since the alternative demand for damages is capable of pecuniary estimation, it is within the jurisdiction of the Metropolitan Trial Courts in Metro Manila. **(Sec. 33 of BP 129 as amended by RA No. 7691: Cruz vs. Tan, 87 Phil. 627).**

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

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

(d) An action for interpleader to determine who between the defendants is entitled to receive the amount of P190,000.00 falls within the jurisdiction of the Metropolitan Trial Courts in Metro Manila. **(Makati Dev Corp. v. Tanjuatco 27 SCRA 401)**

(e) A petition for the probate of a will involving an estate valued at 200,000.00 falls within the Jurisdiction of the Metropolitan Trial Courts in Metro Manila **(Sec. 19[4] of BP 129, as amended).**

ADDITIONAL ANSWER:

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

Jurisdiction vs. Venue (2006)

Distinguish jurisdiction from venue? (2%)

SUGGESTED ANSWER:

JURISDICTION treats of the power of the Court to decide a case on the merits, while VENUE refers to the place where the suit may be filed. In criminal actions, however, venue is jurisdictional. Jurisdiction is a matter of substantive law; venue, of procedural law. Jurisdiction may be not be conferred by consent through waiver upon a court, but venue may be waived, except in criminal cases **(Nocum et al. v. Tan, G.R. No. 145022, September 23, 2005; Santos III v. Northwest Airlines, G.R. No. 101538, June 23, 1992).**

Jurisdiction; Determined by the Allegations (2014)

Estrella was the registered owner of a huge parcel of land located in a remote part of their barrio in Benguet. However, when she visited the property after she took a long vacation abroad, she was surprised to see that her childhood friend, John, had established a vacation house on her property. Both Estrella and John were residents of the same barangay. To recover possession, Estrella filed a complaint for ejectment with the Municipal Trial Court (MTC), alleging that she is the true owner of the land as evidenced by her certificate of title and tax declaration which showed the assessed value of the property as P21,000.00. On the other hand, John refuted Estrella's claim of ownership and submitted in evidence a Deed of Absolute Sale between him and Estrella. After the filing of John's answer, the MTC observed that the real issue was one of ownership and not of possession. Hence, the MTC dismissed the complaint for lack of jurisdiction.

On appeal by Estrella to the Regional Trial Court (RTC), a full-blown trial was conducted as if the case was originally filed with it. The RTC reasoned that based on the assessed value of the property, it was the court of proper jurisdiction. Eventually, the RTC rendered a judgment declaring John as the owner of the land and, hence, entitled to the possession thereof. (4%)

(A) Was the MTC correct in dismissing the complaint for lack of jurisdiction? Why or why not?

SUGGESTED ANSWER:

No. The Metropolitan Trial Court was not correct in dismissing the Complaint for lack of jurisdiction.

It is well settled that jurisdiction is determined by the allegations contained in the complaint. The contention of defendant in his Motion to Dismiss has nothing to do in the determination of jurisdiction. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant. **(Medical Plaza Makati Condominium v. Cullen [2013]).**

Relative thereto, the Municipal Trial Courts have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. (Section 33 of Batas Pambansa Blg. 129) Hence, the Metropolitan Trial Court is not correct in dismissing the complaint for lack of jurisdiction.

Besides, the rules allow provisional determination of ownership in ejectment cases when the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership (Section 16, Rule 70, Rules of Court).

Accordingly, the inferior courts have jurisdiction to resolve questions of ownership only whenever it is necessary to decide the question of possession in an ejectment case. **(Serrano v. Spouses Gutierrez, G.R. No. 162366, [November 10, 2006]).**

(B) Was the RTC correct in ruling that based on the assessed value of the property, the case was within its original jurisdiction and, hence, it may conduct a full-blown trial of the appealed case as if it was originally filed with it? Why or why not?

SUGGESTED ANSWER:

No. The Regional Trial Court was not correct. It is settled that forcible entry and unlawful detainer cases are within the exclusive original jurisdiction of the MTC.

Moreover, all cases decided by the Metropolitan Trial Court are generally appealable to the Regional Trial Court irrespective of the amounts involved. (Section 22, B.P. 129)

ALTERNATIVE ANSWER:

Assuming that Estrella's action was really for ownership and not for physical possession, the Regional Trial Court is correct in ruling that it was the Court of proper jurisdiction.

If an appeal is taken from an order of the lower court dismissing the case without a trial on the merits, the Regional Trial Court may affirm or reverse it, as the case may be. In case of affirmance and the ground of dismissal is lack of jurisdiction over the subject matter, the Regional Trial Court, if it has jurisdiction thereover, shall try the case on the merits as if the case was originally filed with it. In case of reversal, the case shall be remanded for further proceedings. (Section 8, Rule 40, Rules of Court).

Since the RTC affirmed the dismissal by the MTC of Estrella's complaint on the ground of lack of jurisdiction over the subject matter, without conducting a trial on the merits, the RTC may conduct a full-blown trial of the appealed case from the MTC as if the same was originally filed with it.

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

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

SUGGESTED ANSWER:

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

Jurisdiction; Incapable of Pecuniary Estimation (2000)

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

the RTC of Laguna. Decide with reason. (3%)

SUGGESTED ANSWER:

The motion should be granted. The MTC of Manila has no jurisdiction because the action for the annulment of the extrajudicial foreclosure is not capable of pecuniary estimation and is therefore under the jurisdiction of the RTCs. (**Russell v. Vestil, 304 SCRA 738, [1999]**).

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

Jurisdiction; Incapable of Pecuniary Estimation (2000)

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

SUGGESTED ANSWER:

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

Jurisdiction; Incapable of Pecuniary Estimation (2003)

A filed with the MTC of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of p19,000.00. B received the summons and a copy of the Complaint on 02 January 2003. On 10 January 2003, B filed a Motion to Dismiss

the Complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the RTC a Petition for Certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case. 6% On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending.

(a) Was the denial of the Motion to Dismiss the Complaint correct?

(b) Resolve the Motion to Declare the Defendant in Default.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

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

Jurisdiction; Incapable of Pecuniary Estimation (2014)

Prince Chong entered into a lease contract with King Kong over a commercial building where the former conducted his hardware business. The lease contract stipulated, among others, a monthly rental of P50,000.00 for a four (4) -year period commencing on January 1, 2010. On January 1, 2013, Prince Chong died. Kin II Chong was appointed administrator of the estate of Prince Chong, but the former failed to pay the rentals for the months of January to June 2013 despite King Kong's written demands. Thus, on July 1, 2013, King Kong filed with the Regional Trial Court (RTC) an action for rescission of contract with damages and payment of accrued rentals as of June 30, 2013. (4%)

(A) Can Kin II Chong move to dismiss the complaint on the ground that the RTC is without jurisdiction since the amount claimed is only P300,000.00?

SUGGESTED ANSWER:

No, Kin II Chong cannot move to dismiss the Complaint. An action for rescission of contract with damages and payment of accrued rentals is considered incapable of pecuniary estimation and therefore cognizable by the Regional Trial

Court. (*Ceferina De Ungria v. Honorable Court Of Appeals*, G.R. No. 165777, [July 25, 2011]).

(B) If the rentals accrued during the lifetime of Prince Chong, and King Kong also filed the complaint for sum of money during that time, will the action be dismissible upon Prince Chong's death during the pendency of the case?

SUGGESTED ANSWER:

No, the action will not be dismissible upon Prince Chong's death during the pendency of the case.

When the action is for recovery of money arising from contract, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced under Rule 86. (Section 20, Rule 3 of the Rules of Court)

Relative thereto, since the complaint for sum of money filed by King Kong survives the death of Prince Chong, the case shall not be dismissed and the Court shall merely order the substitution of the deceased defendant. (*Atty. Rogelio E. Sarsaba v. Fe Vda. De Te*, G.R. No. 175910, [July 30, 2009]).

Jurisdiction; MTC (2002)

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

SUGGESTED ANSWER:

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

Jurisdiction; RTC; MeTC (2010)

On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

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

SUGGESTED ANSWER:

The Motion to Dismiss is without merit and therefore should be denied. Courts of the first level have jurisdiction over civil actions where the demand is for sum of money not exceeding P300,000.00 or in Metro Manila, P400,000.00, exclusive of interest, damages, attorney's fees, litigation expenses and costs: this jurisdiction includes admiralty and

marine cases. And where the main cause of action is the claim for damages, the amount thereof shall be considered in determining the jurisdiction of the court (*Adm. Circular No. 09-94*, June 14, 1994).

(b) The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to P10,000. At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10,000 binds A. A countered that this was no longer in issue as B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (3%)

SUGGESTED ANSWER:

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

Jurisdiction; Office of the Solicitor General (2006)

In 1996, Congress passed Republic Act No. 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract. Meanwhile, Fotokina filed with the RTC a petition for mandamus compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition. **May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of**

the majority? (5%)

SUGGESTED ANSWER:

Yes, the OSG may represent the COMELEC Chairman before the RTC notwithstanding that his position is contrary to that of a majority of the Commission members in the COMELEC because the OSG is an independent office; its hands are not shackled to the cause of its client agency. The primordial concern of the OSG is to see to it that the best interest of the government is upheld (*COMELEC v. Quyanopadilla*, September 18, 2002).

Jurisdiction; Ombudsman Case Decisions (2006)

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

SUGGESTED ANSWER:

The Supreme Court has exclusive appellate jurisdiction over decisions of the Ombudsman in criminal cases (*Sec. 14, R.A. 6770*). In administrative and disciplinary cases, appeals from the Ombudsman must be taken to the Court of Appeals under Rule 43 (*Lanting v. Ombudsman, G.R. No. 141426, May 6, 2005; Fabian v. Desierto, G.R. No. 129742, September 16, 1998; Sec. 14, RA. 6770*).

Jurisdiction; Probate (2001)

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

SUGGESTED ANSWER:

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

Jurisdiction; RTC (2002)

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

SUGGESTED ANSWER:

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

Jurisdiction; RTC; Counterclaim (2008)

Fe filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and 30,000 as attorney's fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.

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

SUGGESTED ANSWER:

Yes, applying the totality rule which sums up the total amount of claims of the parties, the RTC has jurisdiction over the counter claims. Unlike in the case of compulsory counterclaims, a defendant who raises a permissive counterclaim must first pay docket fees before the court can validly acquire jurisdiction. One compelling test of compulsion is the logical relation between the claim alleged in the complaint and the counterclaim (*Bayer Phil, Inc. vs. C.A., G.R. No. 109269, 15 September 2000*). Ramon does not have to pay docket fees for his compulsory counterclaims. Ramon is liable for docket fees only on his permissive counterclaim for the balance of the purchase price of 30 units of air conditioners in the sum of P250,000, as it neither arises out of nor is it connected with the transaction or occurrence constituting Fe's claim (*Sec.*

19 [8] and 33 [1], B.P. 129; AO 04-94, implementing R.A. 7691, approved March 25, 1994, the jurisdictional; amount for MTC Davao being P300,000 at this time; *Alday vs. FGU Insurance Corporation, G.R. No. 138822, 23 January 2001*).

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Jurisdiction; RTC (2009)

Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan.

(a) May the action prosper? Explain.

SUGGESTED ANSWER:

No, the action may not prosper, because under R.A. No. 7691, exclusive original jurisdiction in civil actions which involve title to, or possession of real property or any interest therein is determined on the basis of the assessed value of the land involved, whether it should be P20,000 in the rest of the Philippines, outside of the Manila with the courts of the first level or with the Regional Trial Court. The assessed value of the parcel of land in Pampanga is different from the assessed value of the land in Bulacan. What is involved is not merely a matter of venue, which is waivable, but of a matter of jurisdiction. However, the action may prosper if jurisdiction is not in issue, because venue can be waived.

ALTERNATIVE ANSWER:

Yes, if the defendant would not file a motion to dismiss on

ground of improper venue and the parties proceeded to trial.

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

SUGGESTED ANSWER:

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

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

JURISDICTION; FAMILY COURTS; CONSTITUTIONALITY OF A LAW (2015)

Juliet invoking the provisions of the Rule on Violence Against Women and their Children filed with the RTC designated as a Family Court a petition for issuance of a Temporary Protection Order (TPO) against her husband, Romeo. The Family Court issued a 30-day TPO against Romeo. A day before the expiration of the TPO, Juliet filed a motion for extension. Romeo in his opposition raised, among others, the constitutionality of R.A. No. 9262 (The VA WC Law) arguing that the law authorizing the issuance of a TPO violates the equal protection and due process clauses of the 1987 Constitution. The Family Court judge, in granting the motion for extension of the TPO, declined to rule on the constitutionality of R.A. No. 9262. The Family Court judge reasoned that Family Courts are without jurisdiction to pass upon constitutional issues, being a special court of limited jurisdiction and R.A. No. 8369, the law creating the Family Courts, does not provide for such jurisdiction. Is the Family Court judge correct when he declined to resolve the constitutionality of R.A. No. 9262? (3%)

SUGGESTED ANSWER:

NO, the Family Court Judge is not correct when it declined to resolve the constitutionality of R.A. 9262.

In *Garcia v. Hon. Ray Allan Drilon*, (G.R. No. 179267, June 25, 2013), the Supreme Court held that the "Family Courts have authority and jurisdiction to resolve the constitutionality of a statute. In spite of its designation as a family court, the RTC remains possessed of authority as a court of general original jurisdiction to pass upon all kinds of cases, whether civil, criminal, special proceedings, land registration, guardianship, naturalization, admiralty, or insolvency. This authority is embraced in the general definition of the judicial power to determine the valid and binding laws in conformity with the fundamental law."

Jurisdiction; Over the Plaintiff, Subject Matter (2009)

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of 19,700.

Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary

public in the State of New York. Brigido filed a motion to dismiss the complaint on the following grounds:

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Jurisdiction; Subdivision Homeowner (2006)

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

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

SUGGESTED ANSWER:

An action for specific performance by a subdivision homeowner against a subdivision developer is within the jurisdiction of the Housing and Land Use Regulatory Board. Sec. 1 of P.D. 1344 provides that the HLURB has jurisdiction over cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots and condominium units against the owner, developer, dealer, broker or salesman (**Manila Bankers Life Insurance Corp. v. Eddy Ng Kok Wei**, G.R. No. 139791, December 12, 2003; **Kakilala v. Faraon**, G.R. No. 143233, October 18, 2004; Sec. 1, P.D. 1344).

Katarungang Pambarangay; Objective (1999)

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

SUGGESTED ANSWER:

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

Katarungang Pambarangay; Lupon; Extent of Authority (2001)

An amicable settlement was signed before a Lupon Tagapamayapa on January 3, 2001. On July 6, 2001, the prevailing party asked the Lupon to execute the amicable

settlement because of the non-compliance by the other party of the terms of the agreement. The Lupon concerned refused to execute the settlement/agreement.

a) Is the Lupon correct in refusing to execute the settlement/agreement? (3%)

b) What should be the course of action of the prevailing party in such a case? (2%)

SUGGESTED ANSWER:

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

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

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

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

SUGGESTED ANSWER:

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

Katarungang Pambarangay; Parties (2009)

Mariano, through his attorney-in-fact, Marcos filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply with the mandatory barangay conciliation. Resolve the motion with reasons. (3%)

SUGGESTED ANSWER:

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

CIVIL PROCEDURE

Civil Actions vs. Special Proceedings (1998)

Distinguish civil actions from special proceedings. [3%]

SUGGESTED ANSWER:

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

particular fact. (Sec. 3[C], *Rule 1, 1997 Rules of Civil Procedure*.)

Cause of action vs. Action (1997)

Distinguish Cause of action from action

SUGGESTED ANSWER:

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

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

Cause of Actions; Damages; (2012)

While leisurely walking along the street near her house in Marikina, Patty unknowingly stepped on a garden tool left behind by CCC, a construction company based in Makati. She lost her balance as a consequence and fell into an open manhole. Fortunately, Patty suffered no major injuries except for contusions, bruises and scratches that did not require any hospitalization. However, she lost self-esteem, suffered embarrassment and ridicule, and had bouts of anxiety and bad dreams about the accident. She wants vindication for her uncalled for experience and hires you to act as counsel for her and to do whatever is necessary to recover at least Php100,000 for what she suffered. What action or actions may Patty pursue, against whom, where (court and venue), and under what legal basis? (7%)

SUGGESTED ANSWER:

Patty may avail any of the following remedies:

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

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

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

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

c) Patty can also file a civil action for damages against the City of Marikina for maintaining an open manhole where she unfortunately fell. Under Article 2189 of the Civil Code, provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. The proper court having jurisdiction over the case is the Metropolitan Trial Court of Marikina City

because the claim is at least Php 100,000 for as long as the aggregate of the claims for damages does not exceed Php 400,000.

Cause of Actions; Action for Specific Performance (2012)

A bought a Volvo Sedan from ABC Cars for P 5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car's upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Cause of Actions; Remedies of an Unpaid Lessor (2014)

Landlord, a resident of Quezon City, entered into a lease contract with Tenant, a resident of Marikina City, over a residential house in Las Pitias City. The lease contract provided, among others, for a monthly rental of P25,000.00, plus ten percent (10%) interest rate in case of non-payment on its due date. Subsequently, Landlord migrated to the United States of America (USA) but granted in favor of his sister Maria, a special power of attorney to manage the property and file and defend suits over the property rented out to Tenant. Tenant failed to pay the rentals due for five (5) months. Maria asks your legal advice on how she can expeditiously collect from Tenant the unpaid rentals plus interests due. (6%)

SUGGESTED ANSWERS:

(A) What judicial remedy would you recommend to Maria?

I will advise Maria to immediately send a letter to the tenant demanding the immediate payment of the unpaid rentals plus interests due. If the tenant refuses, Maria can avail any of the following remedies:

(1) A complaint under A.M. No. 08-8-7-SC or the Rules of Procedure for Small claims cases. Maria should nonetheless waive the amount in excess of P100,000 in order for her to avail of the remedy under the said Rules.

(2) A complaint for collection of sum of money under the Rules on Summary Procedure, since Maria is only claiming the unpaid rentals and interest due from tenant.

(3) If the tenant refuses or is unable to pay the rentals within 1 year from receipt of the last demand to vacate and pay, I would advise Maria to file an action for Unlawful Detainer.

(B) Where is the proper venue of the judicial remedy which you recommended?

1. If Maria decides to file a complaint for collection of sum of money under the Rules of Summary Procedure or Small Claims, the venue is the residence of the plaintiff or defendant, at the election of the plaintiff (Section 2, Rule 4, Rules of Court). Hence, it may be in Quezon City or Marikina City, at the option of Maria.

2. If Maria files an action for Unlawful detainer, the same shall be commenced and tried in the Municipal Trial Court of the municipality or city wherein the real property involved, or a portion thereof, is situated (Section 1, Rule 4 of the Rules of Court). Therefore, the venue is Las Pinas City.

(C) If Maria insists on filing an ejectment suit against Tenant, when do you reckon the one (1)-year period within which to file the action?

The reckoning point for determining the one-year period within which to file the action is the receipt of the last demand to vacate and pay (Section 2, Rule 70 of the Rule of Court).

Actions; Cause of Action vs. Action (1999)

Distinguish action from cause of action. (2%)

SUGGESTED ANSWER:

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

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

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

Give the effects of the following:

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

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

SUGGESTED ANSWER:

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

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

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

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

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

SUGGESTED ANSWER:

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

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

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

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

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

Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are the coowners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 from Ricky which he promised to pay on or before December 1, 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property. Ricky filed a complaint against Perry and Marvin in the RTC of Pasay City for the partition of the property. He also incorporated in his complaint his action against Perry for the collection of the latter's P100,000.00 loan, plus interests and attorney's fees. State with reasons whether it was proper for Ricky to join his causes of action in his complaint for partition against Perry and Marvin in the RTC of Pasay City. (5%)

SUGGESTED ANSWER:

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

Actions; Causes of Action; Joinder of Action; Totality Rule (2015)

Lender extended to Borrower a P100,000.00 loan covered by a promissory note. Later, Borrower obtained another P100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a P300,000.00 loan secured by a real estate mortgage on his land valued at 11500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the 11500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for 11500,000.00.

a.) Did Lender correctly apply the totality rule and the rule on joinder of causes of action? (2%)

SUGGESTED ANSWER:

YES. The Lender correctly applied the totality rule and the rule on the joinder of causes of action because where the claims in all the causes of action are principally for recovery of money, the aggregate amount of the claim shall be the test of jurisdiction (Section 5 (d), Rule 2, Rules of Court).

Here, the total amount of the claim is P500,000.00. Hence, the RTC of Manila has jurisdiction over the suit. At any rate, it is immaterial that one of the loans is secured by a real estate mortgage because the Lender opted to file a collection of sum of money instead of foreclosure of the mortgage.

At the trial, Borrower's lawyer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only 11300,000.00 was the amount due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings.

b.) Should the court dismiss the case? (3%)

SUGGESTED ANSWER:

NO. The court should not dismiss the case. What determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted (Navida v. Hon. Teodoro A. Dizon, Jr. G.R. 125078, May 30, 2011).

Accordingly, even if the defendant is able to prove in the course of the trial that a lesser amount is due, the court does not lose jurisdiction and a dismissal of the case is not in order (Paadlan v. Dinglasan, G.R. No 180321, March 20, 2013).

Actions; Cause of Action; Splitting (1999)

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

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

SUGGESTED ANSWER:

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

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

Actions; Cause of Action; Splitting (2005)

Raphael, a warehouseman, filed a complaint against V Corporation, X Corporation and Y Corporation to compel them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgment was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executory. Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of res judicata. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his

claim for storage fees and advances and that for his failure he was barred from interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefor. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

The motion to dismiss should be granted. Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances, the amounts of which were obviously determinable at the time of the filing of the complaint. They are part of Raphael's cause of action which he may not be split. Hence, when the warehouseman asks the court to ascertain who among the defendants are entitled to the goods, he also has the right to ask who should pay for the storage fees and other related expenses. The filing of the interpleader is available as a ground for dismissal of the second case. (Sec. 4, Rule 2.) It is akin to a compulsory counterclaim which, if not set up, shall be barred. (Sec. 2, Rule 9, ; *Arreza v. Diaz*, G.R. No. 133113, August 30, 2001)

Actions; Derivative Suit vs. Class Suit (2005)

Distinguish a derivative suit from a class suit.

SUGGESTED ANSWER:

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

Actions; Independent Civil Actions (2005)

While cruising on a highway, a taxicab driven by Mans hit an electric post. As a result thereof, its passenger, Jovy, suffered serious injuries. Mans was subsequently charged before the Municipal Trial Court with reckless imprudence resulting in serious physical injuries. Thereafter, Jovy filed a civil action against Lourdes, the owner of the taxicab, for breach of contract, and Mans for quasi-delict. Lourdes and Mans filed a motion to dismiss the civil action on the ground of *litis pendentia*, that is, the pendency of the civil action impliedly instituted in the criminal action for reckless imprudence resulting in serious physical injuries. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

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

Actions; Intervention; Requisites (2000)

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

SUGGESTED ANSWER:

The requisites for intervention are:

- 1 Legal interest in the matter in a controversy; or
- 2 Legal interest in the success of either of the parties; or
- 1 Legal interest against both; or
- 2 So situated as to be adversely affected by a distribution or other disposition or property in the custody of the court or of an officer thereof.
- 3 Intervention will not unduly delay or prejudice the adjudication of the rights or original parties;
- 4 Intervenor's rights may not be fully protected in a separate proceedings.

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

Actions; Real Actions & Personal Actions (2006)

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

SUGGESTED ANSWER:

- a. REAL ACTIONS are actions affecting title to or possession of real property or an interest therein (*Fortune Motors, Inc. v. CA*, G. R. No. 76431, October 16, 1989; Rule 4, Sec. 1).
- b. All other actions are PERSONAL ACTIONS (Rule 4, Section 1) which include those arising from privity of contract.

Parties; Non-Joinder of an Indispensable Party; Remedy (2015)

Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annotated in the TCT, was not impleaded as defendant.

a.) Should the complaint be dismissed? (3%)

SUGGESTED ANSWER:

NO. The complaint should not be dismissed because the mere non-joinder of an indispensable party is not a ground for the dismissal of the action (Sec. 11, Rule 3, Rules of Court; *Republic v. Hon. Mangotara* [2010]).

b.) If the case should proceed to trial without Grieg being impleaded as a party to the case, what is his remedy to protect his interest? (2%)

SUGGESTED ANSWER:

If the case should proceed to trial without Grieg being impleaded as a party, he may intervene in the action (Sec. 1, Rule 19, Rules of Court).

He may also file a petition for annulment of judgment under Rule 47 of the Rules of Court.

In *Metrobank v. Hon. Floro Alejo* (2010), the Supreme Court held that in a suit to nullify an existing Torrens Certificate of Title (TCT) in which a real estate mortgage is annotated, the mortgage is an indispensable party. In such suit, a decision canceling the TCT and the mortgage annotation is subject to a petition for annulment of judgment, because the non-joinder of the mortgagee deprived the court of jurisdiction to pass upon the controversy."

Parties; Death of a Party; Effect (1998)

A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. In the

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

SUGGESTED ANSWER:

As counsel of C, I would move to set aside the writ of execution and the judgment for lack of jurisdiction and lack of due process in the same court because the judgment is void. If X had notified the court of B's death, the court would have ordered the substitution of the deceased by C, the sole heir of B. (*Sec. 16 of Rule 3*) The court acquired no jurisdiction over C upon whom the trial and the judgment are not binding. (**Ferreira vs. Ibarra Vda. de Gonzales, 104 Phil. 143; Vda. dela Cruz vs. Court of Appeals, 88 SCRA 695; Lawas vs. Court of Appeals, 146 SCRA 173.**) I could also file an action to annul the judgment for lack of jurisdiction because C, as the successor of B, was deprived of due process and should have been heard before judgment. (*Rule 47*)

ALTERNATIVE ANSWER:

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

Parties; Death of a Party; Effect (1999)

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

SUGGESTED ANSWER:

1. When the claim in a pending action is purely personal, the death of either of the parties extinguishes the claim and the action is dismissed.
2. When the claim is not purely personal and is not thereby extinguished, the party should be substituted by his heirs or his executor or administrator. (*Sec. 16, Rule 3*)
3. If the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner provided in the rules for prosecuting claims against the estate of a deceased person. (*Sec. 20, Rule 3*)

Parties; Death of a Party; Effect (1999)

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

- 1 Will you grant the motion? Explain. (2%)
- 2 Will your answer be the same if A died while the case is already on appeal to the Court of Appeals? Explain. (2%)
- 3 In the same case, what is the effect if B died before the RTC has rendered judgment? (2%)

SUGGESTED ANSWER:

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

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

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

Parties; Death of the Defendant (2000)

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

- 1 Is the death of PJ a valid ground to dismiss the money claim of Atty. ST in Civil Case No. 456? Explain. (2%)
- 2 Will your answer be the same with respect to the real property being claimed by Atty. ST in Civil Case No. 456? Explain (2%)

SUGGESTED ANSWER:

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

2 Yes, my answer is the same. An action to recover real property in any event survives the death of the defendant. (*Sec. 1, Rule 87, Rules of Court*). However, a favorable judgment may be enforced in accordance with Sec. 7(b) Rule 39 (1997 Rules of Civil Procedure) against the executor or administrator or successor in interest of the deceased.

Venue; Improper Venue; Compulsory Counterclaim (1998)

A, a resident of Lingayen, Pangasinan sued X, a resident of San Fernando La Union in the RTC (RTC) of Quezon City for the collection of a debt of P1 million. X did not file a motion to dismiss for improper venue but filed his answer raising therein improper venue as an affirmative defense. He also filed a counterclaim for P80,000 against A for attorney's fees and expenses for litigation. X moved for a preliminary hearing on said affirmative defense. For his part, A filed a motion to dismiss the counterclaim for lack of jurisdiction. 1 Rule on the affirmative defense of improper venue. [3%]

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

SUGGESTED ANSWER:

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

be pleaded as an affirmative defense in the answer. (Sec. 6 of Rule 16.)

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

Venue; Personal Actions (1997)

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

his complaint to collect the loan from X in Angeles City? b) Suppose the parties did not stipulate in the loan agreement as to the venue, where can A file his complaint against X? c) Suppose the parties stipulated in their loan agreement that "venue for all suits arising from this contract shall be the courts in Quezon City," can A file his complaint against X in Pasay City?

SUGGESTED ANSWER:

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

(b) If the parties did not stipulate on the venue, A can file his complaint either in Angeles City where he resides or in Pasay City where X resides, (Id). (c) Yes, because the wording of the stipulation does not make Quezon City the exclusive venue. (*Philbanking v. Tensuan*. 230 SCRA 413; *Unimasters Conglomeration, Inc. v. CA*. CR-119657, Feb. 7, 1997)

ALTERNATIVE ANSWER:

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

Venue; Real Actions (2008)

(a) Angela, a resident of Quezon City, sued Antonio, a resident of Makati City before the RTC of Quezon City for the reconveyance of two parcels of land situated in Tarlac and Nueva Ecija, respectively. May her action prosper?

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Venue; Real Actions (2012)

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

SUGGESTED ANSWER:

A should file the case in Marikina, the place where the real property subject matter of the case is situated. An action for specific performance would still be considered a real action where it seeks the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance of real property. (*Gochan v. Gochan*, 423 Phil. 491, 501 (2001); *Copioso vs. Copioso*, 391 SCRA 325 (2002). Since it is a real action, the venue must be in the place where the real property involved or a portion thereof, is situated. (Rule 4, Sec. 1, Rules of Court).

Venue; Not Jurisdictional (2015)

A law was passed declaring Mt. Karbungko as a protected area since it was a major watershed. The protected area covered a portion located in Municipality A of the Province I and a portion located in the City of Z of Province II. Maingat is the leader of Samahan ng Tagapag-ingat ng Karbungko (STK), a people's organization. He learned that a portion of the mountain located in the City of Z of Province II was extremely damaged when it was bulldozed and leveled to the ground, and several trees and plants were cut down and burned by workers of World Pleasure Resorts, Inc. (WPRI) for the construction of a hotel and golf course. Upon inquiry with the project site engineer if they had a permit for the project, Maingat was shown a copy of the Environmental Compliance Certificate (ECC) issued by the DENR-EMB, Regional Director (RD-DENR-EMB). Immediately, Maingat and STK filed a petition for the issuance of a writ of continuing mandamus against RD-DENR-EMB and WPRI with the RTC of Province I, a designated environmental court, as the RD-DENR-EMB negligently issued the ECC to WPRI.

On scrutiny of the petition, the court determined that the area where the alleged actionable neglect or omission subject of the petition took place in the City of Z of Province II, and therefore cognizable by the RTC of Province II. Thus, the court dismissed outright the petition for lack of jurisdiction.

a.) Was the court correct in motu proprio dismissing the petition? (3%)

Assuming that the court did not dismiss the petition, the RD-DENR-EMB in his Comment moved to dismiss the petition on the ground that petitioners failed to appeal the issuance of the ECC and to exhaust administrative remedies provided in the DENR Rules and Regulations.

b.) Should the court dismiss the petition? (3%)

SUGGESTED ANSWER:

a.) NO. The court was not correct in motu proprio dismissing the petition. While it appears that the alleged actionable neglect or omission took place in the City of Z of Province II and therefore cognizable by the RTC of Province II, nonetheless, venue is not jurisdictional, and it can be waived in a special civil action for continuing mandamus (*Dolot v. Paje* [2013]).

b.) YES, the court should dismiss the petition because the proper procedure to question a defect in an ECC is to follow the DENR administrative appeal process in accordance with the doctrine of exhaustion of administrative remedies (*Dolot v. Hon. Paje* [2013]; *Paje v. Casiño* [2015]).

ALTERNATIVE ANSWER:

b.) NO, the Court should not dismiss the petition because the doctrine of administrative remedies finds no application when the matter is of extreme urgency that may cause great and irreparable damage to the environment involving strong public interest. After all, the court may suspend the rules of procedure in order to achieve substantial justice, and to address urgent and paramount State interests vital to the life of our nation (*Boracay Foundation, Inc. v. Province of Aklan* [2012]; *Paje v. Casiño* [2015]).

Venue; Alternative Dispute Resolution (2015)

Water Builders, a construction company based in Makati City, entered into a construction agreement with Super Powers, Inc., an energy company based in Manila, for the construction of a mini hydro electric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former P 10 million, the full amount of the down payment paid, and P2 million by way of liquidated damages. Dissatisfied with the CIAC's judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City. Should Water Builders' petition be dismissed? (3%)

SUGGESTED ANSWER:

YES, the petition should be dismissed on the ground of improper venue. Under the Special Rules of Court on Alternative Dispute Resolution (ADR), the petition shall be filed with the Regional Trial Court having jurisdiction over the place where one of the parties is doing business, where any of the parties reside or where the arbitration proceedings were conducted (Rule 11.3 - A.M. No. 07-11-08-SC); hence, the venue of the petition to vacate the arbitral award of Water Builders is improperly laid.

ANOTHER SUGGESTED ANSWER:

YES, the petition should be dismissed because venue is not included among the valid grounds to vacate an arbitral award. The grounds to vacate arbitral award are:

- The arbitral award was procured through corruption, fraud or other undue means;
- There was evident partiality or corruption in the arbitral tribunal or any of its members;
- The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of

any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;

d. One or more of the arbitrators was disqualified to act as such under the law and wilfully refrained from disclosing such disqualification; or

e. The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or

b. A party to arbitration is a minor or a person judicially declared to be incompetent.

ALTERNATIVE ANSWER:

YES, the petition should be dismissed.

Waters Builders should have filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals because R.A. 9285, or the Alternative Dispute Resolution Act of 2004, did not divest the Court of Appeals of its jurisdiction to review the decisions or award of the CIAC (*J Plus Asia Development Corp. v. Utility Assurance Corp.* [2013]).

Pleadings; Forum Shopping; Definition (2006)

What is forum shopping? (2.5%)

SUGGESTED ANSWER:

Forum shopping is the act of a party which consists of filing multiple suits, simultaneously or successively, for the purpose of obtaining a favorable judgment (**Leyson v. Office of the Ombudsman, G.R. No. 134990, April 27, 2000; Yulien v. CA, G.R. No. 131692, June 10, 1999; Chemphil Export & Import Corp. v. CA, G.R. Nos. 112438-39, December 12, 1995.**)

Pleadings; Forum-shopping (2014)

Mr. Humpty filed with the Regional Trial Court (RTC) a complaint against Ms. Dumpty for damages. The RTC, after due proceedings, rendered a decision granting the complaint and ordering Ms. Dumpty to pay damages to Mr. Humpty. Ms. Dumpty timely filed an appeal before the Court of Appeals (CA), questioning the RTC decision. Meanwhile, the RTC granted Mr. Humpty's motion for execution pending appeal. Upon receipt of the RTC's order granting execution pending appeal, Ms. Dumpty filed with the CA another case, this time a special civil action for certiorari assailing said RTC order. Is there a violation of the rule against forum shopping considering that two (2) actions emanating from the same case with the RTC were filed by Ms. Dumpty with the CA? Explain. (4%)

SUGGESTED ANSWER:

No. There is no violation of the rule against forum shopping. The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for certiorari; the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of litis

pendentia are present or where a final judgment in one case will amount to res judicata in the action under consideration. (Roberto S. Benedicto v. Manuel Lacson, G.R. No. 141508, [May 5, 2010]).

In *Philippines Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, G.R. No: 143933, [February 14, 2003], the Supreme Court held that one party may validly question a decision in a regular appeal and at the same time assail the execution pending appeal via certiorari without violating the rule against forum shopping. This is because the merits of the case will not be addressed in the Petition dealing with the execution and vice versa.

Since Ms. Dumpty merely filed a special civil action for certiorari, the same will not constitute a violation of the rules on forum shopping because the resolution or a favorable judgment thereon will not amount to res judicata in the subsequent proceedings between the same parties. (Roberto S. Benedict v. Manuel Lacson, G.R. No. 141508, [May 5, 2010]).

Pleadings; Certificate of Non-Forum Shopping (2000)

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

SUGGESTED ANSWER:

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

Pleadings; Forum Shopping; Certificate of Non-Forum Shopping (2009)

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of 19,700.

Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York. Brigido filed a motion to dismiss the complaint on the following grounds:

(c) The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document. (3%) Rule.

SUGGESTED ANSWER:

The third ground raised questioning the validity of the verification and certification of non-forum shopping for lack of certification from the Philippine Consulate in New York,

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

Pleadings; Certificate of Non-Forum Shopping; Effects; Lack of Certification (2006)

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

you resolve the motion? (5%)

SUGGESTED ANSWER:

If I were the judge, the motion should be denied after hearing because, as expressly provided in the Rules, failure to comply with the requirement of forum shopping is not curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case, without prejudice, unless otherwise provided (**Sec. 5, Rule 7, 1997 Rules of Civil Procedure**). However, the trial court in the exercise of its sound discretion, may choose to be liberal and consider the amendment as substantial compliance (**Great Southern Maritime Services Corp. v. Acuna, G.R. No. 140189, February 28, 2005; Chan v. RTC of Zamboanga del Norte, G.R. No. 149253, April 15, 2004; Uy v. Land Bank, G.R. 136100, July 24, 2000**).

Pleadings; Certificate of Non-Forum Shopping (2015)

Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 down payment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial, the court rendered judgment ordering Aldrin to pay all the installments due, the cancellation of Yuri's title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executory, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former.

Aldrin filed a "Petition for the Issuance of a Writ of Execution" with proper notice of hearing. The petition alleged, among others, that the decision had become final and executory and he is entitled to the issuance of the writ of execution as a matter of right. Neil filed a motion to dismiss the petition on the ground that it lacked the required certification against forum shopping.

a.) Should the court grant Neil's Motion to Dismiss? (3%)

Despite the issuance of the writ of execution directing Neil to execute the deed of sale in favor of Aldrin, the former obstinately refused to execute the deed.

b.) What is Aldrin's remedy? (2%)

SUGGESTED ANSWER:

a.) NO. The motion to dismiss should be denied because certification against forum shopping is only required in a complaint or initiatory pleading (Sec. 5, Rule 7, ROC; *Arquiza v. CA*[2005]). Since a petition for the issuance of a writ of execution is not an initiatory pleading, it does not require a certification against forum shopping.

(Note: The Committee recommends a liberal approach in checking the answer to Question VIII, should the examinees consider the Petition for the Issuance of a Writ of Execution an initiatory pleading or question the correctness of the Trial Court's decision. The contract with Aldrin is a contract to sell with the purchase price not fully paid, while that of Yuri is a perfected contract of sale, plus delivery of the public document and issuance of TCT, making Yuri the owner of the land).

b.) Aldrin may move for the issuance of a court order directing the execution of the Deed of Sale by some other person appointed by it.

Under Sec. 20, Rule 39 of the Rules of Court, if a judgment directs a party to execute a conveyance of land of personal property, or to deliver deeds or other documents, or to perform, any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form.

The phrase "some other person appointed by the court" may refer to the Branch Clerk of Court, Sheriff, or even the Register of Deeds, and their acts when done under such authority shall have the effect of having been done by Neil himself.

ALTERNATIVE ANSWER:

b.) Aldrin may also move that Neil be cited for contempt because of his obstinate refusal to comply with the judgment of the court to execute a Deed of Sale.

Pleadings; Counterclaim vs. Crossclaim (1999)

a) What is a counterclaim? (2%)

b) Distinguish a counterclaim from a crossclaim. (2%)

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

counterclaim could no longer be prosecuted in view of the dismissal of the main case. Is the stand of EE Industries sustainable? Explain. (2%)

SUGGESTED ANSWER:

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

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

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

Pleadings; Counterclaim; Against Counsel (2004)

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

SUGGESTED ANSWER:

Yes. The counterclaim of DY is compulsory because it is one which arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. (Sec. 7 of Rule 6). The motion to dismiss of plaintiffs counsel should not be granted because bringing in plaintiffs counsel as a defendant in the counterclaim is authorized by the Rules. Where it is required for the grant of complete relief in the determination of the counterclaim, the court shall order the defendant's counsel to be brought in since jurisdiction over him can be obtained. (Sec. 12 of Rule 6; *Aurelio v. Court of Appeals, 196 SCRA 674 [1994]*). Here, the counterclaim was against both the plaintiff and his lawyer who allegedly maliciously induced the plaintiff to file the suit.

ALTERNATIVE ANSWER:

The counterclaim should be dismissed because it is not a compulsory counterclaim. When a lawyer files a case for a client, he should not be sued on a counterclaim in the very same case he has filed as counsel. It should be filed in a separate and distinct civil action. (*Chavez v. Sandiganbayan, 193 SCRA 282 [1991]*)

Pleadings; Counterclaim (2007)

(d) A counterclaim is a pleading. (2%)

SUGGESTED ANSWER:

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

6, Rules of Court).

Pleadings; Counterclaim (2010)

Antique dealer Mercedes borrowed P1,000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

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

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

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

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

SUGGESTED ANSWER:

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

Since it was the plaintiff (Benjamin) who moved for the dismissal of his Complaint, and at a time when the defendant (Mercedes) had already filed her Answer thereto and with counterclaim, the dismissal of the counterclaim without conformity of the defendant-counterclaimant. The Revised Rules of Court now provides in Rule 17,

Sec. 2 thereof that "If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim x xxx."

(b) Suppose there was no Counterclaim and Benjamin's complaint was not dismissed, and judgment was rendered against Mercedes for P1,000,000. The judgment became final and executory and a writ of execution was correspondingly issued. Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at P1.2 million. The Sheriff, however, on request of Benjamin, seized Mercedes' 17th century ivory image of the La Sagrada Familia estimated to be worth over P1,000,000. Was the Sheriff's action in order? (3%)

SUGGESTED ANSWER:

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

the option, is the Sheriff authorized to levy on personal properties if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

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

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

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

Yes, C can file a third-party complaint against D because the loan of 100,000.00 was taken out of the P200,000 received from B and hence the loan seeks contribution in respect to his opponent's claim. (Sec. 11 of Rule 6)

Pleadings; Third Party Claim (2000)

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

SUGGESTED ANSWER:

If the real property has been attached, the remedy is to file a third-party claim. The third-party claimant should make an affidavit of his title to the property attached, stating the grounds of his title thereto, and serve such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party. (Sec. 14, Rule 57) The third-party claimant may also intervene or file a separate action to vindicate his claim to the property involved and secure the necessary reliefs, such as preliminary injunction, which will not be considered as interference with a court of coordinate jurisdiction. (Ong v. Tating, 149 SCRA 265, [1987])

Pleadings; Third-Party Claim (2005)

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

liable to A for the money judgment. Is the ruling of the court correct? Explain. (4%)

SUGGESTED ANSWER:

NO. C has not been properly impleaded as a party defendant. He cannot be held liable for the judgment against A without a trial. In fact, since no bond was filed by B, the sheriff is liable to C for damages. C can file a separate action to enforce his third-party claim. It is in that suit that B can raise the ground of fraud against C. However, the execution may proceed where there is a finding that the claim is fraudulent. (*Tanongan v. Samson*, G.R. No. 140889, May 9, 2002)

Amendment of Complaint; By Leave of Court (2003)

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

SUGGESTED ANSWER:

Yes, the present rules allow amendments substantially altering the nature of the cause of action. (Sec. 3, Rule 10, 1977 Rules of Civil Procedure; *Heirs of Marcelino Pagobo v. Court of Appeals*, 280 SCRA 870 [1997]). This should only be true, however, when the substantial change or alteration in the cause of action or defense shall serve the higher interests of substantial justice and prevent delay and equally promote the laudable objective of the rules which is to secure a just, speedy and inexpensive disposition of every action and proceeding. (*Valenzuela v. Court of Appeals*, 363 SCRA 779 [2001]).

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

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

SUGGESTED ANSWER:

No. The action filed on April 25, 2000 is still within the four-year prescriptive period which started to run on May 2, 1996. The amended complaint impleading the three legitimate children, though admitted on August 22, 2000 beyond the four-year prescriptive period, retroacts to the date of filing of the original complaint. Amendments impleading new defendants retroact to the date of the filing of the complaint because they do not constitute a new cause of action. (*Verzosa v. Court of Appeals*, 299 SCRA 100 [1998]). (Note: The four-year period is based on Article 285 of the Civil Code)

ALTERNATIVE ANSWER:

Under the 1997 Rules of Civil Procedure, if an additional defendant is impleaded in a later pleading, the action is commenced with regard to him on the date of the filing of such later pleading, irrespective of whether the motion for its admission, if necessary, is denied by the court. (Sec. 5 of Rule 1). Consequently, the action of X has prescribed with respect to the three (3) legitimate children of Y who are indispensable parties.

ANOTHER ALTERNATIVE ANSWER:

Under Article 175 of the Family Code, the action must be brought within the lifetime of X if the action is based on a record of birth or an admission of filiation in a public document or a private handwritten instrument signed by Y. In such case, the action of X has not prescribed. However, if the action is based on the open and continuous possession of the status of an illegitimate child, the action should have been brought during the lifetime of Y. In such case, the action of X has prescribed.

Amendment of Complaint; Matter of Right (2005)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

The motion to dismiss should be granted. Jurisdiction must be conferred by the contents of the original complaint. Amendments are not proper and should be denied where the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction on the court. (*Rosario v. Carandang*, G.R. No. L-7076, April 28, 1955) While a plaintiff is entitled to amend the complaint before a responsive pleading is served (Sec. 2, Rule 10, 1997 Rules of Civil Procedure; *Remington Industrial Sales Corporation v. Court of Appeals*, G.R. No. 133657, May 29, 2002), still, a complaint cannot be amended to confer jurisdiction on a court where there was none to begin with.

Amendment of Complaint (2004)

During trial, plaintiff was able to present, without objection on the part of defendant in an ejectment case, evidence showing that plaintiff served on defendant a written demand to vacate the subject property before the commencement of the suit, a matter not alleged or otherwise set forth in the

pleadings on file. May the corresponding pleading still be amended to conform to the evidence? Explain. (5%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Amendment of Complaint (2008)

Arturo lent P1M to his friend Robert on the condition that Robert execute a promissory note for the loan and a real estate mortgage over his property located in Tagaytay City. Robert complied. In his promissory note dated September 20, 2006, Robert undertook to pay the loan within a year from its date at 12% per annum interest. In June 2007, Arturo requested Robert to pay ahead of time but the latter refused and insisted on the agreement. Arturo issued a demand letter and when Robert did not comply, Arturo filed an action to foreclose the mortgage. Robert moved to dismiss the complaint for lack of cause of action as the debt was not yet due. The resolution of the motion to dismiss was delayed because of the retirement of the Judge.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

A supplemental complaint may be filed with leave of court to

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

Amendment of Complaint (2009)

Upon termination of the pre-trial, the judge dictated the pre-trial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

Answer; Defense; Specific Denial (2004)

In his complaint for foreclosure of mortgage to which was duly attached a copy of the mortgage deed, plaintiff PP alleged inter alia as follows: (1) that defendant DD duly executed the mortgage deed, copy of which is Annex "A" of the complaint and made an integral part thereof; and (2) that to prosecute his complaint, plaintiff contracted a lawyer, CC, for a fee of P50,000. In his answer, defendant alleged, inter alia, that he had no knowledge of the mortgage deed, and he also denied any liability for plaintiffs contracting with a lawyer for a fee. Does defendant's answer as to plaintiff's allegation

no. 1 as well as no. 2 sufficiently raise an issue of fact? Reason briefly. (5%)

SUGGESTED ANSWER:

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

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

X files a complaint in the RTC for the recovery of a sum of money with damages against Y. Y files his answer denying liability under the contract of sale and praying for the dismissal of the complaint on the ground of lack of cause of action because the contract of sale was superseded by a contract of lease, executed and signed by X and Y two weeks after the contract of sale was executed. The contract of lease was attached to the answer. X does not file a reply. What is the effect of the non-filing of a reply? Explain. (3%)

SUGGESTED ANSWER:

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

Default (2000)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Default (2001)

Mario was declared in default but before judgment was rendered, he decided to file a motion to set aside the order of default. a) What should Mario state in his motion in order

to justify the setting aside of the order of default? (3%) b) In what form should such motion be? (2%)

SUGGESTED ANSWER:

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

Default; Order of Default; Effects (1999)

1 When may a party be declared in default? (2%)

2 What is the effect of an Order of Default? (2%)

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

SUGGESTED ANSWER:

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

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

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

Default; Remedies; Party Declared in Default (1998)

What are the available remedies of a party declared In default:

1 Before the rendition of judgment; [1%]

2 After judgment but before its finality; and [2%]

3 After finality of judgment? [2%]

SUGGESTED ANSWER:

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

1. BEFORE THE RENDITION OF JUDGMENT

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

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

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

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

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

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

Default; Remedies; Party Declared in Default (2006)

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

SUGGESTED ANSWER:

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

1. BEFORE the judgment in default becomes final and executory: Motion for Reconsideration under Rule 37; Motion for New Trial under Rule 37; and

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

- a. Petition for Relief under Rule 38;
- b. Annulment of Judgment under Rule 47; and
- c. Certiorari under Rule 65. **(See Talsan Enterprises, Inc. v. Baliwag Transit, Inc., G.R. No. 126258, July 8, 1999)**

Default; Remedies; Substantial Compliance (2000)

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

SUGGESTED ANSWER:

Yes, there is substantial compliance with the rule. Although the motion is unverified, the answer attached to the motion is verified. The answer contains what the motion to lift the order of default and the affidavit of merit should contain, which are the reasons of movant's failure to answer as well as his defenses. **(Sec. 3 [b] of Rule 9, 1997 Rules of Civil Procedure; Cf. Citibank, N.A. v. Court of Appeals, 304 SCRA 679, [1999]; Consul v. Consul, 17 SCRA 667, 671 [1966]; Tolentino v. Carlos, 66 Phil, 1450, 143-144 [1938]; Nasser v. Court of Appeals, 191 SCRA 783 [1992]).**

Default; Remedies (2013)

Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie's office secretary, Esther, received the summons at Charlie's office. Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence ex parte. Ten days later, Charlie filed his verified

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

SUGGESTED ANSWERS:

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

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

- 2) If judgement has already been rendered when he discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37;

- 3) If he discovered the default after the judgement has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

- 4) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. **(B. D. Longspan Builders, Inc. v. R. S. Ampeloquio Realty Development, G. R. No. 169919, September 11, 2009)** [NOTE: There are additional remedies to address judgments by default: Motion for Reconsideration (Rule 37); Annulment of Judgment (Rule 47) and Petition for Certiorari (Rule 65)].

ALTERNATIVE ANSWER:

The court committed grave abuse of discretion when it declared the defending party in default despite the latter's filing of an Answer. Thus, a petition for certiorari under Rule 65 is the proper remedy. In *San Pedro Cineplex Properties v. Heirs of Manuel HumadaEnano*, G. R. No. 190754, November 17, 2010, the Supreme Court held that where the answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted. Thus, it was error to declare the defending party in default after the Answer was filed **(See Sablas v. Sablas, G. R. No. 144568, July 3, 2007)**. After all, the defect in the service of summons was cured by Charlie's filing of a verified answer raising only the defense of full payment. The belated filing of the verified Answer amounts to voluntary submission to the jurisdiction of the court and waiver of any defect in the service of summons.

Bill of Particulars (2003)

1 When can a bill of particulars be availed of?

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

SUGGESTED ANSWER:

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

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

Bill of Particulars (2008)

Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Summons

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

SUGGESTED ANSWER:

The RTC-Manila should deny the motion because it is in violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and income, outside the province or city in which such obligor resides. In this case the judgment obligor resides in Bulacan. (Rule 39, sec.36).

Summons (1999)

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

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

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

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

SUGGESTED ANSWER:

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

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

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

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

Summons; Substituted Service (2004)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Summons; Substituted Service (2013)

Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5 Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie's office secretary, Esther, received the summons at Charlie's office. Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence ex parte. Ten days later, Charlie filed his verified answer, raising the defense of full payment with interest.

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

SUGGESTED ANSWERS:

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

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

Otherwise stated, it is only when the defendant cannot be served personally within a reasonable time that a substituted service may be made. Impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the fact that such efforts failed. This statement should be made in the proof of service (*Galura v. Math-Agro Corporation*, GR NO. 167230, August 14, 2009, 1st Division, Carpio J).

ALTERNATIVE ANSWER:

Yes, If earnest were exerted to serve the summons in person but the same proved futile, then substituted service through defendant's secretary is valid. In *Gentle Supreme Philippines Inc v. Ricardo Consulta*, GR. No. 183182, September 1, 2010, the Supreme Court held that it is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge. Consequently, the substituted service of summons to the defendant's secretary in the office is valid.

Summons; Validity of Service; Effects (2006)

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

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

ALTERNATIVE ANSWER:

The summons was not validly served on Carlos because it was served on his secretary and the requirements for substituted service have not been followed, such as a showing that efforts have been exerted to serve the same on Carlos and such attempt has failed despite due diligence (*Manotoc v. CA*, G.R. No. 130974, August 16, 2006; *AngPing v. CA*, G.R. No. 126947, July 15, 1999).

ALTERNATIVE ANSWER:

Service of Summons on Carlos was validly served upon him if the Return will show that it was done through Substituted Service because the defendant can not be served personally within a reasonable time despite diligent efforts made to serve the summons personally. Linda, the secretary of defendant Carlos, must likewise be shown to be a competent

person in charge of defendant's office where summons was served (*Sec. 7, Rule 14*).

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

ALTERNATIVE ANSWER:

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

ALTERNATIVE ANSWER:

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

Summons; By Publication (2008)

Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister MaryRose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the Publication of the summons for three weeks in a local tabloid, *Bulgar*. Linda, an OFW vacationing in the Philippines, saw the summons in *Bulgar* and brought a copy of the tabloid when she returned to Singapore. Linda showed the tabloid and the page containing the summons to Mary Rose, who said, "Yes I know, my kumara Anita scanned and e-mailed that page of *Bulgar* to me!" Did the court acquire jurisdiction over Mary Rose?

SUGGESTED ANSWER:

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

Summons; Served by Email (2009)

TRUE or FALSE. Summons may be served by mail.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Summons; Service of Summons by Facsimile (2015)

Circe filed with the RTC a complaint for the foreclosure of real estate mortgage against siblings Scylla and Charybdis, co-owners of the property and cosignatories to the mortgage deed. The siblings permanently reside in Athens, Greece. Circe tipped off Sheriff Pluto that Scylla is on a balikbayan trip and is billeted at the Century Plaza Hotel in Pasay City. Sheriff Pluto went to the hotel and personally served Scylla the summons, but the latter refused to receive summons for Charybdis as she was not authorized to do so. Sheriff Pluto

requested Scylla for the email address and fax number of Charybdis which the latter readily gave. Sheriff Pluto, in his return of the summons, stated that *"Summons for Scylla was served personally as shown by her signature on the receiving copy of the summons. Summons on Charybdis was served pursuant to the amendment of Rule 14 by facsimile transmittal of the summons and complaint on defendant's fax number as evidenced by transmission verification report automatically generated by the fax machine indicating that it was received by the fax number to which it was sent on the date and time indicated therein."*

Circe, sixty (60) days after her receipt of Sheriff Pluto's return, filed a Motion to Declare Charybdis in default as Charybdis did not file any responsive pleading.

a.) Should the court declare Charybdis in default? (2%)

SUGGESTED ANSWER:

NO, the Court should not declare Charybdis in default because there was no proper service of summons. Section 12, Rule 14 of the Rules of Court applies only to a foreign private juridical entity that is not registered in the Philippines and has no resident agent in the country, and not to individuals (A.M. No. 11-3-6-SC, March 15, 2011). The service of summons by facsimile under said rule is, therefore, defective.

A foreclosure of real estate mortgage is a quasi in rem action, thus, the court can render a judgment as long as it has jurisdiction over the *res* and any of the modes of extra-territorial service of summons under Sec. 15 of Rule 14 is complied with prior leave of court. There is, unfortunately, no showing in the problem that a prior leave of court was obtained before resorting to extra-territorial service of summons; hence the service of summons is defective.

Scylla seasonably filed her answer setting forth therein as a defense that Charybdis had paid the mortgage debt.

b.) On the premise that Charybdis was properly declared in default, what is the effect of Scylla's answer to the complaint? (2%)

SUGGESTED ANSWER:

Assuming that Charybdis was properly declared in default, the court shall try the case against all the defendants upon the Answer filed by Scylla, and render judgment upon the evidence presented (Sec. 3 (c), Rule 9, Rules of Court).

Motion (2007)

TRUE OR FALSE. (c) A motion is a pleading. (2%)

SUGGESTED ANSWER:

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

Motions; Motion for Extension of Time; Ex Parte Hearing (2002)

The plaintiff sued the defendant in the RTC for damages allegedly caused by the latter's encroachment on the plaintiff's lot. In his answer, the defendant denied the plaintiff's claim and alleged that it was the plaintiff who in fact had encroached on his (defendant's) land. Accordingly, the defendant counterclaimed against the plaintiff for damages resulting from the alleged encroachment on his lot. The plaintiff filed an ex parte motion for extension of time to answer the defendant's counterclaim, but the court denied

the motion on the ground that it should have been set for hearing. On the defendant's motion, therefore, the court declared the plaintiff in default on the counterclaim. Was the plaintiff validly declared in default? Why? (5%)

SUGGESTED ANSWER:

No, the plaintiff was not validly declared in default. A motion for extension of time to file an answer may be filed ex parte and need not be set for hearing. [*Amante vs. Sunga*, 64 SCRA 192 (1975)].

ALTERNATIVE ANSWER:

The general rule is that a counterclaim must be answered within ten (10) days from service. (Rule 11, sec. 4). However, a counterclaim that raises issues which are deemed automatically joined by the allegations of the Complaint need not be answered. [*Gojo v. Goyala*, 35 SCRA 557 (1970)].

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

Motion to Dismiss; Res Judicata; Bar by Prior Judgment vs. Conclusiveness of Judgment (1997)

Distinguish Bar by prior judgment from conclusiveness of judgment

SUGGESTED ANSWER:

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

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

Motion to Dismiss; Res Judicata (2000)

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

SUGGESTED ANSWER:

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

(b) The Essential Requisites of Res Judicata are:

- 1 the judgment or order rendered must be final;
- 2 the court rendering the same must have jurisdiction of the subject matter and of the parties;
- 3 it must be a judgment or order on the merits; and
4. there must be between the two cases identity of parties, identity of subject matter, and identity of causes of action. (*San Diego v. Cardona*, 70 Phil, 281 [1940])

Motion to Dismiss; Res Judicata; Bar by Prior Judgment (2002)

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

SUGGESTED ANSWER:

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

[Pagsisihan v. Court of Appeals, 95 SCRA 540 (1980) and other cases].

Motion to Dismiss; Lack of Jurisdiction; Proper Action of the Court (2004)

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

SUGGESTED ANSWER:

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

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

Subpoena; Viatory Right of Witness (2009)

The viatory right of a witness served with a subpoena ad testificandum refers to his right not to comply with the subpoena.

SUGGESTED ANSWER:

FALSE. The viatory right of a witness, embodied in Sec. 10,

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

Discovery; Modes of Discovery (2000)

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

SUGGESTED ANSWER:

Five modes of discovery under the Rules of Court are:

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

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

3 ADMISSION BY ADVERSE PARTY. At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document or of the truth of any material and relevant matter of fact. (*Sec. 1, Rule 26, 1997 Rules of Civil Procedure*.)

4. PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS. Upon motion of any party showing good cause therefore, a court may order any party to produce and permit the inspection and copying or photographing of any designated documents, etc. or order any party to permit entry upon designated land or property for inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. (*Sec. 1, Rule 27, 1997 Rules of Civil Procedure*.)

Discovery; Modes; Refusal to Comply (2010)

On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legaspi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

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

SUGGESTED ANSWER:

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

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

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

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

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

Discovery; Modes; Production and Inspection (2002)

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

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

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

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

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

Discovery; Production and Inspection (2009)

Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products.

To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC. Resolve BTC's motion with reasons. (3%)

SUGGESTED ANSWER:

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

Pennswell, Inc., 540 SCRA 215 [2007]).

Discovery; Modes; Subpoena Duces Tecum (1997)

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

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

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

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

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

Alternative Dispute Resolution (2012)

Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

SUGGESTED ANSWER:

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

Demurrer to Evidence (2001)

Carlos filed a complaint against Pedro in the RTC of Ozamis City for the recovery of the ownership of a car. Pedro filed his answer within the reglementary period. After the pre-trial and actual trial, and after Carlos has completed the presentation of his evidence, Pedro moved for the dismissal of the complaint on the ground that under the facts proven and the law applicable to the case, Carlos is not entitled to the ownership of the car. The RTC granted the motion for dismissal. Carlos

appealed the order of dismissal and the appellate court reversed the order of the trial court. Thereafter, Pedro filed a motion with the RTC asking the latter to allow him to present his evidence. Carlos objected to the presentation of evidence by Pedro. Should the RTC grant Pedro's motion to present his evidence? Why? (5%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Demurrer to Evidence (2009)

After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurrer to evidence with leave of court. the prosecution was allowed to comment thereon. Thereafter, the court granted the demurrer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurrer was not in accord with law and jurisprudence, will the motion prosper?

SUGGESTED ANSWER:

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

Demurrer; Civil Case vs. Criminal Case (2003)

Compare the effects of a denial of demurrer to evidence in a civil case with those of a denial of demurrer to evidence in a criminal case. 4%

SUGGESTED ANSWER:

In a civil case, the defendant has the right to file a demurrer to evidence without leave of court. If his demurrer is denied, he has the right to present evidence. If his demurrer is granted and on appeal by the plaintiff, the appellate court reverses the order and renders judgment for the plaintiff, the defendant loses his right to present evidence. (Rule 33). In a criminal case, the accused has to obtain leave of court to file a demurrer to evidence. If he obtains leave of court and his demurrer to evidence is denied, he has the right to present evidence in his defense. If his demurrer to evidence is granted, he is acquitted and the prosecution cannot appeal. If the accused does not obtain leave of court and his demurrer to evidence is denied, he waives his right to present evidence and the case is decided on the basis of the evidence for the prosecution. The court may also dismiss the action on the ground of insufficiency of the evidence on its own initiative after giving the prosecution the opportunity to be heard. (Sec. 23 of Rule 119)

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

(a) Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (5%)

SUGGESTED ANSWER:

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

- (1) In criminal cases, demurrer to the evidence requires leave of court, otherwise, the accused would lose his right to present defense evidence if filed and denied; in civil cases, no leave of court is required for filing such demurrer.
- (2) In criminal cases, when such demurrer is granted, the dismissal of the case is not appealable inasmuch as the dismissal would amount to an acquittal, unless made by a court acting without or in excess of jurisdiction; in civil cases, when such demurrer is granted, the dismissal of the case can be appealed by the plaintiff.
- (3) In criminal cases, the accused loses his right to present

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

DEMURRER TO EVIDENCE; APPLICABILITY TO SPECIAL PROCEEDINGS (2015)

Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence. Ernie's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

a.) Was Ernie's counsel's objection proper? (2%)

SUGGESTED ANSWER:

NO. The Rule on demurrer to evidence is applicable to Special Proceedings (*Matute v. CA* [1969]). Moreover, under Sec. 2, Rule 72 of the Rules of Court, in the absence of special rules, the rules provided for in ordinary actions shall be applicable, as far as practicable, to special proceeding."

b.) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2%)

SUGGESTED ANSWER:

If the order for the conduct of physical and mental examination is issued as a mode of discovery and Ernest defies the said order, the court cannot validly order his arrest (Sec. 3(d), Rule 29 of the Rules of Court).

Pre-Trial; Requirements (2001)

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

SUGGESTED ANSWER:

After the filing of the answer of Juan, the PLAINTIFF has the duty to promptly move ex parte that the case be set for pre-trial. (Sec. 1, Rule 18). The reason is that it is the plaintiff who knows when the last pleading has been filed and it is the plaintiff who has the duty to prosecute.

ALTERNATIVE ANSWER:

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

Trial; Court of Appeals as Trial Court (2008)

Give at least three instances where the Court of Appeals may act as a trial court?

SUGGESTED ANSWER:

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

- (1) In annulment of judgments (Sec. 5 & 6, Rule 47)
- (2) When a motion for new trial is granted by the Court of Appeals (Sec. 4, Rule 53)
- (3) A petition for Habeas Corpus shall be set for hearing

9Sec. 12, Rule 102)

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

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

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

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

Judgment; Execution pending Appeal (2002)

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

SUGGESTED ANSWER:

No, because awards for moral and exemplary damages cannot be the subject of execution pending appeal. The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Liabilities for moral and exemplary damages, as well as the exact amounts remain uncertain and indefinite pending resolution by the Court of Appeals or Supreme Court. [RCPI v. Lantin, 134 SCRA 395 (1985); International School, Inc. v. Court of Appeals, 309 SCRA 474 (1999)].

ALTERNATIVE ANSWER:

Yes, because only moral and exemplary damages are awarded in the judgment and they are not dependent on other types of damages. Moreover, the motion for execution was filed while the court had jurisdiction over the case and was in possession of the original record. It is based on good reason which is the imminent insolvency of the defendant. (Rule 39, sec. 2)

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

Cresencio sued Dioscoro for collection of a sum of money. During the trial, but after the presentation of plaintiff's evidence, Dioscoro died. Atty. Cruz, Dioscoro's counsel, then filed a motion to dismiss the action on the ground of his client's death. The court denied the motion to dismiss and, instead, directed counsel to furnish the court with the names and addresses of Dioscoro's heirs and ordered that the designated administrator of Dioscoro's estate be substituted as representative party.

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

SUGGESTED ANSWER:

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

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

Judgment; Execution; Stay (2009)

Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgement in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

NO. The Court of Appeals is not correct. The dismissal of the appeal is wrong, because the execution of the RTC judgment is only in respect of the eviction of the defendant from the leased premises. Such execution pending appeal has no effect on the merits of the ejectment suit which still has to be resolved in the pending appeal. Rule 70, Sec. 21 of the Rules provides that the RTC judgment against the defendant shall be immediately executory, "without prejudice to a further appeal" that may be taken therefrom (Uy vs. Santiago, 336 SCRA 680 [2000]).

Judgment; Execution; Enforcement After the Lapse of 5 years (1997)

A, a resident of Dagupan City, secured a favorable judgment in an ejectment case against X, a resident of Quezon City, from the MTC of Manila. The judgment, entered on 15 June 1991, had not as yet been executed. a) In July 1996, A decided to enforce the judgment of the MTC of Manila. What is the procedure to be followed by A in enforcing the judgment? b) With what court should A institute the proceedings?

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

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

Judgment; Execution; Enforcement by Action After the Lapse of 5 Years (2007)

(b) A files a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines, seven years later, A discovers that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

SUGGESTED ANSWER:

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

Judgments; Unsatisfied Writ of Execution; Examination of Judgment Obligor (2002)

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

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

SUGGESTED ANSWER:

The RTC-Manila should deny the motion because it is in violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and income, outside the province or city in which such obligor resides. In this case, the judgment obligor resides in Bulacan. (Rule 39, sec.36).

Judgment; Conclusive Between Parties & Their Successors-in-Interest (2008)

Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

After trial, the court rendered judgment ordering Roscoe to reconvey the entire southern half to Salvio. The judgment

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

SUGGESTED ANSWER:

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

However, Nina is a privy or a successor in interest and is bound by the judgment even if she is not a party to the case (Sec. 19, Rule 3, 1997 Rules of Civil Procedure; *Cabresos vs. Tiro*, 166 SCRA 400 [1998]). A judgment is conclusive between the parties and their successors-in-interest by title subsequent to the case (Sec. 47, Rule 39, 1997 Rules of Civil Procedure).

Judgment; Enforcement; Foreign Judgment (2005)

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

SUGGESTED ANSWER:

Article 1144 of the Civil Code which requires that an action upon a judgment (though without distinction) must be brought within 10 years from the time the right of action accrues, does not apply to an action filed in the Philippines to enforce a foreign judgment. While we can say that where the law does not distinguish, we should not distinguish, still the law does not evidently contemplate the inclusion of foreign judgments. A local judgment may be enforced by motion within five years and by action within the next five years. (Rule 39) That is not the case with respect to foreign judgments which cannot be enforced by mere motion.

ALTERNATIVE ANSWER:

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

Judgment; Foreign Judgments; Foreign Arbitral Award (2007)

(a) What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

SUGGESTED ANSWER:

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

In case of judgment upon a specific thing, the judgment is

conclusive upon the title to the thing, unless otherwise repelled by evidence of lack of jurisdiction, want of due notice to the party, collusion, fraud, or clear mistake of law or fact (Rule 39, Sec. 48 [a], Rules of Court); and In case of judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by subsequent title, unless otherwise repelled by evidence on grounds above stated (Rule 39, Sec. 48 [b], Rules of Court).

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

Judgment; Summary Judgment; Partial Summary Judgments (2004)

After defendant has served and filed his answer to plaintiffs complaint for damages before the proper RTC, plaintiff served and filed a motion (with supporting affidavits) for a summary judgment in his favor upon all of his claims. Defendant served and filed his opposition (with supporting affidavits) to the motion. After due hearing, the court issued an order (1) stating that the court has found no genuine issue as to any material fact and thus concluded that plaintiff is entitled to judgment in his favor as a matter of law except as to the amount of damages recoverable, and (2) accordingly ordering that plaintiff shall have judgment summarily against defendant for such amount as may be

found due plaintiff for damages, to be ascertained by trial on October 7, 2004, at 8:30 o'clock in the morning. May defendant properly take an appeal from said order? Or, may defendant properly challenge said order thru a special civil action for certiorari? Reason. (5%)

SUGGESTED ANSWER:

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

PARTIAL SUMMARY JUDGMENTS are interlocutory. There is still something to be done, which is the trial for the adjudication of damages (**Province of Pangasinan v. Court of Appeals, 220 SCRA 726 [1993J; Guevarra v. Court of Appeals, 209 Phil. 241 [1983]**), but the defendant may properly challenge said order thru a special civil action for certiorari. (Sec. 1 [c] and last par. of Rule 41)

Judgment; Judgment on the Pleadings (1999)

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

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

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

SUGGESTED ANSWER:

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

b) No, a motion must be filed by the adverse party. (Sec. 1, Rule 34) The court cannot *motu proprio* render judgment on the pleadings. c) No, because even if B's answer to A's complaint for annulment of their marriage admits all the allegations therein contained, the material facts alleged in the complaint must always be proved. (Sec. 1 of Rule 34.)

ANOTHER ANSWER:

c. No. The court shall order the prosecutor to investigate whether or not a collusion between the parties exists, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated. (Sec. 3[E], Rule 9) Evidence must have to be presented in accordance with the requirements set down by the Supreme Court in **Republic vs. Court of Appeals and Molina (268 SCRA 198.)**

Judgment; Judgment on the Pleadings (2005)

In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex "A" thereof. In his unverified answer, the defendant denied the allegation concerning the sale of the property in

question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof. Is it proper for the court to render judgment without trial? Explain. (4%)

SUGGESTED ANSWER:

Defendant cannot deny the sale of the property for lack of knowledge or information sufficient to form a belief as to the truth thereof. The answer amounts to an admission. The defendant must aver or state positively how it is that he is

ignorant of the facts alleged. (**Phil, Advertising Counselors, Inc. v. Revilla, G.R. No. L-31869, August 8, 1973; Sec. 10, Rule 8**)

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

Judgment; Judgment on the Pleadings (2009)

Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1M, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5M.

Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5M. at the pre-trial, Modesto marked and identified Ernesto's promissory note. He also marked and identified receipts covering payments he made to Ernesto, to the extent of P0.5M, which Ernesto did not dispute.

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

SUGGESTED ANSWER:

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

On the other hand, Ernesto's motion for summary judgment may be granted.

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

ALTERNATIVE ANSWER:

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

Likewise, Ernesto's motion for summary judgment should be denied because there is an issue of fact – the alleged coercion – raised by Ernesto which he has yet to prove in a

trial on its merits. It is axiomatic that summary judgment is not proper or valid when there is an issue of fact remaining which requires a hearing. And this is so with respect to the coercion alleged by Ernesto as his defense, since coercion is not capable of being established by documentary evidence.

Judgment; Judgment on the Pleadings (2012)

Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

SUGGESTED ANSWER:

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

Judgment; Judgment on the Pleadings (2015)

Plaintiff sued defendant for collection of P 1 million based on the latter's promissory note. The complaint alleges, among others:

- 1) Defendant borrowed P 1 million from plaintiff as evidenced by a duly executed promissory note;
- 2) The promissory note reads:

"Makati, Philippines Dec. 30, 2014

For value received from plaintiff, defendant promises to pay plaintiff P 1 million, twelve (12) months from the above indicated date without necessity of demand.

Signed

Defendant"

A copy of the promissory note is attached as Annex "A."

Defendant, in his verified answer, alleged among others:

- 1) Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or
- 2) Defendant has paid the P 1 million claimed in the promissory note (Annex "A" of the Complaint) as evidenced by an "Acknowledgment Receipt" duly executed by plaintiff on January 30, 2015 in Manila with his spouse signing as witness.

A copy of the "Acknowledgment Receipt" is attached as Annex "1" hereof.

Plaintiff filed a motion for judgment on the pleadings on the ground that defendant's answer failed to tender an issue as the allegations therein on his defenses are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue.

a.) Is judgment on the pleadings proper? (3%)

Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts.

b.) Should the court grant defendant's motion for summary judgment? (3%)

SUGGESTED ANSWER:

a.) NO, the judgment on the pleadings is not proper. Judgment on the pleadings is proper only when the answer fails to tender an issue, or otherwise admits the material allegation of the adverse party's pleading (Sec. 1, Rule 34, Rules of Court).

When it appears, however, that not all the material allegations of the complaint were admitted in the answer, because some of them were either denied or disputed, and the defendant has set up certain special defenses which, if proven, would have the effect of nullifying plaintiff's main cause of action, judgment on the pleading cannot be rendered (Phil. National Bank v. Aznar [2011]).

Clearly, since the defendant's verified Answer specifically denied the execution of the promissory note, or raised the affirmative defense of payment, judgment on the pleadings is not proper.

b.) NO, the court should not grant the motion for summary judgment because the defense of payment is a genuine issue as to a material fact that must be resolved by the court upon presentation of evidence.

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A *genuine issue* is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived, or a false claim.

Relative thereto, when the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can be reasonably drawn from the evidence (Smart Communications v. Aldecoa [2013]).

Post-judgment Remedies (2014)

Mr. Avenger filed with the Regional Trial Court (RTC) a complaint against Ms. Bright for annulment of deed of sale and other documents. Ms. Bright filed a motion to dismiss the complaint on the ground of lack of cause of action. Mr. Avenger filed an opposition to the motion to dismiss. State and discuss the appropriate remedy/remedies under each of the following situations: (6%)

(A) If the RTC grants Ms. Bright's motion to dismiss and dismisses the complaint on the ground of lack of cause of action, what will be the remedy/remedies of Mr. Avenger?

SUGGESTED ANSWERS:

Mr. Avenger can choose any of the following remedies:

1. Mr. Avenger may file a Motion for Reconsideration. If denied, he could file an appeal to the Court of Appeals under Rule 41 since a dismissal based on lack of cause of action (under Rule 33) is appealable.

2. Mr. Avenger may file a Motion for reconsideration. If the same is denied, he could file a Petition for Certiorari under Rule 65 because a dismissal based on failure to state a cause of action is considered without prejudice and therefore an interlocutory order which cannot be a subject of an appeal under Rule 41 of the Rules of Court.

3. Mr. Avenger may file a Motion for Reconsideration.

If the same is denied, he can simply re-file the complaint because an Order granting a Motion to Dismiss based on failure to state a cause of action is without prejudice to the filing of another Complaint. (Section 5, Rule 16, Rules of Court)

Mr. Avenger may amend his Complaint, as a matter of right, since a Motion to Dismiss is not a responsive pleading. (Irene Marcos Araneta v. Court of Appeals, G.R. No. 154096, [August 22, 2008]).

(B) If the RTC denies Ms. Bright's motion to dismiss, what will be her remedy/remedies?

SUGGESTED ANSWERS:

1. Ms. Bright may file a Motion for Reconsideration. If the same is denied, she could file a special civil action for Certiorari under Rule 65 of the Rules of Court.

An Order denying a Motion to Dismiss is interlocutory because it does not finally dispose of the case, and, in effect, directs the case to proceed until final adjudication by the court. Hence, a special civil action on certiorari is the appropriate remedy. (Section 1, Rule 41, Rules of Court; Marmo v. Anacay, G.R. No. 182585, [November 27, 2009]).

2. Ms. Bright may file an Answer within the balance of the period from the filing of his Motion to Dismiss but not less than five (5) days, and raise affirmative defenses therein. (Sections 4 and 6, Rule 16, Rules of Court)

(C) If the RTC denies Ms. Bright's motion to dismiss and, further proceedings, including trial on the merits, are conducted until the RTC renders a decision in favor of Mr. Avenger, what will be the remedy/remedies of Ms. Bright?

SUGGESTED ANSWERS:

Ms. Bright may avail of the following remedies before the finality of the decision:

1. A motion for reconsideration; (Section 1 Rule 37);
2. A motion for new trial; (Section 1 Rule 37); and
3. Appeal (Rules 40, 41, 42, 43 and 45).

After the finality of the Decision, Ms. Bright can avail of the following:

1. Petition for relief (Rule 38)
2. Annulment of Judgment (Rule 47)
3. Petition for Certiorari (Rule 65)

Post-judgment Remedies; Motion for Reconsideration; Supplemental Pleadings (2000)

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

SUGGESTED ANSWER:

Yes, because the last day of filing a motion for reconsideration was March 15 if February had 28 days or March 16 if February had 29 days. Although the original

motion for reconsideration was defective because it lacked a notice of hearing, the defect was cured on time by its filing on March 15 of a supplemental pleading, provided that motion was set for hearing and served on the adverse party at least three (3) days before the date of hearing. (Sec. 4, Rule 15).

ALTERNATIVE ANSWER:

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

Post-judgment Remedies; Appeals; Mode of Appeals (2006)

Explain each mode of certiorari:

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Appeals; Modes of Appeal (2009)

On July 15, 2009, Atty. Manananggol was served copies of numerous unfavorable Judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following:

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

SUGGESTED ANSWER:

By notice of appeal, within 15 days from notice of

judgment or final order appealed from, to the Court of Appeals;

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

SUGGESTED ANSWER:

By verified petition for review on certiorari under Rule 45, with the modification that appellant may raise questions of fact or law or both, within 5 work days from date of notice of the judgment or final order to the Supreme Court (Sec. 19, A.M. No. 08-1-16-SC).

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Appeals (2012)

Where and how will you appeal the following:

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

The appeal should be filed with the Court of Appeals by filing a Notice of Appeal within 15 days from notice of judgment or final order appealed from. (Sec. 34, Batas Pambansa Bldg.

129, or the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7691, March 25, 1994).

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Appeals; Period of Appeal; Fresh Period Rule (2003)

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

(a) Is the court's denial of X's Motion to Withdraw Notice of Appeal proper?

(b) Is the court's denial of due course to A's appeal correct?

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

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

NOTE: To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a **FRESH PERIOD of 15 days** within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for a new trial or motion for

reconsideration. [Neypes et. al. vs. CA, G.R. No. 141524, September 14, 2005]

Post-judgment Remedies; Modes of Appeal; RTC to CA (1999)

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

B. XXX received a copy of the RTC decision on June 9, 1999; YYY received it on the next day, June 10, 1999. XXX filed a Notice of Appeal on June 15, 1999. The parties entered into a compromise on June 16, 1999. On June 13, 1999, YYY, who did not appeal, filed with the RTC a motion for approval of the Compromise Agreement. XXX changed his mind and opposed the motion on the ground that the RTC has no more jurisdiction. Rule on the motion assuming that the records have not yet been forwarded to the CA. (2%)

SUGGESTED ANSWER:

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

B. The contention of XXX that the RTC has no more jurisdiction over the case is not correct because at the time that the motion to approve the compromise had been filed, the period of appeal of YYY had not yet expired. Besides, even if that period had already expired, the records of the case had not yet been forwarded to the Court of Appeals. The rules provide that in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties. (Sec. 9, third par., Rule 41) The rules also provide that prior to the transmittal of the record, the court may, among others, approve compromises. (Sec. 9, fifth par., Rule 41) (Note: June 13, the date of the filing of the motion for approval of the Compromise Agreement, appears to be a clerical error)

Post-judgment Remedies; Modes of Appeal; RTC to CA (2009)

Distinguish the two modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals.

SUGGESTED ANSWER:

In cases decided by the Regional Trial Courts in the exercise of their original jurisdiction, appeals to the Court of Appeals shall be ordinary appeal by filing written notice of appeal indicating the parties to the appeal; specifying the judgment/final order or part thereof appealed from; specifying the court to which the appeal is being taken; and stating the material dates showing the timeliness of the appeal. The notice of appeal shall be filed with the RTC which rendered the judgment appealed from and copy thereof shall be served upon the adverse party within 15 days from notice of judgment or final order appealed from. But if the case admits of multiple appeals or is a special proceeding, a record on appeal is required aside from the written notice of appeal to perfect the appeal, in which case the period for appeal and notice upon the adverse party is not only 15 days but 30 days from notice of judgment or final order appealed from. The full amount of the appellate court docket fee and other lawful fees required must also be paid within the period for taking an appeal, to the clerk of the court which rendered the judgment or final order appealed from (Secs. 4 and 5, Rule 41, Rules of Court). The periods of

15 or 30 days above-stated are non-extendible.

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

Post-judgment Remedies; Modes of Appeal; RTC to CA (2014)

Goodfeather Corporation, through its President, Al Pakino, filed with the Regional Trial Court (RTC) a complaint for specific performance against Robert White. Instead of filing an answer to the complaint, Robert White filed a motion to dismiss the complaint on the ground of lack of the appropriate board resolution from the Board of Directors of Goodfeather Corporation to show the authority of Al Pakino to represent the corporation and file the complaint in its behalf. The RTC granted the motion to dismiss and, accordingly, it ordered the dismissal of the complaint. Al Pakino filed a motion for reconsideration which the RTC denied. As nothing more could be done by Al Pakino before the RTC, he filed an appeal before the Court of Appeals (CA). Robert White moved for dismissal of the appeal on the ground that the same involved purely a question of law and should have been filed with the Supreme Court (SC). However, Al Pakino claimed that the appeal involved mixed questions of fact and law because there must be a factual determination if, indeed, Al Pakino was duly authorized by Goodfeather Corporation to file the complaint. Whose position is correct? Explain. (4%)

SUGGESTED ANSWER:

Al Pakino is correct in claiming that the appeal involved mixed questions of fact and law.

There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts. On the other hand, there is a question of fact, when the doubt or difference arises as to the truth or falsehood of alleged facts. (Mirant Philippines Corporation v. Sario, G.R. No. 197598, [November 21, 2012]).

Since the complaint was dismissed due to the alleged lack of appropriate board resolution from the Board of Directors of Goodfeather Corporation, the appeal will necessarily involve a factual determination of the authority to file the Complaint for the said Corporation. Hence, the appeal before the Court of Appeals is correct.

ALTERNATIVE ANSWER:

Al Pakino and Robert White are incorrect. An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by the Rules to be appealable. It is well-settled that an order dismissing an action without prejudice cannot be a subject of appeal (Section 1, Rule 41, Rules of Court) Since a dismissal based on alleged lack of appropriate board resolution is considered without prejudice which cannot be a subject of an appeal, the appropriate remedy is a special civil action under Rule 65 of the Rules of Court.

Post-judgment Remedies; Appeal to SC; Appeals to CA (2002)

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

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

SUGGESTED ANSWER:

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

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

Post-judgment Remedies; Rule 45 vs. Rule 65 (1998)

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

SUGGESTED ANSWER:

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

1. The first is a special civil action under Rule 65 of the Rules of Court, while the second is an appeal to the Supreme Court from the Court of Appeals, Sandiganbayan and the RTC under Rule 45.
2. The first can be filed only on the grounds of lack or excess of jurisdiction or grave abuse of discretion tantamount to lack or excess of jurisdiction, while the second is based on the errors of law of the lower court.
3. The first should be filed within sixty (60) days from notice of the judgment, order or resolution sought to be assailed (Sec. 4, Rule 65), while the second should be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. (Sec. 2, Rule 45)
4. The first cannot generally be availed of as a substitute for a lost appeal under Rules 40, 41, 42, 43 and 45.
5. Under the first, the lower court is impleaded as a party respondent (Sec. 5 of Rule 65), while under the second, the lower court is not impleaded (Sec. 4 of Rule 45) **Certiorari; Rule 45 vs. Rule 65 (2005)**

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Rule 45 vs. Rule 65 (1999)

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

SUGGESTED ANSWER:

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

ADDITIONAL ANSWER:

1) In appeal by certiorari under Rule 45, the petitioner and respondent are the original parties to the action and the lower court is not impleaded. In certiorari, under Rule 65, the lower court is impleaded. 2) In appeal by certiorari, the filing of a motion for reconsideration is not required, while in the special civil action of certiorari, such a motion is generally required.

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

SUGGESTED ANSWER:

b. NO, because as a general rule, certiorari is proper if there is no appeal (Sec. 1 of Rule 65.) However, if appeal is not a speedy and adequate remedy, certiorari may be resorted to. (*Echaus v. Court of Appeals*, 199 SCRA 381.) Certiorari is sanctioned, even if appeal is available, on the basis of a patent, capricious and whimsical exercise of discretion by a trial judge as when an appeal will not promptly relieve petitioner from the injurious effects of the disputed order (*Vasquez vs. Robilla-Alenio*, 271 SCRA 67)

Post-judgment Remedies; Rule 45 vs. Rule 65 (2008)

Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure?

SUGGESTED ANSWER:

The certiorari jurisdiction of the Supreme Court under the Constitution is the mode by which the Court exercises its

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

Post-judgment Remedies; Appeals; Abandonment of a Perfected Appeal (2009)

The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Post-judgment Remedies; Appeals; Second Notice of Appeal (2008)

After receiving the adverse decision rendered against his client, the defendant, Atty. Sikat duly filed a notice of appeal. For his part, the plaintiff timely filed a motion for partial new trial to seek an increase in the monetary damages awarded. The RTC instead rendered an amended decision further reducing the monetary awards. Is it necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision?

SUGGESTED ANSWER:

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

Post-judgment Remedies; Petition for Relief; Injunction (2002)

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Petition for Relief (2007)

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Petition for Relief w/ Injunction (2009)

Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Petition for Relief & Action for Annulment (2002)

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

SUGGESTED ANSWER:

Yes, an order denying the probate of a will may be overturned after the period to appeal therefrom has lapsed. A PETITION FOR RELIEF may be filed on the grounds of fraud, accident, mistake or excusable negligence within a period of sixty (60) days after the petitioner learns of the judgment or final order and not more than six (6) months after such judgment or final order was entered [Rule 38, secs. 1 & 3; Soriano v. Asi, 100 Phil. 785 (1957)]. An ACTION FOR ANNULMENT may also be filed on the ground of extrinsic fraud within four (4) years from its discovery, and if based on lack of jurisdiction, before it is barred by laches or estoppel. (Rule 47, secs. 2 & 3)

Post-judgment Remedies; Annulment of Judgment; Grounds (1998)

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

SUGGESTED ANSWER:

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

Post-judgment Remedies; Action for Annulment of Judgment (2014)

Tom Wallis filed with the Regional Trial Court (RTC) a Petition for Declaration of Nullity of his marriage with Debi Wallis on the ground of psychological incapacity of the latter. Before filing the petition, Tom Wallis had told Debi Wallis that he wanted the annulment of their marriage because he was already fed up with her irrational and eccentric behaviour. However, in the petition for declaration of nullity of marriage, the correct residential address of Debi Wallis was deliberately not alleged and instead, the residential address of their married son was stated. Summons was served by substituted service at the address stated in the petition. For failure to file an answer, Debi Wallis was declared in default and Tom Wallis presented evidence ex- parte. The RTC rendered judgment declaring the marriage null and void on the ground of psychological incapacity of Debi Wallis. Three (3) years after the RTC judgment was rendered, Debi Wallis got hold of a copy thereof and wanted to have the RTC judgment reversed and set aside. If you are the lawyer of Debi Wallis, what judicial remedy or remedies will you take? Discuss and specify the ground or grounds for said remedy or remedies. (5%)

SUGGESTED ANSWER:

Debi Wallis may file a Petition for Annulment of Judgment under Rule 47 of the Rules of Court, on the grounds of lack of jurisdiction, extrinsic fraud and denial of the right to due process. (Leticia Diona v. Romeo Balange, G.R. No. 173589, [January 7, 2013]).

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. The purpose of such action is to have the final and executory judgment set aside so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the appellant and is based on the grounds of extrinsic fraud, and lack of jurisdiction. (Alaban v. Court of Appeals, G.R. No. 156021, [September 23, 2005]). Relative thereto, the act of Tom Wallis in deliberately keeping Debi Wallis away from the Court, by intentionally alleging a wrong address in the complaint constitutes extrinsic fraud.

Moreover, the failure of the Court to acquire jurisdiction over the person of the respondent, being an indispensable party, necessitates the annulment of judgment of the Regional Trial Court.

Likewise, there is denial of the right to due process when Debi Wallis was not given an opportunity to be heard in the case. Hence, the judgment rendered by the RTC may be annulled by the Court of Appeals under Rule 47 of the Rules of Court.

Moreover, it is evident that the ordinary remedies of new trial, petition for relief or other appropriate remedies are no longer available through no fault of Debi Wallis because she was able to obtain a copy of the Decision only three (3) years after the same was rendered by the Trial Court.

At any rate, the Court erred in declaring the defendant in default because there is no default in a Petition for declaration of nullity of marriage (Section 3, Rule 9, Rules of Court). Thus, a Petition for Certiorari under Rule 65 of the

Rules of Court could have been an appropriate remedy within the reglementary period allowed by the Rules.

Post-judgment Remedies; Petition for Certiorari (2000)

AB mortgaged his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD's prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from date of receipt of the Order. AB received the Order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CD but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in the same court praying that CD be directed to receive the amount tendered by him on the ground that the Order does not comply with the provisions of Section 2, Rule 68 of the Rules of Court which give AB 120 days from entry of judgment, and not from date of receipt of the Order. The court denied his motion on the ground that the Order had already become final and can no longer be amended to conform with Section 2, Rule 68. Aggrieved, AB files a petition for certiorari against the Court and CD. Will the petition for certiorari prosper? Explain. (5%)

SUGGESTED ANSWER:

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

Post-judgment Remedies; Petition for Certiorari; Void Decision (2004)

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

SUGGESTED ANSWER:

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

ANOTHER ANSWER:

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

ALTERNATIVE ANSWER:

Yes. The order of dismissal for insufficiency of the plaintiffs evidence is valid upon defendant's motion to dismiss even without prior leave of court. (Sec. 1 of Rule 33). Yes, plaintiff

may properly take an appeal because the dismissal of the complaint is a final and appealable order. However, if the order of dismissal is reversed on appeal, the plaintiff is deemed to have waived his right to present evidence. (Id.)

PROVISIONAL REMEDIES

Provisional Remedies (1999)

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

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment (1999)

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

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment (1999)

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

SUGGESTED ANSWER:

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

Plaza Enterprises Inc., 32 SCRA 281.)

Provisional Remedies; Attachment (2001)

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

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment (2005)

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

Katy's affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of the summons, Tyrone filed a motion to dismiss and to dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served

ahead of the summons; (ii) the writ was improperly implemented; and (iii) said writ was improvidently issued because the obligation in question was already fully paid. Resolve the motion with reasons. (4%)

SUGGESTED ANSWER:

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

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

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

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

Provisional Remedies; Attachment; Counterbond (2002)

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

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment; Bond (2008)

After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio's favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Porfirio moved to charge the plaintiff's attachment bond.

The plaintiff and his sureties opposed the motion, claiming

that the filing of the counterbond had relieved the plaintiff's attachment bond from all liability for the damages. Rule on Porfirio's motion.

SUGGESTED ANSWER:

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

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

Provisional Remedies; Attachment vs. Garnishment (1999)

Distinguish attachment from garnishment. (2%)

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment; Garnishment (2008)

(a) The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you are the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment?

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

The judgment obligee may invoke the exception under Sec. 2

of the Secrecy of Bank Deposits Act. Bank Deposits may be examined upon order of a competent court in cases if the money deposited is the subject matter of the litigation (R.A. 1405).

Provisional Remedies; Attachment (2012)

A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. A moves to lift the attachment. Rule on this. (5%)

SUGGESTED ANSWER:

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

Provisional Remedies; Attachment (2012)

Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)

SUGGESTED ANSWER:

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

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

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

Warrant of seizure is normally applied for, with a search warrant, in criminal cases. The warrant of seizure must particularly describe the things to be seized. While it is true that the property to be seized under a warrant must be particularly described therein and no other property can be taken thereunder, yet the description is required to be specific only insofar as the circumstances will ordinarily allow.

An application for search and seizure warrant shall be filed with the following: (a) Any court within whose territorial jurisdiction a crime was committed. (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

Warrant of distraint and levy is remedy available to local governments and the BIR in tax cases to satisfy deficiencies or delinquencies in inheritance and estate taxes, and real estate taxes. Distraint is the seizure of personal property to be sold in an authorized auction sale. Levy is the issuance of a certification by the proper officer showing the name of the taxpayer and the tax, fee, charge or penalty due him. Levy is made by writing upon said certificate the description of the property upon which levy is made.

Provisional Remedies; Attachment (2014)

Bayani, an overseas worker based in Dubai, issued in favor of Agente, a special power of attorney to sell his house and lot. Agente was able to sell the property but failed to remit the proceeds to Bayani, as agreed upon. On his return to the Philippines, Bayani, by way of a demand letter duly received by Agente, sought to recover the amount due him. Agente failed to return the amount as he had used it for the construction of his own house. Thus, Bayani filed an action against Agente for sum of money with damages. Bayani subsequently filed an ex-parte motion for the issuance of a writ of preliminary attachment duly supported by an affidavit. The court granted the ex parte motion and issued a writ of preliminary attachment upon Bayani's posting of the required bond. Bayani prayed that the court's sheriff be deputized to serve and implement the writ of attachment. On November 19, 2013, the Sheriff served upon Agente the writ of attachment and levied on the latter's house and lot. On November 20, 2013, the Sheriff served on Agente summons and a copy of the complaint. On November 22, 2013, Agente filed an Answer with Motion to Discharge the Writ of Attachment alleging that at the time the writ of preliminary attachment was issued, he has not been served with summons and, therefore, it was improperly issued. (4%)

(A) Is Agente correct?

SUGGESTED ANSWER:

No, Agente is not correct. Section 2 Rule 57 provides that a writ of attachment may be issued ex parte or upon motion with notice and hearing by the Court in which the action is pending. Under the Rules, the applicant of the writ is only required to (i) submit an affidavit; and (ii) post a bond before the court can validly issue the writ of attachment. The Rules do not require prior service of summons for the proper issuance of a writ of attachment. (Sofia Torres vs. Nicanor Satsat in, G.R. No. 166759, [November 25, 2009]), Accordingly, the issuance of the writ of attachment is valid notwithstanding the absence of a prior service of summons to Agente.

(B) Was the writ of preliminary attachment properly executed?

SUGGESTED ANSWER:

No. The writ of preliminary attachment was not properly executed. Although a writ of attachment may issue even before summons is served upon the defendant, the same, however, may not bind and affect the defendant until jurisdiction over his person is obtained. (Davao Light and

Power Co., Inc. v. Court of Appeals, 204 SCRA 343 [Dec. 29, 1991]).

Thus, the writ of preliminary attachment must only be served simultaneously or at least after the service of summons to the defendant. (Sofia Torres v. Nicanor Satsatin, [G.R. No. 166759, November 25, 2009]).

ALTERNATIVE ANSWER:

No. The Writ of attachment was not properly executed. Under Section 2 of Rule 57, the Court may only require the Sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution. In the case, the Sheriff attached the house and lot of Agente which is exempted from attachment and execution. (Section 13, Rule 39 of the Rules of Court)

Provisional Remedies; Injunction (2001)

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

SUGGESTED ANSWER:

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

Provisional Remedies; Injunction (2003)

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

Provisional Remedies; Injunctions; Requisites (2006)

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

SUGGESTED ANSWER:

a. Writ of Preliminary Injunction (Sec. 4, Rule 58 1997

Rules of Civil Procedure) are —

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

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

Provisional Remedies; Injunction; Nature (2009)

TRUE OR FALSE. A suit for injunction is an action in rem.

SUGGESTED ANSWER:

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

Provisional Remedies; Receivership (2001)

Joaquin filed a complaint against Jose for the foreclosure of a mortgage of a furniture factory with a large number of machinery and equipment. During the pendency of the foreclosure suit, Joaquin learned from reliable sources that Jose was quietly and gradually disposing of some of his machinery and equipment to a businessman friend who was also engaged in furniture manufacturing such that from confirmed reports Joaquin gathered, the machinery and equipment left with Jose were no longer sufficient to answer for the latter's mortgage indebtedness. In the meantime judgment was rendered by the court in favor of Joaquin but the same is not yet final. Knowing what Jose has been doing. If you were Joaquin's lawyer, what action would you take to preserve whatever remaining machinery and equipment are left with Jose? Why? (5%)

SUGGESTED ANSWER:

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

Provisional Remedies; Replevin (1999)

What is Replevin? (2%)

SUGGESTED ANSWER:

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

Provisional Remedies; Support Pendente Lite (1999)

Before the RTC, A was charged with rape of his 16year old daughter. During the pendency of the case, the daughter

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

SUGGESTED ANSWER:

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

Provisional Remedies; Support Pendente Lite (2001)

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

SUGGESTED ANSWER:

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

Provisional Remedies; TRO (2001)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Provisional Remedies; TRO (2006)

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

Provisional Remedies; TRO; Duration (2006)

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

SUGGESTED ANSWER:

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

SPECIAL CIVIL ACTIONS

Special Civil Action; Petition for Certiorari (2002)

The defendant was declared in default in the RTC for his failure to file an answer to a complaint for a sum of money. On the basis of the plaintiff's ex parte presentation of evidence, judgment by default was rendered against the defendant. The default judgment was served on the defendant on October 1, 2001. On October 10, 2001, he files a verified motion to lift the order of default and to set aside the judgment. In his motion, the defendant alleged that, immediately upon receipt of the summon, he saw the plaintiff and confronted him with his receipt evidencing his payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the

complaint. The trial court denied the defendant's motion because it was not accompanied by an affidavit of merit. The defendant filed a special civil action for certiorari under Rule 65 challenging the denial order.

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

A. Under ordinary circumstances, the proper remedy of a party wrongly declared in default is either to appeal from the judgment by default or file a petition for relief from judgment.

[*Jao, Inc. v. Court of Appeals*, 251 SCRA 391 (1995)]

SUGGESTED ANSWER:

B. Yes, the trial court gravely abused its discretion or acted without or in excess of jurisdiction in denying the defendant's motion because it was not accompanied by a separate affidavit of merit. In his verified motion to lift the order of default and

to set aside the judgment, the defendant alleged that immediately upon the receipt of the summons, he saw the plaintiff and confronted him with his receipt showing payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. Since the good defense of the defendant was already incorporated in the verified motion, there was not need for a separate affidavit of merit.

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

Special Civil Actions; Petition for Certiorari; Procedure (2015)

Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public prosecutor, filed an Opposition to Jaime's motion. On October 9, 2015, the court granted Jaime's motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor's motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015.

a.) What is the remedy available to the prosecution from the court's order granting Jaime's motion for new trial? (3%)

SUGGESTED ANSWER:

The remedy of the prosecution is to file a petition for certiorari under Rule 65 of the Rules of Court, because the denial of a motion for reconsideration is merely an interlocutory order and there is no plain, speedy and adequate remedy under the course of law.

Be that as it may, it may be argued that appeal is the appropriate remedy from an order denying a motion for

reconsideration of an order granting a motion for new trial because *an order denying a motion for reconsideration* was already removed in the enumeration of matters that cannot be subject of an appeal under Sec. 1, Rule 41 of the Rules of Court.

b.) In what court and within what period should a remedy be availed of? (1%)

SUGGESTED ANSWER:

Following the principle of judicial hierarchy, the petition for certiorari should be filed before the Court of Appeals within 60 days from the receipt of the copy of the order of the denial of the public prosecutor's motion for reconsideration, or on October 20, 2015.

c.) Who should pursue the remedy? (2%)

SUGGESTED ANSWER:

The office of the Solicitor General should pursue the remedy. In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the people is vested solely in the Solicitor General. Under P.D. No. 478, among the specific powers and functions of the OSG is to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without a doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases (*Cariño v. de Castro* [2008]).

Special Civil Action; Certiorari/ Mandamus; When Not Proper (2015)

The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

a.) Was the remedy taken by the governor correct? (2%)

SUGGESTED ANSWER:

NO, the remedy taken by the Governor is not correct. The petition for certiorari is a remedy that is only available when there is no plain, speedy and adequate remedy under the ordinary course of law; hence, the Governor should have filed a motion for reconsideration.

Besides, there is no showing that the Ombudsman committed grave abuse of discretion in granting immunity to the treasurer who agreed to cooperate in the prosecution of the case.

ALTERNATIVE ANSWER:

The remedy taken by the Governor is correct. A petition for certiorari under Rule 65 is that appropriate remedy if the Ombudsman committed grave abuse of discretion in granting immunity to the treasurer who agreed to cooperate in the prosecution of the case.

b.) Will the writ of mandamus lie to compel the Ombudsman to include the treasurer in the Information? (3%)

SUGGESTED ANSWER:

NO. Mandamus will not lie to compel the Ombudsman to include the treasurer in the Information. In matters involving

the exercise of judgment and discretion, mandamus may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion (Ampatuan, Jr. V. Secretary De Lima [2013]).

Evidently, the Ombudsman's act of granting the treasurer immunity from prosecution under such terms and condition as it may determine (Sec. 17, R.A. 6770) is a discretionary duty that may not be compelled by the extraordinary writ of mandamus.

Special Civil Actions; Mandamus (2006)

In 1996, Congress passed Republic Act No. 8189, otherwise known as the Voter's Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter's Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC's modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract. Meanwhile, Fotokina filed with the RTC a petition for mandamus compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

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

SUGGESTED ANSWER:

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

Special Civil Actions; Mandamus vs. Quo Warranto (2001)

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

SUGGESTED ANSWER:

Yes, the court is correct in its ruling. Mandamus will not lie. This remedy applies only where petitioner's right is founded clearly in law, not when it is doubtful. Pablo was transferred

without his consent which is tantamount to removal without cause, contrary to the fundamental guarantee on non-removal except for cause. Considering that Pedro continued to occupy the disputed position and exercise his functions therein, the proper remedy is quo warranto, not mandamus. (**Garcés v. Court of Appeals, 259 SCRA 99 (1996)**)

ALTERNATIVE ANSWER:

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

Special Civil Actions; Mandamus vs. Prohibition (2012)

A files a Complaint against B for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B's Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge "unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office", A files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)

SUGGESTED ANSWER:

No, mandamus will not lie. The proper remedy is a petition for prohibition. (*Serana vs. Sandiganbayan, G.R. No. 162059, January 22, 2008*). The dismissal of the case based on improper venue is not a ministerial duty. Mandamus does not lie to compel the performance of a discretionary duty. (*Nilo Paloma vs. Danilo Mora, G.R. No. 157763, September 23, 2005*).

Special Civil Action; Quo Warranto (2001)

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

SUGGESTED ANSWER:

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

Special Civil Actions; Expropriation (2009)

The Republic of the Philippines, through the department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.

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

SUGGESTED ANSWER:

NO. the present Rule of Procedure governing expropriation (Rule 67), as amended by the 1997 Rules of Civil Procedure, requires the defendant to file an Answer, which must be filed on or before the time stated in the summons.

Defendant's objections and defenses should be pleaded in his Answer not in a motion.

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

SUGGESTED ANSWER:

NO. the expropriation here is governed by Rep. Act No. 8974 which requires 100% payment of the zonal value of the property as determined by the BIR, to be the amount deposited. Before such deposit is made, the national government thru the DPWH has no right to take the possession of the property under expropriation.

Special Civil Action; Foreclosure (2003)

A borrowed from the Development Bank of the Philippines (DBP) the amount of P1 million secured by the titled land of his friend B who, however, did not assume personal liability for the loan. A defaulted and DBP filed an action for judicial foreclosure of the real estate mortgage impleading A and B as defendants. In due course, the court rendered judgment directing A to pay the outstanding account of P1.5 million (principal plus interest) to the bank. No appeal was taken by A on

the Decision within the reglementary period. A failed to pay the judgment debt within the period specified in the decision. Consequently, the court ordered the foreclosure sale of the mortgaged land. In that foreclosure sale, the land was sold to the DBP for P1.2 million. The sale was subsequently confirmed by the court, and the confirmation of the sale was registered with the Registry of Deeds on 05 January 2002. On 10 January 2003, the bank filed an ex-parte motion with the court for the issuance of a writ of possession to oust B from the land. It also filed a deficiency claim for P800,000.00 against A and B. the deficiency claim was opposed by A and B.

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

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

SUGGESTED ANSWER:

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

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

Special Civil Actions; Foreclosure; Certification Against Non-Forum Shopping (2007)

RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a

motion to dismiss the counterclaim on the ground that Bank V's Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule. (5%)

SUGGESTED ANSWER:

A certification against forum shopping is required only in initiatory pleadings. In this case, the counterclaim pleaded in the defendant's Answer appears to have arisen from the plaintiff's complaint or compulsory in nature and thus, may not be regarded as an initiatory pleading.

The absence thereof in the Bank's Answer is not a fatal defect. Therefore, the motion to dismiss on the ground raised lacks merit and should be denied (UST v. Suria, 294 SCRA 382 [1998]).

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

Special Civil Actions; Partition; Non-joinder (2009)

Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Herando and Inocencio, the other co-owners of the property. As Judge, will you grant the motion to dismiss? Explain. (3%)

SUGGESTED ANSWER:

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

Special Civil Action; Ejectment (1997)

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

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

SUGGESTED ANSWER:

(a) Yes. X can contest his ejectment on the ground that there was no prior demand to vacate the premises. (Sec. 2 of Rule 70; *Casilan vs. Tomassi* 10 SCRA 261; *Iesaca vs. Cuevas*. 125 SCRA 335).

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

Special Civil Action; Ejectment (1998)

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

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

2. Does the MTC have jurisdiction over the counterclaim? [2%]

SUGGESTED ANSWER:

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

2. The counterclaim is within the jurisdiction of the Municipal Trial Court which does not exceed P100,000, because the principal demand is P80,000, exclusive of interest and attorney's fees. (*Sec. 33, B.P. Big. 129, as amended.*)

However, inasmuch as all actions of forcible entry and unlawful detainer are subject to summary procedure and since the counterclaim is only permissive, it cannot be entertained by the Municipal Court. (*Revised Rule on Summary Procedure.*)

ALTERNATIVE ANSWER:

2. NO. Only a compulsory counterclaim is allowed. Since X's counterclaim is merely permissive, the MTC has no jurisdiction over the same.

Special Civil Actions; Ejectment; Forcible Entry (2013)

The spouses Juan reside in Quezon City. With their lottery winnings, they purchased a parcel of land in Tagaytay City for P100,000.00. In a recent trip to their Tagaytay property, they were surprised to see hastily assembled shelters of light materials occupied by several families of informal settlers who were not there when they last visited the property three (3) months ago. To rid the spouses' Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (7%)

SUGGESTED ANSWER:

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

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

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

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

In the aforementioned complaint, I will allege that Spouses Juan had prior physical possession and that the dispossession was due to force, intimidation and stealth. The complaint will likewise show that the action was commenced within a period of one (1) year from unlawful deprivation of possession, and that Spouses Juan is entitled to restitution of possession together with damages and costs.

Special Civil Actions; Ejectment; Unlawful Detainer; Jurisdiction (2008)

Filomeno brought an action in the Metropolitan Trial Court (METC) of Pasay

City against Marcelino pleading two causes of action. The first was a demand for the recovery of physical possession of a parcel of land situated in Pasay City with an assessed value of 40,000; the second was a claim for damages of 500,000 for

Marcelino's unlawful retention of the property. Marcelino filed a motion to dismiss on the ground that the total amount involved, which is 540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct?

SUGGESTED ANSWER:

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

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

Special Civil Actions; Ejectment; Unlawful Detainer; Jurisdiction (2010)

Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for accionpubliciana.

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

SUGGESTED ANSWER:

Yes, the Court of Appeals is correct in remanding the case to the RTC for the latter to try the same on the merits. The RTC, having jurisdiction over the subject matter of the case appealed from MTC should try the case on the merits as if

the case was originally filed with it, and not just to affirm the dismissal of the case.

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

Special Civil Actions; Ejectment; Unlawful Detainer; Preliminary Conference (2007)

(a) X files an unlawful detainer case against Y before the appropriate Metropolitan Trial Court. In his answer, Y avers as a special and affirmative defense that he is a tenant of X's deceased father in whose name the property remains registered. What should the court do? Explain briefly. (5%)

SUGGESTED ANSWER:

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

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

Special Civil Actions; Ejectment; Unlawful Detainer; Prior Possession (2008)

Ben sold a parcel of land to Del with right to repurchase within one(1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Del had never been in possession of the property. Is Ben correct?

SUGGESTED ANSWER:

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

Special Civil Actions; Contempt; Death of a Party; Effect (1998)

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

to inform the court of B's death constitute direct contempt? (2%)

SUGGESTED ANSWER:

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

Special Civil Actions; Contempt (2012)

Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of indirect contempt. If you were X's lawyer, what would you do? Why? (5%)

SUGGESTED ANSWER:

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

SPECIAL PROCEEDINGS

Venue; Special Proceedings (1997)

Give the proper venue for the following special proceedings:

a) A petition to declare as escheated a parcel of land owned by a resident of the Philippines who died intestate and without heirs or persons entitled to the property. b) A petition for the appointment of an administrator over the land and building left by an American citizen residing in California, who had been declared an incompetent by an American court. c) A petition for the adoption of a minor residing in Pampanga.

SUGGESTED ANSWER:

(a) The venue of the escheat proceedings of a parcel of land in this case is the place where the deceased last resided. (Sec. 1, Rule 91, Rules of Court).

(b) The venue for the appointment of an administrator over land and building of an American citizen residing in California, declared Incompetent by an American Court, is the RTC of the place where his property or part thereof is situated. (Sec. 1, Rule 92).

(c) The venue of a petition for the adoption of a minor residing in Pampanga is the RTC of the place in which the petitioner resides. (Sec. 1, Rule 99)

Settlement of Estate (2001)

The rules on special proceedings ordinarily require that the estate of the deceased should be judicially administered thru an administrator or executor. What are the two exceptions to said requirements? (5%)

SUGGESTED ANSWER:

The two exceptions to the requirement are:

(a) Where the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves by means of public instrument filed in the office of the register of deeds, or should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties or the sole heir shall file simultaneously around with the register of deeds, in an amount equivalent to the value of the personal property as certified to under oath by the parties and conditioned upon the payment of any just claim that may be filed later. The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the province once a week for three consecutive weeks. (*Sec. 1 of Rule 74, Rules of Court*)

(b) Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the RTC having jurisdiction or the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, to settle the estate. (*Sec. 2 of Rule 74, Rules of Court*)

Settlement of Estate (2010)

Sal Mineo died intestate, leaving a P1 billion estate. He was survived by his wife Dayanara and their five children. Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%)

SUGGESTED ANSWER:

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

Settlement of Estate (2009)

Pinoy died without a will. His wife, Rosie and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate. Rosie and the Three Children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed. Are Rosie and the

Three Children Correct? Explain.

SUGGESTED ANSWER:

NO, the contention is not correct. Suzy can file a complaint to annul the extrajudicial settlement and she can recover what is due her as such heir if her status as an illegitimate child of the deceased has been established. The publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is intended for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. She can file the action therefor within four (4) years after the settlement was registered.

Settlement of Estate; Extra-judicial Settlement of Estate (2005)

Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity? Explain. (2%)

SUGGESTED ANSWER:

If the decedent left no will and no debts, and the heirs are all of age, the parties may, without securing letters of administration, divide the estate among themselves by means of a public instrument or by stipulation in a pending action for partition and shall file a bond with the register of deeds in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned. The fact of extra-judicial settlement shall be published in a newspaper of general circulation once a week for three consecutive weeks in the province. (*Sec. 1, Rule 74, Rules of Court*)

Settlement of Estate; Judicial Settlement of Estate (2005)

State the rule on venue in judicial settlement of estate of deceased persons. (2%)

SUGGESTED ANSWER:

If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, the venue shall be in the RTC in the province in which he resides at the time of his death, not in the place where he used to live. (**Jao v. Court of Appeals, G.R. No. 128314, May 29, 2002**)

If he is an inhabitant, of a foreign country, the RTC of any province or city in which he had estate shall be the venue. The court first taking cognizance of the case shall exercise jurisdiction to the exclusion of all other courts. When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered and liquidated, and the debts thereof paid, in the testate or intestate proceedings of the deceased spouse. If both spouses have died, their conjugal partnership shall be liquidated in the testate or intestate proceedings of either. (**Sees. 1 and 2, Rule 73, Rules of Court**)

Settlement of Estate; Intestate Proceedings (2002)

X filed a claim in the intestate proceedings of D. D's administrator denied liability and filed a counterclaim against X. X's claim was disallowed.

(1) Does the probate court still have jurisdiction to allow the claim of D's administrator by way of offset? Why? (2%)

(2) Suppose D's administrator did not allege any claim against X by way of offset, can D's administrator prosecute the claim in an independent proceeding. Why? (3%)

SUGGESTED ANSWER:

(1) No, because since the claim of X was disallowed, there is no amount against which to offset the claim of D's administrator.

(2) Yes, D's administrator can prosecute the claim in an independent proceeding since the claim of X was disallowed. If X had a valid claim and D's administrator did not allege any claim against X by way of offset, his failure to do so would bar his claim forever. (*Rule 86, sec. 10*).

Settlement of Estate; Intestate Proceedings; Debts of the Estate (2002)

A, B and C, the only heirs in D's intestate proceedings, submitted a project of partition to the partition, two lots were assigned to C, who immediately entered into the possession of the lots. Thereafter, C died and proceedings for the settlement of his estate were filed in the RTC-Quezon City. D's administrator then filed a motion in the probate court (RTC-Manila), praying that one of the lots assigned to C in the project of partition be turned over to him to satisfy debts corresponding to C's portion. The motion was opposed by the administrator of C's estate. How should the RTC Manila resolve the motion of D's administrator? Explain. (3%)

SUGGESTED ANSWER:

The motion of D's administrator should be granted. The assignment of the two lots to C was premature because the debts of the estate had not been fully paid. [*Rule 90, sec. 1; Reyes v. Barreto-Datu, 19 SCRA 85 (1967)*].

Settlement of Estate; Probate of Lost Wills (1999)

a. What are the requisites in order that a lost or destroyed Will may be allowed? (2%)

SUGGESTED ANSWER:

a. In order that a lost or destroyed will may be allowed, the following must be complied with:

- 1 the execution and validity of the same should be established;
- 2 the will must have been in existence at the time of the death of the testator, or shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge; and
- 3 its provisions are clearly and distinctly proved by at least two credible witnesses. (*Sec. 6, Rule 76 of the Rules of Court*)

b. A's Will was allowed by the Court. No appeal was taken from its allowance. Thereafter, Y, who was interested in the estate of A, discovered that the Will was not genuine because A's signature was forged by X. A criminal action for forgery was instituted against X. May the due execution of the Will be validly questioned in such criminal action? (2%)

SUGGESTED ANSWER:

b. No. The allowance of the will from which no appeal was taken is conclusive as to its due execution. (*Sec. 1 of Rule 75*.) Due execution includes a finding that the will is genuine and not a forgery. Accordingly, the due execution of the will cannot again be questioned in a subsequent proceeding, not even in a criminal action for forgery of the will.

Settlement of Estate; Probate of Will (2003)

A, a resident of Malolos, Bulacan, died leaving an estate located in Manila, worth P200,000.00. In what court, taking into consideration the nature of jurisdiction and of venue, should the probate proceeding on the estate of A be instituted? (4%)

SUGGESTED ANSWER:

The probate proceeding on the estate of A should be instituted in the Municipal Trial Court of Malolos, Bulacan which has jurisdiction, because the estate is valued at P200,000.00, and is the court of proper venue because A was a resident of Malolos at the time of his death. (**Sec. 33 of BP 129 as amended by RA 7691; Sec. 1 of Rule 73**).

Settlement of Estate; Probate of Will (2005)

After Lulu's death, her heirs brought her last will to a lawyer to obtain their respective shares in the estate. The lawyer prepared a deed of partition distributing Lulu's estate in accordance with the terms of her will. Is the act of the lawyer correct? Why? (2%)

SUGGESTED ANSWER:

No. No will, shall pass either real or personal estate unless it is proved and allowed in the proper court. (*Sec. 1, Rule 75, Rules of Court*)

Settlement of Estate; Probate of Will (2006)

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language

spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P 300 Million. He bequeathed P 50 Million each to his 3 sons and P 150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

a. Is Cancio Vidal, after learning of Sergio's death, obliged to file with the proper court a petition of probate of the latter's last will and testament? (2%)

SUGGESTED ANSWER:

Cancio Vidal is obliged to file a petition for probate and for accepting or refusing the trust within the statutory period of 20 days under Sec. 3, Rule 75, Rules of Court.

b. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court. (2%)

SUGGESTED ANSWER:

Yes, Cancio can compel Susan to produce the copy in her possession. A person having custody of the will is bound to deliver the same to the court of competent jurisdiction or to the executor, as provided in Sec. 2, Rule 75, Rules of Court.

c. Can the probate court appoint the widow as executor of the will? (2%)

SUGGESTED ANSWER:

Yes, the probate court can appoint the widow as executor of the will if the executor does not qualify, as when he is incompetent, refuses the trust, or fails to give bond (*Sec. 6, Rule 78, Rules of Court*).

d. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)

SUGGESTED ANSWER:

No, the widow and her children cannot settle the estate extrajudicially because of the existence of the Will. No will shall pass either real or personal estate unless it is proved and allowed in the proper court (*Sec. 1, Rule 75, Rules of Court*).

e. Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the court? (2%)

SUGGESTED ANSWER:

No, the widow and her children cannot file a separate petition for partition pending the probate of the will. Partition is a mode of settlement of the estate (*Sec. 1, Rule 75, Rules of Court*).

Settlement of Estate; Probate of Will; Mandatory Nature (2002)

What should the court do if, in the course of intestate proceedings, a will is found and it is submitted for probate? Explain. (2%)

SUGGESTED ANSWER:

If a will is found in the course of intestate proceedings and it is submitted for probate, the intestate proceedings will be suspended until the will is probated. Upon the probate of the will, the intestate proceedings will be terminated. (*Rule 82, sec. 1*).

Settlement of Estate; Probate of Will (2007)

(b) The heirs of H agree among themselves that they will honor the division of H's estate as indicated in her Last Will and Testament. To avoid the expense of going to court in a Petition for Probate of the Will, can they instead execute an Extrajudicial Settlement Agreement among themselves? Explain briefly. (5%)

SUGGESTED ANSWER:

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

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

An heir/oppositor in a probate proceeding filed a motion to remove the administrator on the grounds of neglect of duties as administrator and absence from the country. On his part the heir/oppositor served written interrogatories to the administrator preparatory to presenting the latter as a witness. The administrator objected, insisting that the modes of discovery apply only to ordinary civil actions, not special proceedings. Rule on the matter.

SUGGESTED ANSWER:

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

Settlement of Estate; Probate of Will (2010)

Czarina died single. She left all her properties by will to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.

Duqueza soon instituted an action for probate of Czarina's will. Marco, on the other hand, instituted intestate

proceedings. Both actions were consolidated before the RTC of Pasig. On motion of Marco, Duqueza's petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%)

SUGGESTED ANSWER:

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

Settlement of Estate; Probate of Will: Will Outside of the Philippines (2010)

Pedrillo, a Fil-Am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity. Upon Pedrillo's demise, his will was duly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US\$1,000 per month for the next 15 years. Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo's will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate. Winston now files in the Makati RTC a motion to compel XYZ to account for all sums in its possession forming part of Pedrillo's estate. Rule on the motion. (5%)

SUGGESTED ANSWER:

The motion should be denied. Makati RTC has no jurisdiction over XYZ of Hongkong. The letters of administration granted to Winston only covers all Pedrillo's estate in the Philippines. (*Rule 77, Sec. 4*) This cannot cover the annuities in Hongkong. At the outset, Makati RTC should not have taken cognizance of the petition filed by Winston, because the will does not cover any property of Pedrillo located here in the Philippines.

Settlement of Estate; Probate of Will; Jurisdictional Facts (2012)

What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

SUGGESTED ANSWER:

The jurisdictional facts in a petition for probate are:

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

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

Settlement of Estate; Probate of Will; Notarial Will; Executor (2014)

Johnny, a naturalized citizen of the United States of America (USA) but formerly a Filipino citizen, executed a notarial will in accordance with the laws of the State of California, USA. Johnny, at the time of his death, was survived by his niece Anastacia, an American citizen residing at the condominium

unit of Johnny located at Fort Bonifacio, Taguig City; a younger brother, Bartolome, who manages Johnny's fish pond in Lingayen, Pangasinan; and a younger sister, Christina, who manages Johnny's rental condominium units in Makati City. Johnny's entire estate which he inherited from his parents is valued at P200 million. Johnny appointed Anastacia as executrix of his will.(4%)

(A) Can Johnny's notarial will be probated before the proper court in the Philippines?

SUGGESTED ANSWER:

Yes. Johnny's notarial will can be probated before the proper court in the Philippines.

A foreign will can be given legal effects in our jurisdiction. Article 816 of the Civil Code states that the will of an alien who is abroad produces effect in the Philippines if made in accordance with the formalities prescribed by law of the place where he resides, or according to the formalities observed in his country (Palaganas v. Palaganas, G.R. No. 169144, [January 26, 2011]).

(B) Is Anastacia qualified to be the executrix of Johnny's notarial will?

SUGGESTED ANSWER:

Yes. Anastacia is qualified. Under the rules, the following persons are incompetent to serve as executor or administrator: (a) a minor; (b) not a resident of the Philippines; and (c) is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude. (Section 1, Rule 78, Rules of Court) While Anastacia is an American citizen, she is nonetheless a resident of the Philippines.

Accordingly, Anastacia is not disqualified because there is no prohibition against an alien residing in the Philippines to serve as an executor of an estate.

Settlement of Estate; Administrator (1998)

A, claiming to be an illegitimate child of the deceased D, instituted an Intestate proceeding to settle the estate of the latter. He also prayed that he be appointed administrator of said estate. S, the surviving spouse, opposed the petition and A's application to be appointed the administrator on the ground that he was not the child of her deceased husband D. The court, however, appointed A as the administrator of said estate. Subsequently, S, claiming to be the sole heir of D, executed an Affidavit of Adjudication, adjudicating unto herself the entire estate of her deceased husband D. S then sold the entire estate to X.

1. Was the appointment of A as administrator proper? [2%]

SUGGESTED ANSWER:

1. Yes, unless it is shown that the court gravely-abused its discretion in appointing the illegitimate child as administrator, instead of the spouse. While the spouse enjoys preference, it appears that the spouse has neglected to apply for letters of administration within thirty (30) days from the death of the decedent. (Sec. 6, Rule 78, Rules of Court; Gaspay, Jr. vs. Court of Appeals. 238 SCRA 163.)

ALTERNATIVE ANSWER:

S, the surviving spouse, should have been appointed administratrix of the estate, in as much as she enjoys first preference in such appointment under the rules. (Sec. 6(a) of Rule 78, Rules of Court.)

2. Was the action of S in adjudicating the entire estate of her late husband to herself legal? [3%]

SUGGESTED ANSWER:

2. No. An affidavit of self-adjudication is allowed only if the affiant is the sole heir of the deceased. (Sec. 1, Rule 74, Rules of Court). In this case, A also claims to be an heir. Moreover, it is not legal because there is already a pending juridical proceeding for the settlement of the estate.

Settlement of Estate; Letters of Administration; Interested Person (2008)

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

SUGGESTED ANSWER:

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

Escheat Proceedings (2002)

Suppose the property of D was declared escheated on July 1, 1990 in escheat proceedings brought by the Solicitor General. Now, X, who claims to be an heir of D, filed an action to recover the escheated property. Is the action viable? Why? (2%)

SUGGESTED ANSWER:

No, the action is not viable. The action to recover escheated property must be filed within five years from July 1, 1990 or be forever barred. (Rule 91, sec. 4).

Habeas Corpus (1993)

Roxanne, a widow, filed a petition for habeas corpus with the Court of Appeals against Major Amor who is allegedly detaining her 18-year old son Bong without authority of the law. After Major Amor had a filed a return alleging the cause of detention of Bong, the Court of Appeals promulgated a resolution remanding the case to the RTC for a full-blown trial due to the conflicting facts presented by the parties in their pleadings. In directing the remand, the court of Appeals relied on Sec.9(1), in relation to Sec. 21 of BP 129 conferring upon said Court the authority to try and decide habeas corpus cases concurrently with the RTCs. Did the Court of Appeals act correctly in remanding the petition to the RTC? Why?

SUGGESTED ANSWER:

No, because while the CA has original jurisdiction over habeas corpus concurrent with the RTCs, it has no authority for remanding to the latter original actions filed with the former. On the contrary, the CA is specifically given the power to receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original jurisdiction.

ALTERNATIVE ANSWER:

Yes, because there is no prohibition in the law against a superior court referring a case to a lower court having concurrent jurisdiction. The Supreme Court has referred to the CA or the RTC cases falling within their concurrent jurisdiction.

Habeas Corpus (1998)

A was arrested on the strength of a warrant of arrest issued by the RTC in connection with an Information for Homicide. W, the live-in partner of A filed a petition for habeas corpus against A's jailer and police investigators with the Court of Appeals.

1. Does W have the personality to file the petition for habeas corpus? [2%]

2. Is the petition tenable? [3%]

SUGGESTED ANSWER:

1. Yes. W, the live-in partner of A, has the personality to file the petition for habeas corpus because it may be filed by "some person in his behalf." (Sec. 3. Rule 102. Rules of Court.)

2. No. The petition is not tenable because the warrant of arrest was issued by a court which had Jurisdiction to issue it (Sec. 4, Rule 102 Rules of Court)

Habeas Corpus; Custody of Minors; Jurisdiction (2005)

While Marietta was in her place of work in Makati City, her estranged husband Carlo barged into her house in Paranaque City, abducted their six-year old son, Percival, and brought the child to his hometown in Baguio City. Despite Marietta's pleas, Carlo refused to return their child. Marietta, through counsel, filed a petition for habeas corpus against Carlo in the Court of Appeals in Manila to compel him to produce their son, before the court and for her to regain custody. She alleged in the petition that despite her efforts, she could no longer locate her son. In his comment, Carlo alleged that the petition was erroneously filed in the Court of Appeals as the same should have been filed in the Family Court in Baguio City which, under Republic Act No. 8369, has exclusive jurisdiction, over the petition. Marietta replied that under Rule 102 of the Rules of Court, as amended, the petition may be filed in the Court of Appeals and if granted, the writ of habeas corpus shall be enforceable anywhere in the Philippines. Whose contention is correct? Explain. (5%)

SUGGESTED ANSWER:

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

Habeas Corpus; Custody of Minors (2003)

Widow A and her two children, both girls, aged 8 and 12 years old, reside in Angeles City, Pampanga. A leaves her two daughters in their house at night because she works in a brothel as a prostitute. Realizing the danger to the morals of these two girls, B, the father of the deceased husband of A, files a petition for habeas corpus against A for the custody of the girls in the Family Court in Angeles City. In said petition, B alleges that he is entitled to the custody of the two girls because their mother is living a disgraceful life. The court issues the writ of habeas corpus. When A learns of the petition and the writ, she brings her two children to Cebu City. At the expense of B the sheriff of the said Family Court goes to Cebu City and serves the writ on A. A files her comment on the petition raising the following defenses:

a) The enforcement of the writ of habeas corpus in Cebu City is illegal; and

b) B has no personality to institute the petition. 6% Resolve the petition in the light of the above defenses of A. (6%)

SUGGESTED ANSWER:

(a) The writ of habeas corpus issued by the Family Court in Angeles City may not be legally enforced in Cebu City, because the writ is enforceable only within the judicial region to which the Family Court belongs, unlike the writ granted by the Supreme Court or Court of Appeals which is enforceable anywhere in the Philippines. (Sec. 20 of Rule on Custody of Minors and Writ of Habeas Corpus in Relation to Custody of Minors. (A.M. No. 03-04-04-SC; see also Sec. 4 of Rule 102, Rules of Court.)

(b) B, the father of the deceased husband of A, has the personality to institute the petition for habeas corpus of the two minor girls, because the grandparent has the right of custody as against the mother A who is a prostitute. (Sections 2 and 13, Id.)

Habeas Corpus; Custody of Minors (2007)

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

SUGGESTED ANSWER:

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

Habeas Corpus; Bail (2008)

After Alma had started serving her sentence for violation of BP 22, she filed a petition for a writ of habeas corpus, citing Vacav CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct –

(a) Under Rule 102?

SUGGESTED ANSWER:

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

(b) Under the Rules of criminal procedure?

SUGGESTED ANSWER:

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

Habeas Corpus; Jurisdiction; Sandiganbayan (2009)

In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of habeas corpus.

SUGGESTED ANSWER:

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

Habeas Data (2010)

Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved by her co-employees because she extends cash advances or "vales" to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her. Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat. Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company's refusal to disclose the results of its investigation. Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of habeas data before the Regional Trial Court (RTC) to enjoin Temptation, Inc. from transferring her on the ground that the company's refusal to provide her with a copy of the investigation results compromises her right to life, liberty and privacy. Resolve the petition. Explain. (5%)

SUGGESTED ANSWER:

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

Habeas Data (2009)

What is the writ of habeas data?

SUGGESTED ANSWER:

A writ of habeas data is a remedy available to any persons whose right to privacy in life, liberty, or security is violated or threatened with violation by unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.

Writ of Amparo (2009)

What is the writ of amparo? How is it distinguished from the writ of habeas corpus?

SUGGESTED ANSWER:

A writ of amparo is a remedy available to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of a public official or

employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.

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

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

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

Writ of Amparo (2015)

The residents of Mt. Ahohoy, headed by Masigasig, formed a nongovernmental organization -Alyansa Laban sa Minahan sa Ahohoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the mining site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their trucks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Ahohoy (APKA), a civilian volunteer organization serving as auxiliary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their binge drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation.

Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of amparo against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of amparo with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised among their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in an amparo petition.

a.) Is their defense tenable? (3%)

Respondents Mapusok and APKA, in their Return filed with the Court of Appeals, raised as their defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

b.) Are respondents correct in raising their defense? (3%)

c.) Mayumi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed? (1%)

SUGGESTED ANSWER:

a.) NO. The defense is not tenable. The writ of *amparo* is a remedy available to any person whose right to life, liberty,

and security has been violated or is threatened with violation by an unlawful act or omission of a public officer or employee or of a private individual or entity. The writ covers extralegal killing and enforced disappearances or threats thereof (Sec. 1, Rules on the Writ of Amparo).

Moreover, the rules do not require that the respondents should be agents of the State in order to be impleaded as respondents in an *amparo* petition (Secretary of National Defense v. Manalo [2008]).

b.) YES. The respondents are correct in raising the defense. Under Sec. 2c of the Rules on the Writ of Amparo, the filing of a petition by Mayumi who is an immediate member of the family of the aggrieved party already suspends the right of all other authorized parties to file similar petitions. Hence, ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

c.) When a criminal action and a separate civil action are filed subsequent to a petition for a writ of amparo, the latter shall be consolidated with the criminal action. After consolidation, the procedure under the Rules shall continue to apply to the disposition of the reliefs in the petition. (Sec. 23, Rule on the Writ of Amparo).

Cancellation or Correction; Entries Civil Registry (2005)

Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen. Helen wants her birth certificate corrected by changing her filiation from "legitimate" to "illegitimate" and her citizenship from "Chinese" to "Filipino" because her parents were not married. What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

SUGGESTED ANSWER:

A petition to change the record of birth by changing the filiation from "legitimate" to "illegitimate" and petitioner's citizenship from "Chinese" to "Filipino" because her parents were not married, does not involve a simple summary correction, which could otherwise be done under the authority of R.A. No. 9048. A petition has to be filed in a proceeding under Rule 108 of the Rules of Court, which has now been interpreted to be adversarial in nature. (**Republic v. Valencia, G.R. No. L- 32181, March 5, 1986**) Procedural requirements include:

- (a) filing a verified petition;
- (b) naming as parties all persons who have or claim any interest which would be affected;
- (c) issuance of an order fixing the time and place of hearing;
- (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation. (*Rule 108, Rules of Court*)

Cancellation or Correction; Notice (2007)

(a) B files a petition for cancellation of the birth certificate of her daughter R on the ground of the falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was service on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for

annulment of judgment before the Court of Appeals, saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed saying that the publication of the court order was sufficient compliance with due process. Rule. (5%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Cancellation of Entry (2014)

Mary Jane met Shiela May at the recruitment agency where they both applied for overseas employment. They exchanged pleasantries, including details of their personal circumstances. Fortunately, Mary Jane was deployed to work as front desk receptionist at a hotel in Abu Dhabi where she met Sultan Ahmed who proposed marriage, to which she readily accepted. Unfortunately for Shiela May, she was not deployed to work abroad, and this made her envious of Mary Jane. Mary Jane returned to the Philippines to prepare for her wedding. She secured from the National Statistics Office (NSO) a Certificate of No Marriage. It turned out from the NSO records that Mary Jane had previously contracted marriage with John Starr, a British citizen, which she never did. The purported marriage between Mary Jane and John Starr contained all the required pertinent details on Mary Jane. Mary Jane later on learned that Shiela May is the best friend of John Starr. As a lawyer, Mary Jane seeks your advice on her predicament. What legal remedy will you avail to enable Mary Jane to contract marriage with Sultan Ahmed? (4%)

SUGGESTED ANSWER:

I will file a Petition for correction or cancellation of entry under Rule 108 of the Rules of Court.

A Petition for correction or cancellation of entry under Rule 108 may be filed by Mary Jane because what she sought to be corrected is only the record of such marriage in the Civil Registry Office in order to reflect the truth as set forth by the evidence, and not the nullification of marriage as there was no marriage on the first place. (*Republic of the Philippines v. Merlinda L. Olaybar, G.R. No. 189538, [February 10, 2014]*).

ALTERNATIVE ANSWER:

I will file a Petition for declaration of nullity of marriage. A petition for correction or cancellation of an entry in the civil registry cannot substitute an action to invalidate a marriage. A direct action for declaration of nullity or annulment of marriage is necessary to prevent the circumvention of the jurisdiction of the Family Courts (RA 8369), and the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. Accordingly, a trial court has no jurisdiction to nullify

marriages in a special proceeding for cancellation or correction of entry under Rule 108 of the Rules of Court. The validity of marriage can only be questioned in a direct action to nullify the same. (*Minoru Fujiki v. Maria Paz GalelaMarinay*, G.R. No. 196049, [June 26, 2013]).

Cancellation of Entry; Petition for Recognition of Foreign Divorce Decree (2015)

Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, Hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City.

a.) As Hades' lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia? (2%)

SUGGESTED ANSWER:

As Hades' lawyer, I would file a petition for recognition of a foreign divorce decree, or at least file a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court and include therein a prayer for recognition of the aforementioned divorce decree.

In *Corpuz, v. Sto. Tomas* [2010], the High Court declared that "the recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings [such as that in Rule 108 of the Rules of Court] is precisely to establish the status or right of a party or a particular fact" (*Fujiki v. Marinay* [2013]).

ALTERNATIVE ANSWER:

As Hades' counsel, I will not file any petition because my client is an American citizen, and only Filipino citizens are required to file a petition for recognition of a foreign judgment. I will advise Hades, nonetheless, to secure a certificate of legal capacity to marry in the Philippines if he desires to marry Hestia, in order to avoid prosecution for bigamy.

b.) In what court should you file the petition? (1 %)

SUGGESTED ANSWER:

1. Petition for recognition of foreign divorce decree should be filed in the Regional Trial Court of the place of residence of any of the parties, at the option of the petitioner; or
2. Petition for cancellation or correction of entries under Rule 108 should be filed in the Regional Trial Court of Makati City, where the corresponding Local Civil Registry is located.

c.) What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition? (3%)

SUGGESTED ANSWER:

1. In a petition for recognition of foreign judgment, the petitioner only needs to prove the foreign judgment as a fact under Sec. 24 & 25 of Rule 132 in relation to Sec. 48(b) of Rule 39 of the Rules of Court (*Fujiki v. Marinay* [2013]).
2. Before the court can hear the petition under Rule 108 of

the Rules of Court, Hades must satisfy the following procedural requirements: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which would be affected; (c) issuance of an order fixing the time and place of hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation (Rule 108, Rules of Court; *Co v. Civil Registrar of Manila* [2010]).

Change of Name (2014)

A was adopted by B and C when A was only a toddler. Later on in life, A filed with the Regional Trial Court (RTC) a petition for change of name under Rule 103 of the Rules of Court, as he wanted to reassume the surname of his natural parents because the surname of his adoptive parents sounded offensive and was seriously affecting his business and social life. The adoptive parents gave their consent to the petition for change of name. May A file a petition for change of name? If the RTC grants the petition for change of name, what, if any, will be the effect on the respective relations of A with his adoptive parents and with his natural parents? Discuss. (4%)

SUGGESTED ANSWER:

1. A should be allowed to change his surname because the reasons he invoked are proper and reasonable under the circumstances. Besides, his adoptive parents have agreed on the change of his surname.

In a case with similar facts, *Republic v. Wong*, G.R. No. 97906, [May 21, 1992], the Supreme Court allowed Maximo Wong to change his name to Maximo Alcala, Jr. Maximo was the natural child of Spouses Maximo Alcala, Sr. and Segundina Y. Alcala. When he was adopted by Spouses Hoong Wong and Concepcion Ty, his name was changed to Maximo Wong. Upon reaching the age of 22, he filed a petition to change his name to Maximo Alcala, Jr. It was averred that his use of the surname Wong embarrassed and isolated him from his relatives and friends, as the same suggests a Chinese ancestry when in truth and in fact he is a Muslim Filipino residing in a Muslim community, and he wants to erase any implication whatsoever of alien nationality; that he is being ridiculed for carrying a Chinese surname, thus hampering his business and social life; and that his adoptive mother does not oppose his desire to revert to his former surname.

Undoubtedly, A should be allowed to file a Petition for change of his surname.

ALTERNATIVE ANSWER:

1. No. A cannot file a petition for change of name because the reasons he invoked do not fall among the grounds that would justify the filing of a petition for change of name, to wit:

- (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce;
- (b) when the change results as a legal consequence, as in legitimation;
- (c) when the change will avoid confusion;
- (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage;
- (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and
- (d) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest

(Republic v. Court of Appeals, G.R. No. 97906, May 21, 1992)."

Moreover, the touchstone for the grant of a change of name is that there be "proper and reasonable cause" for which the change is sought. To justify a request for change of name, petitioner must show not only some proper or compelling reason therefore but also that he will be prejudiced by the use of his true and official name. (Republic v. Court of Appeals, G.R. No. 97906, [May 21, 1992]).

Besides, the State has an interest in the name of a person and that names cannot be changed to suit merely the convenience of the bearers (In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, G.R. No. 148311, [March 31, 2005]; In Re: Petition For Change Of Name And/Or Correction/Cancellation Of Entry In Civil Registry Of Julian Lin Carulasan Wang, G.R. No. 159966, [March 30, 2005]).

In the case at bar, the only reason advanced by A for the change of his surname is that it is offensive and it seriously affects his business and social life. Accordingly, A's reasons are not considered proper and compelling that would justify the filing of his Petition for change of name.

2. Assuming that the court allows A to reassume the use of the surname of his biological parents, there will be no effect on the respective relations of A with his adoptive parents and his natural parents. Until and unless the adoption is rescinded by the court, the paternity and filiation which exist by reason of adoption subsists. Ergo, the grant of A's Petition for change of name will have no effect on the respective relations of A with his adoptive and natural parents.

After all, the change of name does not define or effect change in one's existing family relations or in the rights and duties flowing therefrom. It does not alter one's legal capacity, civil status or citizenship; what is altered is only the name. (Republic v. Court of Appeals, G.R. No. 97906, [May 21, 1992]).

Declaration of Absence and Death; Presumptive Death (2009)

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

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

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

SUGGESTED ANSWER:

No. the petition for Declaration of Presumptive Death provided in Art. 41 of the "Family Code" is not the special proceeding governing absentees under Rule 107 of the Rules of Court whose rules of procedure will not be followed (Republic vs. C.A., 458 SCRA [2005]).

Said petition for Declaration of Presumptive Death under Article 41 of the Family Code is a summary proceeding, authorized for purposes only of remarriage of the present spouse, to avoid incurring the crime of bigamy. Nonetheless, it is in the nature of a special proceeding, being an application to establish a status or a particular fact in court.

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

NO. Appeal is not a proper remedy since the decision is immediately final and executor upon notice to the parties under Art. 247 of the Family Code (Republic vs Bermudez-Lorino, 449 SCRA 57 [2005]). The OSG may assail RTC's grant of the petition only on the premise of grave abuse of discretion amounting to lack or excess of jurisdiction. The remedy should be by certiorari under Rule 65 of the Rules of Court.

CRIMINAL PROCEDURE

Prosecution of Offenses; Parties (2000)

Your friend YY, an orphan, 16 years old, seeks your legal advice. She tells you that ZZ, her uncle, subjected her to acts of lasciviousness; that when she told her grandparents, they told her to just keep quiet and not to file charges against ZZ, their son. Feeling very much aggrieved, she asks you how her uncle ZZ can be made to answer for his crime.

a) What would your advice be? Explain. (3%)

b) Suppose the crime committed against YY by her uncle ZZ is rape, witnessed by your mutual friend XX. But this time, YY was prevailed upon by her grandparents not to file charges. XX asks you if she can initiate the complaint against ZZ. Would your answer be the same? Explain. (2%).

SUGGESTED ANSWER:

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

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

Prosecution of Offenses; Adultery & Concubinage; How Commenced (2013)

Yvonne, a young and lonely OFW, had an intimate relationship abroad with a friend, Percy. Although Yvonne comes home to Manila every six months, her foreign posting still left her husband Dario lonely so that he also engaged in his own extramarital activities. In one particularly exhilarating session with his girlfriend, Dario died. Within 180 days from Dario's death, Yvonne gives birth in Manila to a baby boy. Irrate relatives of Dario contemplate criminally charging

Yvonne for adultery and they hire your law firm to handle the case.

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

B) Yes, under Article 171 of the Family Code, the heirs of the husband may impugn the filiation of the child in the following cases:

- a) If the husband should die before the expiration of the period fixed for bringing his action;
- b) If he should die after the filing of the complaint, without having desisted therefrom; or
- c) If the child was born after the death of the husband.

Since Dario is already dead when the baby boy was born, his heirs have the right to impugn the filiation of the child. Consequently, the heirs may impugn the filiation either by a direct action to impugn such filiation or raise the same in a special proceeding for settlement of the estate of the decedent. In the said proceeding, the Probate court has the power to determine questions as to who are the heirs of the decedent (Reyes v. Ysip, et al., 97 Phil. 11; Jimenez v. IAC, 184 SCRA 367). Incidentally, the heirs can also submit the baby boy for DNA testing (AM. No. 6-11-5-SC, Rules on DNA Evidence) or even blood-test in order to determine paternity and filiation. In Jao v. Court of Appeals, GR. No. L-49162, July 28 1987, the Supreme Court held that blood grouping tests are conclusive as to non-paternity, although inconclusive as to paternity. The fact that the blood type of the child is a possible product of the mother and alleged father does not conclusively prove that the child is born by such parents; but, if the blood type of the child is not the possible blood type when the blood of the mother and that of the alleged father are cross matched, then the child cannot possibly be that of the alleged father.

ALTERNATIVE ANSWER:

B. No. There is no showing in the problem of any ground that would serve as a basis for an action to impugn the paternity of the baby boy. In Conception v. Almonte, G. R. No. 123450, August 31 2005 citing Cabatania v. Court of Appeals, the Supreme Court held that the law requires that every reasonable presumption be made in favor of legitimacy. The presumption of legitimacy does not only flow out of a declaration in the statute but is based on the broad principles of natural justice and the supposed virtue of the mother. It is grounded on the policy to protect the innocent offspring from the odium of illegitimacy. The presumption of legitimacy proceeds from the sexual union in marriage, particularly during the period of conception. To overthrow this presumption on the basis of Article 166 (1) (b) of the Family Code, it must be shown beyond reasonable doubt that there was no access that could have enabled the

husband to father the child. Sexual intercourse is to be presumed where personal access is not disproved, unless such presumption is rebutted by evidence to the contrary. Hence, a child born to a husband and wife during a valid marriage is presumed legitimate. Thus, the child's legitimacy may be impugned only under the strict standards provided by law (Herrera v. Alba, GR No. 148220, June 15, 2005).

Prosecution of Offenses; Written Defamation (Libel); Grounds; Venue (2014)

Co Batong, a Taipan, filed a civil action for damages with the Regional Trial Court (RTC) of Pargiaque City against Jose Penduko, a news reporter of the Philippine Times, a newspaper of general circulation printed and published in Parafiaque City. The complaint alleged, among others, that Jose Penduko wrote malicious and defamatory imputations against Co Batong; that Co Batong's business address is in Makati City; and that the libelous article was first printed and published in Parafiaque City. The complaint prayed that Jose Penduko be held liable to pay P200,000.00, as moral damages; P150,000.00, as exemplary damages; and P50,000.00, as attorney's fees. Jose Penduko filed a Motion to Dismiss on the following grounds:

1. The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (MeTC) of Parafiaque City.
2. The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

Are the grounds invoked in the Motion to Dismiss proper? (4%)

(1) The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (MeTC) of Parafiaque City.

FIRST SUGGESTED ANSWER,

No. The ground invoked in the Motion to Dismiss is not proper.

Under Article 360 of the Revised Penal Code, the civil action for damages in cases of written defamation may be filed separately in the Regional Trial Court where the libelous article was printed and first published, regardless of the amount of damages being claimed.

SECOND SUGGESTED ANSWER:

Yes. The ground invoked in the Motion to Dismiss is proper.

In case the claim for damages is the main cause of action, the entire amount of such claim shall be considered in determining the jurisdiction of the court (Administrative Circular No. 09-94).

Hence, the full amount of damages including the attorney's fees being claimed shall determine which Court has jurisdiction. (Sante s. Hon. Claravall, G.R. No. 173915, [February 22, 2010]).

(2) The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

FIRST SUGGESTED ANSWER:

The venue is properly laid.

Under the law, the venue for the civil action involving written Defamation shall be the place where the defamatory article was printed and first published. (Article 360, Revised Penal Code)

Since the defamatory article was printed and first published in Parariaque City, the venue of the action is properly laid.

Hence, the dismissal of the Complaint will only be proper if the Complaint failed to allege the residence of the complainant or the place where the libelous article was printed and first published. (Nocum v. Tan, G.R. No. 145022, [September 23, 2005]).

SECOND SUGGESTED ANSWER:

Under the Rules, personal actions may be commenced and tried where the plaintiff resides or any of the principal plaintiffs reside, or where the defendant or any of the defendants reside, at the option of the plaintiff.

Since Co Batong filed the case in a place which is neither his nor Jose Penduko's residence, the venue of the action is improperly laid. At any rate, instead of dismissing the Complaint, the Court may order Co Batong to simply amend the same in order to allege his place of residence.

Prosecution of Offenses; How Commenced; Requirements (2013)

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

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

- a) File the independent civil action and prosecute the criminal case separately.
- b) File the independent civil action without filing the criminal case.
- c) File the criminal case without need of reserving the independent civil action.

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

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

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

Prosecution of Offenses; Offense Committed in a Public Vehicle; Jurisdiction (2013)

On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

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

SUGGESTED ANSWER:

A) Police Inspector Masigasig should bring the felon to the nearest police station or jail in Makati City where the bus actually was when the felonies took place. In cases of warrantless arrest, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112 (Section 5, Rules of Criminal Procedure).

Moreover, where an offense is committed in a public vehicle while in the course of its trip, the criminal action shall be instituted and tried in the court of any Municipality or territory where such vehicle passed during its trip, including the place of its departure and arrival (Section 15 (b), Rule 110, Rules of Criminal Procedure). Consequently, the criminal case for robbery and illegal possession of firearms can be filed in

Regional Trial Court of Makati City or on any of the places of departure or arrival of the bus.

Venue (1997)

Where is the proper venue for the filing of an information in the following cases? a) The theft of a car in Pasig City which was brought to Obando, Bulacan, where it was cannibalized. b) The theft by X, a bill collector of ABC Company, with main offices in Makati City, of his collections from customers in Tagaytay City. In the contract of employment, X was detailed to the Calamba branch office, Laguna, where he was to turn in his collections. c) The malversation of public funds by a Philippine consul detailed in the Philippine Embassy in London.

SUGGESTED ANSWER:

(a) The proper venue is in Pasig City where the theft of the car was committed, not in Obando where it was cannibalized. Theft is not a continuing offense. (**People v Mercado, 65 Phil 665**).

(b) If the crime charged is theft, the venue is in Calamba where he did not turn in his collections. If the crime of X is estafa, the essential ingredients of the offense took place in Tagaytay City where he received his collections, in Calamba where he should have turned in his collections, and in Makati City where the ABC Company was based. The information may therefore be filed in Tagaytay City or Calamba or Makati which have concurrent territorial Jurisdiction. (**Catingub vs. Court of Appeals, 121 SCRA 106**).

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

Alternative Answers:

(b) The information may be filed either in Calamba or in Makati City, not in Tagaytay City where no offense had as yet been committed, (c) Assuming that the Sandiganbayan has no jurisdiction, the proper venue is the first RTC in which the charge is filed (**Sec. 15(d). Rule 110**).

Jurisdiction; Complex Crimes (2003)

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

SUGGESTED ANSWER:

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

Jurisdiction; Finality of a Judgment (2005)

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

Actions; BP22; Civil Action deemed included (2001)

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

SUGGESTED ANSWER:

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

Actions; BP22; Demurrer to Evidence (2003)

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

SUGGESTED ANSWER:

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

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

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

SPO1 CNC filed with the MTC in Quezon City (MeTCQC) a sworn written statement duly subscribed by him, charging RGR (an actual resident of Cebu City) with the offense of slight physical injuries allegedly inflicted on SPS (an actual resident of Quezon City). The Judge of the branch to which the case was raffled thereupon issued an order declaring that the case shall be governed by the Rule on Summary Procedure in criminal cases. Soon thereafter, the Judge ordered the dismissal of the

case for the reason that it was not commenced by information, as required by said Rule. Sometime later, based on the same facts giving rise to the slight physical injuries case, the City Prosecutor filed with the same MeTC-QC an information for attempted homicide against the same RGR. In due time, before arraignment, RGR moved to quash the information on the ground of double jeopardy and after due hearing, the Judge granted his motion. Was the dismissal of the complaint for slight physical injuries proper? Was the grant of the motion to quash the attempted homicide information correct? Reason. (5%)

SUGGESTED ANSWER:

Yes, the dismissal of the complaint for slight physical injuries is proper because in Metropolitan Manila and in chartered cities, the case has to be commenced only by information. (Sec. 11, Revised Rule on Summary Procedure). No, the grant of the motion to quash the attempted homicide information on the ground of double jeopardy was not correct, because there was no valid prosecution for slight physical injuries.

Actions; Discretionary Power of Fiscal (1999)

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

SUGGESTED ANSWER:

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

Actions; Injunction (1999)

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

SUGGESTED ANSWER:

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

- a) To afford adequate protection to the constitutional rights of the accused;
- b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c) When double jeopardy is clearly apparent; d) Where the charges are manifestly false and motivated by the lust for vengeance;
- e) Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. (See cases cited in *Roberts, Jr., vs. Court of Appeals*, 254 SCRA 307 [1996] and *Brocka v. Enrile*, 192 SCRA 183 [1990].)

Actions; Complaint; Forum Shopping (2010)

X was driving the dump truck of Y along Cattleya Street in

Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street. Lawyer L, who witnessed the incident, offered his legal services to V. V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone. On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action. V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his "Certification Against Forum Shopping," V made no mention of the pendency of the criminal case in Sta. Maria.

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

SUGGESTED ANSWER:

No, V is not guilty of forum shopping because the case in Sta. Maria, Bulacan, is a criminal action filed in the name of the People of the Philippines, where civil liability arising from the crime is deemed also instituted therewith; whereas the case filed in Urdaneta, Pangasinan, is a civil action for quasi-delict in the name of V and against both X and Y for all damages caused by X and Y to V, which may be beyond the jurisdiction of MTC. Hence, the tests of forum shopping, which is res adjudicate or litispendencia, do not obtain here.

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

action is authorized.

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

SUGGESTED ANSWER:

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

Actions; Hold Departure Order (2010)

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-way airplane ticket was purchased online using his credit card for a flight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

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

SUGGESTED ANSWER:

I would advise:

- (1) The filing of an appropriate criminal action cognizable by the RTC against Dina and the filing in said criminal action a Motion for the issuance of a Hold Departure Order;
- (2) thereafter, a written request with the Commissioner of the Bureau of Immigration for a Watch List Order pending the issuance of the Hold Departure Order should be filed;
- (3) then, the airline company should be requested to cancel the ticket issued to Dina.

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

SUGGESTED ANSWER:

He will have to present (a) his report to the bank that he lost his credit card (b) that the ticket was purchased after the report of the lost and (c) the purchase of one-way ticket. Dante should bring an original (or an equivalent copy) printout of: 1) the online ticket purchase using his credit card; 2) the phone call log to show that he already alerted the credit card company of his loss; and 3) his credit card billing statement bearing the online ticket transaction.

Complaint; Where Filed (2012)

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

SUGGESTED ANSWER:

Yes, the bank may directly file the complaint with the proper court. In the absence or unavailability of an inquest

prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person (Section 6, Rule 12 of the Revised Rules of Criminal Procedure).

Complaint vs. Information (1999)

Distinguish a Complaint from Information. (2%)

SUGGESTED ANSWER:

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

Information (2001)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Information; Amendment (2001)

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

SUGGESTED ANSWER:

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

Information; Amendment; Double Jeopardy; Bail (2002)

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

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

SUGGESTED ANSWER:

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

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

Information; Amendment; Supervening Events (1997)

A was accused of homicide for the killing of B. During the trial, the public prosecutor received a copy of the marriage certificate of A and B. (a) Can the public prosecutor move for the amendment of the information to charge A with the crime of

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

SUGGESTED ANSWER:

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

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

Information; Bail (2003)

After the requisite proceedings, the Provincial Prosecutor filed an Information for homicide against X. The latter, however, timely filed a Petition for Review of the Resolution of the Provincial Prosecutor with the Secretary of Justice who, in due time, issued a Resolution reversing the resolution of the Provincial Prosecutor and directing him to withdraw the Information. Before the Provincial Prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X. The Public Prosecutor filed a Motion to Quash the Warrant of Arrest and to Withdraw the Information, attaching to it the Resolution of the Secretary of Justice. The court denied the motion. (6%)

a) Was there a legal basis for the court to deny the motion?

b) If you were the counsel for the accused, what remedies, if any, would you pursue?

SUGGESTED ANSWER:

a. Yes, there is a legal basis for the court to deny the motion to quash the warrant of arrest and to withdraw the information. The court is not bound by the Resolution of the Secretary of Justice. (**Crespo v. Mogul, 151 SCRA 462 [1997]**).

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

Information; Motion to Quash; Grounds (1998)

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

SUGGESTED ANSWER:

1. Two grounds to quash an Information are:

a) That the facts charged do not constitute an offense; and

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

c) That the officer who filed the information had no authority to do so;

d) That it does not conform substantially to the prescribed form;

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

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

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

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

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

SUGGESTED ANSWER:

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

Information; Motion to Quash (2000)

BC is charged with illegal possession of firearms under an Information signed by a Provincial Prosecutor. After arraignment but before pre-trial, BC found out that the Provincial Prosecutor had no authority to sign and file the information as it was the City Prosecutor who has such authority. During the pre-trial, BC moves that the case against him be dismissed on the ground that the Information is defective because the officer signing it lacked the authority to do so. The Provincial Prosecutor

opposes the motion on the ground of estoppel as BC did not move to quash the Information before arraignment. If you are counsel for BC, what is your argument to refute the opposition of the Provincial Prosecutor? (5%)

SUGGESTED ANSWER:

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

Information; Motion to Quash (2005)

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

SUGGESTED ANSWER:

The ground for the motion to quash is that more than one offense is charged in the information. (*Sec. 3[f], Rule 117, 2000 Rules of Criminal Procedure*) Likewise, the RTC has

no jurisdiction over the second offense of possession of an unlicensed .32 caliber gun, punishable by prison correctional in its maximum period and a fine of not less than P15,000.00. It is the MTC that has exclusive and original jurisdiction over all offenses punishable by imprisonment not exceeding six years. (Sec. 2, R.A. No. 7691, amending B.P. Blg. 129)

Information; Motion to Quash (2009)

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

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

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

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

The motion to quash should be denied for lack of merit. The case is already filed in court which must have been done with the approval of the Ombudsman, and thus the Special Prosecutor's office of the Ombudsman takes over. As it is the court which ordered the reinvestigation, the Office of the Special Prosecutor which is handling the case in court, has the authority to act and when warranted, refile the case. The amendment made is only a matter of form which only particularized the violation of the same provision of Rep. Act 3019, as amended.

Information; Motion to Quash (2009)

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

SUGGESTED ANSWER:

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

Information; Motion to Quash; RA 30119; Death of one of the Conspirators (2014)

The Ombudsman, after conducting the requisite preliminary investigation, found probable cause to charge Gov. Matigas in conspiracy with Carpintero, a private individual, for violating Section 3(e) of Republic Act (RA) No. 3019 (Anti-Graft and Corrupt Practices Act, as amended). Before the information could be filed with the Sandiganbayan, Gov. Matigas was killed in an ambush. This, notwithstanding, an information was filed against Gov. Matigas and Carpintero.

At the Sandiganbayan, Carpintero through counsel, filed a Motion to Quash the Information, on the ground of lack of jurisdiction of the Sandiganbayan, arguing that with the death of Gov. Matigas, there is no public officer charged in the information. Is the motion to quash legally tenable? (4%)

SUGGESTED ANSWER:

No. The Motion to quash is not legally tenable. While it is true that by reason of the death of Gov. Matigas, there is no longer any public officer with whom he can be charged for violation of R.A. 3019, it does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Gov. Matigas is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and Carpintero.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy. (People of the Philippines v. Henry T. Go, G.R. No. 168539, (March 25, 2014, Peralta, J.1).

Information; Reversal by DOJ Secretary of Investigating Prosecutor's Finding; Proper Court Action (2012)

After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused's petition for review, reversed the investigating prosecutor's finding of probable cause. Upon order of the DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Arrest; Warrantless Arrest; Preliminary Investigation (2004)

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

SUGGESTED ANSWER:

No. The warrantless arrest is not valid because the alleged offense has not just been committed. The crime was allegedly committed one year before the arrest. (*Sec. 5 (b) of Rule 113*). Yes, he is entitled to a preliminary investigation because he was not lawfully arrested without a warrant (*See Sec. 7 of Rule 112*). He can move for a reinvestigation.

ALTERNATIVE ANSWER:

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

Arrest; Warrantless Arrests & Searches (1997)

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

SUGGESTED ANSWER:

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

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

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

Arrest; Warrantless Arrests & Seizures (2003)

In a buy-bust operation, the police operatives arrested the accused and seized from him a sachet of shabu and an unlicensed firearm. The accused was charged in two Informations, one for violation of the "Dangerous Drug Act", as amended, and another for illegal possession of firearms. The accused filed an action for recovery of the firearm in another court against the police officers with an application for the issuance of a writ of replevin. He alleged in his Complaint that he was a military informer who had been issued a written authority to carry said firearm. The police officers moved to dismiss the complaint on the ground that the subject firearm was in custodia legis. The court denied the motion and instead issued the writ of replevin. (a) Was the seizure of the firearm valid? (b) Was the denial of the motion to dismiss proper? 6%

SUGGESTED ANSWER:

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

(b) The denial of the motion to dismiss was not proper. The court had no authority to issue the writ of replevin whether the firearm was in custodia legis or not. The motion to recover the firearm should be filed in the court where the criminal action is pending.

Arrest; Warrantless Arrests; Objection (2000)

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

SUGGESTED ANSWER:

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

Arrest; Warrantless Arrests & Searches (2007)

(a) On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly. (5%)

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

Yes, the police may take with him the "unlicensed" firearm although not covered by the search warrant.

Possession of an "unlicensed firearm" is a criminal offense and the police officer may seize an article which is the "subject of an offense." Thus especially so considering that the "unlicensed firearm" appears to be in "plain view" of the police officer when he conducted the search. Even if the warrant was subsequently quashed, the police are not mandated to return the "unlicensed firearm." The quashal of the search warrant did not affect the validity of the seizure of the "unlicensed firearm." Moreover, returning the firearm to a person who is not otherwise allowed by law to possess the same would be tantamount to abetting a violation of the law.

Warrantless Arrests & Searches (2015)

Hercules was walking near a police station when a police officer signaled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, "Sir, may problema po ba?" Instead of replying, the police officer locked up Hercules inside the police station jail.

a.) What is the remedy available to Hercules to secure his immediate release from detention? (2%)

SUGGESTED ANSWER:

The remedy available to Hercules is to file a petition for *Habeas Corpus* questioning the illegality of his warrantless arrest. The writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty. (Sec.1, Rule 102, Rules of Court).

ALTERNATIVE ANSWER:

Hercules may also apply for bail. Under Sec. 17c, Rule 114 of the Rules of Court, any person in custody who is not yet

charged in court may apply for bail with any court in the province, city, or municipality where he is held.

b.) If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint? (3%)

SUGGESTED ANSWER:

As counsel of the policeman, I will raise the defense of presumption of regularity in the performance of duty.

I can also raise the defense that the police officer has the duty to search Hercules under the "stop and frisk" rule.

A stop-and-frisk situation must precede a warrantless arrest, be limited to the person's outer clothing, and should be grounded upon a genuine reason, in the light of the police officers' experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him (*Valdez v. People* [2007]).

The stop-and-frisk search should be used *when dealing with a rapidly unfolding and potentially criminal situation in the city streets where unarguably there is no time to secure a search warrant*. Stop-and-frisk searches (sometimes referred to as Terry searches) are necessary for law enforcement, that is, law enforcers should be given the legal arsenal to prevent the commission of offenses. This should be balanced, however, with the need to protect the privacy of citizens in accordance with Article III, Sec.2 of the Constitution (*People v. Cogaed* [2014]).

In addition, I may also assert the defense that the complaint for warrantless search charges no criminal offense. The conduct of a warrantless search is not a criminal act, for it is not penalized under the Revised Penal Code or any other special laws.

ALTERNATIVE ANSWER:

As counsel for the police officer, I will argue that the Ombudsman has no jurisdiction over the complaint filed by Hercules.

While Ombudsman has disciplinary authority over officials and members of the PNP concurrently with the NAPOLCOM and PNP, the Memorandum of Agreement executed by and among the Ombudsman, PNP, and NAPOLCOM on Sept. 12, 2012 specifies the administrative cases that are within the primary jurisdiction of the Ombudsman.

Since the complaint filed against mu client is not among those administrative cases under the primary jurisdiction of the Ombudsman, the complaint should necessarily be dismissed.

c.) If Hercules opts to file a civil action against the police officer, will he have a cause of action? (3%)

SUGGESTED ANSWER:

YES. Hercules has a cause of action to file a civil action against the police officer under Article 32 (4) in relation to Article 2219 (6) and (10) of the New Civil Code, which provides that a public officer may be liable for damages when the right to be secure in one's person, house, papers and effects against unreasonable searches and seizures is impaired. The indemnity includes moral damages. Exemplary damages may also be adjudicated (*Galvante v.*

Casimiro [2008]).

Arrest; Warrantless Arrest (2013)

On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

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

SUGGESTED ANSWER:

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

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

Arrest and Bail; Extradition (2004)

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

SUGGESTED ANSWER:

Under the Extradition Treaty and Law, the application of the Secretary of Justice for a warrant of arrest need not be set for hearing, and Juan cannot be allowed to post bail if the court would issue a warrant of arrest. The provisions in the Rules of Court on arrest and bail are not basically applicable. (*Government of the United States of America v. Puruganan*, 389 SCRA 623 [2002])

Arrest; Motion to Quash Warrant of Arrest (2015)

An information for murder was filed against Rapido. The RTC judge, after personally evaluating the prosecutor's resolution, documents and parties' affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido's lawyer examined the rollo of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest. Immediately, Rapido's counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

a.) *The judge before issuing the warrant did not personally conduct a searching examination of the prosecution witnesses in violation of his client's constitutionally-mandated rights;*

b.) *There was no prior order finding probable cause before the judge issued the arrest warrant.*

May the warrant of arrest be quashed on the grounds cited by Rapido's counsel? State your reason for each ground. (4%)

SUGGESTED ANSWER:

NO, the warrant of arrest may not be quashed based on the grounds cited by Rapido's counsel. In the issuance of a warrant of arrest, the mandate of the constitution is for the judge to personally determine the existence of probable cause. The words "personal determination" was interpreted by the Supreme Court in *Soliven v. Makasiar* [1988] as the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause.

What the law requires as personal determination on the part of a judge is that he should not rely solely on the report of the investigating prosecutor. Thus, personal examination of the complainant and his witness is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest (*People v. Joseph Grey* [2010]).

At any rate, there is no law or rule that requires the Judge to issue a prior Order finding probable cause before the issuance of a warrant of arrest.

Bail (2002)

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

SUGGESTED ANSWER:

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

Bail (2014)

A was charged with murder in the lower court. His Petition for Bail was denied after a summary hearing on the ground that the prosecution had established a strong evidence of guilt. No Motion for Reconsideration was filed from the denial of the Petition for Bail. During the reception of the evidence of the accused, the accused reiterated his petition for bail on the ground that the witnesses so far presented by the accused had shown that no qualifying aggravating circumstance attended the killing. The court denied the petition on the grounds that it had already ruled that: (i) the evidence of guilt is strong; (ii) the resolution for the Petition for Bail is solely based on the evidence presented by the prosecution; and (iii) no Motion for Reconsideration was filed from the denial of the Petition for Bail. (6%)

(A) If you are the Judge, how will you resolve the incident?

SUGGESTED ANSWER:

If I were the Judge, I would grant the second Petition for Bail. Under Section 7, Rule 114, Rules of Court, no person charged with a capital offense, or an offense punishable by reclusion perpetua or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage

of the criminal prosecution. In this case, the evidence of guilt for the crime of murder is not strong, as shown by the prosecution's failure to prove the circumstances that will qualify the crime to, and consequently convict the accused of, murder. Accordingly, the accused should be allowed to post bail because the evidence of his guilt is not strong. (Section 13, Article 3, 1987 Constitution) Besides, it is settled that an Order granting bail is merely interlocutory which cannot attain finality. (Pobre v. People, G.R. No. 141805, [July 8, 2005]).

ALTERNATIVE ANSWER:

If I were the Judge, I would deny the second Petition for Bail. Since the accused was already given the opportunity to present evidence in the summary hearing of his application for bail, and the Court has already ruled that the evidence of the prosecution is strong, his failure to file a motion for reconsideration of the denial of his petition for bail will render the aforesaid Order final and executory, which can no longer be altered therefore during the hearing on the merits. Be that as it may, the Court's ruling that the resolution for the Petition for Bail should be based solely on the evidence presented by the Prosecution is misplaced.

(B) Suppose the accused is convicted of the crime of homicide and the accused filed a Notice of Appeal, is he entitled to bail?

SUGGESTED ANSWER:

Yes. The accused is entitled to bail subject to the discretion of the Court. Under Section 5, Rule 114, Rules of Court, the appellate Court may allow him to post bail because the Trial Court in convicting him, changed the nature of the offense from non-bailable to bailable. Be that as it may, the denial of bail pending appeal is a matter of wise discretion since after conviction by the trial court, the presumption of innocence terminates and, accordingly, the constitutional right to bail ends. (Jose Antonio Leviste v. Court of Appeals, G.R. No. 189122, [Marc!: 17, 2010]).

ALTERNATIVE ANSWER:

No. An accused originally charged with murder, though eventually convicted by the trial court for homicide only, is not entitled to bail during the pendency of the appeal, for the reason that, during the review of his appeal, the appellate court may still find him guilty of the more serious charge of murder. (Obosa v. Court of Appeals, G.12. No. 114350, [January 16, 1997]).

Bail; Single Larceny Doctrine (2015)

Paz was awakened by a commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO 1 Remus and PO2 Romulus proceeded to the condo unit identified by Paz. PO 1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as police officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by PO2 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO 1 Remus took the young lady's statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung physically hurt her. PO2 Romulus detained Oasis Jung at the station's

jail. After the inquest proceeding, the public prosecutor filed an information for Violation of R.A. No. 9262 (The VA WC Law) for physical violence and five separate informations for violation of R.A. No. 7610 (The Child Abuse Law). Oasis Jung's lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made only after his arraignment.

a.) Did the court properly impose that bail condition? (3%)

Before arraignment, Oasis Jung's lawyer moved to quash the other four separate informations for violation of the child abuse law invoking the single larceny rule.

b.) Should the motion to quash be granted? (2%)

c.) After his release from detention on bail, can Oasis Jung still question the validity of his arrest? (2%)

SUGGESTED ANSWER:

a.) NO. The court did not properly impose that bail condition. The Revised Rules of Criminal Procedure do not require the arraignment of the accused as a prerequisite to the conduct of hearings in the bail petition. A person is allowed to file a petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing the bail petition (Serapio v. Sandiganbayan [2003]).

Moreover, the condition that the approval of bail bonds shall be made only after arraignment would place the accused in a position where he has to choose between: (1) filing a motion to quash (the information) and thus delay his release on bail because until his motion to quash can be resolved, his arraignment cannot be held; and (2) foregoing the filing of a motion to quash (the Information) so that he can be arraigned at once and thereafter be released on bail (Lavides v. Court of Appeals [2000]).

b.) NO. The court should not grant the motion to quash, because the "single larceny rule" does not find application where the charges involve violations of R.A. 9262 (The VAWCI Law) and R.A. 7610 (The Child Abuse Law), considering that each criminal act is based on a different criminal impulse and intent.

In Santiago v. Garchitorena [1993], the Supreme Court explained that the "single larceny doctrine" applies only to crimes committed *delito continuado*, which exists if there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and same instant or resolution leading to the perpetration of the same criminal purpose or aim.

The said rule applies in theft cases, where the taking of several things, whether belonging to the same or different owners, at the same time and place constitutes but one larceny (Santiago v. Garchitorena [1993]).

Note: The Committee respectfully recommends that the examinees be given full credit to any answer provided to the question because the single larceny rule is not included in the 2015 Bar Examination Syllabus in Remedial Law.

c.) YES. Oasis Jung can still question the validity of his arrest even after his release from detention on bail. Under Sec. 26, Rule 114 of the Rules of Court, an application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea.

Bail; Appeal (1998)

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

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

Bail; Application; Venue (2002)

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

SUGGESTED ANSWER:

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

Bail; Forms of Bail (1999)

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

SUGGESTED ANSWER:

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

Bail; Matter of Right (1999)

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

SUGGESTED ANSWER:

If bail is a matter of right, it cannot be denied on the ground that there exists a high degree of probability that the accused will abscond or escape. What the court can do is to

increase the amount of the bail. One of the guidelines that the judge may use in fixing a reasonable amount of bail is the probability of the accused appearing in trial.

Bail; Matter of Right (2013)

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(D) In one other case, an indigent mother seeks assistance for her 14-year old son who has been arrested and detained for malicious mischief. Would an application for bail be the appropriate remedy or is there another remedy available? Justify your chosen remedy and outline the appropriate steps to take. (3%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Where a child is detained, the court shall order:

- a) the release of the minor on recognizance to his / her parents and other suitable person;
- b) the release of the child in conflict with the law on bail; or
- c) the transfer of the minor to a youth detention home / youth rehabilitation center. The court shall not order the detention of a child in a jail pending trial or hearing of his / her case (Section 5 and 35, RA 9344).

Conversely, a petition for habeas corpus under Rule 102 may also be considered an appropriate remedy if the court has ordered the detention of a child pending trial or hearing of his case. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto (IN THE MATTER OF THE PETITION OF HABEAS CORPUS OF EUFEMIA E. RODRIGUEZ, filed by EDGARDO E. VELUZ v. LUISA R. VILLANUEVA and TERESITA R. PABELLO, G. R. No. 169482, January 29, 2008, CORONA, J.).

Since minors fifteen (15) years of age and under are not criminally responsible, the child may not be detained to answer for the alleged offense. The arresting authority has the duty to immediately release the child to the custody of his parents or guardians or in their absence to the child's nearest relative (Section 20, Republic Act 9344). Following the hierarchy of courts, the Petition must be filed in the Regional Trial Court having jurisdiction over the place where the child is being detained.

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

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

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

SUGGESTED ANSWER:

When Bail is a matter of right:

All persons in custody shall,

(a) before or after conviction by the metropolitan and municipal trial courts, and

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

When bail is a matter of discretion:

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

1 That the accused is a recidivist, quasi-re-cidivist or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;

2 That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid justification;

3 That the accused committed the offense while on probation, parole, or under conditional pardon;

4 That the circumstances of the accused or his case indicate the probability of flight if released on bail; or

5 That there is undue risk that during the pendency of the appeal, the accused may commit another crime. (*Sec. 1, Id.*)

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

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

SUGGESTED ANSWER:

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

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

Bail; Witness Posting Bail (1999)

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

SUGGESTED ANSWER:

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

Bail; Remedy from Denial (2014)

A was charged before the Sandiganbayan with a crime of plunder, a non-bailable offense, where the court had already issued a warrant for his arrest. Without A being arrested, his lawyer filed a Motion to Quash Arrest Warrant and to Fix Bail, arguing that the allegations in the infoi illation did not charge the crime of plunder but a crime- of malversation, a bailable

offense. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the accused and that the accused should be under the custody of the court since the crime charged was non-bailable. The accused's lawyer counter- argued that the court can rule on the motion even if the accused was at-large because it had jurisdiction over the subject matter of the case. According to said lawyer, there was no need for the accused to be under the custody of the court because what was filed was a Motion to Quash Arrest and to Fix Bail, not a Petition for Bail. (A) If you are the Sandiganbayan, how will you rule on the motion? (3%)

SUGGESTED ANSWER:

I will grant the Motion to quash the warrant of arrest but I will deny the Motion to fix bail. A motion to fix bail is essentially an application for bail. (*People v. Bucalon, G.R. No. 176933, [October 2, 2009]*). Relative thereto, bail is the security for the release of the person in the custody of the law. (Section 1 Rule 114 of the Rules of Court). The Rules use the word "custody" to signify that bail is only available for someone who is under the custody of the law. (*Peter Paul Dimatulac v. Hon. Sesinando Villon, G.R. No. 127107, [October 12, 1998]*). Hence, A cannot seek any judicial relief if he does not submit his person to the jurisdiction of the Sandiganbayan. On the other hand, the Sandiganbayan may grant the Motion to quash the warrant of arrest. It is well settled that adjudication of a motion to quash a warrant of arrest requires neither jurisdiction over the person of the accused nor custody of law over the body of the accused. Otherwise stated, an accused can invoke the processes of the court even though there is neither jurisdiction over his person nor he is under the custody of the law. (*Jose C. Miranda v. Virgilio M. Tuliao, G.R. No. 158763, [March 31, 2006]*). Thus, Sandiganbayan may grant the Motion to quash the warrant of arrest.

ALTERNATIVE ANSWER:

I will grant the Motions to quash the warrant of arrest and fix bail. Well settled is the rule that there are two (2) ways of acquiring jurisdiction over the person of the accused, namely: (i) arrest by virtue of a warrant; and (ii) voluntary appearance of the accused. *People v. Arturo Lara, G.R. No. 199877, [August 13, 2012]*. In filing the aforementioned Motions, the accused sought affirmative reliefs from the Sandiganbayan. Thus, he is deemed to have voluntarily submitted himself to the jurisdiction of said Court. Hence, the Sandiganbayan may validly grant the said Motions in favor of the accused.

(B) If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake? (2%)

SUGGESTED ANSWER:

The accused may file a Motion for Reconsideration. If the same is denied, the accused may resort to a Petition for Certiorari under Rule 65 directly to the Supreme Court.

Bail; Custody Requirement (2012)

A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail saying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

SUGGESTED ANSWER:

No, the court may not entertain his petition as he has not yet been placed under arrest. A must be "literally" placed under the custody of the law before his petition for bail could be

entertained by the court (*Miranda vs. Tuliao*, G.R. No. 158763, March 31, 2006).

ALTERNATIVE ANSWER:

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

Preventive Suspension; RA 3019; Mandatory (2001)

Governor Pedro Mario of Tarlac was charged with indirect bribery before the Sandiganbayan for accepting a car in exchange of the award of a series of contracts for medical supplies. The Sandiganbayan, after going over the information, found the same to be valid and ordered the suspension of Mario. The latter contested the suspension claiming that under the law (Sec. 13 of R.A. 3019) his suspension is not automatic upon the filing of the information and his suspension under Sec. 13, R.A. 3019 is in conflict with Sec. 5 of the Decentralization Act of 1967 (R.A. 5185). The Sandiganbayan overruled Mario's contention stating that Mario's suspension under the circumstances is mandatory. Is the court's ruling correct? Why?

SUGGESTED ANSWER:

Yes. Mario's suspension is mandatory, although not automatic, (Sec. 13 of R.A. No. 3019 in relation to Sec. 5 of the Decentralization Act of 1967 (R.A. No. 5185)). It is mandatory after the determination of the validity of the information in a pre-suspension hearing. [*Segovia v. Sandiganbayan*, 288 SCRA 328 (1988)]. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with evidence or from committing further acts of malfeasance while in office.

Preventive Suspension; RA 3019; No Necessity for Pre-suspension Hearing (2012)

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

SUGGESTED ANSWER:

There is no necessity for the court to conduct pre-suspension hearing. Under Section 13 of RA No. 3019, an incumbent public officer for graft-related crime such as malversation is pending in court, shall be suspended from office. The word "office", from which the public officer charged shall be preventively suspended, could apply to any office, which he might currently be holding and not necessarily the particular office under which he was charged. The preventive suspension of the following public officers was sustained: (1) a mayor, who was charged with acts committed as a government auditor of the Commission on Audit (*Bayot vs. Sandiganbayan*, G.R. No. L-61776 to L-61861, March 23, 1984); (2) a public officer, who was already occupying the office of governor and not the position

of municipal mayor that he held previously when charged with having violated the Anti-Graft Law (*Deloso vs. Sandiganbayan*, G.R. No. 86899, May 15, 1989); and (3) a Vice-Governor, whose suspension is predicated on his acts supposedly committed while still a member of the Sangguniang Bayan (*Libanan vs. Sandiganbayan*, G.R. No. 112386, June 14, 1984). Thus, the DENR undersecretary can be preventively suspended even though he was a mayor, when he allegedly committed malversation.

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

ALTERNATIVE ANSWER:

The argument that X should not be suspended as he now holds an office different from that charged in the information is unavailing. Under Section 3(e) of RA 3019, a public officer may be charged before the Sandiganbayan for "causing undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." The Supreme Court has held that Section 13 of RA 3019 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Preventive suspension is mandatory regardless of the respondent's change in position.

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

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

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

SUGGESTED ANSWER:

No. The court may compel the accused to submit himself to a blood test to determine whether he has HIV under Sec.

17(a) of R.A. No. 8054. His rights to be presumed innocent of the crime charged, to privacy and against self-incrimination are not violated by such compulsory testing. In an action in which the physical condition of a party is in controversy, the court may order the accused to submit to a physical examination. (Sec. 1, Rule 28, 1997 Rules of Civil Procedure) (Look for citation of latest case, in 2004)

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

SUGGESTED ANSWER:

Since the rights of the accused are not violated because the compulsory testing is authorized by the law, the result of the testing cannot be considered to be the fruit of a poisonous tree and can be offered in evidence to prove the qualifying circumstance under the information for qualified rape under R.A. No. 8353. The fruit, of the poisonous tree doctrine refers to that rule of evidence that excludes any evidence which may have been derived or acquired from a tainted or polluted source. Such evidence is inadmissible for having emanated from spurious origins. The doctrine, however, does not apply to the results obtained pursuant to Sec. 1, Rule 28, 1997 Rules of Civil Procedure, as it does not contemplate a search within the meaning of the law. (**People v. Montilla, G.R. No. 123872, January 30, 1998**)

Rights of the Accused; Miranda Rights (2010)

X was arrested for the alleged murder of a 6-year old lad. He was read his Mirandarights immediately upon being apprehended.

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

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

SUGGESTED ANSWER:

The assignment of error invoked by X's counsel is impressed with merit since there has been no express waiver of X's

Miranda Rights. In order to have a valid waiver of the Miranda Rights, the same must be in writing and made in the presence of his counsel. The uncounselled extrajudicial confession of

X being without a valid waiver of his Miranda Rights, is inadmissible, as well as any information derived therefrom.

Rights of the Accused; Right to Speedy Trial (2013)

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(B) In another case, also for qualified theft, the detained young domestic helper has been brought to court five times in the last six months, but the prosecution has yet to commence the presentation of its evidence. You find that the reason for this is the continued absence of the employer-complainant who is working overseas. What remedy is appropriate and before which forum would you invoke this relief? (3%)

SUGGESTED ANSWER:

(B) I will file a motion to dismiss the information in the court where the case is pending on the ground of denial of the accused right to speedy trial (Section 9, Rule 119; *TAN v. PEOPLE, G. R. No. 173637, April 21, 2009, Third Division, Chico-Nazario, J.*). This remedy can be invoked, at any time, before trial and if granted will result to an acquittal. Since the accused has been brought to Court five times and in each instance it was postponed, it is clear that her right to a Speedy Trial has been violated. Moreover, I may request the court to issue Subpoena Duces Tecum and Ad Testificandum to the witness, so in case he disobeys same, he may be cited in contempt. I may also file a motion to order the witness employer-complainant to post bail to secure his appearance in court. (Section 14, Rule 119)

ALTERNATIVE ANSWER:

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

Arraignment; Plea of Guilty; to a Lesser Offense (2002)

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

SUGGESTED ANSWER:

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

Arraignment; Remedies of an Un-arraigned Detainee (2013)

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

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

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

SUGGESTED ANSWER:

A) Section 7, Rule 119 provides, if the public attorney assigned to defend a person charged with a crime knows that the latter is preventively detained, either because he is charged with a bailable crime, or, is serving a term of imprisonment in any penal institution, it shall be his duty to do the following:

- a) Shall promptly undertake to obtain the presence of the prisoner for trial or cause a notice to be served on the person having custody of the

prisoner requiring such person to so advise the prisoner of his right to demand trial.

b) Upon receipt of that notice, the custodian of the prisoner shall promptly advise the prisoner of the charge and of his right to demand trial. If at anytime thereafter the prisoner informs his custodian that he demands such trial, the latter shall cause notice to that effect to sent promptly to the public attorney.

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

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

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

ALTERNATIVE ANSWER:

A Petition for Mandamus is also feasible. In *People v. Lumanlaw*, GR. No. 164953, February 13, 2006, the Supreme Court held that "a writ of mandamus may be issued to control the exercise of discretion when, in the performance of duty, there is undue delay that can be characterized as a grave abuse of discretion resulting in manifest injustice. Due to the unwarranted delays in the conduct of the arraignment of petitioner, he has indeed the right to demand – through a writ of mandamus – expeditious action from all officials tasked with the administration of justice. Thus, he may not only demand that his arraignment be held but ultimately, that the information against him be dismissed on the ground of the violation of his right to speedy trial." Ergo, a writ of mandamus is available to the accused to compel a dismissal of the case.

ALTERNATIVE ANSWER:

The appropriate remedy of the detained accused is to apply for bail since qualified theft is bailable, and she is entitled to bail before conviction in the Regional Trial Court (Section 4, Rule 114 of the Rules of Criminal Procedure).

Arraignment; Remedies of Un-arraigned Accused (2013)

You are the defense counsel of Angela Bituin who has been charged under RA 3019 (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

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

SUGGESTED ANSWER:

A) I will file a Motion for the conduct of preliminary investigation or reinvestigation and the quashal or recall of

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

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

ALTERNATIVE ANSWER:

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

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

In *Bondoc v. Sandiganbayan*, GR No. 71163-65, November 9, 1990, the Supreme Court held that before the Sandiganbayan may lawfully try a private individual under PD 1606, the following requisites must be established: (a) he must be charged with a public officer / employee; and (b) he must be tried jointly. Since the aforementioned requisites are not present, the Sandiganbayan has no jurisdiction.

Pre-Trial Agreement (2004)

Mayor TM was charged of malversation through falsification of official documents. Assisted by Atty. OP as counsel de parte during pre-trial, he signed together with Ombudsman Prosecutor TG a "Joint Stipulation of Facts and Documents," which was

presented to the Sandiganbayan. Before the court could issue a pre-trial order but after some delay caused by Atty. OP, he was substituted by Atty. QR as defense counsel. Atty. QR forthwith filed a motion to withdraw the "Joint Stipulation," alleging that it is prejudicial to the accused because it contains, inter alia, the statement that the "Defense admitted all the documentary evidence of the Prosecution," thus leaving the accused little or no room to defend himself, and violating his right against selfincrimination. Should the court grant or deny QR's motion? Reason. (5%)

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

1. The pre-trial in a criminal case is conducted only "where the accused and counsel agree" (*Rule 118, Sec. 1*): while the pre-trial in a civil case is mandatory. (*Sec. 1 of former Rule 20; Sec. 1 of new Rule 18*).
2. The pre-trial in a criminal case does not consider the possibility of a compromise, which is one important aspect of the pre-trial in a civil case. (*Sec. 1 of former Rule 20; Sec. 2 of new Rule 18*).
3. In a criminal case, a pre-trial agreement is required to be reduced to writing and signed by the accused and his counsel (*See; Rule 118, Sec. 4*); while in a civil case, the agreement may be contained in the pretrial order. (*Sec. 4 of former Rule 20; See 7 of new Rule 78*).

Discovery; Production and Inspection (2009)

The accused in a criminal case has the right to avail of the various modes of discovery.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

Trial; Reverse Trial (2007)

(b) What is reverse trial and when may it be resorted to? Explain briefly. (5%)

SUGGESTED ANSWER:

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

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

Trial; Speedy Trial (2007)

L was charged with illegal possession of shabu before the

RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L's counsel filed motions to dismiss, invoking the right of the accused to speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus. Reason briefly.

SUGGESTED ANSWER:

Yes, L can file a petition for mandamus to enforce his constitutional right to a speedy trial which was capriciously denied to him. There is absolutely no justification for postponing an arraignment of the accused nineteen (19) times and over a period of two (2) years. The numerous, unreasonable postponements of the arraignment demonstrate an abusive exercise of discretion (*Lumanlaw v. Peralta, 482 SCRA 396 [2006]*). Arraignment of an accused would not take thirty minutes of the precious time of the court, as against the preventive imprisonment and deprivation of liberty of the accused just because he does not have the means to post bail although the crime charged is bailable.

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

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

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

SUGGESTED ANSWER:

1. The requisites of trial in absentia are:
(a) the accused has already been arraigned;
(b) he has been duly notified of the trial; and (c) his failure to appear is unjustifiable. (**Sec. 14 [2], Article III. Constitution; Parada vs. Veneracion, 269 SCRA 371 [1997].**)

2. Yes, there is still a legal necessity for the Supreme Court (*as of 2004 the Court of Appeals has the jurisdiction to such review*) to review the decision of conviction sentencing the accused to death, because he is entitled to an automatic review of the death sentence. (**Sees. 3[e] and 10, Rule 122, Rules of Criminal Procedure; People vs. Espargas, 260 SCRA 539.**)

Trial; Trial in Absentia (2010)

- (1) Enumerate the requisites of a "trial in absentia" (2%) and a "promulgation of judgment in absentia" (2%).

SUGGESTED ANSWER:

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

The requisites for a valid promulgation of judgment are:

- (a) A valid notice of promulgation of judgment;
- (b) Said notice was duly furnished to the accused personally or thru counsel;
- (c) Accused failed to appear on the scheduled date of promulgation of judgment despite due notice;
- (d) Such judgment be recorded in the criminal docket;
- (e) Copy of said judgment had been duly served upon the accused or his counsel.

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

SUGGESTED ANSWER:

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

- (1) The acquittal is based on reasonable doubt;
- (2) Where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and
- (3) Where the civil liability is not derived from or based on the criminal act of which the accused is acquitted (Remedios Nota Sapiera vs. Court of Appeals, September 14, 1999).

Demurrer to Evidence; Contract of Carriage (2004)

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

SUGGESTED ANSWER:

No. The court should not grant defendant's demurrer to evidence because the case is for breach of contract of carriage. Proof that the defendant was negligent and that such negligence was the proximate cause of the collision is not required. (Articles 1170 and 2201, Civil Code; *Mendoza v. Phil. Airlines, Inc.*, 90 Phil. 836 [1952]; *Batangas Transportation Co. v. Caguimbal*, 22 SCRA 171 U 968; *Abeto v. PAL*, 115 SCRA 489 [1982]; *Aboitiz v. Court of Appeals*, 129 SCRA 95 [1984]).

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

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

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

SUGGESTED ANSWER:

1. Yes. The Court had the discretion to deny the demurrer to the evidence, because although the evidence presented by the prosecution at the hearing for bail was not strong, without any evidence for the defense, it could be sufficient for conviction.

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

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

ALTERNATIVE ANSWER:

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

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

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

Yes. The judgment of the trial court is valid. The accused did not ask for leave to file the demurrer to evidence. He is deemed to have waived his right to present evidence. (Sec. 23 of Rule 119; *People v. Flores*, 269 SCRA 62 [1997]; *Bernardo v. Court of Appeals*, 278 SCRA 782 [1997]. However, the judgment is not proper or is erroneous

because there was no showing from the proper office like the Firearms Explosive Unit of the Philippine National Police that the accused has a permit to own or possess the firearm, which is fatal to the conviction of the accused. (**Mallari v. Court of Appeals & People, 265 SCRA 456 [1996]**).

Demurrer to Evidence (2013)

At the Public Attorney's Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(C) Still in another case, this time for illegal possession of dangerous drugs, the prosecution has rested but you saw from the records that the illegal substance allegedly involved has not been identified by any of the prosecution witnesses nor has it been the subject of any stipulation. Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the remedial steps you propose to undertake. (3%)

SUGGESTED ANSWER:

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

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

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

Demurrer to Evidence (2013)

You are the defense counsel of Angela Bituin who has been charged under RA 3019 (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

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

SUGGESTED ANSWER:

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

presenting defense evidence. It may be done through the court's initiative or upon motion of the accused and after the prosecution rested its case.

Dismissal; Failure to Prosecute (2003)

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

SUGGESTED ANSWER:

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

Dismissal; Provisional Dismissal (2003)

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

the dismissal but she refused to give her consent. Subsequently, the private complainant urged the public prosecutor to refile the murder charge because the accused failed to pay the consideration which he had promised for the execution of the Affidavit of Desistance. The public prosecutor obliged and refilled the murder charge against the accused on 01 February

2003, the accused filed a Motion to Quash the Information on the ground that the provisional dismissal of the case had already become permanent. (6%)

a) Was the provisional dismissal of the case proper?

b) Resolve the Motion to Quash.

SUGGESTED ANSWER:

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

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

Judgment; Promulgation of Judgment (1997)

X, the accused in a homicide case before the RTC. Dagupan City, was personally notified of the promulgation of judgment in his case set for 10 December 1996. On said date, X was not present as he had to attend to the trial of another criminal case

against him in Tarlac, Tarlac. The trial court denied the motion of the counsel of X to postpone the promulgation.

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

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

SUGGESTED ANSWER:

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

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

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

Judgment; Promulgation in Absentia; Effects (2014)

Ludong, Balatong, and Labongwere charged with murder. After trial, the court announced that the case was considered submitted for decision. Subsequently, the Clerk of Court issued the notices of promulgation of judgment which were duly received. On promulgation day, Ludong and his lawyer appeared. The lawyers of Balatong and Labong appeared but without their clients and failed to satisfactorily explain their absence when queried by the court. Thus, the judge ordered the Clerk of Court to proceed with the reading of the judgment convicting all the accused. With respect to Balatong and Labong, the judge ordered that the judgment be entered in the criminal docket and copies be furnished their lawyers. The lawyers of Ludong, Balatong, and Labong filed within the reglementary period a Joint Motion for Reconsideration. The court favorably granted the motion of Ludong downgrading his conviction from murder to homicide but denied the motion as regards Balatong and Labong. (4%)

(A) Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

SUGGESTED ANSWER:

The Court is not correct in taking cognizance of the Joint Motion for Reconsideration. Section 6, Rule 120 of the Rules of Court provides that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available against the judgment and the court shall order his arrest. Henceforth, the Court erred when it entertained the joint Motion for Reconsideration with respect to accused Balatong and Labong who were not present during the promulgation of the judgment. The Court should have merely considered the joint motion as a motion for reconsideration that was solely filed by Ludong. (People v. De Grano, G.R. No. 167710, [June 5, 2009]).

ALTERNATIVE ANSWER:

The Court is correct in taking cognizance of the Joint Motion for Reconsideration with respect to Ludong who was present during the promulgation of judgment.

However, as regards accused Balatong and Labong, the Court erred because they lost their remedies against the judgment when they failed to appear during the promulgation thereof.

Acquittal; Effect (2002)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

If the judgment of acquittal is based on reasonable doubt, the court may receive it in evidence because in such case,

the civil action for damages which may be instituted requires only a preponderance of the evidence. (Art. 29, Civil Code).

Double Jeopardy (2002)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Double Jeopardy (2014)

McJolly is a trouble-maker of sorts, always getting into brushes with the law. In one incident, he drove his Humvee recklessly, hitting a pedicab which sent its driver and passengers in different directions. The pedicab driver died, while two (2) of the passengers suffered slight physical injuries. Two (2) Informations were then filed against McJolly. One, for Reckless Imprudence Resulting in Homicide and Damage to Property, and two, for Reckless Imprudence Resulting in Slight Physical Injuries. The latter case was scheduled for arraignment earlier, on which occasion McJolly immediately pleaded guilty. He was meted out the penalty of public censure. A month later, the case for reckless imprudence resulting in homicide was also set for arraignment. Instead of pleading, McJolly interposed the defense of double jeopardy. Resolve. (4%)

SUGGESTED ANSWER:

McJolly correctly interposed the defense of double jeopardy. Reckless imprudence under Article 365 is a single quasi-offense by itself and not merely a means to commit other crimes, such that conviction or acquittal of such quasi-offense already bars subsequent prosecution for the same quasi-offense, regardless of its various resulting acts. (Ivler v. Hon. Modesto-San Pedro, G.R. No. 172716, [November 17, 2010]).

Hence, the conviction of McJolly for Reckless Imprudence resulting to Slight Physical Injuries bars his subsequent

prosecution for Reckless Imprudence resulting to Homicide and Damage to Property.

Double Jeopardy; Upgrading; Original Charges (2005)

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

SUGGESTED ANSWER:

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

Double Jeopardy; Res Judicata in Prison Grey (2010)

What is "res judicata in prison grey"? (2%)

SUGGESTED ANSWER:

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

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

Provisional Dismissal (2002)

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

SUGGESTED ANSWER:

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

Remedies; Void Judgment (2004)

AX was charged before the YY RTC with theft of jewelry valued at P20,000, punishable with imprisonment of up to 10 years of prison mayor under the Revised Penal Code. After trial, he was convicted of the offense charged, notwithstanding that the material facts duly established during the trial showed that the offense committed was estafa, punishable by imprisonment of up to eight years of prison mayor under the said Code. No appeal having been taken therefrom, said judgment of conviction became final. Is the judgment of conviction valid? Is the said judgment reviewable thru a special civil action for certiorari? Reason. (5%)

SUGGESTED ANSWER:

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

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

Search Warrant; Motion to Quash (2005)

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

SUGGESTED ANSWER:

The motion to quash should be denied. The name of the person in the search warrant is not important. It is not even necessary that a particular person be implicated (**Mantaring v. Roman, A.M. No. RTJ-93-904, February 28, 1996**), so long as the search is conducted in the place where the search warrant will be served. Moreover, describing the shabu in an undetermined amount is sufficiently particular. (**People v. Tee, G.R. Nos. 140546-47, January 20, 2003**)

Search & Seizure; Plain View (2008)

The search warrant authorized the seizure of "undetermined quantity of shabu." During the service of the search warrant, the raiding team also recovered a kilo of dried marijuana leaves wrapped in newsprint. The accused moved to suppress the marijuana leaves as evidence for the violation

of Section 11 of the Comprehensive Dangerous Drugs Act of 2002 since they were not covered by the search warrant. The State justified the seizure of the marijuana leaves under the "plain view" doctrine. There was no indication of whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If you are the judge, how would you rule on the motion to suppress?

SUGGESTED ANSWER:

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

Search & Seizure; Warrantless Search (2010)

As Cicero was walking down a dark alley one midnight, he saw an "owner-type jeepney" approaching him. Sensing that the occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle – elements from the Western Police District – gave chase and apprehended him. The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of shabu tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body-search legal? (3%)

SUGGESTED ANSWER:

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

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

ALTERNATIVE ANSWER:

No, the arrest and the body-search were not legal. In this case, Cicero did not run because the occupants of the vehicle identified themselves as police officers. He darted into the corner and ran upon the belief that the occupants of the vehicle were up to no good. Cicero's act of running does not show any reasonable ground to believe that a crime has been committed or is about to be committed for the police officers to apprehend him and conduct body search. Hence, the arrest was illegal as it does not fall under any of the circumstances for a valid warrantless arrest provided in Sec. 5 of Rule 113 of the Rules of Criminal Procedure.

Search Warrant (2012)

A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, Laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he applies for a search warrant in any Laguna court, their plan might leak out.

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

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

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

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

PEOPLE OF THE PHILIPPINES,
Plaintiff

-versus-

Crim. Case No. 007
for: Violation of R.A.
9165

Ho Pia and Sio Pao,

Accused.

x- - - - -x

TO ANY PEACE OFFICER

Greetings:

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

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

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

(signed)
Judge XYZ

SUGGESTED ANSWER:

The judge must, before issuing the warrant, examine personally in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted. (Rule 126, Sec. 5, Rules of Court). If the judge is satisfied of the existence of facts upon which the

application is based on that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by the Rules. (Rule 126, Sec. 6, Rules of Court).

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

f. Suppose an unlicensed armalite was found in plain view by the searchers and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals? Explain your answer. (3%)

SUGGESTED ANSWER:

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

Search Warrant (2014)

A search warrant was issued for the purpose of looking for unlicensed firearms in the house of Ass-asin, a notorious gun for hire. When the police served the warrant, they also sought the assistance of barangay tanods who were assigned to look at other portions of the premises around the house. In a nipabut thirty (30) meters away from the house of Ass-asin, a Barangay tanod came upon a kilo of marijuana that was wrapped in newsprint. He took it and this was later used by the authorities to charge Ass-asin with illegal possession of marijuana. Ass-asin objected to the introduction of such evidence claiming that it was illegally seized. Is the objection of Ass-asin valid? (4%)

SUGGESTED ANSWER:

The objection is valid.

The search warrant specifically designates or describes the house of the place to be searched. Incidentally, the marijuana was seized by Barangay Tanods thirty (30) meters away from the house of the accused.

Since the confiscated items were found in a place other than the one described in the search warrant, it can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of petitioner's constitutional guaranty against unreasonable searches and seizure. (Ruben Del Castillo v. People of the Philippines, G.R. No. 185128, [January 30, 2012]). Besides, the search is also illegal because the marijuana confiscated in the nipa hut was wrapped in a newsprint. Therefore, the same cannot be considered validly seized in plain view. (Abraham Micalat v. People of the Philippines, [G.R. No. 176077, August 31, 2011]).

Appeal; Remedy for Lost Appeal (2014)

(B) Can Balatong and Labong appeal their conviction in case Ludong accepts his conviction for homicide?

SUGGESTED ANSWER:

No, Balatong and Ludong cannot appeal their conviction because they lost their right to appeal from the judgment when they failed to appear during the promulgation of judgment. Be that as it may, if they surrendered and filed a Motion for Leave to avail of their post judgment remedies within fifteen (15) days from promulgation of judgment, and they have proven that their absence at the scheduled promulgation was for a justifiable cause, they may be allowed to avail of said remedies within Fifteen (15) days from notice thereof. (People v. De Grano, G.R. No. 167710, [June 5, 2009]).

EVIDENCE

Facts; Legislative Facts vs. Adjudicative Facts (2004)

Distinguish Legislative facts and adjudicative facts.

SUGGESTED ANSWER:

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

Judicial Notice; Evidence (2005)

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

1. The street name of methamphetamine hydrochloride is shabu.

SUGGESTED ANSWER:

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

2. Ordinances approved by municipalities under its territorial jurisdiction;

SUGGESTED ANSWER:

In the absence of statutory authority, the RTC may not take judicial notice of ordinances approved by municipalities under their territorial jurisdiction, except on appeal from the municipal trial courts, which took judicial notice of the ordinance in question. (U.S. v. Blanco, G.R. No. 12435, November 9, 1917; U.S. v. Hernandez, G.R. No. 9699, August 26, 1915)

3. Foreign laws;

SUGGESTED ANSWER:

The RTC may not generally take judicial notice of foreign laws (In re Estate of Johnson, G.R. No. 12767,

November 16, 1918; Fluemer v. Hix, G.R. No. 32636, March 17, 1930), which must be proved like any other matter of fact (**Sy Joe Lieng v. Sy Quia, G.R. No. 4718, March 19, 1910**) except in a few instances, the court in the exercise of its sound judicial discretion, may take notice of foreign laws when Philippine courts are evidently familiar with them, such as the Spanish Civil Code, which had taken effect in the Philippines, and other allied legislation. (**Pardo v. Republic, G.R. No. L2248 January 23, 1950; Delgado v. Republic, G.R. No. L2546, January 28, 1950**)

4. Rules and Regulations issued by quasijudicial bodies implementing statutes;

SUGGESTED ANSWER:

The RTC may take judicial notice of Rules and Regulations issued by quasi-judicial bodies implementing statutes, because they are capable of unquestionable demonstration (**Chattamal v. Collector of Customs, G.R. No. 16347, November 3, 1920**), unless the law itself considers such rules as an integral part of the statute, in which case judicial notice becomes mandatory.

5. Rape may be committed even in public places.

SUGGESTED ANSWER:

The RTC may take judicial notice of the fact that rape may be committed even in public places. The "public setting" of the rape is not an indication of consent. (**People v. Tongson, G.R. No. 91261, February 18, 1991**) The Supreme Court has taken judicial notice of the fact that a man overcome by perversity and beastly passion chooses neither the time, place, occasion nor victim. (**People v. Barcelona, G.R. No. 82589, October 31, 1990**)

Judicial Notice; Evidence; Foreign Law (1997)

a) Give three instances when a Philippine court can take judicial notice of a foreign law.

b) How do you prove a written foreign law? c) Suppose a foreign law was pleaded as part of the defense of defendant but no evidence was presented to prove the existence of said law, what is the presumption to be taken by the court as to the wordings of said law?"

SUGGESTED ANSWER:

(a) The three instances when a Philippine court can take judicial notice of a foreign law are:

(1) when the Philippine courts are evidently familiar with the foreign law (*Moran. Vol. 5, p. 34, 1980 edition*); (2) when the foreign law refers to the law of nations (*Sec. 1 of Rule 129*) and (3) when it refers to a published treatise, periodical or pamphlet on the subject of law if the court takes judicial notice of the fact that the writer thereof is recognized in his profession or calling as expert on the subject (*Sec. 46. Rule 130*).

(b) A written foreign law may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied. If the record is not kept in the Philippines, with a certificate that such officer has the custody, if the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the

foreign country in which the record is kept, and authenticated by the seal of his office (**Sec. 24, Rule 132, Zalamea v. CA, 228 SCRA 23**).

(c) The presumption is that the wordings of the foreign law are the same as the local law. (**Northwest Orient Airlines v. Court of Appeals, 241 SCRA 192; Moran, Vol. 6. page 34, 1980 edition; Lim v. Collector of Customs, 36 Phil. 472**). This is known as the PROCESSUAL PRESUMPTION.

Judicial Affidavit Rule; Criminal Cases (2015)

Pedro was charged with theft for stealing Juan's cellphone worth P20,000.00. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the cellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan's cellphone.

At the trial, Pedro's lawyer objected to the prosecution's use of judicial affidavits of her witnesses considering the impossible penalty on the offense with which his client was charged.

a.) Is Pedro's lawyer correct in objecting to the judicial affidavit of Mario? (2%)

b.) Is Pedro's lawyer correct in objecting to the judicial affidavit of Juan? (2%)

At the conclusion of the prosecution's presentation of evidence, Prosecutor Marilag orally offered the receipt attached to Juan's judicial affidavit, which the court admitted over the objection of Pedro's lawyer.

After Pedro's presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly liable for P20,000.00.

Pedro's lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan's judicial affidavit, a documentary evidence which Prosecutor Marilag failed to orally offer.

c.) Is the motion for reconsideration meritorious? (2%)

SUGGESTED ANSWER:

a.) YES, Pedro's lawyer is correct in objecting to the judicial affidavit of Mario. The Judicial Affidavit Rules shall apply only to criminal actions where the maximum of the impossible penalty does not exceed six years (*Sec. 9a-1 of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule*).

Here, the maximum impossible penalty for the crime of theft of a cellphone worth P20,000.00 is prison mayor in its minimum to medium periods, or six years and one day to eight years and one day. Thus, Pedro's lawyer is correct in objecting to the judicial affidavit of Mario.

Note: The Committee respectfully recommends that the examinees be given full credit to any answer given to the question, because the specific impossible penalty for crimes or offenses charged are not included in the 2015 Bar Examination Syllabus in Remedial Law.

b.) NO, Pedro's lawyer is not correct in objecting to the judicial affidavit of Juan because the Judicial Affidavit Rules

apply with respect to the civil aspect of the actions, regardless of the penalties involved (Sec. 9 of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule). Here, the judicial affidavit of Juan was offered to prove the civil liability of Pedro. Thus, the objection of Pedro's lawyer to the judicial affidavit of Juan is not correct.

c.) NO. The motion for reconsideration is not meritorious. The judicial affidavit is not required to be orally offered as separate documentary evidence, because it is filed in lieu of the direct testimony of the witness. It is offered, at the time the witness is called to testify, and any objection to it should have been made at the time the witness was presented (Sec. 6 & 8, A.M. 12-8-8-SC or the Judicial Affidavit Rule).

Since the receipt attached to the judicial affidavit was orally offered, there was enough basis for the court to award civil liability.

ALTERNATIVE ANSWER:

c.) YES, the motion for reconsideration is meritorious. The Judicial Affidavit Rules require an oral offer of evidence upon the termination of the testimony of the last witness (Sec. 8, A.M. No. 12-8-8-SC or the Judicial Affidavit Rule).

Admissibility (1998)

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

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

SUGGESTED ANSWER:

1. The rifle is not admissible in evidence because it was seized without a proper search warrant. A warrantless search is not justified. There was time to secure a search warrant. (*People vs. Encinada G.R. No. 116720, October 2, 1997 and other cases*)
2. The sworn statement is not admissible in evidence because it was taken without informing him of his custodial rights and without the assistance of counsel which should be independent and competent and preferably of the choice of the accused. (*People vs. Januario, 267 SCRA 608.*)
3. The waiver of his right to counsel is not admissible because it was made without the assistance of counsel of his choice. (*People vs. Gomez, 270 SCRA 433.*)

Admissibility (2002)

Acting on a tip by an informant, police officers stopped a car being driven by D and ordered him to open the trunk. The officers found a bag containing several kilos of cocaine. They seized the car and the cocaine as evidence and placed D under arrest. Without advising him of his right to remain silent and to have the

assistance of an attorney, they questioned him regarding the cocaine. In reply, D said, "I don't know anything about it. It isn't even my car." D was charged with illegal possession of cocaine, a prohibited drug. Upon motion of D, the court suppressed the use of cocaine as evidence and dismissed the charges against him. D commenced proceedings against the police for the recovery of his car. In his direct examination, D testified that he owned the car but had registered it in the name of a friend for convenience. On cross-examination, the attorney representing the police asked, "After your arrest, did you not tell the arresting officers that it wasn't your car?" If you were D's attorney, would you object to the question? Why? (5%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Admissibility (2004)

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

SUGGESTED ANSWER:

No. The sworn written statements of Max and Brix may not be admitted in evidence, because they were not assisted by counsel. Even if the police captain before whom they signed the statements was a lawyer, he was not functioning as a lawyer, nor can he be considered as an independent counsel. Waiver of the right to a lawyer must be done in writing and in the presence of independent counsel. (*People v. Mahinay, 302 SCRA 455 11999; People v. Espiritu, 302 SCRA 533 [1999].*)

Admissibility; Extra-judicial Confession; Affidavit of Recantation (1998)

1 If the accused on the witness stand repeats his earlier uncounseled extrajudicial confession implicating his co-

accused in the crime charged, is that testimony admissible in evidence against the latter? [3%]

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

SUGGESTED ANSWER:

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

Admissibility; Admission of Guilt; Requirements (2006)

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

SUGGESTED ANSWER:

- 1 The admission must be voluntary.
- 2 The admission must be in writing.
- 3 The admission must be made with the assistance of competent, independent counsel.
4. The admission must be express (*People v. Prinsipe*, G.R. No. 135862, May 2, 2002).
5. In case the accused waives his rights to silence and to counsel, such waiver must be in writing, executed with the assistance of competent, independent counsel.

Admissibility; Admission of Guilt (2008)

The mutilated cadaver of a woman was discovered near a creek. Due to witnesses attesting that he was the last person seen with the woman when she was still alive, Carlito was arrested within five hours after the discovery of the cadaver and brought to the police station. The crime laboratory determined that the woman had been raped. While in police custody, Carlito broke down in the presence of an assisting counsel orally confessed to the investigator that he had raped and killed the woman, detailing the acts he had performed up to his dumping of the body near the creek. He was genuinely remorseful. During the trial, the state presented the investigator to testify on the oral confession of Carlito. Is the oral confession admissible in evidence of guilt? (4%)

SUGGESTED ANSWER:

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

Admissibility; Electronic Evidence (2003)

a) State the rule on the admissibility of an electronic evidence. b) When is an electronic evidence regarded as being the equivalent of an original document under the Best Evidence Rule? 4%

SUGGESTED ANSWER:

- (a) Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules. (*Sec. 1 of Rule 3, Rules of Electronic Evidence effective August 1, 2001*). An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules. (*Sec. 2 of Rule 3, Id.*). The authenticity of any private electronic document must be proved by evidence that it had been digitally signed and other appropriate security measures have been applied. (*Sec. 2 of Rule 5, Id.*).
- (b) An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately. (*Sec. 1 of Rule 4*)

Admissibility; Objections (1997)

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

SUGGESTED ANSWER:

Two kinds of objections are: (1) the evidence being presented is not relevant to the issue; and (2) the evidence is incompetent or excluded by the law or the rules, (*Sec. 3, Rule 138*). An example of the first is when the prosecution offers as evidence the alleged offer of an Insurance company to pay for the damages suffered by the victim in a homicide case. (*See 1997 No. 14*). Examples of the second are evidence obtained in violation of the Constitutional prohibition against unreasonable searches and seizures and confessions and admissions in violation of the rights of a person under custodial investigation.

ALTERNATIVE ANSWERS:

- 1) Specific objections: Example: parol evidence and best evidence rule General Objections: Example: continuing objections (*Sec. 37 of Rule 132*).
- 2) The two kinds of objections are:
 - (1) objection to a question propounded in the course of the oral examination of the witness and
 - (2) objection to an offer of evidence in writing.

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

Admissibility; Offer to Marry; Circumstantial Evidence (1998)

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

1 an offer of A to marry X; and (3%)

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

SUGGESTED ANSWER:

1. A's offer to marry X is admissible in evidence as an Implied admission of guilt because rape cases are not allowed to be compromised. (**Sec. 27 of Rule 130; People vs. Domingo, 226 SCRA 156.**)

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

Admissibility; Offer to Pay Expenses (1997)

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

inadequate. a) Is the offer by A to pay the hospitalization expenses of B admissible in evidence? b) Is the offer by A's insurance carrier to pay for the injuries and damages of B admissible in evidence?

SUGGESTED ANSWER:

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

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

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

Bembol was charged with rape. Bembol's father, Ramil, approached Artemon, the victim's father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

No, Under Sec. 27, Rule 130 of the Rules of Court, it is the offer of compromise by the accused that may be received in evidence as an implied admission of guilt.

The testimony of Artemon would cover the offer of Ramil and not an offer of the accused himself. (Peo v. Viernes, GR Nos. 136733-35, 13 December 2001)

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

SUGGESTED ANSWER:

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

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

Linda and spouses Arnulfo and Regina Ceres were co-owners of a parcel of land. Linda died intestate and without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral relatives of the deceased Linda, filed an action for partition with the RTC praying for the segregation of Linda's ½ share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn, and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refused to partition on the following grounds:

1) the baptismal certificates of the parish priest are evidence only of the administration of the sacrament of baptism and they do not prove filiation of the alleged collateral relatives of the deceased;

2) entry in the family bible is hearsay;

3) the certification of the registrar on non-availability of the records of birth does not prove filiation;

4) in partition cases where filiation to the deceased is in dispute, prior and separate judicial declaration of heirship in a settlement of estate proceedings is necessary; and

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

SUGGESTED ANSWER:

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

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

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

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

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

Admissibility; DNA Evidence (2009)

TRUE OR FALSE. [a] The Vallejo standard refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence.

SUGGESTED ANSWER:

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

Admissibility; DNA Evidence (2010)

In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused's. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)

SUGGESTED ANSWER:

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

Admissibility; Evidence from Invasive and Involuntary Procedures (2010)

Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of shabu which they alleged to have swallowed Lorenzo. Suppose the PGH agreed to, and did perform the surgery is the package of shabu admissible in evidence? Explain. (3%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

Admissibility; Rules of Evidence (1997)

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

- (a) Dead Man Rule
- (b) Parol Evidence Rule
- (c) Best Evidence Rule
- (d) The rule against the admission of illegally obtained extrajudicial confession
- (e) The rule against the admission of an offer of compromise in civil cases

SUGGESTED ANSWER:

The reasons behind the following rules are as follows:

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

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

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

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

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

Surviving Parties Rule (Dead Man Rule) (2007)

RUE OR FALSE. (a) The "surviving parties" rule bars Maria from testifying for the claimant as to what the deceased Jose had said to her, in a claim filed by Pedro against the estate of Jose. (3%)

SUGGESTED ANSWER:

False. The said rule bars only parties-plaintiff and their assignors, or persons prosecuting a claim against the estate of a deceased; it does not cover Maria who is a mere witness. Furthermore, the disqualification is in respect of any matter of fact occurring before the death

of said deceased (Sec. 23, Rule 130, Rules of Court, *Razon v. Intermediate Appellate Court*, 207 SCRA 234 [1992]). It is Pedro who filed the claim against the estate of Jose.

Documentary Evidence; Admissible Though Not Raised in the Pleading (2004)

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

SUGGESTED ANSWER:

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

Documentary Evidence; Private Document (2005)

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

SUGGESTED ANSWER:

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

Best Evidence Rule (1997)

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

a) In an action to collect on the promissory note, which is deemed to be the "original" copy for the purpose of the "Best Evidence Rule"?

b) Can the photocopies in the hands of the parties be considered "duplicate original copies"?

c) As counsel for A, how will you prove the loan given to A and B?

SUGGESTED ANSWER:

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

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

(c) The loan given by A to B may be proved by secondary evidence through the xeroxed copies of the promissory note. The rules provide that when the original document is lost or destroyed, or cannot be produced in court, the offerer, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (Sec. 5 of Rule 130).

Best Evidence Rule; Electronic Evidence (2009)

TRUE OR FALSE. [d] An electronic evidence is the equivalent of an original document under the Best Evidence Rule if it is a printout or readable by sight or other means, shown to reflect the data accurately.

SUGGESTED ANSWER:

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

Burden of Proof vs. Burden of Evidence (2004)

Distinguish Burden of proof and burden of evidence.

SUGGESTED ANSWER:

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

Best Evidence Rule; Lost Documents; Secondary Evidence (1992)

Ajax Power Corporation, a utility company, sued in the RTC to enforce a supposed right of way over a property owned by Simplicio. At the ensuing trial, Ajax presented its retired field auditor who testified that he knew for a fact that a certain sum of money was periodically paid to Simplicio for some time as consideration for a right of way pursuant to a written contract. The original contract was not presented. Instead, a purported copy, identified by the retired field auditor as such, was formally offered as part of his testimony. Rejected by the trial court, it was finally made the subject of an offer of proof by Ajax. Can Ajax validly claim that it had sufficiently met its burden of proving the existence of the contract establishing its right of way? Explain.

SUGGESTED ANSWER:

No. Ajax had not sufficiently met the burden of proving the existence of the written contract because. It had not

laid the basis for the admission of a purported copy thereof as secondary evidence. Ajax should have first proven the execution of the original document and its loss or destruction. (Sec. 5 of Rule 130)

Best Evidence Rule; Photocopies (2000)

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

a. Is the claim of defendant valid?

SUGGESTED ANSWER:

The claim of defendant is not valid because.....

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

SUGGESTED ANSWER:

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

Parol Evidence Rule (2001)

Pedro filed a complaint against Lucio for the recovery of a sum of money based on a promissory note executed by Lucio. In his complaint, Pedro alleged that although the promissory note says that it is payable within 120 days, the truth is that the note is payable immediately after 90 days but that if Pedro is willing, he may, upon request of Lucio give the latter up to 120 days to pay the note. During the hearing, Pedro testified that the truth is that the agreement between him and Lucio is for the latter to pay immediately after ninety day's time. Also, since the original note was with Lucio and the latter would not surrender to Pedro the original note which Lucio kept in a place about one day's trip from where he received the notice to produce the note and in spite of such notice to produce the same within six hours from receipt of such notice, Lucio failed to do so. Pedro presented a copy of the note which was executed at the same time as the original and with identical contents.

a) Over the objection of Lucio, will Pedro be allowed to testify as to the true agreement or contents of the promissory note? Why? (2%)

b) Over the objection of Lucio, can Pedro present a copy of the promissory note and have it admitted as valid evidence in his favor? Why? (3%)

SUGGESTED ANSWER:

a) Yes, because Pedro has alleged in his complaint that the promissory note does not express the true intent and agreement of the parties. This is an exception to the parol evidence rule. [Sec. 9(b) of Rule 130, Rules of Court]

b) Yes, the copy in the possession of Pedro is a duplicate original and with identical contents. [Sec. 4(b) of Rule 130]. Moreover, the failure of Lucio to produce the original of the note is excusable because he was not given reasonable notice, as requirement under the Rules before secondary evidence may be presented. (Sec. 6 of Rule 130, Rules of Court)

Note: The promissory note is an actionable document and the original or a copy thereof should have been attached to the complaint. (Sec. 7 of Rule 9, 1997 Rules of Civil Procedure). In such a case, the genuineness and due execution of the note, if not denied under oath, would be deemed admitted. (Sec. 8 of Rule 9, 1997 Rules of Civil Procedure)

Object Evidence; Photocopy (1994)

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

a) Is the photocopy real (object) evidence or documentary evidence? b) Is the photocopy admissible in evidence?

SUGGESTED ANSWER:

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

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

Object Evidence; Sec. 21, RA 9165; Chain of Custody Rule (2012)

Discuss the "chain of custody" principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (5%)

SUGGESTED ANSWER:

In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. (People vs Sitco, G.R. No. 178202, May 14, 2010, Velasco, Jr., J.). Ergo, the existence of the dangerous drug is a condition sine qua non for conviction. (People v. De Guzman Y Danzil, G.R. No. 186498,

March 26, 2010 Nachura J.). The failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused (People vs. De Guzman Y Danzil). Nonetheless, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs when: (1) such non-compliance is attended by justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two (2) requirements were met before such non-compliance may be said to fail within the scope of the proviso. (People v. Dela Cruz, G.R. No. 177222, October 29, 2008, 570 SCRA 273).

ALTERNATIVE ANSWER:

Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link, thus, it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference. Thus, non-compliance by the apprehending/buy-bust team with Sec. 21 of RA 9165 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. (People vs. Mantalaba, G.R. No. 186227, July 20, 2011).

Testimonial Evidence; Privileged Communication (1998)

C is the child of the spouses H and W. H sued his wife W for judicial declaration of nullity of marriage under Article 36 of the Family Code. In the trial, the following testified over the objection of W: C, H and D, a doctor of medicine who used to treat W. Rule on W's objections which are the following:

1. H cannot testify against her because of the rule on marital privilege; [1%]
2. C cannot testify against her because of the doctrine on parental privilege; and [2%]
3. D cannot testify against her because of the doctrine of privileged communication between patient and physician. [2%]

SUGGESTED ANSWER:

1. The rule of marital privilege cannot be invoked in the annulment case under Rule 36 of the Family Code because it is a civil case filed by one against the other, (Sec. 22, Rule 130. Rules of Court.)
2. The doctrine of parental privilege cannot likewise be invoked by W as against the testimony of C, their child. C may not be compelled to testify but is free to testify against her. (Sec. 25. Rule 130. Rules of Court; Art. 215, Family Code.)
3. D, as a doctor who used to treat W, is disqualified to testify against W over her objection as to any advice or treatment given by him or any information which he may have acquired in his professional capacity. (Sec. 24 [c], Rule 130. Rules of Court.)

ALTERNATIVE ANSWER:

If the doctor's testimony is pursuant to the requirement of establishing the psychological incapacity of W, and he is the expert called upon to testify for the purpose, then it should be allowed. (**Republic vs. Court of Appeals and Molina, 26S SCRA 198.**)

Testimonial Evidence; Privileged Communication; Marital Privilege (1989)

Ody sued spouses Cesar and Baby for a sum of money and damages. At the trial, Ody called Baby as his first witness. Baby objected, joined by Cesar, on the ground that she may not be compelled to testify against her husband. Ody insisted and contended that after all, she would just be questioned about a conference they had with the barangay captain, a matter which is not confidential in nature. The trial court ruled in favor of Ody. Was the ruling proper? Will your answer be the same if the matters to be testified on were known to Baby or acquired by her prior to her marriage to Cesar? Explain.

SUGGESTED ANSWER:

No. Under the Rules on Evidence, a wife cannot be examined for or against her husband without his consent, except in civil cases by one against the other, or in a criminal case for a crime committed by one against the other. Since the case was filed by Ody against the spouses Cesar and Baby, Baby cannot be compelled to testify for or against Cesar without his consent. (**Lezama vs. Rodriguez, 23 SCRA 1166**). The answer would be the same if the matters to be testified on were known to Baby or acquired by her prior to her marriage to Cesar, because the marital disqualification rule may be invoked with respect to testimony on any fact. It is immaterial whether such matters were known to Baby before or after her marriage to Cesar.

Testimonial Evidence; Privileged Communication; Marital Privilege (2000)

Vida and Romeo are legally married. Romeo is charged to court with the crime of serious physical injuries committed against Selmo, son of Vida, stepson of Romeo. Vida witnessed the infliction of the injuries on Selmo by Romeo. The public prosecutor called Vida to the witness stand and offered her testimony as an eyewitness. Counsel for Romeo objected on the ground of the marital disqualification rule under the Rules of Court.

- a) Is the objection valid? (3%)
- b) Will your answer be the same if Vida's testimony is offered in a civil case for recovery of personal property filed by Selmo against Romeo? (2%)

SUGGESTED ANSWER:

- (a) No. While neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, one exception is if the testimony of the spouse is in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants. (Sec. 22, Rule 130). The case falls under this exception because Selma is the direct descendant of the spouse Vida.
- (b) No. The marital disqualification rule applies this time. The exception provided by the rules is in a civil case by one spouse against the other. The case here involves a

case by Selmo for the recovery of personal property against Vida's spouse, Romeo.

Testimonial Evidence; Privileged Communication; Marital Privilege (2004)

XYZ, an alien, was criminally charged of promoting and facilitating child prostitution and other sexual abuses under Rep. Act No. 7610. The principal witness against him was his Filipina wife, ABC. Earlier, she had complained that XYZ's hotel was being used as a center for sex tourism and child trafficking. The defense counsel for XYZ objected to the testimony of ABC at the trial of the child prostitution case and the introduction of the affidavits she executed against her husband as a violation of espousal confidentiality and marital privilege rule. It turned out that DEF, the minor daughter of ABC by her first husband who was a Filipino, was molested by XYZ earlier. Thus, ABC had filed for legal separation from XYZ since last year. May the court admit the testimony and affidavits of the wife, ABC, against her husband, XYZ, in the criminal case involving child prostitution? Reason. (5%)

SUGGESTED ANSWER:

Yes. The court may admit the testimony and affidavits of the wife against her husband in the criminal case where it involves child prostitution of the wife's daughter. It is not covered by the marital privilege rule. One exception thereof is where the crime is committed by one against the other or the latter's direct descendants or ascendants. (Sec. 22, Rule 130). A crime by the husband against the daughter is a crime against the wife and directly attacks or vitally impairs the conjugal relation. (*Ordono v. Daquigan*, 62 SCRA 270 [1975]).

Testimonial Evidence; Privileged Communication; Marital Privilege (2006)

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City. For unknown reasons, the house of Leticia's sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information filed with the Regional Trial Court, Pasig City. During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson. Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

ALTERNATIVE ANSWER:

No, Leticia cannot testify over the objection of her husband, not under marital privilege which is inapplicable and which can be waived, but she would be barred under Sec. 22 of Rule 130, which prohibits her from testifying and which cannot be waived (*Alvarez v. Ramirez*, G.R. No. 143439, October 14, 2005).

ALTERNATIVE ANSWER:

Yes, Leticia may testify over the objection of her husband. The disqualification of a witness by reason of marriage under Sec. 22, Rule 130 of the Revised Rules of Court has its exceptions as where the marital relations are so strained that there is no more harmony to be preserved.

The acts of Paul eradicate all major aspects of marital life. On the other hand, the State has an interest in punishing the guilty and exonerating the innocent, and must have the right to offer the testimony of Leticia over the objection of her husband (*Alvarez v. Ramirez*, G.R. No. 143439, October 14, 2005).

Testimonial Evidence; Privileged Communication; Marital Disqualification Rule; Doctor-Patient; Priest-Confessor (2013)

For over a year, Nenita had been estranged from her husband Walter because of the latter's suspicion that she was having an affair with Vladimir, a barangay kagawad who lived in nearby Mandaluyong. Nenita lived in the meantime with her sister in Makati. One day, the house of Nenita's sister inexplicably burned almost to the ground. Nenita and her sister were caught inside the house but Nenita survived as she fled in time, while her sister tried to save belongings and was caught inside when the house collapsed. As she was running away from the burning house, Nenita was surprised to see her husband also running away from the scene. Dr. Carlos, Walter's psychiatrist who lived near the burned house and whom Walter medically consulted after the fire, also saw Walter in the vicinity some minutes before the fire. Coincidentally, Fr. Platino, the parish priest who regularly hears Walter's confession and who heard it after the fire, also encountered him not too far away from the burned house. Walter was charged with arson and at his trial, the prosecution moved to introduce the testimonies of Nenita, the doctor and the priest-confessor, who all saw Walter at the vicinity of the fire at about the time of the fire.

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

Yes. Nenita may be allowed to testify against Walter. It is well-settled that the marital disqualification rule does not apply when the marital and domestic relations between the spouses are strained. In *Alvarez v. Ramirez*, GR No. 143439, October 14, 2005, the Supreme Court citing *People v. Castaneda*, 271 SCRA 504, held that the act of private respondent in setting fire to the house of his sister-in-law Susan Ramirez, knowing fully well that his wife was there, and in fact with the alleged intent of injuring the latter, is an act totally alien to the harmony and confidences of marital relation which the disqualification primarily seeks to protect. The criminal act complained of had the effect of directly and vitally impairing the conjugal relation. It underscored the fact

that the marital and domestic relations between her and the accused-husband have become so strained that there is no more harmony, peace or tranquility to be preserved. Hence, the identity is non-existent. In such a situation, the security and confidences of private life which the law aims to protect are nothing but ideals which through their absence, merely leave void in the unhappy home. Thus, there is no reason to apply the Marital Disqualification Rule.

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

SUGGESTED ANSWER:

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

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

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

SUGGESTED ANSWER:

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

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

Testimonial Evidence; Privileged Communication; Lawyer-Client (2008)

On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008 and the second on August 16, 2008; and that both visits concerned the swindling of Petronilo. During the trial of Edgardo, the RTC issued a subpoena ad testificandum to Edgardo's lawyer for him to testify on the conversations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

SUGGESTED ANSWER:

Yes, the mantle of privileged communication based on lawyer-client relationship protects the communication between a lawyer and his client against any adverse party as in this case. The subpoena requiring the lawyer

to testify can be quashed on the ground of privileged communication (See *Regala v. Sandiganbayan*, GR No. 105938, 20 September 1996). Sec. 24 (b) Rule 130 provides that an attorney cannot, without the consent of his client be examined in any communication made to him by his client to him, or his advice given thereon, including his secretary, stenographer, clerk concerning any fact the knowledge of which has been acquired in such capacity. However, where the subject matter of the communication involves the commission of the crime, in which the lawyer himself is a participant or conspirator, then the same is not covered by the privilege. Moreover, if the substance of the communication can be established by independent evidence, the lawyer maybe compelled to testify.

Testimonial Evidence; Privileged Communication; Lawyer-Client (2008)

A tugboat owned by Speedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five(5) crews in the resulting shipwreck. At the maritime board inquiry, the four (4) survivors testified. SPS engaged Atty. Ely to defend it against potential claims and to sue the company owning the other vessel for damages to tug. Ely obtained signed statements from the survivors. He also interviewed other persons, in some instance making memoranda. The heirs of the five (5) victims filed an action for damages against SPS. Plaintiffs' counsel sent written interrogatories to Ely, asking whether statements of witnesses were obtained; if written copies were to be furnished; if oral, the exact provision were to be set forth in detail. Ely refused to comply, arguing that the documents and information asked are privileged communication. Is the contention tenable? Explain (4%)

SUGGESTED ANSWER:

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

Testimonial Evidence; Privileged Communication; Marital Privilege (2010)

On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini's estranged wife Gregoria had sent to Emilio on the eve of his death, reading: "Honey, pa2tayin u ni Mabini. Mtgal n nyang plano i2. Mg ingat u bka ma tsugi k."

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

SUGGESTED ANSWER:

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

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

Testimonial Evidence; Witness; Competency of the Witness vs. Credibility of the Witness (2004)

Distinguish Competency of the witness and credibility of the witness.

SUGGESTED ANSWER:

Competency of the witness refers to a witness who can perceive, and perceiving, can make known his perception to others (Sec. 20 of Rule 130), while credibility of the witness refers to a witness whose testimony is believable.

Testimonial Evidence; Witness; Examination of a Child Witness; via Live-Link TV (2005)

When may the trial court order that the testimony of a child be taken by live-link television? Explain.

SUGGESTED ANSWER:

The testimony of a child may be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must of a kind which would impair the completeness or truthfulness of the testimony of the child. (See Sec. 25, Rule on Examination of a Child Witness).

Testimonial Evidence; Witness; Examination of Witnesses (1997)

a) Aside from asking a witness to explain and supplement his answer in the cross-examination, can the proponent ask in re-direct examination questions on matters not dealt with during cross-examination?

b) Aside from asking the witness on matters stated in his re-direct examination, can the opponent in his re-cross-examination ask questions on matters not dealt with during the re-direct?

c) After plaintiff has formally submitted his evidence, he realized that he had forgotten to present what he considered an important evidence. Can he recall a witness?

SUGGESTED ANSWER:

(a) Yes, on redirect examination, questions on matters not dealt with during the cross-examination may be allowed by the court in its discretion. (Sec. 7 of Rule 132).

(b) Yes, the opponent in his re-cross-examination may also ask questions on such other matters as may be allowed by the court in its discretion. (Sec. 8. Rule 132).

(c) Yes, after formally submitting his evidence, the plaintiff can recall a witness with leave of court. The court may grant or withhold leave in its discretion as the interests of justice may require. (Sec. 9. Rule 132).

Testimonial Evidence; Witness; Examination of Witnesses (2002)

Is this question on direct examination objectionable: “What happened on July 12, 1999”? Why? (2%)

SUGGESTED ANSWER:

The question is objectionable because it has no basis, unless before the question is asked the proper basis is laid.

Testimonial Evidence; Witness; Examination of Witness (2009)

TRUE OR FALSE. [b] The One-Day Examination of witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial.

SUGGESTED ANSWER:

TRUE. Par. 5(i) of Supreme Court A.M. No. 03-1-09-SC

requires that a witness has to be fully examined in one (1) day only. This rule shall be strictly adhered to subject to the court's discretion during trial on whether or not to extend the direct and/or cross-examination for justifiable reasons. On the last hearing day allotted for each party, he is required to make his formal offer of evidence after the presentation of his last witness and the opposing party is required to immediately interpose his objection thereto. Thereafter, the judge shall make the ruling on the offer of evidence in open court. However, the judge has the discretion to allow the offer of evidence in writing in conformity with Section 35, Rule 132.

ALTERNATIVE ANSWER:

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

Testimonial Evidence; Accused Utilized as State Witness; Procedure (2006)

As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? (2.5%)

SUGGESTED ANSWER:

As counsel of an accused charged with homicide, the procedure that can be followed for the accused to be utilized as a state witness is to ask the Prosecutor to recommend that the accused be made a state witness. It is the Prosecutor who must recommend and move for the acceptance of the accused as a state witness. The accused may also apply under the Witness Protection Program.

Testimonial Evidence; Accused Utilized as State Witness; Requirements (2015)

The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

c.) Can the Special Prosecutor move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence? (2%)

SUGGESTED ANSWER:

NO. The special prosecutor cannot move for the discharge of the budget officer to become a State witness since his testimony is only corroborative to the testimony of the treasurer.

Under Sec. 17, Rule 119, the court upon motion of the prosecution before resting its case, may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the State, provided the following requisites are satisfied: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper

prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

Absolute necessity exists for the testimony of an accused sought to be discharged when he or she alone has knowledge of the crime. In more concrete terms, necessity is not present when the testimony would simply corroborate or otherwise strengthen the prosecution's evidence. The requirement of absolute necessity for the testimony of a state witness depends on the circumstances of each case regardless of the number of the participating conspirators (Manuel J. Jimenez, Jr. v. People [2014]).

ALTERNATIVE ANSWER:

NO, the special Prosecutor cannot move for the discharge of the budget officer to become a State Witness. The Office of the Special Prosecutor is merely a component of the Office of the Ombudsman and may only act under the supervision and control and upon authority of the Ombudsman (Uy v. Sandiganbayan [2001]).

Accordingly, in the absence of any express delegation and authority from the Ombudsman, the Special Prosecutor does not have the power to move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence. (Sec. 11(3), R.A. 6770).

Testimonial Evidence; Examination of Child Witness; Voir Dire Examination (2015)

AA, a twelve-year-old girl, while walking alone met BB, a teenage boy who befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:

"On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter's will and consent."

At the trial, the prosecutor called to the witness stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB's counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

a.) Is BB's counsel correct? (3%)

In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge *motu proprio* conducted his voir dire examination on AA.

b.) Was the action taken by the judge proper? (2%)

After the prosecution had rested its case, BB's counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB's minority as alleged in the Information.

c.) Should the court grant the demurrer? (3%)

SUGGESTED ANSWER:

a.) NO. BB's counsel is not correct. Every child is presumed qualified to be a witness (Sec.6, Rule on Examination of a Child Witness). To rebut the presumption of competence enjoyed by a child, the burden of proof lies on the party challenging his competence (Sec. 6 of A.M. No. 005-07-SC or the Rules on Examination of Child Witness).

Here, AA, a 12-year old child witness who is presumed to be competent, may be asked leading questions by the prosecutor in conducting his direct examination pursuant to RECW and the Revised Rules on Criminal Procedure (People v. Santos [2008]).

b.) YES, the judge may motu proprio conduct his voir dire examination on AA. Under the Rules on Examination of Child Witness, the court shall conduct a competency examination of a child, motu proprio or on motion of a party, when it finds that substantial doubt exists regarding the ability of the child to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court. (Sec. 6 of A.M. 005-07-SC or the Rules on Examination of Child Witness).

Note: The Committee respectfully recommends that the examiner be more liberal in checking the answers to the question because the term voir dire examination is not normally used under the rules on evidence in the Philippines.

c.) NO, the court should not grant the demurrer. While it was alleged in the information that BB was a minor at the time of the commission of the offense, the failure of the prosecutor to present evidence to prove his minority is not a basis for the granting of the demurrer, because minority of the accused is not an element of the crime of rape.

Be that as it may, the court should not consider minority in rendering the decision. After all, the failure of the prosecutor to prove the minority of AA may only affect the imposable penalty but may not absolve him from criminal liability.

Hearsay Evidence (2002)

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

SUGGESTED ANSWER:

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

Hearsay Rule (2014)

A foreign dog trained to sniff dangerous drugs from packages, was hired by FDP Corporation, a door to door forwarder company, to sniff packages in their depot at the international airport. In one of the routine inspections of packages waiting to be sent to the United States of America (US), the dog sat beside one of the packages, a signal that the package contained

dangerous drugs. Thereafter, the guards opened the package and found two (2) kilograms of cocaine. The owner of the package was arrested and charges were filed against him. During the trial, the prosecution, through the trainer who was present during the incident and an expert in this kind of field, testified that the dog was highly trained to sniff packages to determine if the contents were dangerous drugs and the sniffing technique of these highly trained dogs was accepted worldwide and had been successful in dangerous drugs operations. The prosecution moved to admit this evidence to justify the opening of the package. The accused objected on the grounds that: (i) the guards had no personal knowledge of the contents of the package before it was opened; (ii) the testimony of the trainer of the dog is hearsay; and (iii) the accused could not cross-examine the dog. Decide. (4%)

FIRST SUGGESTED ANSWER:

The objections of the accused should be overruled.

An evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules. (Section 3, Rule 128 Rules of Court) Under Section 36, Rule 130 of the Rules of Court, a witness can testify only to those which he knows of his personal knowledge and derived from his own perception.

The contention that the guards had no personal knowledge of the contents of the package before it was opened is without merit. The guards can testify as to the facts surrounding the opening of the package since they have personal knowledge of the circumstances thereof, being physically present at the time of its discovery.

On the other hand, the testimony of the trainer of the dog, is not hearsay based on the following grounds:

- a. he has personal knowledge of the facts in issue, having personally witnessed the same;
- b. hearsay merely contemplates an out-of-court declaration of a person which is being offered to prove the truthfulness and veracity of the facts asserted therein;
- c. he is an expert witness, hence, his testimony may constitute an exception to the hearsay rule;
- d. the accused has the opportunity to cross-examine him; and

e. testimony of a witness as to statements made by nonhuman declarants does not violate the rule against hearsay. The law permits the so-called "non-human evidence" on the ground that machines and animals, unlike humans, lack a conscious motivation to tell falsehoods, and because the workings of machines can be explained by human witnesses who are then subject to cross-examination by opposing counsel. (City of Webster Groves vs. Quick, 323 S.W. 2d 386 [Mo. 1959]; Buck v. State, 138 P. 2d 115 [Okla. 1943]; page 581, 1999 Edition Remedial Law Volume V, Herrera)

Conversely, the accused may not argue that he cannot cross-examine the dog as the Constitutional right to confrontation refers only to witnesses.

As alluded, the human witnesses who have explained the workings of the non-human evidence is the one that should be cross-examined. Hence, the contention of the accused that he could not cross-examine the dog is misplaced.

Ergo, there is no doubt that the evidence of the prosecution is admissible for being relevant and competent.

SECOND SUGGESTED ANSWER:

The evidence for the prosecution is admissible.

In *People of the Philippines v. Hedishi Suzuki*, G.R. No. 120670, [October 23, 2003], the Supreme Court held that search conducted by the airport authorities as reasonable and, therefore, not violative of any constitutional rights. "Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures."

Moreover, in the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked, since the Constitution, in laying down the principles of the government and fundamental liberties of the people, does not govern relationships between individuals.

Undoubtedly, the package which contains two (2) kilograms of cocaine is considered validly seized even in the absence of a search warrant. (*People of the Philippines v. Andre Marti*, G.R. No. 81561, [January 18, 1991]).

[NOTE: The Committee respectfully suggests that the examinees be given utmost consideration and liberality.]

Hearsay Rule; Exceptions (1999)

a) Define hearsay evidence? (2%)

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

SUGGESTED ANSWER:

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

b.) The exceptions to the hearsay rule are: dying declaration, declaration against interest, act or declaration about pedigree, family reputation or tradition regarding pedigree, common reputation, part of the *res gestae*, entries in the course of business, entries in official records, commercial lists and the like, learned treatises, and testimony or deposition at a former proceeding. (*37 to 47, Rule 130, Rules of Court*)

Hearsay Rule; Exceptions (2007)

(a) What is the hearsay rule? (5%)

SUGGESTED ANSWER:

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

(b) In relation to the hearsay rule, what do the following rules of evidence have in common? (5%)

(1) The rule on statements that are part of the *res gestae*.

(2) The rule on dying declarations.

(3) The rule on admissions against interest.

SUGGESTED ANSWER:

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

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

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

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

Hearsay Rule; Exception; Dead Man Statute (2001)

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

SUGGESTED ANSWER:

No, the testimony is admissible in evidence because witness Mariano who testified as to what Maximo and Juan, the deceased person agreed upon, is not disqualified to testify on the agreement. Those disqualified are parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against the administrator or Juan's estate, upon a claim or demand against his estate as to any matter of fact occurring before Juan's death. (*Sec. 23 of Rule 130*)

Hearsay Rule; Exception; Dying Declaration (1998)

Requisites of Dying Declaration. [2%]

SUGGESTED ANSWER:

The requisites for the admissibility of a dying declaration are:

(a) the declaration is made by the deceased under the consciousness of his impending death;

(b) the deceased was at the time competent as a witness;

(c) the declaration concerns the cause and surrounding circumstances of the declarant's death; and (d) the declaration is offered in a (criminal) case wherein the declarant's death is the subject of inquiry. (**People vs. Santos, 270 SCRA 650.**)

ALTERNATIVE ANSWER:

The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of Inquiry, as evidence of the cause and surrounding circumstances of such death. (*Sec. 37 of Rule 130.*)

Hearsay Rule; Exceptions; Dying Declaration (1999)

The accused was charged with robbery and homicide. The victim suffered several stab wounds. It appears that eleven (11) hours after the crime, while the victim was being brought to the hospital in a jeep, with his brother and a policeman as companions, the victim was asked certain questions which he answered, pointing to the accused as his assailant. His answers were put down in

writing, but since he was in a critical condition, his brother and the policeman signed the statement. Is the statement admissible as a dying declaration? Explain. (2%)

SUGGESTED ANSWER:

Yes. The statement is admissible as a dying declaration if the victim subsequently died and his answers were made under the consciousness of impending death (Sec. 37 of Rule 130). The fact that he did not sign the statement point to the accused as his assailant, because he was in critical condition, does not affect its admissibility as a dying declaration. A dying declaration need not be in writing (**People v. Viovicente, 286 SCRA 1**)

Hearsay Rule; Exception; Res Gestae; Opinion of Ordinary Witness (2005)

Dencio barged into the house of Marcela, tied her to a chair and robbed her of assorted pieces of jewelry and money. Dencio then brought Candida, Marcela's maid, to a bedroom where he raped her. Marcela could hear Candida crying and pleading: "Huwag! Maawa ka sa akin!" After raping Candida, Dencio fled from the house with the loot. Candida then untied Marcela and rushed to the police station about a kilometer away and told Police Officer Roberto Maawa that Dencio had barged into the house of Marcela, tied the latter to a chair and robbed her of her jewelry and money. Candida also related to the police officer that despite her pleas, Dencio had raped her. The policeman noticed that Candida was hysterical and on the verge of collapse. Dencio was charged with robbery with rape. During the trial, Candida can no longer be located. (8%)

a) If the prosecution presents Police Officer Roberto Maawa to testify on what Candida had told him, would such testimony of the policeman be hearsay? Explain.

SUGGESTED ANSWER:

No. The testimony of the policeman is not hearsay. It is part of the res gestae. It is also an independently relevant statement. The police officer testified of his own personal knowledge, not to the truth of Candida's statement, i.e., that she told him, despite her pleas, Dencio had raped her. (**People v. Gaddi, G.R. No. 74065, February 27, 1989**)

b) If the police officer will testify that he noticed Candida to be hysterical and on the verge of collapse, would such testimony be considered as opinion, hence, inadmissible? Explain.

SUGGESTED ANSWER:

No, it cannot be considered as opinion, because he was testifying on what he actually observed. The last paragraph of Sec. 50, Rule 130, Revised Rules of Evidence, expressly provides that a witness may testify on his impressions of the emotion, behavior, condition or appearance of a person.

Hearsay Rule; Exceptions; Res Gestae (2014)

While passing by a dark uninhabited part of their barangay, P02 Asintado observed shadows and heard screams from a distance. P02 Asintado hid himself

behind the bushes and saw a man beating a woman whom he recognized as his neighbor, Kulasa. When Kulasa was already in agony, the man stabbed her and she fell on the ground. The man hurriedly left thereafter.

P02 Asintado immediately went to Kulasa's rescue. Kulasa, who was then in a state of hysteria, kept mentioning to P02 Asintado "Si Rene, gusto akongpatayin! Sinaksakniyaako!" When P02 Asintado was about to carry her, Kulasa refused and said "Kaya ko. Mababaw tang to. Habulin mo si Rene." The following day, Rene learned of Kulasa's death and, bothered by his conscience, surrendered to the authorities with his counsel. As his surrender was broadcasted all over media, Rene opted to release his statement to the press which goes:

"I believe that I am entitled to the presumption of innocence until my guilt is proven beyond reasonable doubt. Although I admit that I performed acts that may take one's life away, I hope and pray that justice will be served the right way. God bless us all.

(Sgd.)
Rene"

The trial court convicted Rene of homicide on the basis of P02 Asintado's testimony, Kulasa's statements, and Rene's statement to the press. On appeal, Rene raises the following errors:

1. The trial court erred in giving weight to P02 Asintado's testimony, as the latter did not have any personal knowledge of the facts in issue, and violated Rene's right to due process when it considered Kulasa's statements despite lack of opportunity for her cross-examination.

2. The trial court erred in holding that Rene's statement to the press was a confession which, standing alone, would be sufficient to warrant conviction.

Resolve. (4%)

SUGGESTED ANSWER:

1. The trial court did not err in giving weight to P02 Asintado's testimony.

While a witness can only testify as to those facts which he has personal knowledge, the Rules provide that a statement made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances, is an exception being part of res gestae. (**Belbis, Jr., v. People, [2012]**).

In the case, the statements made by P02 Asintado constitutes part of res gestae since the same were made without any opportunity to fabricate and while a startling occurrence was actually taking place. In addition, the statement of P02 Asintado may fall within the purview of the doctrine of independent relevant statement, where only the fact that such statements were made is relevant,

and the truth and falsity thereof is immaterial. (*People v. Malibiran*, I.G.R. No. 178301, [April 24, 2009]). On the other hand, Kulasa's statements are also admissible as part of *res gestae* since the same were made under the influence of a startling event and without any opportunity to concoct or devise a falsehood.

2. The trial court did not err in holding that Rene's statement to the press is a confession.

Rene's confessions to the media were properly admitted because statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. (*People v. Hipona*, G.R. No. 185709, [February 18, 2010]).

ALTERNATIVE ANSWER:

2. The trial court erred in considering Rene's statement as a confession. Confession contemplates a categorical acknowledgement of guilt made by an accused in a criminal case in any exculpatory statement or explanation. (*People v. Aquino*, [L-3240, April 21, 1952, 91 Phil. 910]). A second look of Rene's Statement to the press would readily show that there was no categorical admission of the commission of the offense. Hence, it is not considered a confession that will warrant his conviction. After all, it is well settled that an extra-judicial confession made by an accused, shall not be a sufficient ground for conviction, unless corroborated by evidence of corpus delicti. (Section 3, Rule 133, Rules of Court)

Hearsay Evidence vs. Opinion Evidence (2004)

Distinguish Hearsay evidence and opinion evidence.

SUGGESTED ANSWER:

Hearsay evidence consists of testimony that is not based on personal knowledge of the person testifying, (see Sec. 36, Rule 130), while opinion evidence is expert evidence based on the personal knowledge skill, experience or training of the person testifying (Sec. 49, *Id.*) and evidence of an ordinary witness on limited matters (Sec. 50, *Id.*).

Hearsay Rule; Inapplicable (2003)

X was charged with robbery. On the strength of a warrant of arrest issued by the court, X was arrested by police operatives. They seized from his person a handgun. A charge for illegal possession of firearm was also filed against him. In a press conference called by the police, X admitted that he had robbed the victim of jewelry valued at P500,000.00. The robbery and illegal possession of firearm cases were tried jointly. The prosecution presented in evidence a newspaper clipping of the report to the reporter who was present during the press conference stating that X admitted the robbery. It likewise presented a certification of the PNP Firearms and Explosive Office attesting that the accused had no license to carry any firearm. The certifying officer, however, was not presented as a witness. Both pieces of evidence were objected to by the defense. (6%)

a) Is the newspaper clipping admissible in evidence against X?

b) Is the certification of the PNP Firearm and Explosive Office without the certifying officer testifying on it admissible in evidence against X?

SUGGESTED ANSWER:

(a) Yes, the newspaper clipping is admissible in evidence against X, regardless of the truth or falsity of a statement, the hearsay rule does not apply and the statement may be shown where the fact that it is made is relevant. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such fact. (**Gotesco Investment Corporation vs. Chatto, 210 SCRA 18 [1992]**)

(b) Yes, the certification is admissible in evidence against X because a written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. (Sec. 28 of Rule 132).

Hearsay Rule; Inapplicable; Doctrine of Independent Relevant Statement (1999)

A overheard B call X a thief. In an action for defamation filed by X against B, is the testimony of A offered to prove the fact of utterance i.e., that B called X a thief, admissible in evidence? Explain. (2%)

SUGGESTED ANSWER:

Yes. The testimony of A who overheard B call X a thief is admissible in evidence as an independently relevant statement. It is offered in evidence only to prove the tenor thereof, not to prove the truth of the facts asserted therein. Independently relevant statements include statements which are on the very facts in issue or those which are circumstantial evidence thereof. The hearsay rule does not apply. (**See People vs. Gaddi, 170 SCRA 649**)

Hearsay Rule; Inapplicable; Doctrine of Independently Relevant Statements (2009)

[b] Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto who shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%)

SUGGESTED ANSWER:

Objection overruled. The disclosure received by Domingo and Carla may be regarded as independently relevant statement which is not covered by the hearsay rule; hence admissible. The statement may be received not as evidence of the truth of what was stated but only as to the tenor thereof and the occurrence when it was said, independently of whether it was true or false. (*People v.*

Cloud, 333 Phil. 30 [1996]; People v. Malibiran, et al., G.R. No. 178301, April 24, 2009).

ALTERNATIVE ANSWER:

Objection sustained. The disclosure made by Carla has no other probative value except to identify who shot Betty. Its tenor is irrelevant to the incident, and the same was made not to a police investigator of the occurrence but to a nurse whose concern is only to attend to the patient. Hence, the disclosure does not qualify as independently relevant statement and therefore, hearsay. The nurse is competent to testify only on the condition of Betty when rushed to the Hospital but not as to who caused the injury. The prosecution should call on Carla as the best witness to the incident.

Hearsay Rule; Remedies to Ruling on the Objections (2012)

Counsel A objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection Sustained". Can Counsel A ask for a reconsideration of the ruling? Why? (5%)

SUGGESTED ANSWER:

Yes, Counsel B may ask the Judge to specify the ground/s relied upon for sustaining the objection and thereafter move its reconsideration thereof. (Rule 132, Sec. 38, Rules of Court).

Character Evidence (2002)

D was prosecuted for homicide for allegedly beating up V to death with an iron pipe.

A. May the prosecution introduce evidence that V had a good reputation for peacefulness and nonviolence? Why? (2%)

B. May D introduce evidence of specific violent acts by V? Why? (3%)

SUGGESTED ANSWER:

A. The prosecution may introduce evidence of the good or even bad moral character of the victim if it tends to establish in any reasonable degree the probability or improbability of the offense charged. [Rule 130, sec. 51 a (3)]. In this case, the evidence is not relevant.

B. Yes, D may introduce evidence of specific violent acts by V. Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time; but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like. (Rule 130, sec. 34).

Character Evidence; Bad Reputation (2010)

In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the Anti- Graft and Corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground/s. Respond. (3%)

SUGGESTED ANSWER:

The objection is on the ground that the fact sought to be elicited by the prosecution is irrelevant and immaterial to the offense under prosecution and trial. Moreover, the Rules do not allow the prosecution to adduce evidence of

bad moral character of the accused pertinent to the offense charged, except on rebuttal and only if it involves a prior conviction by final judgment (Rule 130, Sec. 51, Rules of Court).

Offer of Evidence (1997)

A trial court cannot take into consideration in deciding a case an evidence that has not been "formally offered".

When are the following pieces of evidence formally offered?

- (a) Testimonial evidence
- (b) Documentary evidence
- (c) Object evidence

SUGGESTED ANSWER:

(a) Testimonial evidence is formally offered at the time the witness is called to testify. (Rule 132, Sec. 35, first par.).

(b) Documentary evidence is formally offered after the presentation of the testimonial evidence. (Rule 132, Sec. 35, second par.).

(c) The same is true with object evidence. It is also offered after the presentation of the testimonial evidence.

Offer of Evidence; res inter alios acta (2003)

X and Y were charged with murder. Upon application of the prosecution, Y was discharged from the Information to be utilized as a state witness. The prosecutor presented Y as witness but forgot to state the purpose of his testimony much less offer it in evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly crossexamined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds. (a) The testimony of Y should be excluded because its purpose was not initially stated and it was not formally offered in evidence as required by Section 34, Rule 132 of the Revised Rules of Evidence; and (b) Y's testimony is not admissible against X pursuant to the rule on "res inter alios acta". Rule on the motion for demurrer to evidence on the above grounds. (6%)

SUGGESTED ANSWER:

The demurrer to the evidence should be denied because:

a) The testimony of Y should not be excluded because the defense counsel did not object to his testimony despite the fact that the prosecutor forgot to state its purpose or offer it in evidence. Moreover, the defense counsel thoroughly crossexamined Y and thus waived the objection.

b) The *res inter alios acta* rule does not apply because Y testified in open court and was subjected to cross examination.

Offer of Evidence; Testimonial & Documentary (1994)

What is the difference between an offer of testimonial evidence and an offer of documentary evidence?

SUGGESTED ANSWER:

An offer of testimonial evidence is made at the time the witness is called to testify, while an offer of documentary

evidence is made after the presentation of a party's testimonial evidence. (Sec. 35, Rule 132).

Offer of Evidence; Failure to Offer (2007)

(b) G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F's evidence.

Was the court correct? Explain briefly. (5%)

SUGGESTED ANSWER:

No, the trial court is not correct in ruling in favor of F. Tax Declaration are not by themselves evidence of ownership; hence, they are not sufficient evidence to warrant a judgment that F's father is a co-owner of the property.

Plaintiff's failure to make a formal offer of his evidence may mean a failure to prove the allegations in his complaint. However, it does not necessarily result in a judgment awarding co-ownership to the defendant.

While the court may not consider evidence which is not offered, the failure to make a formal offer of evidence is a technical lapse in procedure that may not be allowed to defeat substantive justice. In the interest of justice, the court can require G to offer his evidence and specify the purpose thereof.

Offer of Evidence; Fruit of Poisonous Tree (2010)

Dominique was accused of committing a violation of the human Security Act. He was detained incommunicado, deprived of sleep, and subjected to water torture. He later allegedly confessed his guilt via an affidavit. After trial, he was acquitted on the ground that his confession was obtained through torture, hence, inadmissible as evidence. In a subsequent criminal case for torture against those who deprived him of sleep and subjected him to water torture. Dominique was asked to testify and to, among other things, identify his above said affidavit of confession. As he was about to identify the affidavit, the defense counsel objected on the ground that the affidavit is a fruit of a poisonous tree. Can the objection be sustained? Explain. (3%)

SUGGESTED ANSWER:

No, the objection may not be sustained on the ground stated, because the affiant was only to identify the affidavit which is not yet being offered in evidence.

The doctrine of the poisonous tree can only be invoked by Domingo as his defense in the crime of Violation of Human Security Act filed against him but not by the accused torture case filed by him.

In the instant case, the presentation of the affidavit cannot be objected to by the defense counsel on the ground that it is a fruit of the poisonous tree because the same is used in Domingo's favor.

Offer of Evidence; Fruit of a Poisonous Tree (2009)

Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of "shabu" were confiscated from him. Edmond consented and also signed a receipt for the amount of P3,000, allegedly representing the "purchase price of the shabu." At the trial, the arresting officer testified and identified the documents executed and signed by Edmond. Edmond's lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond. Edmond's lawyer object to the admissibility of the document for being the fruit of the poisoned tree. Resolve the objection with reasons. (3%)

SUGGESTED ANSWER:

The objection to the admissibility of the documents which the arresting officer asked Edmond to sign without the benefit of counsel, is well-taken. Said documents having been signed by the accused while under custodial investigation, imply an "admission" without the benefit of counsel, that the shabu came from him and that the P3,000.00 was received by him pursuant to the illegal selling of the drugs. Thus, it was obtained by the arresting officer in clear violation of Sec. 12 (3), Art. III of the 1987 Constitution, particularly the right to be assisted by counsel during custodial investigation.

Moreover, the objection to the admissibility of the evidence was timely made, i.e., when the same is formally offered.

Doctrine of Adoptive Admission (2009)

Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it.

SUGGESTED ANSWER:

TRUE. The effect or consequence of the admission will bind also the party who adopted or espoused the same, as applied in *Estrada vs. Desierto*, 356 SCRA 108 [2001]. An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person.

SUMMARY PROCEDURE

Prohibited Pleadings (2004)

Charged with the offense of slight physical injuries under an information duly filed with the MeTC in Manila which in the meantime had duly issued an order declaring that the case shall be governed by the Revised Rule on Summary Procedure, the accused filed with said court a motion to quash on the sole ground that the officer who filed the information had no authority to do so. The MeTC denied the motion on the ground that it is a prohibited motion under the said Rule. The accused thereupon filed

with the RTC in Manila a petition for certiorari in sum assailing and seeking the nullification of the MeTC's denial of his motion to quash. The RTC in due time issued an order denying due course to the certiorari petition on the ground that it is not allowed by the said Rule. The accused forthwith filed with said RTC a motion for reconsideration of its said order. The RTC in time denied said motion for reconsideration on the ground that the same is also a prohibited motion under the said Rule. Were the RTC's orders denying due course to the petition as well as denying the motion for reconsideration correct? Reason. (5%)

SUGGESTED ANSWER:

The RTC's orders denying due course to the petition for certiorari as well as denying the motion for reconsideration are both not correct. The petition for certiorari is a prohibited pleading under Section 19(g) of the Revised Rule on Summary Procedure and the motion for reconsideration, while it is not prohibited motion (**Lucas v. Fabros, AM No. MTJ-99-1226, January 31, 2000, citing Joven v. Court of Appeals, 212 SCRA 700, 707-708 (1992)**), should be denied because the petition for certiorari is a prohibited pleading.

Prohibited Pleadings (2010)

Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US authorities in connection with the Balikatan exercises. Marinella alleges that as a result of her exposé, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed. Atty. Daro, counsel for the Chief of Staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro's motion. Explain. (3%)

SUGGESTED ANSWER:

The motion to dismiss must be denied on the ground that it is a prohibited pleading under Section 11 (a) of the Rule on the Writ of Amparo. Moreover, said Rule does not require the petition therefor to allege a complete detail of the actual or threatened violation of the victim's rights. It is sufficient that there be an allegation of real threat against petitioner's life, liberty, and/or security. (**Gen. A. Razon, Jr. vs. Tagitis, G.R. No. 182498, Dec. 03, 2009**).

Rule on Small Claims Cases (2013)

As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counseling and the notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this practice and location, he did not have big-time clients but enjoyed heavy patronage assisting walk-in clients.

(A) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases? (3%)

SUGGESTED ANSWER:

A) Atty. Novato may provide legal assistance to his clients by giving counseling and guidance in the preparation and accomplishment of the necessary documents and Affidavits to initiate or defend a small claims action including the compilation and notarization of the aforementioned documents, if necessary.

(B) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (4%)

SUGGESTED ANSWER:

B) Atty. Novato may file a Petition for Certiorari under Rule 65 of the Rules of Court before the RTC since a decision in small cases is final and unappealable (Sec. 23, Am no. 8-8-7 SC, Rules of Procedure for Small Claims Cases). The petition for certiorari should be filed before the RTC conformably to the Principle of Judicial Hierarchy.

Environmental Cases; Precautionary Principle (2012)

What do you understand about the "precautionary principle" under the Rules of Procedure for Environmental Cases? (5%)

SUGGESTED ANSWER:

Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat. In its essence, the precautionary principle calls for the exercise of caution in the face of risk and uncertainty (Sec. 4[f], Rule 1, Part 1 and Rule 20, A.M. NO. 09-6-8-SC, Rules of Procedure for Environmental Cases).

MISCELLANEOUS

Administrative Proceedings (2005)

Regional Director AG of the Department of Public Works and Highways was charged with violation of Section 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him in the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the Military to conduct a joint investigation of the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for a period not exceeding six months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators. AG moved to reconsider the order on the following grounds: (a) the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case; (b) the order for his preventive suspension was premature

because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and (c) he was a career executive service officer and under Presidential Decree No. 807 (Civil Service Law), his preventive suspension shall be for a maximum period of three months. Resolve with reasons the motion of respondent AG. (5%)

SUGGESTED ANSWER:

The motion should be denied for the following reasons:

1 The Office of the Special Prosecutor does not have exclusive authority to conduct a preliminary investigation of the criminal case but it participated in the investigation together with the Deputy Ombudsman for the Military who can handle cases of civilians and is not limited to the military.

2 The order of preventive suspension need not wait for the answer to the administrative complaint and the submission of countervailing evidence. (*Garcia v. Mojica*, G.R. No. 13903, September 10, 1999) In *Vasquez case*, G.R. No. 110801, April 6, 1995, the court ruled that preventive suspension pursuant to Sec. 24 of R.A. No. 6770 (Ombudsman Act of 1989), shall continue until termination of the case but shall not exceed six (6) months, except in relation to R.A. No. 3019 and P.D. No. 807. As a career executive officer, his preventive suspension under the Civil Service Law may only be for a maximum period of three months. The period of the suspension under the Anti-Graft Law shall be the same pursuant to the equal protection clause. (*Garcia v. Mojica*, G.R. No. 13903, September 10, 1999; *Layno v. Sandiganbayan*, G.R. No. L-65848, May 21, 1985)

Congress; Law Expropriating Property (2006)

May Congress enact a law providing that a 5,000 square meter lot, a part of the UST compound in Sampaloc Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenic Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. (5%)

SUGGESTED ANSWER:

Yes, Congress may enact a law expropriating property provided that it is for public use and with just compensation. In this case, the construction of a park is for public use (*See Sena v. Manila Railroad Co.*, G.R. No. 15915, September 7, 1921; *Reyes v. NHA*, GR No. 147511, March 24, 2003). The planned compensation, however, is not legally tenable as the determination of just compensation is a judicial function. No statute, decree or executive order can mandate that the determination of just compensation by the executive or legislative departments can prevail over the court's findings (*Export Processing Zone Authority v. Dulay*, G.R. No. L-59603, April 29, 1987; *Sees. 5 to 8 Rule 67, 1997 Rules of Civil Procedure*). In addition, compensation must be paid in money (*Esteban v. Onorio, A.M. No. 00-4-166-RTC*, June 29, 2001).